

PROJECT APPLICATION FORM – 2013 DRAFT

Applicant: Town of Acton Historic District Commission

Submission Date: 11/14/12

Applicant's Address, Phone Number and Email

*Historic District Commission
Town of Acton, 472 Main Street
Acton, MA 01720; hdc@acton-ma.gov*

*Kathy Acerbo-Bachmann, Chair, Historic District Commission (contact)
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Acton, MA 01720
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Purpose: Historic Preservation

Town Committee: Historic District Commission

Project Name: Preservation Loan

Amount Requested: \$ 150,000

Project Summary:

The purpose of this revolving loan program (Preservation Fund) is to encourage preservation of architecturally significant structures in the town of Acton, MA. The program is based on a successful program in Arlington, MA that has been in existence since 1984. Through these favorable loans, the Fund will encourage the preservation or restoration of appropriate exterior architectural details for both residential and commercial building projects. This revolving fund will be administered through a local bank.

Loans will involve buildings both inside and outside the Town of Acton's Historic Districts, including the areas, cataloged in any of the Historical Commission's surveys, the National Register Multiple Resource Listing, as well as other buildings or structures which are otherwise deemed significant by the Historic District Commission and/or Historical Commission.

Once a preliminary application is received, it will be forwarded to a Preservation Loan subcommittee formed by one member of the Historic District Commission, one member of the Historical Commission and one member of the Community Preservation Committee, who will vet the application to make sure it meets guidelines. Approved loan requests will then be forwarded to the Selectmen who have veto power. Once the subcommittee receives word that the veto has not been exercised, the applicant will be sent a final application, as required by Massachusetts law. After this is signed and received, the application will be forwarded to the bank, who will administer the loan process and payments. A small sign will discretely installed at the property while the project is underway, indicating the historic nature of the restoration assisted by the Fund.

Project Description:

In Acton, there are three historic districts: South Acton, West Acton and Acton Center. Each is administered by the Historic District Commission according to the Rules and Regulations set forth in Massachusetts General Laws, Chapter 40C, and Chapter P of the By-Laws of the Town of Acton as enacted at Special Town Meeting in 1990 by near unanimous vote. These districts were established to preserve the architectural significance and distinctive character of these neighborhoods. Properties within the Historic Districts carry a special distinction because of their protected status, which enhances the value of both the property and community in which it is located.

However, there are no incentives or deterrents to keep buildings in the Historic Districts from being slowly destroyed by neglect or those outside the districts from being demolished after a delay. Several structures in the

districts have been demolished within the last five years due to long term neglect and several others await that fate as they continue to deteriorate. Buildings outside the district are at even greater risk.

In order to preserve these irreplaceable structures for future generations, the HDC is seeking to establish a fund for low interest loans to property owners seeking to maintain and preserve their buildings. This program is open to anyone whose building qualifies; however, it particularly serves low to moderate and fixed income homeowners who struggle to maintain their existing dwellings or who might not otherwise consider a historic home due to maintenance issues. Any exterior repairs or feature (such as windows) funded by the program will still need to be approved by the HDC if the buildings falls in one of the three Districts. The public benefit of the Fund includes higher property values, improving the overall appearance and conditions of the Districts, possibly leading to opportunities for cultural tourism, enhanced civic pride and most importantly, assurance that these buildings- which are a tangible link with Acton's cultural history- will exist for future generations.

The Historic District Commission is also considering bringing forward a Minimal Maintenance or Demolition-by-Neglect By-Law for Town Meeting 2014. A loan program is a first step and is a necessary counterpart for enforcement. If successful, a more punitive By-Law may not be needed at all.

The Loan

The Fund will be overseen and administered by a local bank, who will oversee disbursement. The HDC is currently seeking a local bank to partner with and has had several meetings with Enterprise Bank. Approved loans will typically be used for the repair or restoration- not maintenance- of elements most essential to the architectural character of the building, such as duplication of deteriorated columns, repairing slate roofs, or replacing synthetic siding with wood clapboards or shingles. Loans may be for as long as ten years, but will be also available on a three-year and five-year amortizations, with the latter being the most typical. On occasion, approval of a large, short-term loan could be considered. Monthly amortization of principal and interest will be based on one-half of the prime rate as of January 1 of the year of the loan.

Loans of \$7,500 or less do not require a mortgage; however, a preservation restriction is required on the areas of work for twice the length of the loan unless the property is located in one of Acton's Historic Districts and a lien will be placed on the property to secure performance and repayment. Loans of more than \$7500 will require a mortgage, lien, and preservation restriction as described above.

No attorney's fees, points, credit report fees, or appraisal fees are charged, but applicants are required to pay for recording fees at the Registry and a loan processing fee of 1/2 of 1% of the loan or \$50, whichever is more, to defray administrative expenses.

The Process

All preliminary applications will be reviewed by the Fund subcommittee, and those that are approved will be forwarded to the Board of Selectmen for review. After approval, Massachusetts law requires that a final application be signed and returned prior to closing and issuance of a check. The overall process is fairly simple and averages about 2 months' time for completion. Whether or not a loan is under \$7500 (no mortgage required) or more than \$7500 (mortgage required), a performance lien will be placed on the title of the property and then discharged upon repayment and satisfactory completion of the project.

The Fund will not discriminate on the basis of race, sex, color, creed, ethnic origin, marital status, or age.

Loans are on a three or five year basis, with monthly amortization of principal and interest. The 2013 interest rate will be one-half of the current prime rate as of January 1. Loans of \$7,500 or less will not require a mortgage; however, unless the property is located in a Chapter 40C Historic District, a preservation restriction is required on the areas of work for twice the length of the loan, an Internal Revenue Service requirement. No attorney's fees, points, credit report fees, or appraisal fees are charged, but we do require that the applicant pay for a recording at the Registry of Deeds (\$25), and a loan processing fee of 1% of the loan or \$50, whichever is more, to help defray administrative expenses.

Because of guidelines on how CPC funding may be used to benefit the community, the Fund would not make loans for projects that are *primarily* for maintenance. Such projects would include painting or asphalt roof repair as opposed to restoration work such as wood column repair/replacement, slate roof repair, or the removal of synthetic sidings. The Fund cannot make loans for repainting as a stand alone project. Sometimes the Fund can assist with a part of a larger restoration project, in which case the Fund will support those aspects which can be seen by the public visibility and are most essential to the character of the building.

Estimated Date for Commencement of Project: April 2013

Estimated Date for Completion of Project: Ongoing

Massachusetts Department of Revenue Division of Local Services

Amy A. Pitter, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



October 23, 2012

Nina Pickering-Cook
Anderson & Kreiger LLP
One Canal Park, Suite 200
Cambridge, MA 02141

Re: Use of CPA Funds for Historic Preservation Loan
Our File No. 2012-86

Dear Ms. Pickering-Cook:

You asked whether Acton can use Community Preservation Act (CPA) funds for a revolving loan program to encourage residents of the Town to "preserve or restore exterior architectural features of historic residences or commercial buildings in Acton." Rehabilitation or restoration of historic properties is an allowable CPA expense. We think that a loan program could be an allowable CPA initiative depending on how it is administered.

The CPA allows CPA funds to be used "for the acquisition, preservation, rehabilitation and restoration of historic resources." G.L. c. 44B, § 5(b)(2). The CPA defines "historic resources" as "a building, structure, vessel, real property, document or artifact that is listed 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." G.L. c. 44B, § 2, as amended by St. 2012, c. 139, § 70. Preservation is narrowly defined as the "protection of ... real property from injury, harm or destruction." G.L. c. 44B, § 2, as amended by St. 2012, c. 139, § 72. Rehabilitation, however, includes capital improvements and extraordinary repairs to make historic resources functional for their intended uses and comply with Standards for Rehabilitation stated in the United States Secretary of the Interior's Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68. G.L. c. 44B, § 2, as amended by St. 2012, c. 139, § 73.

The CPA does not expressly grant municipalities the power to loan money to further its objectives, but local by-laws may omit or modify powers listed in the statute, or grant additional powers consistent with the statute. Therefore, Acton could adopt a by-law to provide for such a loan program. Moreover, there is nothing in the CPA that prohibits the use of funds for rehabilitation or restoration of historic resources on privately-owned properties. Under the Anti-Aid Amendment of the Massachusetts State Constitution, however, public funds cannot be given or loaned to private individuals or organizations for their private purposes. Mass. Const. Amend. Article 42, § 2, as amended by Article 103. Therefore, any expenditure must be made to advance a public purpose.

The rehabilitation and restoration of historic assets is generally understood to have some legitimate public purposes. Both the federal and state governments, for example, have various historic grant programs that include grants to non-profit organizations. Typically, these programs result in public acquisition of an historic preservation restriction or receipt of some other benefit to ensure that the grant is for public, as opposed to private, purposes. For example, in an Anti-Aid case involving

Nina Pickering-Cook
Anderson & Kreiger LLP
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the allocation of state funds to a non-profit group to rehabilitate the U.S.S. Massachusetts for use as a memorial and museum, the Supreme Judicial Court found the expenditure to be a public purpose, since the property would be open to the public as a place to contemplate and honor those who died in the service of their country and to educate school children, who were admitted free of charge, about history. *Helmes v. Commonwealth*, 406 Mass. 873, 876-878 (1990).

As town counsel, your firm is best situated to navigate the restrictions the Anti-Aid Amendment imposes on your client's proposed outlays of municipal funds and to recommend safeguards, such as property restrictions, that ensure loan recipients use the funds for public purposes and in strict accordance with the CPA. We would assume, however, that there would be a written loan agreement between the town and the loan recipient that details the work to be completed with the CPA funds, the inspections and other procedures the town will use to ensure all work complies with those specifications and appropriate remedies and protections for the town to be able to collect the loan and protect its investment.

As part of the program, Acton proposes to use a revolving fund to be credited with loan payments and used as a funding source for further loans. A revolving fund is a special revenue fund into which receipts from a specific revenue source are credited and earmarked for expenditure without appropriation for specified purposes to support the activity, program or service that generated the receipts. Ordinarily, under G.L. c. 44, § 53, all monies received by a municipal officer belong to the general fund and may only be spent by appropriation. As you know, however, the CPA credits certain monies received in connection with CPA purposes to the CPA rather than the general fund, but still requires that those monies be spent by appropriation." G.L. c. 44B, §§ 5, 6 and 7. Monies credited to the CPA fund include "(iii) all funds received from ... any other source for such purposes," G.L. c. 44B, § 7. We think that includes monies received as repayments of CPA loans. Therefore, the repayments would be credited to the CPA fund, but could not be spent for other loans or CPA purposes without Community Preservation Committee recommendation and legislative body appropriation. Since the receipts in question belong to the CPA fund under G.L. c. 44B, § 7, there is no other authority in the general laws for establishing a revolving fund. The departmental revolving fund statute, G.L. c. 44, § 53E½, applies "[n]otwithstanding the provisions of section 53," i.e., it only authorizes by an annual vote the segregation of certain general fund departmental receipts into a revolving fund to spend without appropriation during that fiscal year.

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

Very truly yours,



Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:JGG