

*Karis L. North*  
*knorth@mhtl.com*

September 5, 2023

**VIA EMAIL ONLY**

Andrew Levine, Chief of Staff  
Kimberly Turner, Manager of Special Projects  
City of Newburyport  
60 Pleasant Street  
Newburyport, MA 01950

RE: Community Preservation Act Funding

Dear Mr. Levine and Ms. Turner:

You asked me two questions concerning the use of Community Preservation Act funding for structures, specifically related to the construction of a pump house at the Bartlett Mall pond. In preparing this opinion, I have reviewed facts relating to the project, the Community Preservation Act (CPA), and the Division of Local Services Informational Guideline Release titled “Community Preservation Fund” IGR No. 19-14.

The facts are as set forth below:

1. The City Council (Council) conditionally approved funding for the Bartlett Mall pond and statue, under the Historic Preservation funding of the CPA.
2. The plans for the pond rehabilitation and restoration include a pump house, necessary for the water quality of the pond.
3. Since the original conditional approval, changes have been made to the pump house design, moving it from a vaulted location to a free standing above ground location.
4. The pump house design and construction is in accordance with Secretary of Interior’s Standards for Treatment of Historic Properties, and has received approval from the Newburyport Planning Board.
5. The conditionally approved funding for the project includes funds for the pump house.

Question One is whether the revisions to the plans require additional approval by the Community Preservation Committee (Committee).

In my opinion, since the pump house was already within the scope of the plans, and within the scope of the conditionally approved funding, there is no need to go back to the Committee for additional approval. Additional approvals are only necessary where the project requires additional funds, or the scope of the project changes materially. The treatment of the pump house and moving it from a vaulted location to a free standing above ground location is not a material change.



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Question Two is whether there is a prohibition against using CPA funds for “structures.” There is no general prohibition in the Community Preservation law or in the guidance from DLS which prohibits the use of CPA funds on “structures.” There is a general prohibition against using CPA funds for the “maintenance” of any CPA asset. Under DLS’s guidance (IGR No. 19-14), “maintenance” is “prohibited for all assets even if it could otherwise be considered acquisition, creation, preservation, support, rehabilitation or restoration.” Maintenance is defined as “incidental repairs that do not materially add to the value of property or appreciably prolong property’s life but keep property in condition of fitness, efficiency or readiness.” The construction of a pump house for the pond does not qualify as maintenance as it is not an incidental repair, so it is not prohibited. It is also not specifically named as a type of structure prohibited from utilizing CPA funding (such as bleachers).

Since construction of a pump house is not prohibited, the question is whether it is allowed. Allowed construction utilizing CPA funds depends on the source and purpose of the funding. Here, the funds are coming from Historic Preservation funds. The pump house is integral to the rehabilitation and restoration project, and necessary to make the asset (the pond and its mall location) functional for its intended use. So long as the construction complies with the Secretary of Interior’s Standard for Treatment of Historic Properties (which it does), the pump house portion of the project may be completed with CPA funds.

I hope this opinion is useful. Please contact me if you would like to discuss.

Sincerely,

*Karis L. North*

Karis L. North  
City Solicitor

cc: Andrew Port  
Katelyn E. Sullivan  
Jane Healey