

**Community Preservation Fund
Advisory Opinions Bureau Meeting Minutes
November 4, 2013**

Meeting started at 1:05pm

Present Members/Participants: Mr. Andy Hammer, Mr. Kyle Collins, Ms. Laury Dowd, Ms. Anne Marie Prudenti, Mr. Paul Brennan, Mr. Kevin McDonald, Mr. Bob DeLuca, Mr. John Halsey, Ms. Melanie Cirillo, Mr. Kevin O'Connor, Mr. Jeff Bragman, Assemblyman Fred W. Thiele, Jr., Mr. Drew Biondo (on behalf of Senator Kenneth LaValle), Mr. Scott Wilson, Ms. Laura Stephenson, Mr. Joe Gergela, Ms. Lee Foster, Mr. Zachary Cohen.

A. Welcoming & Opening Remarks

Presented by Chair, Kevin McDonald

B. Approval of June 24, 2013 Meeting Minutes

John H proposed changes, to be sent to secretary. Minutes to be revised and approved at next meeting.

C. Discussion, Review drafted Opinions

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

Kyle went over some revisions, including some not on the printed version. Laury felt the request had not come from Shelter Island but Fred said the request came from SI Supervisor. There was a discussion about whether the text of the law should be inserted, but it was decided to go with a summary statement. It was noted that a transfer of development right assignment does not HAVE to be used for affordable housing. However, it was emphasized that all purposes (such as transfer of development rights) should be spelled out at time of acquisition so the public is advised.

There was a discussion on whether a town needed to put a conservation easement on land that has been stripped of TDRs. East Hampton hasn't been doing it and instead uses SCHD transfers of sewer flows in groundwater management zone. A recorded document would encourage consistency between towns to memorialize transfer of credits.

Fred proposed to add a citation to the fair market value reference, noting that the duty to get fair market value is based on NYS Constitution Art 8 Sec 1, not just fiduciary duty. The cite will be added to the decision.

Next was a discussion whether a town could discount the value of credits, which would decrease the value coming back to the CPF. Kevin felt the decision needed clarification on this point but Fred thought the decision addressed the issue. However, it was agreed to add language to the second to last paragraph of the opinion that there can still be nonmonetary consideration such as covenant, and an example such as "If there were 5 TDRs worth \$500,000 they would go back to CPF, but if use 2 TDRs for affordable housing only put \$250,000 back into CPF plus restrictions".

John H wants to know who town has to grant declaration covenant and restrictions/conservation easement to. Fred thinks it should be back to the town, but should be recorded document so is public notice of TDR transfer.

There was discussion of other uses of TDRs than affordable housing and a question whether to restrict the opinion to affordable housing. It was decided to use the language in the law, which is broader.

Based on this discussion, changes will be made to the opinion for future review and approval.

2. Beach Project- Mary Wilson and Anne Marie Prudenti

Anne Marie noted the distinction between engineering beach and habitat restoration. The asterisk language is deleted. Fred asks for an express and prominent statement in the opinion that this use of CPF funds can only be for CPF properties and all agreed to this.

Motion Kyle, Second Bob. Opinion approved with changes.

D. Followup

CPF Historic Preservation Use Subcommittee - Assemblyman Fred Thiele

Fred reported that a subcommittee of himself, Kyle, Paul, John Jilnicki, John Halsey had met and discussed the proper reuse of property bought for historic purposes but had not finalized anything and was seeking further board input. The group discussed whether the original historical use of property was definitive for future use, and it was suggested that the future purpose should be clearly expressed in the CPF stewardship plan as well as acquisition resolutions.

The conversation then turned to whether the town can get revenue for governmental uses of the property (ie permit fees), or if it can lease out concessions for private management of the historic property and collect revenues. The goal of the subcommittee is to come up some kind of generic guidance document. There was debate re the use of CPF to buy historic building (ie restaurant), and whether it could be used for government offices or could be renting out for commercial use to continue prior historic use. Kevin thinks such historic building protection should be dealt with by the private market, not government. Fred notes law does not focus much on historic and thinks facade easements are preferred model.

Joe Gergela objected to excessive restriction on CPF land citing that farmers couldn't have farmers market on CPF land, though he feels this is still an important community purpose. The group suggested that such uses should be part of the stated purpose in purchasing property. Zach says are too limited in use of historic properties, use of barn on historic property for haunted house, no money changed hands, law should allow for that and other community uses

The question was raised as to what happens to the monies a town gets from rentals--should it go to CPF or the general fund? John H feels need to find delicate balance or protection and public use, urges bulk of CPF to go for preservation easements but not owning outright. Anne Marie says need to prevent abuse, which is a tough issue

The subcommittee will go back and work on new stewardship guidelines for historic properties based on the above input.

D. New Discussion Items

1. Paying CPF liability insurance through the CPF - Southampton Town

There was a question whether CPF funds could be used to purchase insurance for CPF properties.

The general consensus was that this was neither an acquisition nor stewardship cost and thus not an appropriate use of CPF funds. An insurance charge is same as maintenance, staff, upkeep. Kyle feels if that is case, the acquisition info should include statement that property will create costs for town general fund. John H says stewardship provisions are important for long term responsible management of property. There was a discussion re whether the proceeds of insurance (if is payout) goes back to CPF or town general fund. Kevin will draft an opinion.

E. Next Meeting – will be before end of 2013 to wrap up pending opinions.

F. Action Items

- *Affordable Housing Opinion: John Jilnicki and Kyle Collins to revise*
- *Beach Project Opinion: Mary Wilson and Anne Marie Prudenti to add changes for distribution*
- *CPF Historic Preservation Use – Subcommittee Paul, Fred, John H., Kyle to further draft guidelines*
- *Paying liability insurance on CPF properties: Kevin McDonald to draft*