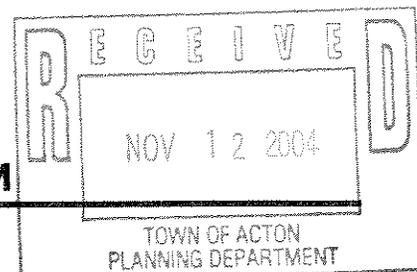


## PROJECT APPLICATION FORM



**Applicant: Acton Housing Authority**

**Submission Date: November 12, 2004**

**Applicant's Address, Phone Number and Email**

**Purpose: (Please select all that apply)**

**68 Windsor Avenue, Acton MA 01720**

**Phone: 978-263-5339**

**E-Mail: [ahabetty@attglobal.net](mailto:ahabetty@attglobal.net)**

- Open Space
- Community Housing
- Historic Preservation
- Recreation

**Town Committee (if applicable): Acton Housing Authority**

**Project Name: Design and Construction of a Recreational Area at McCarthy Village**

**Project Location/Address: Sachem Way (off of Great Road) Acton, MA**

**Project Summary:** In the space below provide a brief summary of the project. Using additional sheets submit a complete narrative description of the project and, when applicable, of the property involved and its proposed use. Describe how the project will benefit the Town and the citizens of Acton and how the project is consistent with the Plan's "Guidelines for Submission" and "Review and Recommendation Criteria." Include a work plan showing the anticipated steps or phases for completion of the project and the timing and estimated cost of each phase.

***The Acton Housing Authority (AHA) is requesting a \$20,000 grant from the Town of Acton's Community Preservation fund for Site Design and Construction of a Recreational Area for the residents living at McCarthy Village, a complex constructed in 1986 housing 12 families (26 children, 19 adults) and 23 elderly/handicapped residents.***

### **Control of Site:**

***The Acton Housing Authority owns McCarthy Village which consists of 10 three bedroom family homes, 1 four bedroom home, 1 two bedroom handicapped home and 23 elderly/handicapped apartments. The portion of the site in which the Feasibility Study and Site Design will be done is in an area of the remaining undeveloped 4 acres. The AHA has met with Tom Tidman, Conservation Director and has determined there are no wetland issues, consulted with Nancy McShea, Recreation Director to discuss plan for the recreational area and has met with Garry Rhodes, Building Commissioner to discuss the Authority's plans for a recreational area as it relates to handicapped accessibility issues.***

## **Narrative**

***The Authority is proposing to hire an engineer/landscape consultant to do a site design to determine the placement of the recreational area consisting of: a picnic area for 6 to 8 picnic tables, a sitting area with benches, a sand filled volley ball court, installation of an asphalt area for a basketball backboard, a tether ball area, a horseshoe/bocce court and an asphalt area for a 4x4 game and then once designed to construct the recreational area and purchase the equipment.***

***In the nineties several McCarthy Village families approached community merchants for donations to purchase a swing and gym set. They successfully raised \$400 and purchased a pressure treated swing set with slide, trapeze, rings and canopy for the smaller children (90 lb. limit), but as the children grew and as time passed the Authority became concerned with safety and liability issues. In 2002 the Department of Housing and Community Development sent a Public Housing Notice to address common concerns at many local housing authorities (LHA). DHCD recommended that housing authorities adopt a policy which prohibits tenants from having swimming pools, swing sets or trampolines at state-aided housing units. Allowing tenants to use such personally owned equipment on the Authority's property would place a housing authority in a very vulnerable position with respect to personal injury. The Authority was instructed to take necessary steps to bring itself into compliance with DHCD's recommendation. The swing set was dismantled.***

***In an attempt to provide a small play area the AHA purchased a tether ball game, a badminton/volley ball set, a basketball backboard and installed them in a small clearing at the end of the complex's roadway. Although the Authority's attempt was well intended the area was not adequate as a play space and the sports equipment purchased were not designed for the use of large groups of children.***

***It should be emphasized the only space for the 26 children to play is in the narrow roadway as the homes are close together and have little or no back yards. By constructing a recreational area the elderly will walk down to the area to sit and visit with the children/families, the adults will be able to play bocce or throw horseshoes, the older children will play one on one basketball games or tether ball, the adults or older children will play volley ball and the 4x4 area will provide hours of activity for the younger children.***

***Approval of the grant will enable the AHA to complete a Site Design, construct the recreational area and purchase the equipment.***

***This proposed recreational area will be on public land and therefore would be open to the public, especially children in the nearby development of Harris Village. It is not anticipated to be a large draw from outside the neighborhood but it is the intention of the AHA to make it a welcoming area to all.***

### **Eligibility of Grant Request**

***Massachusetts Department of Revenue's (DOR) letter to Acton's Town Counsel dated August 25, 2004 confirms the Acton Housing Authority's eligibility for Community Preservation funds:***

***"A housing authority is a separate body politic and corporate organized for the purpose of owning and operating the public affordable housing stock within the municipality". The municipality is authorized to provide its authority with a broad range of financial and other assistance. G.L.c.121Bss19 and 20. "support" in the context of municipal expenditures ordinarily means to provide funds for a particular activity, including operating expenses.***

***The Authority will follow the Public Bidding Law's in their Request for Proposals for the design and construction of the recreational area. The AHA will establish a separate account called the "McCarthy Village Recreational Fund" to which the \$20,000 will flow after approval of the April 2005 Annual Town Meeting. The McCarthy Village Recreational Area fund will not be co-mingled with the Authority's Operating funds and the accounting of the McCarthy Village Recreational fund will be kept by the AHA and periodic reports will be made to the Board of Selectmen and the Community Preservation Committee.***

**Estimated Date for Commencement of Project: May 2005**  
**Estimated Date for Completion of Project: September 2005**

**Addenda:**

- 1). Site Plan of McCarthy Village and proposed recreation area**
  
- 2). The Department of Housing and Community Developments Memorandum dated May 8, 2003 regarding Tenant Swimming Pools, Swing Set and Trampoline Policy**
  
- 3). Massachusetts Department of Revenue's (DOR) letter to Acton's Town Counsel dated August 25, 2004**
  
- 4). Pictures of McCarthy Village elderly and family area as well as proposed recreational area**

***ADDENDUM 1***



***ADDENDUM 2***



Commonwealth of Massachusetts  
**DEPARTMENT OF HOUSING &  
COMMUNITY DEVELOPMENT**

Mitt Romney, Governor ♦ Kerry Healey, Lt. Governor ♦ Jane Wallis Gumble, Director

**Public Housing Notice 2003- 04**

MEMORANDUM

TO: All Local Housing Authority Executive Directors  
FROM: Carole E. Collins, Director of Housing Management  
Stephanie Giancola, Risk Management Specialist  
RE: **Tenant Swimming Pool, Swing Set and Trampoline Policy**  
DATE: May 8, 2003

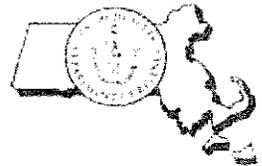
Now that Spring is upon us, the weather invites outdoor activities. This memo is being sent to address a common concern at many LHAs. It is DHCD's recommendation that housing authorities adopt a policy which prohibits tenants from having swimming pools, swing sets or trampolines at their state-aided housing units.

Ownership of swimming pools, swing sets and trampolines carry very special responsibilities regarding safety precautions, and as a result, they pose a high risk for general liability claims. Allowing tenants to use such personally owned equipment on the authority's property would place a housing authority in a very vulnerable position with respect to personal injury claims. Housing authorities routinely get sued for incidents even when a tenant is the responsible party. Allowing tenants to have swimming pools, swing sets or trampolines would only open another avenue of potential in this area with an unacceptable level of risk.

Please review your policies and take steps as may be necessary to bring them into conformance with this recommendation. If you have any questions on this issue, please contact Stephanie Giancola at 617-727-7130 x 624.



***ADDENDUM 3***



August 25, 2004

Stephen D. Anderson, Esq.  
Anderson & Kreiger LLP  
43 Thorndike Street  
Cambridge MA 02141-1764

Re: Community Preservation Act – Housing Authority Acquisition of Affordable Housing  
Our File No. 2004-308

Dear Mr. Anderson:

You asked whether the Town of Acton may appropriate community preservation funds to assist the Acton Housing Authority acquire condominiums that will be subject to affordable housing restrictions. The town plans to provide \$200,000 of the necessary funds, with \$300,000 being obtained from other sources. The housing authority will own and maintain these units and rent them to income eligible persons.

We believe a municipality may appropriate community preservation fund monies to assist a local housing authority acquire property for affordable housing purposes. As your analysis indicated, however, the issue presented is a difficult one given certain language in the Community Preservation Act (CPA). The CPA establishes a special community preservation fund with dedicated revenues for the purpose of giving cities and towns additional financial resources to support the preservation and expansion of open space, historic structures and landscapes, recreational land and affordable housing. With respect to affordable housing, the CPA provides that monies in the community preservation fund may be used "for the creation, preservation and support of community housing ... and for the rehabilitation or restoration of such ... community housing ... that is ... created" under the act, with preference to be given wherever possible to "the adaptive reuse of existing buildings or construction of new buildings on previously developed sites." (Emphasis added). G.L. Ch. 44B §5(b)(2). It does not provide that fund monies may be used for the "acquisition" of affordable housing, but elsewhere in the same section, acquisition is a purpose for which fund monies may be used with respect to the other community preservation assets.

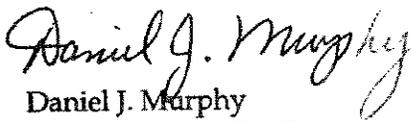
We agree that it is difficult to reconcile the omission of "acquisition" from the list of affordable housing purposes for which CPA monies may be spent with the overall purpose of the act and more specifically, the means by which a municipality expands its supply of affordable housing, *i.e.*, by acquiring affordable housing restrictions on privately owned housing units or having its housing authority acquire and operate publicly owned units. Even though both means involve acquiring property interests, we doubt the legislature intended to preclude communities from using fund monies for these purposes. Therefore, we have come to conclude in the context of allowable spending purposes, "acquisition" of an asset may have been intended to refer to municipal ownership of the fee or other possessory interest tantamount to outright ownership. We think this interpretation allows communities to undertake the range of activities contemplated by the legislature, although we recognize it is somewhat problematic.

Under that view, municipalities could still use fund monies to restrict the future use of a property, but it would be considered "creation" of the community preservation asset, which is included in the list of allowable purposes for all categories of such assets. Creation is not defined in the act, but its ordinary and generally understood meaning is bringing into being, causing to exist or production. American Heritage Dictionary 338 (2<sup>nd</sup> New College Edition 1985); Black's Law Dictionary 440 (4<sup>th</sup> ed. 1968). Creation could include a number of activities, such as new construction, conversion from one use to another, or restriction of future use, that effectively "cause" property to become a community preservation asset. We think such restrictions are acquired under the act for purposes of G.L. c. 44B §12(b), which means the municipality must own them.

A municipality could also use CPA monies to assist a housing authority increase its affordable housing stock under this view. We think it is significant that the legislature used the term "support" in the list of affordable housing purposes for which CPA monies may be spent. That term does not appear in connection with the allowable spending purposes for open space, historic resources or recreational land, nor is it defined. A housing authority is a separate body politic and corporate organized for the purpose of owning and operating the public affordable housing stock within a municipality and as you note, the municipality is authorized to provide its authority with a broad range of financial and other assistance. G.L. c. 121B §§19 and 20. "Support" in the context of municipal expenditures ordinarily means to provide funds for a particular activity, including operating expenses. See, for example, G.L. c. 71 §34 regarding the annual appropriation "for the support of public schools." We think that definition certainly describes the nature of the financial assistance a municipality is authorized to provide to its housing authority and therefore, we have taken the position that CPA funds may be used for that purpose. Informational Guideline Release 00-209, Section III-A-6-b. Funds appropriated by the municipality for that purpose are essentially a grant to the authority. In such cases, the municipality is simply providing financing and does not have to own the property. The property is being purchased using CPA monies, however, and therefore, we think it must be bound by an affordable housing restriction. G.L. c. 44B §12(a). If the authority sells the property at a later time, this will ensure the property will continue to be part of the community's affordable housing stock.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

  
Daniel J. Murphy  
Chief, Property Tax Bureau

DJM:KC

*ADDENDUM 4*





