

Nate Budington <nate.budington@gmail.com>

New Library Addition

4 messages

Stuart Saginor <stuart.saginor@communitypreservation.org>

Sat, Feb 15, 2020 at 11:26 PM

To: Nate Budington <nate.budington@gmail.com>, "Delaney, Anthony" <delaney@amherstma.gov>, Diana Stein <dstein@mtholyoke.edu>

Cc: Chase Mack <chase.mack@communitypreservation.org>

Dear Amherst CPA Folks:

Each of you has separately inquired about the proposed library project in Amherst, so it seemed appropriate to send along one group response. We do appreciate your patience on this reply, as it's our busiest time of year. The majority of CPA communities are all finalizing their CPA project recommendations right now, so it has been a whirlwind these past few weeks.

On to the library question. There is a certain recipe for questions that we dread at the Coalition, and this one has all the ingredients:

1. A project on general municipal buildings where there is usually a desire (and great pressure) to save a town money by shifting some of the cost onto the CPA fund
2. A project that clearly is not what CPA was intended for, but...
3. Language exists in the Act that can be easily misinterpreted and used as evidence that the project is allowed

It's easy to see why we are a little reluctant to wade into these questions. But since so many of you have asked, we'll try to explain why funding the construction a wing of a new library is not an acceptable CPA project, no matter what the building holds.

The legislature created CPA to fund new quality of life initiatives, as opposed to just shifting existing expenses from the general fund. The "non-supplanting" language in Section 6 makes it clear that CPA projects should be ones that are not traditionally paid for out of general funds. Building new municipal buildings is a classic example of something that towns have paid for with general funds for since time began, and shifting the cost of these buildings onto CPA is exactly what the non-supplanting language is designed to stop.

The legislature doubled down on this concept in the historic category, where they made it clear that CPA funds cannot be used to "create" something new. This is easy to see on the CPA allowable uses chart created by DOR, where a big "NO" is in the "create" box. It certainly makes sense that you can't create something historic.

<https://www.communitypreservation.org/allowable-uses>

In looking at this chart, you are supposed to match what the CPA money will actually be spent on with the verb that describes that activity. In the case of building a new library, the CPA money is being spent to create the building, and that's clearly not allowed.

Someone will undoubtedly say that it is justified under "preservation." And if you look at the definition of that word, you could certainly stretch the term to the limits - the definition in Section 2 of CPA isn't very specific:

"Preservation", protection of personal or real property from injury, harm or destruction.

When it comes to historic documents, this verb contemplates CPA funds being spent on work to directly preserve the actual documents. Activities would include de-acidifying the paper, cleaning the documents from damaging dirt and film, repairing tears, encasing them in mylar protection, etc.

Of course there are many indirect things you can do that protect the documents from injury harm or destruction. In fact, hiring a 24 hour security details fits that definition, but we think everyone would agree that this is not eligible for CPA funds. What about the monthly subscription to the building security system? Electricity to run the building heat and dehumidifier? If the town owned a large collection of artifacts, could it build an entirely new museum to hold those documents? It's easy to see how far away you can get from actual preservation of the document when you start down this road.

CPA is for direct preservation activities on documents and artifacts. Once you step away from work on the actual documents and artifacts, you are spending money on something else (like building a library), not the documents. And that's outside the boundaries of CPA.

New construction is allowed in the housing category, but no new additions or new buildings are supposed to be done in the historic category.

Regards,

Stuart

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February 25, 2020

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Mr. Paul Bockelman
Town Manager
Amherst Town Hall
4 Boltwood Avenue
Amherst, MA 01002

Re: Use of CPA Funds for Jones Library Special Collections Room

Dear Mr. Bockelman:

You have requested an opinion as to whether the Town may use Community Preservation Act ("CPA") funds to construct a room in the Jones Library that will be used to permanently house the current archives of Amherst's history and other historic resources acquired by the Town from time to time. I refer to this room as the "Special Collections Room". It is my understanding that the construction of the Special Collections Room is part of a larger construction project to renovate and/or expand the main Jones Library facility, which project is being funded by tax revenues, historic tax credits, private donations, and state grants. In my opinion, it is reasonable for the Community Preservation Committee ("CPAC") to conclude that the use of CPA funds to construct a room that is specifically designed for and used to preserve and display the Town's historic resources is permissible under the CPA.

As you know, the Town may expend CPA funds solely for the purposes authorized in the CPA. The CPA states that funds may be used for "the acquisition, preservation, rehabilitation and restoration of historic resources." G.L. c. 44B, §5(b)(2). "Historic resources" is defined as "a building, structure, vessel real property, document or artifact that is listed 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", while "preservation" is defined as the "protection of personal or real property from injury, harm or destruction". "Rehabilitation" is defined as the making of substantial and/or extraordinary capital improvements to property to make it functional for its intended use. I assume that the Amherst Historical Commission has determined that the documents, records, and/or artifacts proposed to be housed in the Special Collections Room (the "Town Records") satisfy the definition of "historic resources". The CPA funds will not be used to purchase or otherwise acquire historic resources or to rehabilitate or improve the Town Records themselves. Rather, the primary purpose of constructing the Special Collections Room is to have an area that is designed to protect the historical Town Records from physical injury, harm or destruction, and will also create a space to facilitate new presentations and programs for the community, and expand opportunities for important scholarly work.

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It is my understanding that the Community Preservation Coalition has raised concerns regarding the use of CPA funds to construct the Special Collections Room. It has cautioned that the CPA funds will "supplant" general funds that would otherwise have been used to construct the Special Collections Room, which is prohibited under the CPA; that the Town cannot use funds to "create" historical resources; and that the word "preservation", as used in the CPA, is intended to refer only to work that is directly done to the historic resources themselves, and not to work done indirectly to preserve historic resources.

It is correct that the CPA states that "community preservation funds shall not replace existing operating funds, only augment them." However, it is my opinion that this provision is intended to prohibit the Town from using CPA funds to pay for work the cost of which should ordinarily be funded by the Town's or the Library's existing operating funds, that is, to prevent municipalities from deliberately underfunding their operating budgets to avail themselves of CPA funds. The fact that the Town could have used general fund monies to construct the Special Collections Room is not determinative; as mentioned above, it is whether those such costs would routinely have been included in the operating budget. The cost of constructing a new room or a new building is ordinarily not included in an operating budget, which, typically, includes costs that are necessary to operate a facility, including, for example, heat, hot water, and ordinary maintenance and/or repairs. The cost of adding to or expanding a building would be part of a capital budget. It is my understanding that the Town's and the Library's operating budgets do not include the cost of constructing the Special Collections Room, and that the Town had not previously appropriated funds for such purposes. For that reason, it is my opinion that the CPA funds will not "supplant" existing operating funds.

The Coalition states that the CPA does not allow funds to be used to "create" historic resources. Although the word "create" is not defined in the CPA, it has been interpreted by the court to mean bringing something into existence that was not previously there, such as using CPA funds to construct affordable housing on a parcel of Town-owned land that was not previously devoted to or used for community housing purposes. Historic resources, by their very nature, cannot be created, and the Town does not claim that CPA funds will be used to create the Town Records.

Furthermore, there is nothing in the CPA stating that funds to preserve historic resources must mean work that is done directly to the historic resource itself, such as de-acidifying papers, cleaning documents of dirt and film, and repairing tears. Rather, it is my opinion that "preservation" means measures to protect historic resources from injury, harm or destruction, whether the work is done directly to historic resources or indirectly, such as by installing air conditioning or other climate control measures in a room to be used to archive historical documents, or repairing the roof of a building used as a vault for historical documents. The Town is not constructing a new building for the purpose of protecting the Town Records; rather, since the Town Records have been displayed in parts of the existing Jones Library, the CPA funds will be used to construct a new space that is

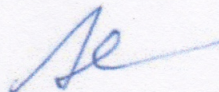
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specifically designed to house and display the Town Records, thereby protecting them from injury, harm or destruction. To state that "preservation" includes only those activities that are done to historic resources themselves would unduly and impermissibly limit the purpose and scope of the CPA, in my opinion.

As you are aware, the CPA states that it is the CPAC that ultimately makes recommendations to the Town Council for the acquisition, preservation, ~~re~~habilitation and restoration of historic resources. It is up to the CPAC to determine if the construction of the Special Collections Room is permitted by the CPA, and whether to recommend the project to the Town Council. In my opinion, the CPAC may reasonably conclude that the Special Collections Room will preserve the Town Records from injury, harm or destruction and that the use of CPA funds to construct the Special Collections Room is consistent with the CPA.

Please contact me if you have any questions.

Very truly yours,



Shirin Everett

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