



June 11, 2002

Marie Chiofolo, Acting Chairman  
Community Preservation Committee  
1 Liberty Lane  
Norfolk MA 02056

Re: Community Preservation Act  
Our File No. 2002-379

Dear Ms. Chiofolo:

You asked that we review a list of eleven projects that the town's Recreation Department proposes financing with monies raised under the Community Preservation Act (CPA) and advise whether the town may do so. It appears that a number of the projects may involve installations and improvements to one or more existing town recreational facilities. We do not know all of the details for each project, but we can offer general guidelines to assist you evaluate whether a proposal may be financed with community preservation fund monies.

With respect to recreational purposes, the CPA provides that monies in the community preservation fund may be used "for the *acquisition, creation and preservation* of land for recreational use ... and for the *rehabilitation or restoration* of such ... land for recreational use ... *that is acquired or created*" under the act. (Emphasis added). G.L. Ch. 44B §5(b)(2). "Acquisition" can include obtaining a fee or lesser interest in the land, including a lease, and "preservation" is defined quite narrowly to mean protection of property from injury, harm or destruction, but not including maintenance. G.L. Ch. 44B §2. The act does not specifically define the term "creation," but we presume the Legislature intended the term to be given its ordinary and generally understood meaning as bringing into being, causing to exist or production. American Heritage Dictionary 338 (2<sup>nd</sup> New College Edition 1985); Black's Law Dictionary 440 (4<sup>th</sup> ed. 1968). Only those recreational properties acquired or created with fund monies may be rehabilitated or restored using such monies.

Accordingly, we think the town may spend fund monies to do the following:

1. Acquire real property and develop it as a recreational site.
2. Acquire an existing recreational site and rehabilitate or restore it as needed.
3. Develop a recreational use on any real property owned by the town before adoption of the CPA, or acquired with other municipal funds, that is not already dedicated to recreational use.

Marie Chiofalo, Acting Chairman  
Community Preservation Committee  
Town of Norfolk  
Page Two

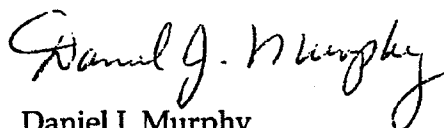
4. Make particular improvements on recreational property owned by the town before adoption of the CPA, or acquired with community preservation or any other municipal funds, for the limited purpose of protecting the property from injury, harm or destruction. This might include such projects as repair or replacement of a roof to protect a structure from damage from the elements or installation of a sprinkler system to protect it from fire damage. It does not include ordinary maintenance or upkeep of the property, nor improvements intended to enhance or extend its use or life.

Community preservation fund monies cannot ordinarily be used to simply replace equipment, or install additional equipment, amenities or improvements, on an existing recreational property. Equipment and improvements can be financed with fund monies, however, where they are an integral part of a project that qualifies as the creation, preservation, rehabilitation or restoration of recreational land. This would include any equipment and amenities acquired or installed:

1. During the original development of a new recreational site on land acquired for that purpose with community preservation funds.
2. During the original development of a new recreational site on property owned by the town before adoption of the CPA, or acquired with other municipal funds, that is not already dedicated to recreational use.
3. During the rehabilitation or restoration of a recreational site acquired or developed with fund monies.
4. For the protection of the property from physical harm.

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

Very truly yours,



Daniel J. Murphy  
Chief, Property Tax Bureau

DJM/KC