



**MEMORANDUM**

TO: Acton Community Preservation Committee

FROM: Stephen D. Anderson, Town Counsel

DATE: December 7, 2010

RE: Acton/CPA - Allowable Uses of CPA Funds for FY 2011 Appropriation (Proposals 1, 2, 6 and 7)

---

You have asked us to review various Community Preservation Act (“CPA”) FY 2011 funding applications, and have requested our opinion as to whether these proposals may be funded under the CPA. This memorandum analyzes four pending proposals for CPA funding set forth below.

By way of background, the CPA permits municipalities to use CPA funds for the following purposes (G. L. c. 44B, § 5(b)(2)):

- (a) acquisition, creation and preservation of open space;
- (b) acquisition, preservation, rehabilitation and restoration of historic resources;
- (c) acquisition, creation and preservation of land for recreational use;
- (d) acquisition, creation, preservation and support of community housing;
- (e) rehabilitation and restoration of open space, land for recreational use and community housing that is acquired or created using monies from the fund.

**Proposal 1. Open Space Acquisition/Protection Set-Aside [YES]**

The Open Space Committee requests \$500,000 to be set aside for future open space acquisition and/or land protection projects. This request is the same last year’s request, including the same dollar amount. We stand by our review last year and similar proposals in past years, which stated:

“CPA § 6 provides as follows (emphasis added):

In every fiscal year and upon the recommendation of the community preservation committee, the legislative body shall spend, or **set aside for later spending, not less than 10 per cent of the annual revenues in the Community Preservation Fund**

**for open space, but not including land for recreational use**, not less than 10 per cent of the annual revenues for historic resources and not less than 10 per cent of the annual revenues for community housing.

“Setting aside [\$500,000] for Open Space Acquisition & Protection would be consistent with previous fiscal year recommendations made by the CPC and approved by Town Meeting. The CPC should of course be mindful that the overall balance is preserved among the three main 10% categories listed in § 6.”

Unlike last year, the Open Space Committee is not requesting any additional funds for the Open Space Acquisition and Preservation Fund this year.

**Proposal 2. Community Housing Program Fund [YES] and [Judgment Call]**

The Acton Community Housing Corporation (“ACHC”) requests \$150,000 of CPA funds for its Community Housing Program Fund (“CHP Fund”) for “the acquisition, creation, preservation, and support of community housing in the Town of Acton.” The ACHC made similar requests for CPA funds for FY 2008, 2009 and 2010 for a similar set of programs. A summary of our response from prior years, updated for this year, is as follows:

The CHP Fund will be used to finance new affordable housing initiatives recommended by ACHC and approved by the Board of Selectmen under ACHC’s enabling legislation (Chapter 143 of the Acts of 1996, § 1). ACHC proposes to use the CHP Fund to continue current programs and create new initiatives. These programs and initiatives include:

- A Condo Buy-Down Program: Under this program (begun in 2007), ACHC would “buy down” the selling price of existing housing units or new construction units in non-40B developments to a pre-determined affordable level so the unit could be sold to income eligible households earning up to 80% of the Area Median Income.
- First-Time Homebuyer Grant Program: Under this program, ACHC would provide a grant of \$60,000 for a 2-bedroom unit or \$80,000 for a 3-bedroom unit to eligible first-time homebuyers selected in a lottery process. This grant would be used to off-set the mortgage and would require a deed rider to keep the unit affordable in perpetuity. The ACHC would also consider using \$100,000 from the fund to subsidize a minimum of one unit for first-time homebuyers, again determined by the DHCD-approved lottery system.
- A Condo Purchase & Rental Program: Under this program, ACHC would partner with the Acton Housing Authority to buy existing condo units for AHA’s low income rental program. A combination of CPA, AHA and housing funds would be used to fund these acquisitions.

- Affordable Housing Buyer Assistance Programs:<sup>1</sup> Under these programs, ACHC would provide down-payment and closing cost assistance, a first-time home buyer course, and foreclosure prevention and credit counseling for income-eligible households seeking to purchase affordable housing.
- Minor Capital Upgrades to Restricted Units: Under this program, ACHC would use portions of the fund to do inspections and minor capital upgrades for existing deed-restricted units as part of the resale process. This program would also cover the cost of an agent to handle the resale to an income eligible buyer.
- Financial Literacy Course: ACHC would co-sponsor a new Financial Literacy Course with the Acton-Boxborough United Way.

With the exception of the Financial Literacy Course, each of these programs and initiatives could qualify for CPA funds for “the acquisition, creation, preservation and support of community housing” under G. L. c. 44B, § 5 provided that:

- Permanent deed restrictions that meet the requirements of chapter 184 are utilized to ensure that the subsidized housing remains affordable in perpetuity and that the unit or units are added to the Town’s Subsidized Housing Unit Count.<sup>2</sup>
- ACHC’s initiatives are approved by the Board of Selectmen under ACHC’s enabling legislation.
- The housing in question qualifies under the CPA’s definition of “community housing” as “low and moderate income housing for individuals and families, including low or moderate income senior housing.” G. L. c. 44B, § 2.<sup>3</sup>

---

<sup>1</sup> In our comments on the proposed 2007 CPA Appropriations, we commented at length on ACHC’s proposal for a forgivable 5-year down payment assistance loan. Please consult those comments for a more detailed analysis with respect to any such proposed program this year.

<sup>2</sup> See G.L. c. 44B, § 12(a) (emphasis added). The deed restriction “shall run with the land and shall be enforceable by the city or town or the commonwealth” or shall “run to the benefit of a nonprofit, charitable corporation or foundation selected by the city or town with the right to enforce the restriction.” *Id.*

<sup>3</sup> In turn, the CPA defines these terms as follows (emphasis added):

- "Low income housing" is defined as “housing for those persons and families whose annual income is less than 80 per cent of the area-wide median income” as determined by the United States Department of Housing and Urban Development.
- "Low or moderate income senior housing" is defined as “housing for those persons having reached the age of 60 or over who would qualify for low or moderate income housing.”
- "Moderate income housing" is defined as “housing for those persons and families whose annual income is less than 100 per cent of the area-wide median income” as determined by the United States Department of Housing and Urban Development.

- In the case of minor capital upgrades for existing deed-restricted units, care must be taken to ensure that the CPA funds are used for “preservation” purposes (i.e. “protection of ... real property from injury, harm or destruction”) and not for “maintenance” (i.e. “the upkeep of real ... property”).

With respect to the Financial Literacy Course, it would be helpful for ACHC to describe more clearly the nexus between the proposed course and its specific “support of community housing,” a permissible use of CPA Funds under G.L. c. 44B, §5(b)(2). While the Act permits CPA funds to be used for the “support of community housing,” the phrase “[s]upport of” is not defined in the statute. In prior guidance to the Town, the Department of Revenue (“DOR”) has opined that “support of” community housing “in the context of municipal expenditures ordinarily means to provide funds for a particular activity.” Letter to Stephen D. Anderson from Daniel J. Murphy, dated August 25, 2004. Eligible activities under this portion of the statute include, for example, payments for operating expenses and annual payments to the housing authority to preserve or expand the affordable housing supply. DOR Informational Guideline Release No. 00-209. At this point, the Committee needs more information from ACHC as to how the financial literacy course would be specifically directed toward “supporting” community housing before the Committee can conclude that this course is eligible for CPA Funds.

**Proposals 6. & 7.     Window Replacement Projects at Town Properties [YES]**

There are two historic window replacement projects on this year’s list of potential CPA projects:

- The Town’s Municipal Properties Department requests \$15,000 in CPA funds for the restoration and rehabilitation of the large arch window on the mezzanine level in the original 1889 wing of the Acton Memorial Library. The Library, and that location specifically, serves as Acton’s Civil War Memorial, is located in the Acton Center Historic District and was listed in the National Register in 1983. The Library is publicly owned and open to the public. The work funded with CPA funds is proposed to restore and rehabilitate the wood mullions separating the 128 panes of glass in the arch window and restore the plaster damaged around the window from prior roof leakage (since repaired).
- The Town’s Municipal Properties Department requests \$75,000 in CPA funds for the rehabilitation and restoration of windows on the second floor, mezzanine and belfry of the historic portion of Town Hall. This portion of Town Hall was built in 1864, listed in the National Register in 1983, and is located in the Acton Center Historic District. The work funded with CPA funds is proposed to also restore and rehabilitate the original wooden storm windows on the mezzanine and belfry levels. The amount requested is \$25,000 more than the amount requested and approved for restoration of the first floor windows because the area is 20% larger and the access to the windows is more difficult.

Under G.L. c. 44B, § 5(b)(2), the “acquisition, preservation, rehabilitation and restoration of historic resources” are legitimate uses of CPA funds. CPA § 2 defines “historic resources” to include “a building, structure, vessel, real property, document or artifact that is listed or eligible for listing on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.” Both buildings qualify under this test. As such, each is an appropriate use of CPA Funds.