

Community Preservation Act Committee Minority Report
on Article 20 A-4 Consultant to oversee and complete eight or more CPA projects
Submitted by Ellen Kosmer and Mary Streeter

We hope you will vote no on Article 20 A-4. As members of the Community Preservation Act Committee we have been concerned for several years about the backlog of historic preservation projects that has been accumulating. Each year as we receive even more new historic preservation proposals we have asked about that backlog upon which little or no action has been taken. We have been assured by the Planning Director and the Chair of the Historical Commission that staff could oversee the completion of these projects, and that we should keep recommending newly requested projects.

Unusually Close Vote

The CPA Committee's vote on the Article 20 A-4 consultant was 4 in favor of recommending this proposal and 3 not in favor. It is unusual that CPAC has a closely split vote such as this. We generally reach agreement on the projects we recommend to Town Meeting, with an occasional abstention. The three committee members voting no feel very strongly that this proposed consultant should not be funded.

Legal Issues: The Community Preservation Act says that there should be no "supplanting".

In the past it has been Planning/Development staff who oversaw completion of projects, unless the project was for an outside organization such as Habitat for Humanity, the Historical Society, or the Jones Library. Funding a consultant position to do work previously done routinely by Town staff does not seem to us to be in keeping with the spirit of the law, and possibly not in keeping with the letter of the law.

We received a legal opinion from Town Counsel, Shirin Everett of Koppleman & Paige, stating, "It is permissible for the Town to use CPA funds to pay for such a staff assistant." She cited a 2006 letter that we do not feel supports this position. That letter from the Mass. Department of Revenue to the Town of Brookline states in part, "We do not believe community preservation fund monies may be used to pay for administrative or operating expenses incurred by general government departments....We read the language as limiting the use of fund monies for administrative and operating purposes to those incurred by the community preservation committee itself in carrying out its statutory duties."

However, the proposed consultant would not be hired by or work with Amherst's CPA Committee itself – that person would work for and be supervised by either the Historical Commission or the Planning Department.

Post-Deadline Proposals

This consultant proposal was submitted two months after the deadline of Dec. 10, 2010. Although we try to be flexible when an urgent need arises, this proposal was very late and was not urgent. We were told the Historical Commission did not recommend another proposal, the repair of the chimneys on Jones Library, because that project was submitted a week or two after the deadline. It was late because workers on the roof of the library had just discovered the damage in December. This certainly seemed to us to be an urgent need.

Meeting Obligations

We recognize that Planning staff work hard, especially with all the projects currently going on in Town. However, commitments were made in the past to complete the backlog of work. Over the last few years we were repeatedly assured that once the Planning Department had a full complement of planners, the backlog would be addressed and completed. If an expert consultant were required for any of these projects, that cost would usually be included in the proposal. Fortunately the new projects recommended for FY12 are mostly for outside organizations, so they are unlikely to require much planning staff time. That should enable staff to fulfill previous commitments before undertaking new projects. It's a matter of priorities.

This sets a precedent. Just as we have been assured in the past that work could be done by Town staff, we are concerned that this use of CPA funds for a salary rather than preservation may come back again in future years, resulting in less money available for necessary projects.

We hope you will vote no on Article 20 A-4.



October 23, 2006

Jennifer Dopazo
Town Counsel
Town of Brookline
333 Washington Street
Brookline, MA 02445

Re: Community Preservation Act - Implementation Expenses
Our File No. 2006-371

Dear Ms. Dopazo:

You asked about the use of community preservation fund monies for implementation expenses.

We do not believe community preservation fund monies may be used to pay for administrative or operating expenses incurred by general government departments, such as the assessors, treasurer/collector, accounting officer, town counsel or others, in implementing the Community Preservation Act (CPA). G.L. c. 44B. The CPA provides that monies in the community preservation fund may be used for certain categories of allowable projects and "for the administrative and operating expenses of the community preservation committee." G.L. c. 44B, §6 (emphasis added). Also see G.L. c. 44B. ("The expenditures from the fund shall be limited to ... providing administrative and operating expenses to the committee.")(emphasis added). We read the language as limiting the use of fund monies for administrative and operating purposes to those incurred by the community preservation committee itself in carrying out its statutory duties.

If you have any further questions, please do not hesitate to contact me again.

Very truly yours,

A handwritten signature in black ink that reads "Kathleen Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC