

PECONIC BAY REGION COMMUNITY PRESERVATION
FUND ADVISORY OPINIONS BUREAU

Advisory Opinion 2013- 3

Opinion requested by: Town of East Hampton

Issued: June 24, 2013

Issue presented: Are there limits to the frequency for which parcels may be considered for acquisition by the CPF Advisory Board or the Town Board?

Applicable sections of Town Law Section 64-e (3), (4), (5), (6)

Interests or rights in real property may be acquired with Peconic Bay Community Preservation Fund monies, provided the real property interests or rights were approved for acquisition in the Community Preservation Project Plan and the town is acquiring rights or interests in property pursuant to Town Law 64-e(4) , more broadly as categories of land defining community character.

The Town of East Hampton has requested an advisory opinion regarding whether there are limits on the frequency or number of times a parcel may be reviewed before the CPF Advisory Board or the Town Board for consideration.

Town Law section 64-e(6) provides that “the town board of any town in the Peconic Bay region which has established a community preservation fund shall, by local law adopt a community preservation project plan. This plan shall list every project which the town plans to undertake.” A purpose of the fund is to preserve community character “in accordance with such plan and in cooperation with willing sellers”. In addition, paragraph 5 mandates that an advisory board is created “to review and make recommendations on property acquisitions of interests in real property using monies from the fund....The board shall act in an advisory capacity to the town board.”

Clearly, Town Law establishes a framework for the process of acquiring land with CPF monies. However, it does not address any limitations to the number of times an advisory board or town board may review a particular project (property). Therefore, whether a town limits the frequency for review of a project is a local, policy determination. Consideration should be given to the review process remaining flexible to enable additional review where facts or circumstances have changed, while

protecting against repetitive reviews of land which appear to be an abuse of discretion and of the acquisition process.

Accordingly, 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. However, there is no statutory treatment or limit on the frequency of consideration for each project. The CPF Advisory Board and Town Board may wish to consider if there has been a material change in ownership or owner circumstance, or if there has been an external material change such as a destructive storm or other natural disaster which may alter the review of a project such that reconsideration is warranted. Notwithstanding these circumstances, it would be reasonable to establish a 6-month or annual cycle for review of projects.