

**COMMUNITY PRESERVATION COMMITTEE MEETING:
MINUTES**
Judge Welsh Room, Town Hall, 260 Commercial Street
February 10, 2020, 1:01 pm

Members present: Kristin Hatch, Michele Crone, Dawn Walsh, Brandon Quesnell, Alfred Famiglietti (1:07), Robin Evans (1:10), Polly Burnell, and Catherine Nagorski

Members excused:

Staff: Community Housing Specialist Michelle Jarusiewicz

PUBLIC HEARING:

DLS DOR Guidelines:

Michelle Jarusiewicz stated that on January 2, 2020 she received notice regarding the Dept. of Revenue's updated Guidelines that supersede all previous ones, for CPA [75 pages long]. She reviewed the sections on eligibility and identified several potential issues with current applications that needed resolution. Summary of Town Counsel John Giorgio opinion:

[MJ] On January 2, 2020 I received the notice below [along with others] regarding the Dept. of Revenue's updated Guidelines that supersede all previous ones, for CPA [75 pages long]. I reviewed the sections on eligibility. My interpretation identifies several potential issues with current applications that will need resolution. I recommended to the CPC we proceed on the merits as we sort out the details regarding eligibility. Please note that this should be billed separate section and sent to my attention.

Link:

[IGR 19-14: Community Preservation Fund](#)

Some of the issues include:

- *The Town must own any real property acquired with CPA funds [page 37]. It can delegate management to another entity such as HA. We have an application from Housing Authority for \$425,000 to acquire property.*

[JG] The IGR (and the Act itself) states that if CPA funds are used to purchase a real property interest the property must be bound by a permanent deed restriction. Accordingly, if the Town makes a grant of CPA to the Housing Authority for the acquisition of real property, the Town must acquire an affordable housing restriction on the property so acquired. This would be accomplished by entering into a grant agreement with the Housing Authority that includes the grant and recording of a restriction granted by the Housing Authority in favor of the Town by the Housing Authority to the Town.

- *Historic inventory is not eligible UNLESS the CPC deems it necessary to perform its duties [page 18] and then it must be paid from admin funds [recall that admin allocation can be up to 5% so could be \$25,000- \$30,000 range]. This may also apply to the waterfront park study [but this is not clear]. We have applications for both.*

[JG] If you have a grant application for a general survey to identify historic resources within the Town, such a general survey would most likely not be eligible for CPA funding under the historic resources program because presumably there would be no certainty at the time of the grant that the CPA funds would be spent for "for the acquisition, preservation, rehabilitation and restoration of historic resources," which are the limits established in the CPA for historic resources appropriations under the CPA. I am familiar with and agree with DOR's view that such survey projects could be funded under the administrative expenses category of the CPA.

- *Anti-aid amendment has been clarified through several recent cases which limits any aid to institutions, charitable organizations, religious entities.... There is now a 3-factor test for determination [page 23 & others]; this may impact the PAAM [Provincetown Art Association & Museum] request. At a minimum may require Town Counsel review for 3-factor test.*

[JG] You are referring to the three factor test established by the Supreme Judicial Court's decision in Caplan v. Town of Acton. If you need assistance from Town Counsel is analyze whether a particular grant application raises issues of eligibility under the Caplan test, please forward the grant applications to me for review.

[JG] Dear Michelle;

You have asked me to review the grant application submitted by the Provincetown Art Association & Museum for CPA funds to restore the façade of the original building. You would like me to address specifically whether this grant may violate the Anti-Aid Amendment to the Massachusetts Constitution under the three-part test established by the Supreme Judicial Court for evaluating CPA grants.

In the case of Caplan v. Town of Acton, the Supreme Judicial Court considered a challenge to CPA funds for two projects at the Acton Congregational Church on the grounds that award of the funds violated the so-called anti-aid amendment to the Massachusetts Constitution (which prohibits the "grant, appropriation or use of public money . . . for the purpose of founding, maintaining or aiding any church, religious denomination or society.") The court's decision is extensive and reviews many years of history and legislative action regarding the amendment, but the court declared that the constitutionality of public funds granted to active churches must be evaluated under a three-prong test: (1) whether a motivating purpose of a grant is to aid the church, (2) whether the grant will have the effect of substantially aiding the church, and (3) whether the grant avoids the risks of the political and economic abuses that prompted the passage of the anti-aid amendment (e.g., entanglement of the government and public monies in religious institutions). At issue in the Caplan case was a grant for restoration of stained glass windows which included religious images and a grant to fund a master plan for preservation of the church and its related buildings. The court ruled that the plaintiffs had a likelihood of success with respect to the stained glass windows grant and remanded to the Superior Court for entry of a preliminary injunction against disbursement of the grant.

The court cautioned that the three factors "are not 'precise limits to the necessary constitutional inquiry,' but are instead guidelines to a proper analysis;" and added that each factor was "interrelated," and that any conclusion "results from a balancing" of the factors as applied to the facts of a particular case. While the Anti-Aid Amendment applies to nonprofit associations that are not affiliated with religious institutions, it is clear that in Caplan, the court was particularly concerned with the potential for entanglement of public money with religious institutions. If, on the other hand, the grant is to a secular entity, the analysis under the Anti-Aid Amendment is somewhat different in that the CPA must include that the grant is for a valid public purpose of stimulation and support for the local community.

PAAM is a secular nonprofit that hosts an art museum that is open to the public, and it provides year round educational programs for members of the community. The CPA grant would be used to preserve the exterior of an important historic building in the Town. In turn, the Town will acquire an historic preservation restriction to protect the historic character of the façade of the building. In my opinion, a grant of CPA funds for this purpose would not violate the Anti-Aid Amendment. In my opinion the CPC may reasonably conclude that the grant is intended and would have the effect of providing stimulation and support to the residents and visitors to Provincetown, and does not entangle public money with religious institutions. As long as the Town acquires an historic preservation restriction on the façade of the building, in my opinion, the primary purpose of the grant can be seen as

supporting the public's use of a building that has historic significance in the Town, rather than primarily being intended to aid the non-profit institution. Finally, I do not think that the grant of CPA funds for this purpose runs the risk of political and economic abuses that were of concern in the Caplan case.

Please let me know if you have any further questions.

John

John W. Giorgio, Esq.
KP | LAW

CPA REQUESTS:

Waterfront Park 387 Commercial Street, \$50,000, Recreation, with Environmental Planner & Conservation Agent Tim Famulare.

Note 3 letters of support

Kristin Hatch disclosed that she is member of Recreation Commission. Brandon Quesnell and Cathy Nagorski are as well. In compliance with Open Meeting law, Brandon Quesnell left the room (1:10).

Mr. Famulare described the application – the historic site will be used for active and passive recreation. The Recreation Commission oversees the care and custody of the site which was acquired with state funding assistance. There will be a working group to expedite the design; the deliverables will be a preliminary design and estimated costs.

Michelle Crone-DeMarco indicated that the Town approved the Disability Commission's request for interim stairs to the beach. Mr. Famulare stated that the concepts are to be discussed and include removing a section of the seawall, acquiring mobi-mats, and accessible picnic tables. Ms. Burnell pointed out that it is not in the historic district. Mr. Famulare said that the Historic Commission is part of the working group. Ms. Walsh asked if there are ideas for implementation funding? Mr. Famulare said probably the same such as PARC and CPA funding. There is a CIP earmark for \$400,000 but that does not mean it will be funded.

Public comment: none.

Chelsea Earnest Basketball Court Retrofit, \$50,000, Recreation, with Assistant Recreation Director Caroline Thompson:

The court was constructed in the 1990's. The retrofit would resurface the court and replace the chain-link fence with vinyl coated; might go beyond basketball and include pickle-ball. Mr. Famiglietti said that he lives in that neighborhood and doesn't see people there. Ms. Thompson said that the East-end court meets more collegial standards and is more appealing. The West-end court is used; sometimes for other activities. Mr. Famiglietti suggested that it would be a nice place for small park. Other members said that they see people using it; discussion about size of area, options, and parking. Ms. Hatch pointed out that the Rec Director had a baby prior week.

Public comment: none.

Kristin Hatch stated that after discussions with the Town Clerk and the State Ethics Commission, that as the Executive Director of the Housing Authority she would be leaving the room for the housing applications discussion. Brandon returns to the room and Polly Burnell as Vice-Chair conducts meeting (1:24).

The Housing Institute, \$15,000 for 2 years, Community Development Partnership [CDP] with Andrea Aldana: The regional Housing Institute is part of a comprehensive strategy to meet housing needs of residents. The Institute provides local training and peer support through a series of workshops and peer group meetings that

rotate through each Town. All Towns have housing sites in progress this year. The Training sessions include the basics for elected and appointed officials, staff, and volunteers. Some training sessions do a deeper dive into the topic such as form-based code, or collaborating with Open Space around development. They would like to see zoning changes; increase in CPA funds for housing, increase in housing inventory numbers, and increased public support. The goal is to at least serve 5 people per community; this past year 7 from Provincetown participated. The Provincetown Team Captain is Michelle Jarusiewicz.

Public comment: none.

Ms. Aldana indicated that they monitor all town meetings and share with participants. The request is the same as in the past - \$7500 per year; this request is \$15,000 for two years to increase efficiencies. Mr. Famiglietti asked when would it be? Typically in the fall, but it is to be determined and linked to time when most effective. Peer group meetings are regular and are moved from town-to-town to increase local participation. Ms. Jarusiewicz indicated that she supports this unique training opportunity; affordable housing is complex and education is key. Typically there is an annual multi-day state training in Devens but many cannot take the time to attend. This local training effort provides free close-to-home training.

Housing Office, \$25,404, Housing Office: Ms. Jarusiewicz said that this continues the funding split for the Housing Office with 75% under the Town's general fund and 25% under CPA. The Housing Specialist is full-time and provides support to most Town housing initiatives and housing committees including the Community Housing Council, the Year Round Market Rate Rental Trust, and the CPC. The activities vary from year-to-year but include the administration of programs such as the Self Sufficiency Local Voucher Program, down-payment & closing cost program, resale of deed restricted units, Harbor Hill, development of the VFW site, and others.

Public comment: none.

Mr. Quesnell stated that he was very happy with the progress with the various programs.

46 Harry Kemp Way Acquisition for Housing Authority Expansion, \$425,000, with Charlene Parris, Housing Authority member and Bob O'Malley

Mr. O'Malley indicated that he has been working with the Housing Authority pro bono to purchase the adjacent property to Maushope. Conservation land has already been protected in Trust. This is one of the last buildable parcels. It has been on the market for about 5 years. Discussion around the preliminary designs that have been considered. The design will depend upon how it is developed. If it is part of Maushope, perhaps remove the lot line. The Housing Authority has had the dream of creating a "HOW" house modeled after the Foley House. There is currently a waitlist of 370 elders. Development is presently limited by Title 5 septic system. Anticipate at least 9 new bedrooms; maybe up to 15. There is no sewer in the area and no plan at the moment for some.

Public comment: none.

Ms. Burnell asked if there are any green or solar components? Mr. O'Malley said that development would meet the stretch code. Ms. Walsh asked about other funding components? Mr. O'Malley spoke of the Housing Authority working with Mass. Housing Partnership [MHP]; they are supportive but note that at the moment the state is not funding senior housing. Ms. Nogorski asked if the vision was for SROs and 1 bedroom units. Mr. Quesnell asked about the status of the past \$60,000 CPA grant? Ms. Jarusiewicz indicated that the Housing Authority has been planning with MHP and other community members about various options. Mr. O'Malley said that they were doing a Ch. 21E study of this parcel before town meeting under the grant. There was a question about the inclusionary zoning in-lieu funds – Ms. Jarusiewicz said that it is going to the Affordable Housing Trust Fund.

406 Commercial Street PAAM Restoration Request for \$60,000 discussion with Grace Ryder-O'Malley: The restoration of the Cook house in 2005/2007 under the previous expansion project did not do much exterior restoration of the old building [1825+/-]. Over time, there have been weather impacts, leaks, and there is very little insulation. They have gotten quotes for restoration, from historic masons, and updated their budget. They will be applying for a Mass. Preservation Fund grant. They anticipate doing the work in the fall/winter and provided a letter of support from the Historic Commission. Ms. Burnell suggested looking at salvage doors, there is a list serve Historic New England. Ms. Grace-O'Malley said that the light fixture was not historic and is searching for pictures. Julia Perry said that the Historic Commission voted 5-0-0 in support. Mr. Quesnell asked if \$60,000 was enough? Ms. Ryder-O'Malley said she thought so and for future maintenance, they are building an endowment to be in better position.

Public comment: with the support of a preservationist, they will get a solid plan for future and will have documentation.

Historic Inventory Update, \$60,000, with Marty: Ms. Jarusiewicz spoke to the DOR requirements and the ability to use CPA admin funds only. The admin line item is restricted annually to 5%, so she estimates that up to \$25,000 could be used without using all of the admin budget. Marty indicated that it could be phased under the same scope and standard. Start with about 300 most at risk buildings, especially those in flood velocity zone [approximately 500 in that zone]. Then the Town could look for FEMA mitigation assistance. General discussion of precedence, DOR regulations, Mass. Historic Commission.

Public comment: none.

Weir Map Restoration \$1500 discussion with Julia Perry, Chair of Historical Commission: The weir map is from 1930, it is unique, only 1 done per Town; shows old town line at Howland Street; there is some water damage. Members asked about vendor for the work? UV glass? Display? Ms. Perry said that the work would be done on Cape and museum glass would be used.

Walling Map \$3500 discussion with Julia Perry, Chair of Historical Commission: The Walling map was created by private company in 1858 as business venture. It was a 5'x6' map where businesses could ID themselves. An original sold for \$45,000. It has a linen back. They would be preserving it in a Plexiglas box and display in town building such as Town Hall or Library. Mr. Quesnell asked if the other maps were done? Ms. Perry said that yes they are but they are not hung yet.

Alden Street Cemetery Old Section Priority 3 & 4 Stone Restoration \$36,862 with Brian Cowing DPW & Chris Brooke Cemetery Commission: the request continues the ongoing stone conservation work in the old cemetery and will address the most dangerous and worst stones first. The mausoleums are active with the owners maintaining [new locks, etc.]. There are lots of visitors. They will also add the civil war monument. Ms. Hatch asked what was the total amount of funds overtime for conservation? Are there other resources? Perhaps a "Friends of..." type of organization. Mr. Cowing said there are perpetual care funds but actually very little money. The Town does some work that they are able to do. Ms. Crone-DeMarco said that many people ask about the cemeteries. Ms. Walsh said that she is on the Cemetery Commission and that it is very important to maintain the stones, there is very little money. Mr. Quesnell suggested that the Cemetery Commission approach the Town for ongoing line-item to provide future maintenance. Mr. Cowing described the old vs. newer settings, various materials, these stones are historical.

Robin Evans leaves 2:53 pm.

Brandon Quesnell recusing on all Recreation requests

Dawn Walsh MOVE to recommend \$50,000 for the Waterfront Park at 387 Commercial Street; Polly Burnell second; approved 6-0-1 [Brandon Quesnell recusing on all Recreation requests]

Polly Burnell MOVE to recommend \$50,000 for the Chelsea Earnest Basketball retrofit; Michelle Crone-DeMarco second; approved 5-0-2 [Brandon Quesnell recusing on all Recreation requests, Alfred Famiglietti abstains].

Kristin Hatch recusing on all Housing requests.

Brandon Quesnell MOVE to recommend \$15,000 for the Housing Institute; Alfred Famiglietti second; approved 6-0-1 [KH].

Alfred Famiglietti MOVE to recommend \$25,404 for the Housing Office; Polly Burnell second; approved 6-0-1 [KH].

Brandon Quesnell MOVE to recommend \$425,000 for the Housing Authority acquisition of 46 Harry Kemp; Polly Burnell second; approved 6-0-1 [KH].

Polly Burnell MOVE to recommend \$60,000 for the restoration of 460 Commercial Street; second by Michelle Crone-DeMarco; approved 7-0.

Kristin Hatch MOVE to approve \$25,000 for the update of the historic inventory to be allowed under the CPA administration line as it is necessary for the CPC to do its work; Polly Burnell second; approved 7-0.

Alfred Famiglietti MOVE to recommend \$1,500 for the Weir map restoration; Dawn Walsh second; approved 7-0

Polly Burnell MOVE to recommend \$3,500 for the Walling map; Cathy Nagorski second; approved 7-0.

Kristin Hatch MOVE to recommend \$36,862 for the Alden Street Cemetery Stone Conservation; Polly Burnell second; approved 7-0.

Kristin Hatch MOVE to recommend \$37,000 for CPA administration; Alfred Famiglietti second; approved 7-0.

Kristin Hatch MOVE to approve the CPA Coalition dues for \$2875.00; Polly Burnell second; approved 7-0.

Ms. Jarusiewicz noted that Keith Hunt resigned from the Housing Authority and was their rep to CPC so creates a vacancy.

Adjourned 3:20 pm.

*Submitted by:
Michelle Jarusiewicz,
Community Housing Specialist & Grant Administrator*