

CPF Advisory Opinions Bureau Meeting January 11, 2013

Meeting started at 10am

Intro by LaValle & Thiele

Thiele overview

Opinions will be in writing

Opinions will be published and posted online at each town's website

The dates of the meetings will be posted

The group will try to meet quarterly, but it depends on need

Opinions can be requested by the Town Board, CPF Committee and Bureau members, but not directly from the general public

Chairperson selected – Kevin McDonald through 2013

Secretary selected – Laury Dowd through 2013

*note that Town of Southold abstained from voting throughout meeting

A subcommittee will be selected to write opinions. They should be drafted by lawyers subject to revision by bureau members. Each decision will be “based on information provided to the bureau”.

The meeting schedule will be posted online at each town's website

Opinion Issues

1. Can CPF properties be used as dog parks?

This came as a very general question—in the future questions should be presented in writing with specifics so that an accurate opinion can be drafted. East Hampton said they purchased fenced-in open space that is de facto used by people to walk dogs. The issue is very property specific. The threshold question is the purpose for which the property was acquired. There are four basic purposes for acquisition: open space, parks, agriculture and historic. If the property was purchased for park or active recreational purposes there should be no problem in using it as a dog park, but if the property was purchased to protect sensitive habitat it is probably not suitable for use as a dog park. The properties can be improved to meet dog park needs but CPF funds cannot be used to fund the improvements. The amount of fencing needs to be proportional to the reason the property was purchased. This led to a discussion whether the purpose for which a property was purchased can be switched to another purpose. Since the CPF law allows the CPF stewardship plans to be amended after a public hearing, the feeling was that it could be amended to reflect a different purpose.

This will be reduced to a written opinion which can be voted upon. The subcommittee shall consist of Jeff, John, Ken LaValle, Laury and Fred Thiele. It will be presented in advance of the next bureau meeting.

2. Can CPF properties be used to offset increased density elsewhere, to promote a public purpose like affordable housing?

The law expressly provides for transfer of development rights from CPF property. The rights can be banked to resell if adequate consideration is paid for the resale (pursuant to a NYS Comptroller opinion). The consideration from such a sale must be returned to CPF funds. Again, a critical threshold issue is the purpose for which the property was acquired. Fred felt that once the CPF property was acquired without a properly established TDF program and bank in place, the rights are extinguished and no longer exist for transfer. This issue was debated by other bureau members. The argument was that a public hearing on the stewardship plan could be held to amend the plan to reflect a TDR program. It was suggested that the intent of each municipality as to whether the CPF program is a density neutral or a density reduction program is a matter for local determination. Southampton, Riverhead and the Pine Barrens have TDR programs, and Southold allows the transfer of sanitary flows.

This issue was not decided and will require further discussion.

3. Would the towns like to share a CPF auditor?

No interest was expressed in this idea.

4. Can CPF management funds be used for 4-poster tick control programs?

Fred suggested that this would limit the 4-poster to CPF lands only. Some argued that the 4-poster could be justified for tick control if one of the purposes for acquiring the property was public access, as access may be restricted if there are ticks. Others suggested it was a public health issue and not directly related to CPF stewardship. There was a discussion about deer management versus tick management, with the suggestion that deer management was more directly related to the property because deer overpopulation could adversely affect the ecosystem. There needs to be an ecological nexus to support hiring deer hunters to thin the herd using CPF funds. But the ticks lack this ecological nexus to the property. Ken LaValle supported a strict construction of the stewardship law as relates to use of CPF funds and feels that allowing a loose interpretation to use CPF to control ticks will open the door to future problems.

The bureau members asked for more information from East Hampton to flesh out the question and it will require further discussion.

There was a discussion about the possible reluctance to bring issues to the bureau. A decision on Opinion 1 will be drafted and distributed to the bureau in advance of the next meeting. The meetings will initially be every two months but may drop down to quarterly or less as needed.

Meeting ended at 11:25am.