

**Community Preservation Fund  
Advisory Opinions Bureau Meeting Minutes  
June 24, 2013**

Meeting started at 1:00pm

**Present Members/Participants:** Mr. Kyle Collins, Ms. Laury Dowd, Ms. Anne Marie Prudenti, Ms. Melissa Spiro, Mr. Paul Brennan, Mr. Kevin McDonald, Mr. Bob DeLuca, Mr. John Halsey, Ms. Peri Grandone, Mr. Kevin O'Connor, Mr. Jeff Bragman, Assemblyman Fred W. Thiele, Jr., Mr. Drew Biondo (on behalf of Senator Kenneth LaValle), Ms. Mary Wilson, Mr. John Jilnicki, Mr. Scott Wilson, Ms. Laura Stephenson, Mr. Zachary Cohen, Mr. Joe Gergela, John Erwin.

**A. Welcoming & Opening Remarks**

Presented by Chair, Kevin McDonald

**B. Approval of April 10, 2013 Meeting Minutes**

Motion to approve: Kyle Collins; seconded by Paul Brennan; no objections or abstentions.

**C. Discussion, Review drafted Opinions**

Community Preservation Funds may not be used to fund 4-Poster deer tick control programs - drafted by Bob DeLuca and Jeff Bragman

Laury Dowd suggested a minor change of "any" to "every". The change was approved.

Fred Thiele proposes deletion of the second to last paragraph. The change was approved

With the above changes, the opinion was approved.

The CPF Advisory Board and the Town Board may in their discretion set reasonable limits regarding the number of times a project can be considered for acquisition as a matter of proper administration of the CPF program – drafted by Kevin McDonald

Melissa suggests that last paragraph be deleted since is extraneous. The group agreed to delete "it is our opinion" in last paragraph. Mary Wilson will rewrite.

With the above changes, the opinion was approved.

The circumstances under which CPF funds can be used to acquire or restore beach projects – drafted by Mary Wilson and Anne Marie Prudenti

Laury sought clarification on the references to revised goals. Anne Marie clarified about subsequent management plan amendment to allow for restoration to reflect subsequent events.

Kevin discussed examples, such as scraping off dredge spoil to allow for restoration. The discussion focused on whether CPF funds should be used to enhance natural values rather than restore lost values. There was a debate with Anne Marie re dune replacement.

Some scenarios discussed where if wetland acquired and gets covered with storm debris like houses/boats- can CPF be used to clean it up? If a CPF property is breached or it's dunes destroyed, can it be filled in or the dunes replaced to address global warming issues or even the needs of adjacent properties? Kevin suggested a town could repair the breach, but not with CPF money. The group agreed that use of CPF money should relate to some ecological justification.

The group agreed that the opinion needed examples to provide guidance on what is an OK use CPF and what not, since there can be abuse unless it is construed properly.

There are controls in place—use of CPF would require amendment of plan, allow for public view and debate on that use of CPF, and need environmental support for amendment

There was a request that the group strike "passive recreation" in parenthesis. The group agreed to delete.

Anne Marie and Mary will work with Bob to add examples to the opinion.

There was more debate on the repair of breach issue, concluding that it needs more thought at this time. There was a suggestion that a breach went well beyond ordinary maintenance and repair--is catastrophic. Fred suggested that maybe anything involving a State or Federal emergency is out of the CPF realm because it is not stewardship

The group agreed that the opinion would be modified as discussed, and that the group would discuss this opinion further at next meeting. The goal is to send out email drafts early so can it can be refined as much as possible prior to the next meeting.

Development rights on real property acquired with CPF may be used for affordable housing under appropriate conditions – drafted by John Jilnicki and Kyle Collins

John J. says there has to be a fully established TDR plan, with review of impacts on sending and receiving zone—it cannot be random and must consider school districts, taxes, etc. It would need to make clear at acquisition that is the intent to use development rights elsewhere. Southampton has an explicit determination in its resolution re use or retirement of TDRs. If there is no statement in resolution the TDRs are extinguished.

Fred asked the opinion to clarify that a town cannot retroactively resurrect extinguished rights after acquisition. Kyle objects to adding info unrelated to affordable housing. Fred and Kevin feel it needs to be put in opinion because is common corollary to this issue. The consensus was that it will be added to the opinion.

East Hampton routinely banks CPF property rights in TDR at time of property acquisition, but the matter is advertised to public.

Fred says allowing TDRs was part of political concession to get CPF law adopted. East Hampton says the number of TDRS to be banked from acquisition is based on a formula involving SCHD review (more than 1 right per property acquisition)

Fred asks for clarification on the statement in the opinion that compensation for TDRS need not be at fair market value, to reflect NYS constitution. John agreed to fix.

It was suggested that John remove the legal citations and put the legal points in opinion.

John J. will revise the opinion and share by email.

#### **D. New Discussion Items**

##### **1. What should/can CPF Historic Preservation parcels be used for? By East Hampton Town**

The CPF Rules have a detailed outline of use of CPF funds for historical properties. But once the building is restored, it is not clear on what the building can be used for.

Anne Marie and Mary referenced the rules which say that the town can't use historic properties for general town govt or for non CPF uses.

Fred agrees that the law didn't clearly address this issue. The group appointed a subcommittee to tease out various options to be discussed and also ask what happens with fees collected from the activity. It was noted that there are many kinds of structures, such as carousel, so the discussion is very broad. Paul, Fred, John H., Kyle are the subcommittee to work on issue.

Zach from East Hampton feels that the rules are overly strict re historical properties, so that some purchases have sat unused for years.

There was a discussion about the abuses that law designed to protect. There is a need to have greater clarity in the acquisition plan as to purpose of historic building after acquisition.

## **2. Should non-profit organizations be allowed to sell their properties to the Town using the CPF?**

Kevin brought up a question of policy, because law would allow a town to purchase from a nonprofit. Fred clarified that the specific question involves acquisition from an organization related to PLT, a parks district and an historical society that want to be able to sell to town—that it involves not for profits that have a mission similar to CPF. He noted that Towns can't purchase their own properties with CPF money, but this is similar. He discussed an extreme scenario re buying TNC property with CPF money. He feels it is a question for committee on how far into policy issues they want to get. Kevin asks whether towns should do deals with these nonprofits.

John Halsey suggested that every CPF purchase should be reviewed on its merits regardless of seller. John H. explained that there is a South Fork Land Foundation (SFLF) property under consideration for the purchase of development rights. The land does not have any restrictions limiting its use.

AnneMarie wants to explore public trust doctrine issue.

John H. says PLT lands are assets and that non-profits have a responsibility to use their assets for greatest public benefit. SFLF has 50 acres of land in fee (donor wanted big tax deduction so didn't put restrictions on it). Their land is on Southampton priority acquisition list and when approached by Town SFLF offered to sell development rights which would permanently protect the land and provide funds for other land acquisitions.

Annamarie asked and John H. confirmed that there was a potential that the land could be developed if not sold. She felt that if the land is in danger of being developed, it is ok to use CPF to accomplish that goal.

Laury says that whether or not to pursue a specific land acquisition is a policy issue to be determined by TB in each town. It is not the role of the AOB to dictate the propriety of acquisitions by Southampton.

Fred notes that highest priority of CPF is for preservation of farmland. Joe Gergela says that towns can't mandate how landowners should sell property.

There was a debate on whether there was any difference between a sale by a nonprofit or by any other landowner. Some said that nonprofits have different and longer term goals and that this is an improper diversion of CPF money.

Fred agrees is legitimate policy question for Southampton to decide, since the law clearly allows it. He suggests that in the early stages of the AOB it should focus on law and uniform administration rather than policy issues.

Kevin calls for further thought on the issues since he thinks that this could be opening of door for multiple negative consequences. He wants committee to come up with suggestion of issues for towns to consider in order to make policy decision.

## **F. Action Items**

- *4-Poster Opinion: Adopted, Bob DeLuca and Jeff Bragman to finalize form/distribute*
- *Parcel Revisited Opinion: Adopted, Mary Wilson to finalize form/distribute*
- *Affordable Housing Opinion: John Jilnicki and Kyle Collins to revise*
- *Beach Project Opinion: Mary Wilson and Anne Marie Prudenti to revise*
- *CPF Historic Preservation Use – Subcommittee Paul, Fred, John H., Kyle to identify scenarios*