



# KOPELMAN AND PAIGE, P.C.

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February 2, 2016

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BY FACSIMILE - (413) 259-2402 and  
FIRST CLASS MAIL

Mr. Jonathan Tucker  
Planning Consultant  
Amherst Town Hall  
4 Boltwood Avenue  
Amherst, MA 01002

Re: Use of CPA Funds for West Cemetery Memorial

Dear Mr. Tucker:

You have requested an opinion as to whether the Town may use funds under G.L. c.44B, the Community Preservation Act (the "CPA"), to purchase, inscribe, and install a memorial stone in the West Cemetery (the "Cemetery") to honor Christopher Thompson and some of the other twenty (20) or so African-American soldiers from Amherst who fought for the Union in the Civil War. Five (5) of those twenty (20) soldiers were members of the Thompson family, and three (3) of such members, including Christopher, are known to be buried in the Cemetery. Gravestones presently mark the burial place of Christopher's brother and son, and some of the other African-American soldiers, but there is no physical evidence, such as stones or other memorials, of Christopher Thompson being buried in the Cemetery. The Town created and is implementing the *West Cemetery Preservation Plan* to protect, and celebrate the Town's heritage and unique character, and to rehabilitate the Cemetery; the stone memorial is part of the Plan. The Historical Commission seeks CPA fund to install the stone in the African-American section of the Cemetery to honor Christopher Thompson and the other members of his family who served in the Civil War, and to apprise visitors of the contributions made by African-Americans in the Town to the Union's war efforts. You have asked if CPA funds may properly be used for this project. For the reasons set forth below, it is my opinion that CPA funds may be used for this project if the Community Preservation Committee ("CPAC") determines the installation of the stone rehabilitates the Cemetery.

The CPA sets forth the specific purposes for which CPA funds may be used. Under the CPA, funds may be used only to acquire, preserve, and rehabilitate historic resources. Section 2 of the CPA defines "historic resources" 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." "Preservation" is defined as actions taken to protect historic resources from harm, injury or destruction, and "rehabilitation" is defined as "capital improvements, or the making of extraordinary repairs, to historic resources... for the purpose of making such historic resources...functional for their intended uses." A "capital improvement," in turn, is defined as the

**KOPELMAN AND PAIGE, P.C.**

Mr. Jonathan Tucker  
Amherst Planning Consultant  
February 2, 2016  
Page 2

improvement, "reconstruction or alteration of real property that: (1) materially adds to the value of the real property or appreciably prolongs the useful life of the real property; (2) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and (3) is intended to become a permanent installation or is intended to remain there for an indefinite period of time."

In my opinion, it is unclear if the proposed memorial stone in and of itself constitutes a historic resource. The CPA's definition of "historic resources" suggests that a building, structure, artifact, document or real property may constitute a historic resource if it is both then in existence (and has been in existence for a while) and is considered by the a local historic preservation commission (such as the Historical Commission) to have significance in the history, archeology, architecture and/or culture of the Town. For that reason, a historic resource cannot be "created." In my opinion, while the stone may commemorate historic events, the stone, even if inscribed, is not itself a historic resource.

The West Cemetery, however, meets the definition of a historic resource, in my opinion. The Cemetery is listed in the Massachusetts and National Register of Historic Places and contains the remains of the Town residents, including persons from Amherst who were significant in the history and/or the culture of the Town (such as Emily Dickinson, William Smith Clark, Ebenezer Mattoon, and several black Civil War veterans, among others). CPA funds have been used previously to preserve the tombstones in the Cemetery from injury and to reconstruct other historic structures in the Cemetery. Since the installation of the memorial stone does not protect the Cemetery from physical harm, in my opinion, CPA funds may be used for the stone installation project only if the project constitutes the rehabilitation of a portion of the West Cemetery. As mentioned above, to qualify as a "rehabilitation" project under the CPA, the stone memorial must be a "capital improvement" that makes the Cemetery functional for its intended use. You have informed me that the proposed memorial stone will be affixed to a Town-owned portion of the Cemetery or to a burial plot in the Cemetery and is intended to become a permanent part of the Cemetery.

The CPAC also needs to determine if the stone memorial also makes the Cemetery "functional for its intended use." In my opinion, a cemetery, particularly one that that has been used for burial purposes for decades, if not for hundreds of years, such as the West Cemetery, serves several functions. In addition to serving as a final resting place, a cemetery may contain stones, monuments, memorials, fences and other structures that represent unique architectural or historical features and/or have archeological significance. In my opinion, such cemeteries, by their very nature, are repositories of history, and are uniquely suited to educating members of the public of events noteworthy in the history of the town, the state, and/or the country, and of the role played by those buried in the cemetery in such historic events. The Historical Commission proposes to use CPA funds to install the stone in a portion of the Cemetery to commemorate Christian Thompson

**KOPELMAN AND PAIGE, P.C.**

Mr. Jonathan Tucker  
Amherst Planning Consultant  
February 2, 2016  
Page 3

and his family, and to educate members of the public of the important contributions of the Town's African-Americans in the history of the Town and the nation.

Please note, however, that there is no case law on this very point, and the few cases that have interpreted the CPA construe that statute narrowly. The CPAC bears the burden of determining, in the first instance, if the proposed project satisfies the criteria set forth in the CPA. In my opinion, CPA funds may properly be used for the project if the CPAC reasonably determines that the installation of the stone memorial, which is specifically recommended in the *West Cemetery Preservation Plan*, rehabilitates a portion of the West Cemetery and adds to the Cemetery's value as a historic resource.

Please contact me if you have any questions on this matter.

Very truly yours,



Shirin Everett

SE/

cc: Interim Town Manager  
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