

HAMILTON COMMUNITY PRESERVATION COMMITTEE

PRELIMINARY PROJECT PROPOSAL FORM

Submitter: Fire Chief Raymond Brunet
Submission Date: Friday, December 29, 2023
Group or Committee Affiliation (if any): Hamilton Fire Department

Submitter's address and phone number: 265 Bay Road Hamilton, Ma 01982
Station #: (978)-468-5559
Cell #: (978)-423-2565

Purpose (please select all that apply): Historic

Submitter's email address: rbrunet@hamiltonma.gov

Project Name: Historic Model T, Hamilton Chemical Engine 1, Building

Project Description:

This project proposes building a replacement facility to store Hamilton Fire Department's Chemical Engine 1 on the grounds of the Hamilton Public Safety complex.

Purchased by the Town in 1916 for \$1,495, Chemical Engine 1, a 1916 American LaFrance Model T, was the first piece of motorized fire apparatus owned by the Town of Hamilton. Chemical Engine 1 saw service almost immediately and, with the exception of a brief period during World War II when it was loaned out for service in Maine, has been a part of the Hamilton Fire Department (HFD) for more than 100 years. Chemical Engine 1 was also the impetus for the Town's first fire station, as the original proposal for the Engine included an allocation to build an Engine House.

As the department evolved and grew over the years, preserving Chemical Engine 1 as a part of our history remained a priority for HFD's members. In 1988 the Department's members took the initiative to construct a dedicated building to preserve and showcase the apparatus. This facility remained in place until February 2007 when it was demolished as part of the planned construction of the current Public Safety Facility. This planned construction included allocations for immediately reconstruction of the destroyed building; however, this replacement structure was never built.

With a lack of appropriate storage, it was temporarily stored undercover in the new Public Safety Building apparatus bay for fifteen years. This antique was exposed to moisture, cold, and was even struck by modern fire apparatus during storage. Fluids remained unchanged. As a result, Chemical Engine 1 unfortunately fell into disrepair and was at risk of being completely abandoned. Equally important, this amazing piece of history could no longer be properly enjoyed by our community (and beyond).

Chemical Engine 1 is not just a display piece. It is functional, drive-able, and was in-fact registered with the Department of Motor Vehicles for years prior to falling into disrepair. In the early 2000's this antique won many awards for "oldest operating apparatus" and "best presenting antique" in parades, fireman's musters, and other events throughout New England. It remains one of the few antiques of its era that can still operate under its own power in New England.

In 2022, with the support of the members of the HFD and the Hamilton Fire Department Relief Association (HFDRA), a retired HFD firefighter, Richard Randolph Churchill Ayer, began the painstaking process of completely restoring Chemical Engine 1 to its original, working condition. He did this entirely at his own expense with the goal of saving this original and important piece of our Town's and the department's history. In addition to the considerable care and generosity shown in the restoration process, Mr. Ayer has also generously offered to provide a long-term investment to cover the ongoing maintenance of the apparatus.

We are now requesting \$150,000.00 from the Community Preservation Committee to build a permanent home for Chemical Engine 1. As detailed in the attached PowerPoint slides, this would consist of building a new, appropriately sized building on the grounds of the current Public Safety Building. The building would include ample windows and lighting, so as to allow public viewing of the engine, as well as cost-efficient climate controls to ensure long-term preservation. Locating the facility along 1A at the current Public Safety Building will also provide additional opportunities for this unique part of Hamilton's history to engage with the community.

In keeping with tradition, the Hamilton Fire Department and its associates plan on giving their time and resources towards the completion of this historical project. Within our vast network we have a number of skilled trade persons that are excited to assist us in this undertaking. This certainly will be a cost saving measure for this project. However, we will be requesting the full amount be set aside to assure the building's completion. Our intentions have always been to give back to the community by safeguarding this valued historical gem (Chemical Engine 1).

Preliminary Estimate of Project Costs and Outline Schedule:

A detail cost estimate document is presently being worked upon and will be submitted by the scheduled due date of Thursday, February 1, 2024. However, we are expecting that funds of around \$150,000.00 will be needed for this project.

How does this project meet the General Criteria for CPC projects (see attached)?

The proposed project meets the following CPC criteria:

- *Protect, preserve, enhance, restore and/or rehabilitate historic, cultural, architectural or archaeological resources of significance, especially those that are threatened:* Chemical Engine 1 is a historic antique representing the history of Hamilton, its fire department, and the department's past members. Fortunately, a retired member took it upon himself to restore and rehabilitate this antique, but these CPC funds will be used to continue its preservation for decades to come. History has demonstrated that without a proper storage and display, Chemical Engine 1 is at significant risk of falling into disrepair, and eventually being lost entirely.
- *Protect, preserve, enhance, restore and/or rehabilitate town-owned properties, features or resources of historical significance.* See above. Chemical Engine 1 was Hamilton's first motorized fire apparatus and has been a part of HFD for more than 100 years. Additionally, this building will owe tribute to the original "Chemical 1 Engine" house on Willow St (Now "Firehouse Apartments" at 69 Willow Street), which was built around 1916 specifically to house this engine. Lastly, this structure will add architectural beauty to the grounds of the Hamilton Public Safety Building.
- *Project is within a Hamilton Historic District, on a State or National Historic Register, or eligible for placement on such registers, or as Hamilton historic properties for evaluation by the Historic District Commission (see recommendation of the Master Plan):* The proposed location for project lies outside of the Hamilton Historic District, though it is on Town property, on 265 Bay Road at the Public Safety Building. The location adjacent to Bay Rd, across from the Community House and Patton Park is such that all of Hamilton will routinely be reminded of the history of the Town and its Fire Department.
- *Project demonstrates a public benefit:* The facility will be easily accessible to the community, providing educational opportunities, as well as a further bridge for engagement between community members and the Town's public safety providers.
- *Project demonstrates the ability to provide permanent protection for maintaining the historic resource.* The construction of a climate-controlled, electronically protected, and dedicated storage building will provide protection for this antique while allowing the community to continually interact with this historic piece. Furthermore, the location selected for construction is such that it will not interfere with any anticipated future construction projects and will be present for decades to come. Lastly, history has shown that this antique needs dedicated storage and gentle treatment in order to remain operational and presentable.

(Specific Criteria should be reviewed for inclusion with final application)

Signature: Chief Raymond Brunet
For Community Preservation Committee Use:
Form Received on: _____

Date: 12/29/2023

Project Presented to CPC on: _____

Reviewed by: _____

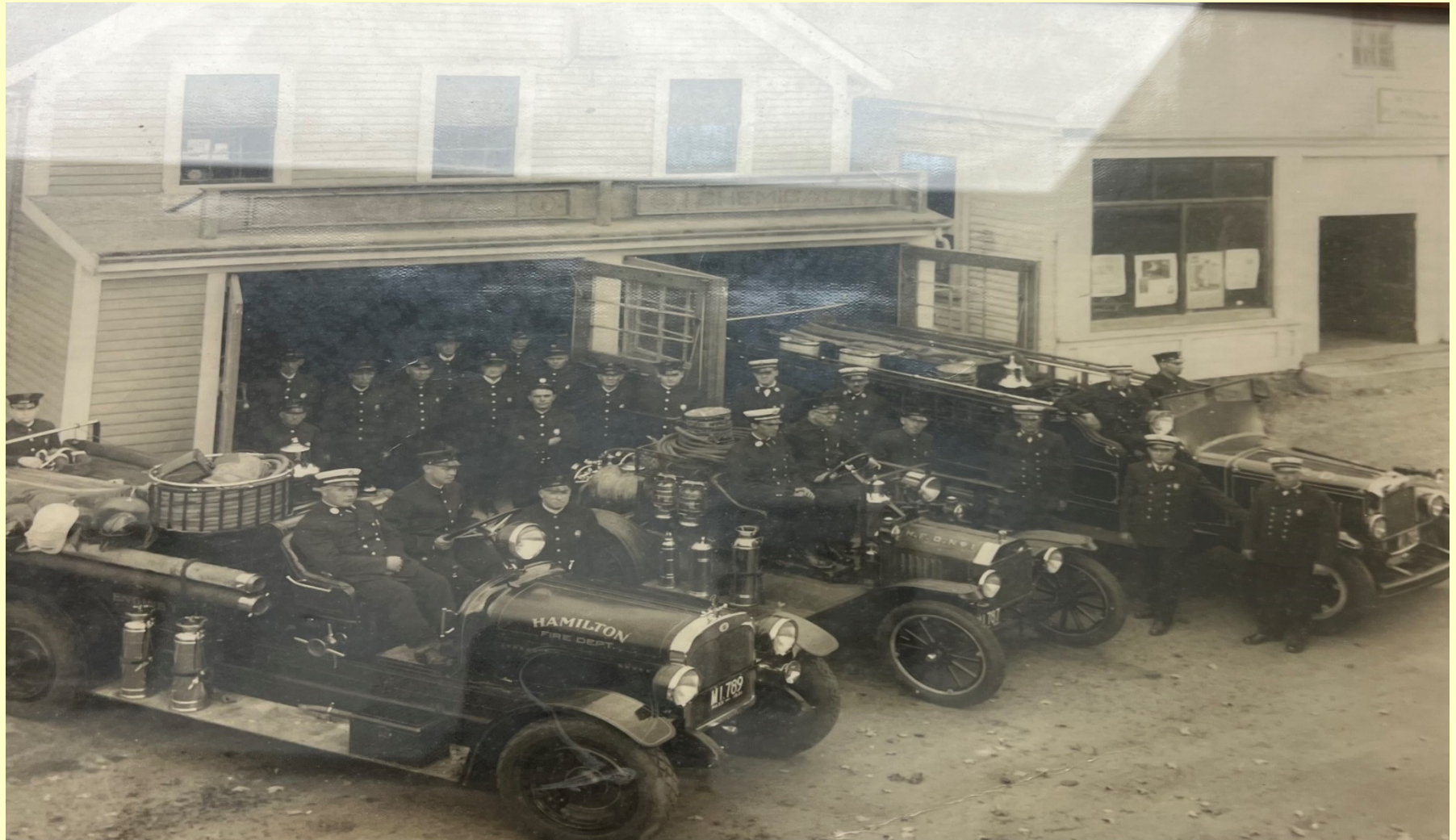
Determination: _____

Model T Building Project

- 1916 Model T/American LaFrance Chemical Truck
- First piece of equipment purchased by Hamilton FD



The original Hamilton Fire Station



Model T - Former Building

- The building that protected the Model T was demolished during construction of new Public Safety Building (PSB) because it was in the way of progress
- The construction of a replacement Model T building was abandoned due to budget cuts



The old Model T Building location



Replacement Model T Building

- We are requesting CPA funds to rebuild this building for historical preservation
- Funding was previously approved by your committee in 2007
- This building project was never acted upon
- The funds were subsequently returned to the CPC
- The building project has been in limbo until now

Model T Building Site



Proposed Model T Building



Good Evening. As the Chief stated, my name is Andrew Ellison, a 24-year veteran of the Hamilton Fire Department and a Taxpayer, and I have a very personal connection with this project. My role assisting with the Model T maintenance, rebuilding, and operation began over 30 years ago. In the 1990s and early 2000's I spent many a night and weekend with my father Captain Danny Ellison maintaining and keeping this valuable piece of Hamilton's history in immaculate condition as well as displaying it at local and regional shows, parades, and fireman's musters. As such, I can speak to you thoroughly regarding the significant **tender, love, and care** that this piece of history requires.

Chemical 1, the assigned name for the Model T back in 1916 when it was delivered to The Town, was the **first motorized fire apparatus** purchased by The Town. Following its service for The Town, it was sold privately and almost lost forever. However, the fire engine was gifted back in the 1950s where firefighters began restoring the engine on their own time. Unfortunately, in the mid-1970's, the engine was involved in an accident while being driven by a restoration vender and significantly damaged. Again, the firefighters rebuilt the nearly destroyed fire engine back to its original drive-able condition.

In 1990, the **Hamilton Firefighters recognized the need to preserve this piece of the town's history** and personally built a brick-and-mortar garage without any taxpayer funding to secure this irreplaceable antique. In 2005, Chief Philip Stevens applied to the CPC for a grant for construction of a replacement building to house the Model T as this existing structure was **slated for destruction** to make space for the new public safety building. Your predecessors on the CPC saw the **immense value** in maintaining this piece of history and approved the request for funds back in 2005. As a result of this approval, **the building was razed with the promise that the Town of Hamilton would then build a suitable replacement building.**

Unfortunately, over the next 8 years, this project met substantial opposition from the prior town manager because of uncertainty related to the future use of what is now the Senior Center. This left the **1916 Model T fire engine homeless**, and it was *"temporarily"* stored in the fire apparatus bay where it was almost abandoned, repeatedly soaked, and even **struck by a reversing in-service vehicle**. As a result of these delays, in 2015, the CPC rescinded the unused funding, while

stating that we (The CPC) **QUOTE Strongly encourage the Fire Department to reapply for CPA Funds whenever plans are renewed to complete the project. END-QUOTE.** Today, we are reaching out to the CPC for approval for exactly this.

In 2022, Retired Firefighter Randy Ayer took it upon himself to revitalize our historic antique. Over the next 18 months, Randy rebuilt and revitalized this piece to the **show-piece** it is again. Firefighter Ayer did all of this **without using a cent of the taxpayers' money** by donating both his time and money to purchase materials. We, as a department and as a town, owe it to Randy to see that his hard work is secured and preserved for decades to come.

This request for funding represents a portion of the expected project costs to not only preserve the Model T, but also make it accessible for the public to enjoy by placing the antique on display in a beautiful building full of windows right in the heart of Hamilton. In addition to Firefighter Ayer's generous donation of time and money rebuilding the truck, the Fire Chief has already lined up a number of residents and community members who have volunteered their professional services to assist in various aspects of the project, from trenching the electrical service to preparing the foundation. In fact, the architectural renderings you have been provided were donated by VANCEarchitects. The \$150,000 requested represents the cost of the proposed structure which **pays homage to Hamilton's original firehouse** where Chemical 1 was housed on Willow St (now the site of the Firehouse Place apartments, another CPC-funded project).

We, as the firefighters of the Hamilton Fire Department and many of us as Taxpayers of the town of Hamilton implore this committee to approve this request for funds and help us preserve this significant and rare part of Hamilton's history.

At this time, The Chief and I would like to answer any questions the committee may have regarding the application and the proposed project.

*Andrew D. Ellison
Captain
Hamilton Fire Department*

*Presented at:
CPC Meeting
January 11, 2024*

To: Laurie Wilson, CPC
From: Hamilton Historical Society
Subject: Support For Model T Building
Date; January 28, 2024

It is with great enthusiasm that the Hamilton Historical Society endorses the construction of a building to house Hamilton Fire Department's, Model T, Chemical 1. The significance of this vehicle to the town cannot be valued. It has served the Town of Hamilton since 1916 and was used to save untold lives and property.

So much of history is not appreciated and vehicles are scrapped and buildings are torn down. Not every community has the foresight to treasure its history; with the help of the CPC, we are able to value the past.

Randy Ayer has brought Chemical 1 back to life and it is amazing. I went to see Randy and he showed me all the work that has been done with loving care. His time and money made this irreplaceable vehicle a showpiece of which the Town of Hamilton can be proud.

This is our chance to show appreciation to the Hamilton Fire Department for the work they have done and continue to do for the townspeople.

Anne Marie Cullen, President
Hamilton Historical Society

*Eligibility & Funding
of \$150,000 approved
2/8/24*

*Historic Model T, Hamilton Chemical Engine 1, Building
Funding Supporting Documentation*

Project Description

This project proposes building a replacement facility to store Hamilton Fire Department's Chemical Engine 1 on the grounds of the Hamilton Public Safety Complex. This building is to replace the building built by firefighters and destroyed in 2005 to make room for the new Public Safety Complex constructed in 2007.

This request is for \$160,050.00 of funding from the Community Preservation Act to build a permanent home for Chemical Engine 1. As detailed in the attached plans, the project will consist of building a new appropriately-sized and publicly accessible building on the grounds of the current Public Safety Building. The facility will be located along Bay Rd (State Rout 1A) in the grassy area between the parking lot and the emergency vehicle access driveway in front of the current Public Safety Building. The building will include ample windows and lighting to allow public viewing of the engine, as well as cost-efficient climate controls to ensure long-term preservation of this sensitive artifact. The project will provide additional opportunities for our department to engage with the Hamilton Community.

In keeping with the tradition, the Hamilton Fire Department and its associates plan on donating their time and resources towards the completion of this historical project. Within our vast network of associates we have skilled trade persons that are excited to assist us in this undertaking. These donations will be a cost saving measure for this project.

Goals:

- Preserve the newly refurbished Model T for current and future generations to enjoy.
- Maintain Chemical Engine 1 safe from harm. The history of this piece clearly shows that improper storage results in harm and damage to this antique. Additionally, the climate-controlled environment will help preserve the Engine's sensitive components from freezing temperatures and high humidity.
- Display the Model T in a publicly accessible location where it can be used as a recreational/educational capacity by being viewed and admired by the Town's residents for many decades to come.
- Provide a relevant and historical cultural focal point to supplement the existing downtown area. The building is intended to draw people to the downtown area and help tie in Hamilton's history to the downtown businesses.

Timeline:

1. This project started in 2005 when Chief Philip Stevens approached the CPC for funding for this project. Over the years, the project has been tabled and revitalized numerous times. Most recently, the firefighters revived this project last year and it is their goal to have the building/display completed by late 2025.
2. To-date, we have obtained the services (without fees) of VANCE STEIN ARCHITECTS to design and specify a suitable building which meets the needs of the Model T, the Town, and the Public. Our team has also obtained commitments from numerous contractors for donation of services related to the construction (see listing later in this document).
3. VANCE STEIN ARCHITECTS has completed the conceptual drawings and cost estimate has been completed.
4. The intent is to have the municipal plan review process completed by late spring 2024. A building permit will also be in place at that time.
5. Construction is intended to commence by Early 2025.
6. Construction completion and building dedication is anticipated by the end of 2025.

Historic Model T, Hamilton Chemical Engine 1, Building Funding Supporting Documentation

Budget:

- a) Detail listing of all the major components including anticipated building costs is included. This document is appended to this application.
- b) Additional funding sources, are in the form of donations of physical services, etc. have already been secured. We have commitments for the following services:
 - VANCE STEIN ARCHITECTS (drawings),
 - Iron Tree Service (moving the 2 trees and replanting),
 - Masterson Construction (dig the foundation and site work)
 - Preventive Septic (dig the electrical service),
 - Daniel McCormack Electric, has offered to help with the electrical installation.
- c) Tim Olsen, the Director of Public Works, will provide the firefighters bidding and prevailing wage consulting services throughout the construction project. The intent is to subcontract out major build processes (i.e. foundation, concrete floor slab, framing, windows, roof and the viewing sidewalks) to professional service companies. Work will be supplemented by firefighters' and taxpayers expertise where applicable.

Support:

I have spoken to the Town Manager and many of the Town's department heads have shown positive encouragement and support for this project. At the CPC's January, 4, 2024 meeting, there was unanimous support for this project by the CPC. Marnie Crouch, the Town's Planning Board Chair, spoke about her excitement for this project and the impact it will have on the downtown area. Ms. Crouch commented on how it would help tie the down-town area together by using a piece of town history as a static display that everybody would be able to enjoy.

Chief Brunet plans to act as the General Contractor with help of, Michael Toomey "Licensed Builder" and Capital Committee Board Member and Mathew Brunet "Licensed Engineer/Construction Superintendent". Chief Brunet's history as a business owner, experience managing construction of new structures, and past role as the town's Fire Inspector will be instrumental in assisting the firefighters' reach their goal.

The taxpayers of Hamilton have often supported the firefighters and the Model T. The Model T made one of its inaugural displays since its last reconstruction at the 1991 Bicentennial Celebration where it was not only on static display but also led the Bicentennial Parade with Chief Doug Woodman. The Model T has participated in a number of Hamilton and neighboring parades and other community events allowing the firefighters to interact with the public. Taxpayers' children have climbed on the truck, posed for photographs on and with the antique over the years.

On a final note; we have been approached with a very generous endowment offer for the upkeep and maintenance of this static display. Firefighter Randy Ayer, a retiree of the Hamilton Fire Department, has offered to donate sufficient funds/stocks to fully fund the building and the antique's future maintenance. As a result, the building maintenance moving forward will cost the town (and the taxpayers) nothing, making this the Town's only self-sustaining building.

RAB Property Management INC. P.O. Box 2063 Hamilton Ma 01982

(978)-423-2565

BUDGET ESTIMATED BREAKDOWN

Scope of work is based upon conceptual drawing Provided by: VANCE STEIN ARCHITECTS
For a building **14' X 22'** coming in at **308 SQFT = \$519 Per SQFT**

Plans/Drawing Labor		
Construction Drawings (Donation)	\$	-
Site Construction Labor		
Site Work (Donation)	\$	-
Footing, Frost Walls	\$	10,000.00
Concrete Floor	\$	6,000.00
Carpentry & General Labor		
Wood Framing,	\$	11,500.00
Windows/Doors & Trim	\$	8,000.00
Exterior Siding & Misc.	\$	9,500.00
Electrical Labor		
Electrical Service & Runs (Donation)	\$	-
Thermal & Moisture Protection Labor		
Vapor Barriers	\$	500.00
Sealant & Caulking	\$	500.00
Shingle Roof	\$	7,500.00
Plastering	\$	4,750.00
Insulation	\$	8,500.00
Painting	\$	7,500.00
Landscaping Labor		
Sidewalks	\$	5,000.00
Misc. Landscaping	\$	4,000.00
HVAC Labor		
Install Split Climate Control Unit	\$	5,800.00
Materials Labor		
Misc. Site Materials	\$	3,000.00
Concrete \$175 Per Yard	\$	8,500.00
Wood Framing Materials	\$	25,000.00
Windows & Doors	\$	15,000.00
Blue Board & Plaster	\$	3,600.00
Primer & Paint	\$	3,000.00
Electrical Service & Runs materials only	\$	7,800.00
Misc. Rentals Fencing etc.	\$	1,600.00
Carrier Climate Control (Donation)	\$	-
Insurance Umbrella	\$	3,500.00
Estimate Totals	\$	160,050.00

TO: Attorney Thomas W. McEnaney (*By Electronic Mail Only*)
FROM: Attorney Michael D’Ortenzio, Jr.
RE: Using CPA Funds to Construct Display Building for Antique Fire Apparatus
DATE: January 9, 2024

Question

Can Community Preservation Act (“CPA”) dollars be used to construct a new display building for Chemical Engine 1, Hamilton’s first and recently rehabilitated motorized fire apparatus, which is currently stored in a manner that does not adequately protect Chemical Engine 1?

Short Answer

In my opinion, the proposed use is allowable pursuant to the CPA because the use would “preserve” a historic resource.

Detailed Analysis

Community Preservation Act

To expend money from the CPA, projects must fall into one of the following categories: open space/recreation, community housing and historic preservation. Within each category are specific ways that spending is authorized. In my opinion, the proposed building to house the Chemical Engine 1 would fall under the historic preservation category.

Pursuant to the CPA, authorized spending on historic preservation means spending that achieves “the acquisition, preservation, rehabilitation and restoration of historic resources...” G.L. c.44B, §5(b)(2).¹ “Historic resources” means “a building, structure, vessel real property, [sic] 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.” G.L. c.44B, §2. In my opinion, to expend funds on the proposed building under the historic preservation category, the Community

¹ The CPA contains an internal inconsistency in the authorized uses of historic resources spending. While G.L. c.44B, §5(b)(2) excludes “creation” from being an authorized use for historic resources, the CPA also defines “community preservation” as “the acquisition, creation and preservation of open space, the acquisition, creation and preservation of historic resources and the creation and preservation of community housing” (emphasis added). G.L. c.44B, §2. This memorandum assumes that CPA funds cannot be used to “create” historic resources, consistent with Department of Revenue guidance.

Preservation Committee would need to determine that the building acquires, preserves, or rehabilitates a historic resource.

Application to Chemical Engine 1

In my opinion, construction of the display building would comport with the CPA because the building would preserve a historic resource. Further, the Department of Revenue has previously interpreted “preservation” liberally and other towns have authorized similar spending.

First, to spend CPA funds, the Community Preservation Committee (“Committee”) must determine that Chemical Engine 1 is a historic resource. In my opinion, the Committee may make this finding if Chemical Engine 1 has been determined by the Historic District Commission/Historical Commission to be significant in the history, archaeology, architecture, or culture of the Town of Hamilton.

Once Chemical Engine 1 has been determined to be a historic resource, CPA monies may then be spent to acquire, preserve, or rehabilitate Chemical Engine 1. I understand that, since the previous display building was torn down in February 2007 as part of the construction of the current Public Safety Facility, the apparatus has suffered from a lack of proper storage. Specifically, over the past fifteen (15) years, I understand that Chemical Engine 1 has been stored under cover in the Public Safety Facility’s apparatus bay, suffered from exposure to moisture and freezing temperatures and been struck by modern fire trucks. I further understand that a retired member of the Hamilton Fire Department recently restored Chemical Engine 1 to its original, working condition.

In my opinion, if a new display building will preserve the restored Chemical Engine 1 from the disrepair and degradation that it currently suffers in the apparatus bay, then the CPC would be able to determine that construction of such a building falls within an eligible CPA use. First, the CPA defines “preservation” as the “protection of personal or real property from injury, harm or destruction.” G.L. c.44B, §2. Here, construction of the display building will keep Chemical Engine 1 safe from further harm, which would otherwise continue to occur due to lack of proper storage. Second, the Department of Revenue has in the past broadly interpreted the term “preserve” to include the construction of new facilities. In a case involving the Town of Norfolk, the Department of Revenue opined that construction of a water treatment plant near a local pond could be an authorized use under the preservation prong of the open space category, as the treatment facility would “prevent further contamination of the pond....” DOR File 2006-230 (February 9, 2007). Finally, the Town of Essex recently built a structure to enclose and protect a historic hand pumper fire apparatus at its Memorial Park with CPA funds. Essex authorized \$60,000 of CPA spending on this project in May 2021. This expenditure was approved by its Community Preservation Committee and Town Meeting and, to my knowledge, has not been challenged by any taxpayer.



Community Preservation Coalition

Preserving our past. Building our future.

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196 CPA Communities



Home

CPA Projects – Detailed Report

Project Information

Project Name

Historic Fire Pumper Shed

City/Town Name

Essex

Project ID

50494

Town ID

92

Description

construction of a structure to enclose and protect historic hand pumper fire apparatus at Memorial Park.

Status

Project complete

Approval Date

05-15-2021

Project Category



Open Space



Housing



Recreation



Historic

Project Details

Housing Units**New**

0

Supported

0

Total

0

Acres**Open Space**

0

Housing

0

Recreation

0

Historic

0



Mixed Use

Uncategorized Acres

0

Total

0

CPA Funding

Open Space \$0	Housing \$0	Recreation \$0	Historic \$60,000	Uncategorized \$0	Total \$60,000
CPA Bonded Amount \$0	Bond Term 0				
<input type="checkbox"/>	Transferred FROM a Fund/Trust \$0				
Transferred TO a Fund/Trust					

Other Funding Sources Leveraged

Other Town Funds \$0	Private Funds \$0	State Funds \$0	Federal Funds \$0
Other Misc Funds \$0	Other Funds Description		

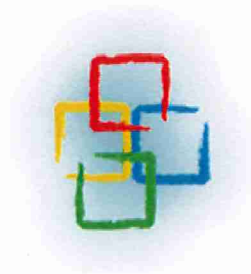
Total Project Cost

\$60,000

Total Funds Leveraged From Other Sources
\$0

Community Preservation Coalition

6 Beacon Street, Suite 615
Boston, MA 02108
Phone: (617) 367-8998



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February 9, 2007

Mary Ellen Gattoni
342 Main Street
Norfolk, MA 02056

Re: Community Preservation Act
Our File No. 2006-230

Dear Ms. Gattoni:

This is in reply to your letter questioning certain appropriations from the Community Preservation Fund that were voted by the Town of Norfolk at its 2006 annual meeting. You question whether Community Preservation Act (CPA) monies may be used to fund these projects. G.L. c. 44B. We apologize for the delay in responding.

The CPA is relatively new and as is usually the case, there are many issues regarding its interpretation and application with respect to particular projects. Many of the questions are very fact specific so we generally defer to municipal counsel to advise about the appropriateness of any given expenditures. The reason is that under the law, all CPA spending decisions are made locally and we do not have the power to invalidate any municipal appropriations from CPA fund monies (or any other municipal financing source). From the general information presented, however, the projects in question would appear to come within the purposes of the statute.

Monies in the Community Preservation Fund may be used "for the acquisition, creation and preservation of open space; for the acquisition, preservation, **rehabilitation and restoration** of historic resources; for the acquisition, **creation** and **preservation** of land for recreational use; for the **acquisition, creation**, preservation and **support** of community housing; and for the rehabilitation or restoration of open space, land for recreational use and community housing that is acquired or created" under the act. (Emphasis added). G.L. c. 44B, §5(b)(2).

The first appropriation you question is to assist town residents and employees make a down payment on a home within the town. We understand there are various programs that provide such financial support to low and moderate-income persons seeking to own a home and in exchange, the municipality acquires an affordable housing restriction on the unit. As a result, the home becomes part of the community's affordable housing stock. This type of program would appear to be eligible for CPA funding since acquisition of property interests for affordable housing – in this case an affordable housing restriction – is clearly an allowable

purpose. Even if a restriction is not being acquired under this program, the statute allows monies to be used in support of affordable housing. Support is not defined in the statute, but it could include a broad range of programs to provide affordable housing. We think the statute contemplates that these programs result in additional affordable housing units in the community, but some have interpreted it to allow support or assistance to individuals needing affordable housing as well.

The second appropriation is for the restoration of an historic building owned by the Norfolk Grange, which is a private, non-profit organization. Rehabilitation or restoration of historic properties is an allowable purpose. There is nothing in the CPA that prohibits the use of funds for this project simply because the property is privately owned. However, under the Anti-aid Amendment to the Massachusetts Constitution, public funds cannot be given or loaned to private individuals or organizations for their private purposes. Mass. Const. Amend. Article 46 §2, as amended by Article 103. Any expenditure must be to advance a public purpose. The preservation of historic assets is generally understood to have legitimate public purposes. Both the federal and state governments, for example, have various historic grant programs, which include grants to non-profit organizations. www.sec.state.ma.us/mhc/mhcidx.htm. Typically, these programs result in the public acquiring an historic preservation restriction or receiving some other benefit to ensure that the grant is for public rather than private purposes. For example, in an anti-aid case involving state monies given to a non-profit group to rehabilitate the U.S.S. Massachusetts for use as a memorial and museum, the Supreme Judicial Court found the expenditure was for a public purpose because the property would be open to the public as a place to contemplate and honor those who died in the service of their country and to educate school children, who were admitted free of charge, about history. *Helmes v. Commonwealth*, 406 Mass. 873. In the case of the Grange property, we understand the town will acquire an historic preservation restriction and the organization must use the funds received in exchange to finance the rehabilitation. In other words, it appears the town is receiving an interest in the property to ensure that its investment of public funds benefits the public through the preservation of a piece of the town's history.

The last appropriation was to create and preserve recreational facilities at a town owned pond. From information provided, the Community Preservation Committee and Recreation Department sought the monies to restore the pond and beach area and to make it suitable for recreational purposes, such as swimming, picnicking and boating. Apparently, the pond was once used for swimming and fishing, but it was closed many years ago due to contamination from poor drainage in the area. You claim that the monies will actually be used to build a water treatment plant near the pond. We are obviously not in a position to evaluate that claim, although the \$85,000 appropriated would not seem sufficient to build such a facility. In any event, given that the site is not currently used for recreational purposes, any expenditure to restore the pond and beach area would probably qualify as creation of a recreational asset.

Creation is not defined in the act, but its ordinary and generally understood meaning is bringing into being, causing to exist or production. American Heritage Dictionary 338 (2nd New College Edition 1985); Black's Law Dictionary 440 (4th ed. 1968). Creation could include a number of activities, such as a wholly new use, conversion from one use to another, or restriction of future use, that effectively cause property not used for recreational purposes to become a recreational asset. Even if the appropriation were for some sort of treatment facility or other improvement designed to prevent further contamination of the pond, it might possibly qualify as preservation, which the act defines as protection of property from injury, harm, or destruction.

If ten taxpayers believe particular expenditures are unlawful, they can bring suit to enjoin the municipality from spending those funds. G.L. c. 40, §53. Ultimately, the voters may consider whether they believe local officials are acting appropriately with respect to implementing the CPA, or carrying out any municipal responsibility.

I hope this information is helpful.

Very truly yours,

A handwritten signature in black ink, appearing to read "Kathleen Colleary". The signature is fluid and cursive, with the first name and last name clearly distinguishable.

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC

Laurie Wilson

From: Stuart Saginor <Stuart.Saginor@communitypreservation.org>
Sent: Tuesday, January 2, 2024 1:09 PM
To: Laurie Wilson
Cc: Chase Mack
Subject: External Email Warning RE: question of eligibility for CPA grant

Hi Laurie:

We don't see any way you can construct a new building with CPA funds. If you look at the CPA Allowable Uses chart, it is clear that you can't "create" anything new in the historic category.

<https://www.communitypreservation.org/allowable-uses>

If the town had an historic building that was on the state register, or similarly significant, then it could "rehabilitate" that building to house the truck, so long as the rehab didn't destroy any historic features of the building. But creating a new building, nor planning activities to create a new building, aren't eligible for CPA funds.

Best,
Stuart

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Community Preservation Coalition

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Please Note: The Community Preservation Coalition renders neither legal opinions nor legal advice, and recommends consulting with an attorney.

From: Laurie Wilson <lwilson@hamiltonma.gov>
Sent: Tuesday, January 2, 2024 12:02 PM
To: Stuart Saginor <Stuart.Saginor@communitypreservation.org>
Subject: question of eligibility for CPA grant

You don't often get email from lwilson@hamiltonma.gov. [Learn why this is important](#)

Hi Stuart, and Happy New Year,

The Community Preservation Committee just received the attached eligibility application. It is categorized under "Historic Preservation" but it is for a grant to construct a building to house the antique fire truck. Does this new building fall under Historic Preservation?

FYI I have also attached the previous application which was approved in FY08 for a building, but never built. The CPC wonders whether this application was even eligible under Historic Preservation at that time.

As always, thank you for your help,
Laurie