

**COMMUNITY PRESERVATION COMMITTEE
TOWN OF NEEDHAM, MASSACHUSETTS**

**Minutes of Meeting
September 9, 2015**

PRESENT: Gary Crossen - Chair, Lita Young – Vice Chair, Mark Gluesing, Reg Foster, Peter Oehlkers, Paul Alpert, Ron Furman

ABSENT: Robert Boder, Mike Retzky

STAFF: Patricia Carey, Staff Liaison
Kristen Wright, Recording Secretary

GUEST: Michael Greis, School Committee Representative
Peter Pingitore, Needham Housing Authority Chairman
Scott Brightman, Needham Housing Authority Commissioner
Debra Jordan, Executive Director of the Needham Housing Authority
Andrew Barr, Russo Barr Associates
Emma Murphy, Needham Times

Mr. Crossen called the meeting to order at 7:32 PM in the Highland Room at Town Hall.

Vote & Discussion:

FY2016-1 Seabeds Way Housing – Liaisons – Mark Gluesing and Lita Young

This request is for \$600,000 construction funds for emergency repairs and construction defects corrections under Community Housing. Mr. Gluesing reviewed the information that he received from the Community Preservation Coalition to determine if the project is eligible, including an advisory from MA Department of Housing and Community Development providing guidance on eligibility under preservation of housing. *(See Appendixes A – F)*. Housing Authority Executive Director Debra Jordan presented a brief overview of the project, and noted that it was out to bid, based on estimates of funds currently available. Mr. Crossen asked Ms. Jordan if there was any update on the emergency HUD funding. Ms. Jordan stated that she has reached out, but has not received any updates. **Mr. Gluesing made a motion that this proposal was eligible for CPA funding. The motion was seconded by Ms. Young and was approved unanimously with 7 in favor.**

Next Steps and Meeting Dates: As one of the project liaisons, Mr. Gluesing stated that the next step is to go review the project with the proponents to gain a better understanding. Ms. Jordan stated that the project is currently out to bid. Consultant Andrew Barr from Russo Barr Associates discussed the general scope of the project. Mr. Gluesing stated that he would work with Ms. Jordan, the Housing Authority representatives and Mr. Barr to on the details, including what components are eligible for CPA funding. If the CPC recommends funding, and the project is approved at Town Meeting, Ms. Carey noted that the Town Manager would develop an agreement with the Housing Authority on the process for payment.

Mr. Crossen reminded the CPC that their next meeting will be on Wednesday, September 16th at 7:30 PM. The following meeting will be on Wednesday, September 30th.

Minutes: August 26, 2015: Mr. Gluesing made a motion to approve the minutes of the August 26th meeting and the motion was seconded by Mr. Oehlkers. The minutes were unanimously approved.

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Adjournment: Mr. Alpert made a motion to adjourn the meeting at 8:45PM. Mr. Furman seconded the motion and the meeting adjourned at 8:45PM.

Respectfully submitted,

Kristen Wright,
Recording Secretary

NEEDHAM HOUSING AUTHORITY CPC QUESTIONS ABOUT SEABEDS WAY PROJECT

- 1. Is the entire project eligible for CPA funding? If not, is a portion of the project eligible? Which portion?**

The Housing Authority believes the entire project is eligible. We have researched the Community Preservation Coalition database and found numerous examples of Housing Authority renovation and repair projects that have been funded with CPA funds. (List attached). We also conferred with legal counsel, Thomas McEnaney from Kopelman & Paige, who advised that the project does meet the CPA guidelines.

- 2. Is the damage a result of overlooked or deferred maintenance?**

Not overlooked but underfunded. The Housing Authority regularly repairs and maintains its properties. It is a well known fact that HUD has been underfunded for decades, resulting in Housing Authorities having to do more with less. Some estimate the backlog of underfunded capital improvements exceeds \$26 billion. NHA receives approximately \$150,000 in capital improvement funds each year to maintain 136 units of housing. That is about \$1,100 per unit including 90 family units which often require significantly more upkeep. A portion of the capital improvement money is also allocated to supplement operating costs which have also been underfunded.

- 3. How much of the project can be classified as repairs, as opposed to capital improvements?**

The roofs are about 18 year old; however they were not properly flashed, allowing water to seep in underneath them. The extraordinary winter weather created ice dams this year which further damaged the roofs. Residing the buildings is both a preservation measure and a capital improvement. Interior closet repairs are a result of the ice and water damage this winter. Balcony repairs are repairs to rotted wood and construction defects. All of the work that is being done will improve the condition of the buildings and sustain the useful life.

- 4. If the project doesn't receive CPA funding at Special Town Meeting, does that mean it wouldn't be done?**

No. The project will be done regardless of whether we receive CPA funds. The Housing Authority will use Reserve monies to fund the necessary work. The scope of the project will be limited if we do not receive the funds. We will make only the repairs necessary to make the buildings weather tight and repair the closets. Specifically, the roofs will be replaced, siding will be repaired and replaced where absolutely necessary, balconies shored up, and interior closets repaired. We will not be able to replace doors or windows or reside the entire buildings with vinyl siding. Only portions of the siding will be replaced. The housing must be restored and made safe prior to the onset of winter. Construction is anticipated to begin October 1.

- 5. Provide more details about the other funding sources for the project.**

See attached spreadsheet. The spreadsheet reflects the full project including the remediation and repair work which has been completed. It is important to note that the spreadsheet shows the NHA using all of its cash reserves to fund the project if no grant funds were received. This would not be a sound business practice and would represent an

extreme circumstance to get the project completed. In reality NHA would try to scale back the project even further and would seek a loan.

- 6. Provide more detail about the application for funding from HUD. Explain why there is a problem paying NHA back if monies are already expended for repairs then the HUD grant comes through.**

By statute, Housing Authorities cannot expend nonfederal funds first to pay applicable bills and then use Capital Funds to reimburse themselves. Capital Funds must be budgeted and approved for specific expenditures. Once the funds are disbursed the Housing Authority must pay the applicable bill within three days. Therefore the Housing Authority cannot pay bills from reserves or other funding sources and then reimburse themselves from Capital Funds.

- 7. Provide more information on the insurance coverage that NHA had in place. What did it cover? What did it not cover? How much in total does NHA expect to get from insurance reimbursements?**

NHA has a commercial property insurance policy in place through Housing Authority Property Insurance Group (HAPI) in the amount of \$4,640,840. Coverage is subject to a deductible of \$1,000. The insurance company was notified on 03/02/15 that there was a loss. HAPI retained a loss adjustor, Munroe Associates, who visited the site on several occasions and monitored the progress of the remediation and repair work. NHA retained an engineer and industrial hygienist to inspect & determine the cause & origin of damage. To the extent the damage was caused by ice dams, it was a covered loss under the policy. HAPI determined that damage caused by long term deterioration, rot, decay, general wear & tear, and any damage caused directly or indirectly by mold would not be covered. Coverage was limited to interior damage caused by ice damming. The total amount of the covered loss was \$297,299.38. These funds were used to pay for remediation and repairs to the interior of the building, ice dam removal, and temporary housing and moving costs for residents who were displaced. The letter from the insurance company is attached for reference.

- 8. What can be done in the repair process to help prevent or mitigate future ice dam issues to the structures?**

Ice & water barrier will be added and roof ventilation will be improved.

- 9. Can roof vents be installed?**

Yes, see above response.

- 10. Should a roof system re-design be considered? (Consider material change from asphalt shingle to a metal roof system, sheet metal ice belts, etc.?)**

We can discuss, but properly designed, asphalt shingles should not be an issue.

- 11. Is more insulation needed to prevent the warm air from the heated apartments from rising and getting into the attic space?**

We will be increasing R- value and adding insulation as well as improving the ventilation.

- 12. Can a steeper pitch or slope be designed and installed for this roof system?**

A steeper pitch would be very expensive.

- 13. Should changes be made to the roof system to include a better ventilation system with soffit vents, gable end vents, and attic/roof fans to keep the area cold?**

Ventilation will be increased. Soffit and ridge vents will be enlarged and gravity vents added.

- 14. It was mentioned the decks and/or porches have structural issues, was flashing installed at the ledger boards where the deck/joists meet the building structure during the initial construction? If not, has this been included in the new repair and renovation plans?**

Ledger flashing is being added and structural support is being corrected.

- 15. Will the NHA hire an on-site owner construction representative to inspect the necessary repairs and insure they meet the contract specification requirements, design criteria, and comply with all federal, state, and local building codes?**

Yes, NHA has contracted with VERTEX to provide Owner's Project Manager services. The contractor will also have an onsite supervisor.

- 16. Has the new design, for the roof repairs, considered use of a lighter colored roof shingle vs. a darker colored shingle (if shingles are used) to prevent the darker shingle from absorbing the heat from the sun and in turn warming the roof surface/attic then cooling and potentially forming ice dams?**

We will discuss this issue with the architect.

Please note: The architect, Andy Barr, will attend the CPC meeting on 9/9 to answer any technical questions that the committee may have.

**NEEDHAM HOUSING AUTHORITY
SEABEDS WAY PROJECT**

Emergency & Remediation Costs To Date

Emergency Remediation Services	\$402,589
Snow & Ice Removal services	9,899
Resident Relocation Costs	8,303
Supplies- Paint, etc	2,695
Electric door repairs & exit signs	752
Building Permits	400
Engineering Fees	9,500
Industrial Hygienist	<u>2,220</u>
Total Remediation & Repair Completed	\$436,358

Insurance coverage	287,299
HUD Capital Funds-2013 remaining	60,000
NHA Cash reserves used	<u>89,059</u>
Funding for Completed Work	\$436,358

Planned Work

Roof Replacements	190,000
Siding Replacement	280,000
Closet & Balcony Repairs	230,000
Attic Insulation	<u>75,000</u>
Construction Subtotal- Hard Costs	775,000

Permits & Bonds-2%	15,500
General Conditions-10%	77,500
Overhead & Profit- 5%	38,750
Architect Fees	55,000
Owner's Project Manager	32,600
Design Contingency	<u>5,650</u>
Soft Cost Estimate	225,000
Contingency	<u>100,000</u>
Total Planned Work	\$1,100,000

Hud Capital Funds- 2014 & 2015	288,753
NHA Reserves	<u>811,247</u>
Total Sources of Funds	\$1,100,000

**COMMUNITY PRESERVATION ACT FUNDED
HOUSING AUTHORITY PROJECTS**

Town	Approval Date	Project #	Recipient	Project Description	CPA Funding
Acton	4/1/2013	37495	Acton Housing Authority	Replace siding, sheathing & insulation	\$ 280,000
Acton	4/7/2014	40571	Acton Housing Authority	Replace doors & windows	\$ 92,692
Canton	5/12/2014	40753	Canton Housing Authority	Upgrade smoke detectors	\$ 63,700
Canton	5/12/2014	40752	Canton Housing Authority	Replace electrical boxes	\$ 30,000
Cohasset	3/27/2010	17254	Cohasset Housing Authority	Electrical upgrades	\$ 12,300
Cohasset	3/27/2010	17255	Cohasset Housing Authority	Electrical upgrades	\$ 15,375
Concord	4/23/2013	37790	Concord Housing Authority	Roof replacement	\$ 100,000
East Longmeadow	5/19/2009	33079	East Longmeadow Housing Authority	Window replacement	\$ 95,000
East Longmeadow	5/17/2010	33081	East Longmeadow Housing Authority	Window replacement	\$ 145,000
East Longmeadow	5/20/2013	39233	East Longmeadow Housing Authority	Install generators in Community Rooms	\$ 160,000
East Longmeadow	5/20/2013	39234	East Longmeadow Housing Authority	Install generators in Community Rooms	\$ 60,000
Easthampton	9/7/2011	30391	Easthampton Housing Authority	Repair access ramp	\$ 16,500
Easton	5/20/2013	37891	Easton Housing Authority	Roof replacement	\$ 56,950
Easton	5/19/2014	40639	Easton Housing Authority	Window & siding replacement	\$ 200,000
Fairhaven	5/1/2010	7139	Fairhaven Housing Authority	Fire alarm upgrades	\$ 40,000
Fairhaven	5/7/2011	32879	Fairhaven Housing Authority	Window & siding replacement	\$ 50,000
Fairhaven	5/4/2013	37594	Fairhaven Housing Authority	Roof replacement	\$ 40,000
Georgetown	5/7/2012	33163	Georgetown Housing Authority	Community Room renovations	\$ 63,000
Georgetown	5/3/2010	7175	Georgetown Housing Authority	Roof replacement	\$ 74,910
Gloucester	12/1/2011	33099	Gloucester Housing Authority	Roof replacement	\$ 86,453
Hadley	11/18/2010	22462	Hadley Housing Authority	Rehabilitation & maintenance	\$ 75,000
Hadley	5/5/2011	22476	Hadley Housing Authority	Rehabilitation & maintenance	\$ 75,000
Hadley	11/3/2011	33504	Hadley Housing Authority	Rehabilitation & maintenance	\$ 100,000
Hamilton	5/8/2010	6198	Hamilton Housing Authority	Kitchen renovations	\$ 120,000
Lexington	4/7/2008	4990	Lexington Housing Authority	Window replacement	\$ 158,686
Lexington	4/6/2009	5643	Lexington Housing Authority	Roof replacement	\$ 320,828
Lexington	4/14/2010	17062	Lexington Housing Authority	Siding replacement	\$ 386,129
Lexington	4/6/2011	22458	Lexington Housing Authority	Drainage improvements	\$ 364,800
Lexington	4/8/2013	37809	Lexington Housing Authority	Replace front doors	\$ 172,734
Lexington	4/7/2014	41353	Lexington Housing Authority	Replace front doors	\$ 300,551
Millis	11/5/2012	38836	Millis Housing Authority	Replace siding, windows, & porches	\$ 117,000
Northfield	5/7/2012	33810	Northfield Housing Authority	Replace roofing & remove trees	\$ 23,000
Pembroke	11/13/2012	37617	Pembroke Housing Authority	Install intercom system	\$ 82,000
Pembroke	11/13/2012	37620	Pembroke Housing Authority	Install intercom system	\$ 60,000
Pembroke	4/23/2013	37635	Pembroke Housing Authority	Install intercom system	\$ 57,500
Quincy	6/20/2011	32982	Quincy Housing Authority	Security upgrades	\$ 125,000
Rowley	4/30/2012	33145	Rowley Housing Authority	Kitchen renovations	\$ 260,000
Southwick	3/2/2010	17631	Southwick Housing Authority	Replace furnaces & insulation	\$ 54,000
Stockbridge	5/17/2010	17617	Stockbridge Housing Authority	Window & door replacement	\$ 24,000
Stockbridge	5/16/2011	33051	Stockbridge Housing Authority	Skylight replacement	\$ 16,000
Stockbridge	5/21/2012	37326	Stockbridge Housing Authority	Window replacement	\$ 25,000
Stockbridge	5/19/2014	40822	Stockbridge Housing Authority	Fire protection panel	\$ 15,000
Sudbury	5/7/2014	40567	Sudbury Housing Authority	Ceramic tile tub surrounds	\$ 200,000
Wareham	5/24/2011	30395	Wareham Housing Authority	Replace storm doors	\$ 50,000
Wareham	4/30/2014	41501	Wareham Housing Authority	Plumbing repairs	\$ 59,000
Wareham	4/30/2014	41498	Wareham Housing Authority	Replace flooring	\$ 35,000
West Boylston	10/18/2010	22446	West Boylston Housing Authority	Roof replacement	\$ 25,000
West Boylston	6/9/2014	40343	West Bridgewater Housing Authority	Balcony restoration	\$ 30,000



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September 9, 2015

Thomas W. McEnaney
tmcenaney@k-plaw.com

BY FIRST CLASS MAIL
AND BY ELECTRONIC MAIL – djordan@needhamhousing.org

Ms. Debra Jordan
Executive Director
Needham Housing Authority
28 Captain Robert Cooke Drive
Needham, MA 02492

Re: Seabeds Way Project

Dear Ms. Jordan:

You have requested an opinion as to whether the Needham Housing Authority (“NHA”) Seabeds Way Project (“Project”) is eligible for Community Preservation Act (“CPA”) funding. You describe the Project as involving the replacement of roofs, repairs to building façades and balconies, possible door and window replacement, gutters, insulation, and any related work to achieve code compliance, for four (4) buildings located at Seabeds Way. For the reasons set forth in detail below, it is my opinion that the NHA Project constitutes the preservation of community housing as that term is defined in the CPA, and is therefore eligible for CPA funding.

It is my understanding that the buildings in question are owned and maintained by the NHA, although not acquired using CPA funds. The buildings house low-income elderly and handicapped individuals, the majority of whom are frail and suffer from serious health conditions. During this past winter, the buildings experienced significant water infiltration discovered on or about March 6, 2015 when ice dams developed on the building roofs. NHA engaged contractors to remove the ice dams and accumulated snow, remediate mold, remove carpeting and water damaged building elements, install flooring, sanitize areas affected by mold, and remove and replace damaged ceilings. NHA also investigated the cause of the water infiltration, which was determined to be not only the result of this past winter’s storms, but also the result of previous water penetration, dry rot and construction defects. It is my further understanding that NHA has determined that without this work, the buildings will continue to experience water infiltration and mold proliferation, which will result in further injury, harm or destruction to the buildings, making such work a necessity.

As you know, a municipality may appropriate CPA funds only for those purposes that are set forth in the statute. The CPA allows funds to be used to “acquire,” “create,” “preserve,” and “support” community housing, and to “rehabilitate” or restore community housing originally acquired or created using CPA funds. “Community housing” is defined as “low and moderate income housing,” that is, housing for persons earning no more than 80% (low income housing) or 100% (moderate income housing) of the area median income. The word “create” is not defined in the CPA, but is generally understood, in the context of community housing, to mean actions that

Ms. Debra Jordan
Executive Director
September 9, 2015
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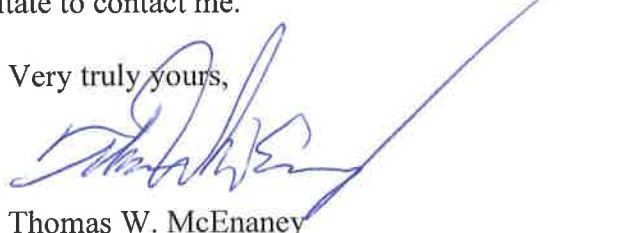
make homes that were not previously affordable now affordable to low and moderate income households. The term "support" was recently defined in the CPA to include "programs that provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing or to an entity that owns, operates or manages such housing, for the purpose of making housing affordable."

NHA wishes to use CPA funds to replace the roofs and make certain repairs to the buildings identified in the scope of work set forth above. Because the buildings were not acquired using CPA funds, CPA funds may not be used to "rehabilitate" the buildings. However, CPA funds may be appropriated and expended for the project if it is determined that the work is reasonably necessary to preserve community housing. "Preservation" is defined in the CPA to mean actions that protect real or personal property from injury, harm or destruction. In my opinion, such actions cannot constitute routine maintenance (which is defined as: "incidental repairs which neither materially add to the value of the property nor appreciably prolong the property's life, but keep the property in a condition of fitness, efficiency or readiness").

Here, in light of what I understand is significant deterioration to the roofs and building envelopes, it is my opinion that the work does not constitute routine maintenance, and instead has been properly characterized as necessary for the protection of the properties from injury, harm or destruction. Accordingly, it is my opinion that the project aligns properly with the purpose of "preservation" set forth in the CPA.

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

Very truly yours,



Thomas W. McEnaney



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VIA CERTIFIED MAIL - RETURN RECEIPT REQUESTED

7014 0150 0001 8984 5276

June 19, 2015

Debra Jordan, Executive Director
Needham Housing Authority
28 Robert Cook Drive
Needham, MA 02492-2492

Re:	Insured:	Needham Housing Authority ("NHA")
	Policy No.:	HAPI-738-140605-2015
	Property:	26 Seabeds Way, Needham, MA ("Property")
	Claim No.:	A7PM8
	Nature of Loss:	Ice Dams

Dear Ms. Jordan:

This letter sets forth the coverage position of Housing Authority Property Insurance ("HAPI") with respect to the loss notice tendered to HAPI relating to damage at the above-referenced Property.

POLICY

HAPI issued to NHA a commercial property insurance policy under policy number HAPI-738-140605-2015 effective January 16, 2015 to January 16, 2016 (the "Policy"). The Declarations list the Property in the Location Schedule. Coverage is subject to a deductible of \$1,000.

NATURE OF LOSS

On or about March 2, 2015, NHA provided notice to HAPI that water had intruded into the walls, closets, ceilings and floors of approximately 30-40 units at the Property caused by ice dams. Immediately after receiving NHA's notice of loss, HAPI retained a loss adjuster Munroe Associates ("Munroe"), and NHA retained an engineer Simpson Gumpertz & Hager Engineering ("SGH"), and an Industrial Hygienist Vertex, to inspect and determine the cause and origin of

the damage. HAPI has now received reports from each of these entities and has concluded its coverage investigation.

Based on HAPI's coverage investigation, a portion of the damage was caused by ice dams that had evolved as the freeze/thaw cycle occurred at the Property. To the extent that damage was caused by ice dams, this is a covered cause of loss under the Policy.

However, based on the reports obtained by HAPI, a portion of the damage was not caused by the ice dams, specifically the exterior damage to the Property which was due to a long-term water damage condition unrelated to the ice dams from last winter. For example, the balcony decks have suffered from long-term deterioration, lack of bearing fasteners, lack of proper flashing, poor craftsmanship and other deficiencies that created unsafe conditions and which were not caused by the ice dams. SGH concluded that the balconies were potentially unstable and deemed them unsafe, and recommended temporary shoring of all decks until permanent repairs can be made. In addition, it was determined that a lack of kick-out flashing at the base of roof-to-rising-wall conditions allowed water flowing down the roof to bypass the weather barrier and leak into the building walls. Rotten framing particularly at the corners of the closets reflect significant deterioration which has occurred over a long period of time, not from this winter's ice dams.

Beyond cosmetic ice dam water damage, it is apparent that a long-term moisture problem had existed at the Property, and that the deterioration of exterior structural components went undetected until severe ice damming occurred during the past winter and interior water leakage was observed.

The report from Vertex confirmed the presence of microbial growth on the exterior and interior of the closet bump out areas, the back side of exterior clapboard siding, fiberboard sheathing, wood framing and plywood. Vertex concluded that there was extensive chronic water damage and dry rot noted in multiple locations.

COVERAGE

The insuring agreement of the Policy provides in relevant part as follows:

PROPERTY COVERED

"We" cover the following property unless the property is excluded or subject to limitations.

"We" cover direct physical loss to covered property at a "covered location" caused by a covered peril.

* * *

PERILS COVERED

"We" cover risks of direct physical loss unless the loss is limited or caused by a peril that is excluded.

The Policy contains the following exclusions:

PERILS EXCLUDED

* * *

2. "We" do not pay for loss or damage that is caused by or results from one or more of the following excluded causes or events.

* * *

- d. **Contamination or Deterioration** -- "We" do not pay for loss caused by contamination or deterioration including corrosion, decay, fungus, rot, rust, or any quality, fault, or weakness in covered property that causes it to damage or destroy itself.

But if contamination or deterioration results in a "specified peril" or breakage of building glass, "we" cover the loss or damage caused by that "specified peril" or breakage of building glass.

* * *

- f. **Defects, Errors, and Omissions** -- "We" do not pay for loss which results from one or more of the following:

- 1) an act, error, omission (negligent or not) relating to:

* * *

- b) the design, specification, construction, workmanship, installation, or maintenance of property;

* * *

- d) maintenance of property (such as land, structures, or improvements);

* * *

- 2) a defect, weakness, inadequacy, fault, or unsoundness in materials used in construction or repair, whether on or off a "covered location";

- 3) the cost to make good an error in design;

But if a defect, error, or omission as described above results in a covered peril, "we" cover the loss or damage caused by that covered peril.

* * *

- n. **Seepage** -- "We" do not pay for loss caused by continuous or repeated seepage or leakage of water or steam or the presence of moisture, humidity, or vapor that occurs over a period of 14 days or more.¹

* * *

- s. **Wear and tear** -- "We" do not pay for loss caused by wear and tear, marring or scratching. But if wear and tear, marring, or scratching results in a "specified peril" or the breakage of building glass, "we" cover the loss or damage caused by that "specified peril" or the breakage of building glass.

"Specified Peril" is defined as follows:

- (1) [A]ircraft; civil commotion; explosion; falling objects; fire; hail; leakage from fire extinguishing equipment; lightning; riot; "sinkhole collapse"; smoke; sonic boom; vandalism; vehicles; "volcanic action"; water damage; weight of ice, snow, or sleet; and windstorm.

* * *

¹ As amended by the Limited Fungus Endorsement.

Water damage means the sudden or accidental discharge or leakage of water or steam as a direct result of breaking or cracking of a part of the system or appliance containing the water or steam.

As set forth above, HAPI's investigation based on the reports from Munroe, SGH and Vertex concluded that a portion of the damage, including exterior damage and damage to the balcony decks, was caused, not by the ice dams, but rather by long-term deterioration, lack of bearing fasteners, lack of proper flashing, poor craftsmanship and other deficiencies that created unsafe conditions. In addition, a lack of kick-out flashing at the base of roof-to-rising-wall conditions allowed water flowing down the roof to bypass the weather barrier and leak into the building walls. Coverage for the cost to repair damage caused in the aforesaid manner is excluded by virtue of the Defects, Errors and Omissions exclusion 2.f.

Moreover, HAPI's investigation has concluded that, in addition to cosmetic ice dam water damage, it is apparent that a long-term moisture and seepage problem had existed at the Property, and that deterioration of structural components went undetected until severe ice damming occurred during the past winter and interior water leakage was observed. To the extent that damage has been caused by long term seepage of water, as opposed to damage from last winter's ice dams, coverage is excluded by the Seepage exclusion, 2.n.

Vertex concluded that there was extensive chronic water damage and dry rot noted in multiple locations. To the extent that the damage was caused by long-term deterioration, decay, rot, and general wear and tear, coverage is excluded by Exclusions 2.d and 2.s.

In addition, there is no coverage for any damage caused or contributed to by mold. The Policy contains a Limited Fungus and Related Perils Coverage endorsement (the "Limited Fungus Endorsement"), which amends the Policy by adding the following exclusion:

PERILS EXCLUDED

1. ["We" do not pay for loss or damage caused directly or indirectly by one or more of the following excluded causes or events. Such loss or damage is excluded regardless of other causes or events that contribute to or aggravate the loss, whether such causes or events act to produce the loss before, at the same time as or after the excluded causes or events.]

Fungus or Related Perils --

- a. Except as provided under the Limited Fungus and Related Perils Property and Income Coverage in this endorsement, "we" do not pay for loss, cost, or expense caused by or

relating to the existence of or any activity of "fungus or related perils".

But if "fungus or related perils" results in a "specified peril", we cover loss or damage caused by that "specified peril".

- b. This exclusion does not apply to:
 - (i) loss that results from fire or lightning; or
 - (ii) collapse caused by hidden decay, to the extent that such loss is covered under Other Coverages, Collapse.

The term "fungus or related perils" is defined to include mildew and mold. The report from Vertex confirmed the presence of microbial growth on the exterior and interior of the closet bump out areas, the back side of exterior clapboard siding, fiberboard sheathing, wood framing and plywood. To the extent that there is mold at the Property, the above exclusion in the Limited Fungus Endorsement applies to exclude loss caused by or relating to the existence of mold. The loss did not result from fire, lightning or collapse, and therefore none of the exceptions to the exclusion applies.

The Limited Fungus Endorsement provides a Coverage Extension for Limited Fungus And Related Perils Property Coverage, subject to a sublimit of \$15,000 for all losses at all covered locations which provides in relevant part:

Limited Fungus And Related Perils Property Coverage -

1. **Coverage** -- "We" pay for direct physical loss to covered property caused by or relating to the existence of or any activity of "fungus or related perils".
2. **Coverage Limitation** -- "We" only cover loss caused by "fungus or related perils":
 - a. when the "fungus or related peril" is the result of:
 - (i) a "specified peril" other than fire or lightning; or
 - (ii) "flood" (if the Flood Endorsement applies to the affected location);that occurs during the policy period; and

- b. if all reasonable steps were taken to protect the property from additional damage at and after the time of the occurrence.

The mold at the Property is not the result of a "specified peril" or flood and therefore, there is no coverage under the Limited Fungus And Related Perils Property Coverage extension. Although the definition of "specified peril" includes "weight of ice, snow, or sleet," ice dams are not caused by the "weight" of the ice, but rather by the melting of snow down a roof under an insulating blanket of snow, the accumulation of ice and the further melting of snow down the roof being unable to pass through the ice dams and ultimately leaking through the roofing material. Further, the water damage sustained to the building does not constitute "water damage" as defined by the definition of a "specified peril."

Based on Munroe's estimates for the cost of repair work for interior damage caused by ice damming, the actual cash value is \$224,571.46, which HAPI has paid (less the \$1,000 deductible). HAPI is currently holding back the amount of \$62,827.92 which represents the balance of the replacement cost value which will be paid by HAPI upon completion of the repairs. The total amount of covered loss is therefore \$287,299.38.

HAPI hereby denies coverage for amounts in excess of the replacement cost of \$287,299.38. Repair costs in excess of such amount represents the costs to repair damage which is excluded by one or more of the above-referenced exclusions.

Accordingly, based on HAPI's coverage investigation and the information and documentation that has been provided to HAPI, HAPI denies coverage for this claim. If you disagree with this denial of coverage or have additional information that could affect HAPI's Coverage interpretation, please contact Jack Van Arsdale by email at jvanarsdale@housingcenter.com or call 203-272-8220 ext. 410.

Pursuant to HAPI's Policy on Claims Management, DHA has the right to appeal HAPI's denial of coverage. To effect an appeal, an insured shall submit in writing to the Director, Claims Management, the decision made by management that is being appealed and include a statement setting for the basis for the insured's disagreement with HAPI's determination. Mediation shall be scheduled through JAMS or any similar ADR provider in New York, New York, or any other location that the Director, Claims Management, and the insured agree for the mediation. The standard procedure of the mediator who is selected shall thereafter be followed by both HAPI and the insured in submitting the appeal to mediation.

Please be advised that no statements or conduct of HAPI to date, nor statements contained in this letter, should be construed as an admission of liability for any portion of the claim submitted, nor a waiver, modification or estoppel in respect of the subject Policy's terms, conditions, exclusions, or limitations, and all of HAPI's rights, remedies and defenses, both legal and equitable, remain expressly reserved.

Patricia Carey

From: Gary Crossen <garyccrossen@verizon.net>
Sent: Wednesday, September 09, 2015 3:28 PM
To: Patricia Carey
Subject: Fwd: RE: Needham CPC project question
Attachments: DOR Letter - Funding for Housing Authority ADA Improvements in Wilbraham..pdf

Patty - Would you be kind enough to make copies of this email and the attachments and linked documents for the committee members for tonight's meeting.

Thanks, Gary

-----Original Message-----

From: "Stuart Saginor"
Date: Sep 9, 2015 11:32:41 AM
Subject: RE: Needham CPC project question
To: "Gary Crossen" <garyccrossen@verizon.net>, <mjgarchitect@verizon.net>
Cc: <litashoes@aol.com>, "Katherine Roth" <Katherine.Roth@communitypreservation.org>

Hi Mark and Gary:

As you know, the legislature created CPA for the purpose of providing new housing programs and new units to address the critical lack of affordable housing in the Commonwealth. They wanted to make it clear that CPA funds should not be used to work on existing affordable housing stock, so the Act only allows rehabilitation of existing affordable housing units if they were acquired or created with CPA funds. See DOR's allowable uses chart for a visual explanation of this:

<http://communitypreservation.org/content/chart-allowable-uses>

DOR has made it very clear that you cannot use the verb "support" to justify working on existing housing units either; see the attached DOR letter, particularly the last paragraph.

As CPA has evolved, many noticed that the definition of "preserve," (a verb which was really designed more for historic projects) could be interpreted in such a way as to allow limited work on existing affordable housing units. Many housing advocates said the term "preserve" was designed to be used to keep units affordable when their affordable housing restrictions were set to expire (most of the old housing restrictions were for 30 and 40 years, not perpetual, and many affordable units convert to market rate at the end of the term). But other housing advocates, including the state's Dept of Housing and Community Development, were seeking ways to fill a state funding shortfall for care of Housing Authority units, and they issued their opinion on the subject, which the Coalition covered in an issue of our CPA Update Newsletter:

Can CPA Fund Work on Existing Affordable Housing? (May 2013)

While it clearly wasn't the intent of the legislature, some communities have relied on the guidance from DHCD to fund discrete tasks that protect housing units (not the residents of those units) from injury, harm or destruction. Installing sprinklers and fire alarm systems clearly would fit this description. A roof which is beyond it's useful life and leaking, thereby damaging the interior, might fit in such a category. Other leaking elements of the building envelope may also qualify if they are allowing damage to the unit.

It's hard to advise you on how to treat emergency repairs needed from damage caused by a storm. You'll have to look at each item on the list and determine if the repair would prevent future injury, harm or destruction to the building structure. The roof may qualify, as we discussed above. It may be hard to do mold remediation work, as mold is much more harmful to residents than the building itself. Unfortunately, since the term "preserve" probably wasn't designed to be used in this way, it clearly can't be used to protect residents from injury, harm or destruction - only the building.

I hope this information is helpful to you. I'm available between about 2:30 and 4:30 if you want to kick this around a bit further.

Regards,
Stuart

Stuart Saginor
Executive Director
Community Preservation Coalition
10 Milk Street, Suite 810
Boston, MA 02108
Tel: 617-371-0540
stuart.saginor@communitypreservation.org

Please Note: The Community Preservation Coalition does not render legal opinions or advice, and recommends consulting with an attorney.

>>> Gary Crossen <garyccrossen@verizon.net> 9/8/2015 8:09 PM >>>

Hi Stuart - presumably you get my email as well as Mark's giving you other details relating to the needed repairs + their connection to conditions from last winter.

I am more focused on "preservation" of community housing rather than "support of", given the definition of "preservation" as "protection of ... real property from injury, harm or destruction."

But your thoughts on either front or any other would be appreciated.

thanks, Gary

-----Original Message-----

From: Stuart.Saginor@communitypreservation.org
Sent: Tue, Sep 8, 2015 17:44 PM
CC: Garyccrossen@verizon.net; litashoes@aol.com;
SUBJECT: Needham CPC project question

Hi Mark and Gary:

I can send along some information in the morning that will help you with this question. Once you take a peek at that, we can also talk on the telephone should you want to kick it around a bit further.

Regards,
Stuart

Stuart Saginor
Executive Director
Community Preservation Coalition
10 Milk Street, Suite 810
Boston, MA 02108
Tel: 617-371-0540
stuart.saginor@communitypreservation.org

Please Note: The Community Preservation Coalition does not render legal opinions or advice, and recommends consulting with an attorney.

>>> Mark Gluesing <mjgarchitect@verizon.net> 9/8/2015 2:50 PM >>>

Dear Stuart,

You may have received a call from Gary Crossen, the new chair of our committee. We have an application before us that has a short timeframe for review for possible inclusion in Needham's fall Special Town Meeting. We are meeting Wednesday evening to discuss it, the first question being eligibility.

It is re-roofing and re-siding 48 unit low income housing apartment buildings operated by the Needham Housing Authority. They were not originally built with CPA funds, so are trying to determine whether we can help with funding for this work. Have other towns done anything like this? Does "support" covers this kind of grant, as it appears it is not eligible under the renovation of buildings section?

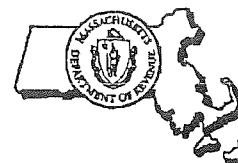
Please call Gary or me if you can before tomorrow evening.

Thank you.

Mark Gluesing
781 444 4298

Massachusetts Department of Revenue Division of Local Services

Navjeet K. Bal, Commissioner Robert G. Nunes, Deputy Commissioner & Director of Municipal Affairs



November 22, 2010

Michael T. Hassett, Esq.
Hassett & Buendo
95 Post Office Park, Suite B
Wilbraham, MA 01095

Re: CPA Funding for Housing Authority Improvements
Our File No.2010-1004

Dear Mr. Hassett:

This is in reply to your letter concerning the use of Community Preservation Act (CPA) funds to pay for a parking lot and American for Disabilities Act (ADA) ramps at an existing elderly housing project of the Wilbraham Housing Authority, which we assume constitutes community housing for CPA purposes under G.L.c. 44B, § 2. Our views in this letter are strictly advisory, and relate only to the use of CPA funds for the work. We apologize for the delay in providing a written response.

There is no suggestion that the proposed spending is for acquisition of land for community housing, and the letter from the Housing Authority's director, Carol Anne Young, makes it clear that the parking lot and ramps will be built on land acquired by the housing authority long before the enactment of the CPA.

Communities may spend CPA funds for the "acquisition, creation, preservation and support of community housing." G.L.c. 44B, § 5(b)(2). Since no additional housing units will result from the work, it is hard to see how it can be characterized as the acquisition or creation of community housing. The argument that spending to create parking and access ramps to support the use of the existing community housing amounts to the creation of community housing does not seem to us to be consistent with the statutory language. If the development of accessory land constituted creation within the meaning of § 5, then simply expanding a parking lot on an undeveloped portion of existing land serving a community housing project, or a recreational parcel, would constitute creation. In *Seideman v. City of Newton*, 452 Mass. 472 (2008), Newton tried to characterize the creation of new recreational uses on existing recreational land as the creation of land for recreational use, a reading of the word "creation" that both the trial court and the Supreme Judicial Court rejected. The court did note (*Seideman*, at 478) that the conversion to a recreational use of land already owned by the city but held for another purpose could constitute creation for purposes of spending CPA funds. However, nothing we have seen suggests that the land where the parking lot and ramps are to be built is dedicated to any purpose other than community housing.

The improvements will make the existing housing authority parcel better suited to the needs of its tenants, and therefore better fitted to its use as community housing, but that is virtually the definition of "rehabilitation" in § 2 of G.L.c. 44B. Improvements designed to make community housing facilities

Michael T. Hassett, Esq.
Page Two

handicapped accessible in compliance with the ADA are expressly included in the definition of rehabilitation. However, § 5 of the act limits the expenditure of community preservation funds for the rehabilitation or restoration of community housing that was acquired or created with CPA funds.

CPA funds may also be appropriated for the support of community housing, which is not limited to property acquired with CPA money. While the term "support" is not defined in G.L. c. 44B, it seems to us that as a matter of statutory construction it cannot include work that falls within the definition of rehabilitation, for if it did, there would be no point in § 5's prohibition against spending CPA money to rehabilitate properties not acquired with CPA funds, since such work could simply be re-characterized as support, and funded under that rubric.

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

Very truly yours,

A handwritten signature in dark ink, appearing to read "Kathleen Colleary", written in a cursive style.

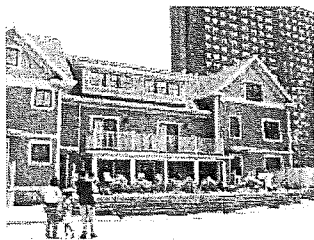
Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC:CH

CC: Carol Anne Young, Director, Wilbraham Housing Authority

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Can CPA Fund Work On Existing Affordable Housing?

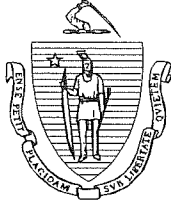


May 2013: It can often be difficult to determine if repairs to existing affordable housing units are an allowable use of CPA funds. The determining factor is if the work can best be described as "preservation," which is allowable, or "rehabilitation," which is generally not allowed. For the project to qualify as "preservation," it must protect real property, such as a building, from "injury, harm or destruction." Making such a determination can be a challenge!

The Massachusetts Department of Housing and Community Development (DHCD) recently issued guidance to housing authorities on exactly which tasks they consider to be allowable under the CPA legislation, and which are not. This document will be most helpful to Community Preservation Committees as they consider whether to fund work on existing affordable housing units.

[Click here to read DHCD's guidance on affordable housing preservation and rehabilitation work...](#)

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Commonwealth of Massachusetts
**DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT**

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Aaron Gornstein, Undersecretary

PUBLIC HOUSING NOTICE 2013-14

To: All Local Housing Authorities

From: Lizbeth Heyer, Associate Director
Division of Public Housing and Rental Assistance

Re: Utilization of CPA Funds for Preservation of Existing Public Housing Units

Date: May 30, 2013

Many Housing Authorities have inquired about the potential for using Community Preservation Act ("CPA") funding for work on existing public housing units, and some confusion on this topic exists among municipalities. DHCD has reviewed the CPA statute as it applies to such work and is providing this notice to help clarify the type of activities that it believes would be appropriate for CPA funding and those activities that would not be appropriate. Please note that this guidance is advisory in nature and is not binding on your community.

Section 5(b)(2) of the Community Preservation Act, MGL chapter 44B, provides that community preservation funds may be utilized "for the acquisition, creation, preservation and support of community housing provided, however, that funds expended pursuant to this chapter shall not be used for maintenance." State public housing meets the definition of "community housing", namely, "low and moderate income housing for individuals and families, including low or moderate income senior housing."

It is important to note that both the recreational use and historic preservation provisions of the CPA provide for "rehabilitation" of those resources with CPA funds, the former through a CPA amendment signed into law in 2012. However "rehabilitation" of "community housing" is not a permitted use of CPA funds. The legislature's original intent for CPA was to spur the creation of additional affordable housing units in the Commonwealth, and with that in mind, CPA was passed with a specific prohibition on rehabilitation activities on existing community housing units (unless those units were acquired or created with CPA funds).

While activities classified as "rehabilitation" are not allowed, "preservation" work on existing community housing resources is allowed. In general, work that protects the housing structure (not residents) from future injury, harm or destruction is permitted under CPA.

Preservation Activities (appropriate for CPA funding)

Preservation is defined in Section 2 of the CPA as “protection of personal or real property from injury, harm or destruction.” The following is a partial list of activities related to existing community housing units that DHCD believes could be classified as “preservation” and funded by CPA monies:

- Building envelope and site work to preserve the structural integrity of the housing
- Roof, siding and window replacements to assure the water tightness of the housing
- Upgrading of dangerous electrical or plumbing services
- Replacement of dangerous building systems which threaten the housing units
- Installation of hard-wired smoke alarms, sprinklers and other building fire suppression systems

Rehabilitation Activities (not allowed with CPA funding)

Rehabilitation is defined in Section 2 of the CPA as “capital improvements, or the making of extraordinary repairs, to...community housing for the purpose of making such...community housing functional for their intended uses, including, but not limited to, improvements to comply with the Americans with Disabilities Act and other federal, state or local building or access codes.” The following is a partial list of activities that DHCD believes do not rise to the level of “preservation,” but are more properly described as “rehabilitation” and therefore not appropriate for CPA funding:

- Replacement of kitchen cabinets
- The installation of more energy efficient windows (if not necessary to assure the water tightness of the housing), building systems (if not necessary to assure the on-going safety of the building) or appliances.
- Improvements solely needed to comply with ADA and other federal, state or local building or access codes
- Installation of generators primarily for the comfort and safety of residents in power outages
- Repaving or repair of parking lots and walkways

Maintenance Activities (not allowed with CPA funding)

Maintenance is defined in Section 2 of the CPA as “incidental repairs which neither materially add to the value of the property nor appreciably prolong the property’s life, but keep the property in a condition of fitness, efficiency, or readiness.” The following is a partial list of common maintenance activities which would not be appropriate for CPA funding:

- Outside landscaping or tree work
- Cleaning services or other ongoing services to the housing units

- The painting and refinishing of walls and floors

Mixing CPA funding with other sources of funding

In some cases a housing authority may wish to pursue modernization projects that include both preservation work allowed by the CPA (for example, the replacement of deteriorated and leaking siding), and other work that does not meet the preservation standard (for example, exterior wall insulation). Such projects are acceptable as long as the LHA tracks the cost of the allowable scope through a reasonable means of cost estimating, and only uses CPA funding for the allowable portion of the project cost. Applicable soft costs should be fairly apportioned. The balance not covered by CPA funds may be funded by Formula Funding, operating reserves (if approved), or other allowable sources.

Chart 1
COMMUNITY PRESERVATION FUND ALLOWABLE SPENDING PURPOSES (G.L. c. 44B, § 5)

	OPEN SPACE	HISTORIC RESOURCES	RECREATIONAL LAND	COMMUNITY HOUSING
DEFINITIONS (G.L. c. 44B, § 2)	Land to protect existing and future well fields, aquifers and recharge areas, watershed land, agricultural land, grasslands, fields, forest land, fresh and salt water marshes and other wetlands, ocean, river, stream, lake and pond frontage, beaches, dunes and other coastal lands, lands to protect scenic vistas, land for wildlife or nature preserve and land for recreational use	Building, structure, vessel, real property, document or artifact listed on the state register of historic places or determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of the city or town	Land for active or passive recreational use including, but not limited to, the use of land for noncommercial youth and adult sports, and the use of land as a park, playground or athletic field Does not include horse or dog racing or the use of land for a stadium, gymnasium or similar structure.	Housing for low and moderate income individuals and families, including low or moderate income seniors Moderate income is less than 100%, and low income is less than 80%, of US HUD Area Wide Median Income
ACQUISITION Obtain property interest by gift, purchase, devise, grant, rental, lease or otherwise. Only includes eminent domain taking as provided by G.L. c. 44B	Yes	Yes	Yes	Yes
CREATION To bring into being or cause to exist. <i>Seideman v. City of Newton</i> , 452 Mass. 472 (2008)	Yes		Yes	Yes
PRESERVATION Protect personal or real property from injury, harm or destruction	Yes	Yes	Yes	Yes
SUPPORT Provide grants, loans, rental assistance, security deposits, interest-rate write downs or other forms of assistance directly to individuals and families who are eligible for community housing, or to entity that owns, operates or manages such housing, for the purpose of making housing affordable				Yes, includes funding for community's affordable housing trust
REHABILITATION AND RESTORATION Make capital improvements, or extraordinary repairs to make assets functional for intended use, including improvements to comply with federal, state or local building or access codes or federal standards for rehabilitation of historic properties	Yes if acquired or created with CP funds	Yes	Yes	Yes if acquired or created with CP funds