

COMMUNITY PRESERVATION ACT (CPA)
COMMUNITY PRESERVATION COMMITTEE (CPC)



FREQUENTLY ASKED QUESTIONS AND ANSWERS ABOUT CPC PROCEDURES

(As of August 24, 2020)

When are meetings scheduled?

Meetings are generally scheduled for the second Thursday of each month at 6:30 pm at Town Hall. Meetings are posted at least two days in advance of meetings on the window on the southeast door of the Town Hall.

What are the deadlines for submission in order to be considered at Town Meeting?

In order to meet town by-law requirements, fully documented projects must be submitted and approved for recommendation to Town Meeting no later than 4 months prior to a Town Meeting. A public hearing on recommended projects shall be held four months before Town Meeting. For example, for a Town Meeting held in May, a complete project submission sheet must be submitted for consideration no later than at the December meeting. A public hearing will be held at the January meeting. In extraordinary circumstances, the Chair or Vice-Chair may recommend exceptions to the December meeting or other deadline for a complete project submission.

How do I obtain forms to submit projects for consideration by CPC?

The submission forms and other materials are available on the town website under the department Community Preservation Committee. You should consult the *Guide for Submission of Projects to CPC* on this website. You may also obtain a form from the CPC Clerk.

How long before a meeting must I submit my project?

A submission should be in the hands of the CPC Clerk at least one week prior to the meeting at which the submission will be discussed. *There must be a person specified as Project Manager or Contact for each project.*

When and where do I present my submission and associated documentation?

Your complete submission forms with detailed supporting documentation should be emailed to the CPC Clerk at least one week prior to the next scheduled meeting before 12 o'clock noon, e.g., on previous Friday at noon if meeting is on Thursday. Materials also may be left as a hard copy at the Town Hall by noon of the due date (one week before the scheduled meeting) at the office of the Board of Selectmen. Please ask the secretary to date stamp the incoming materials. If you have questions or requests concerning the required documentation and dates of submission, please consult with the CPC Clerk.

The CPC Clerk will forward digital material and will scan non-digital materials to the best of her ability and send them to the CPC members by email. If there are questions about the documentation, the CPC Clerk will contact you. You will be placed on the agenda and an agenda will be sent to you for the relevant meeting. You will be expected to explain your

project in detail at the meeting. If you have questions please consult with the CPC Clerk or the CPC Chair and/or Vice-Chair.

Can I apply for CPA funds for more than one year?

Applicants can only apply for CPA funds for the next fiscal year. In some cases, there is an understanding that a further phase of the project would be considered in the future.

Do I have to have three bids before I submit my project for consideration?

Applicants are not required to have 3 bids at the time of submission. However, applicants should consider carefully the requirements of the project and consult with one or more contractors or other experienced persons. Applicants are required to submit a budget which should meet their needs to complete the project. It is often useful to have a contingency sum included. It is useful to consult with the Historical Commission if the project is historical preservation to get help on finding qualified contractors and learn what the Historical Commission might require. CPC stands ready to help in the development of a budget. A preliminary review of your project could provide information to help you develop the budget correctly.

Does the CPC allow for preliminary reviews of a proposal?

CPC recommends that potential applicants ask for a preliminary hearing if it is not clear that the project meets CPA eligibility or that it involves more complicated issues.

May private persons or non-profits submit applications?

The applicant should determine before submission the status of the project as either private or Town. If this is unclear, the applicant should consult the CPC Chair or Vice-Chair.

A "private" applicant may be an individual (known as the Project Manager) who may act on behalf of himself/herself or on behalf of a non-Town entity, e.g., Westport Historical Commission, Westport Historical Society, Westport Grange, Westport Fishermen's Association, etc. A "private" applicant may also be the lessor of Town-owned property, such as the WYAA and the WUYS. This affiliation, if any, must be stated on the Submission Form. CPA funds may go to private entities as long as there is a clear public purpose demonstrated by the applicant.

What are examples of "public purpose" for private applicants?

A public purpose can be of many different types. More generally, a preservation, affordable housing or conservation restriction on a property is designed to assure a public purpose. A facility being open to the public (at least part of each year) serves a public purpose.

What are the differences between Town and private projects?

Chapter 30 and prevailing wages

Town projects may be subject to MGL Chapter 30 procurement and prevailing wages, whereas "private" projects are not. A Town project is characterized as a project involving town-owned resources administered by a Town entity, such as the Landing Commission, Historical Commission, Town Clerk, etc. Although the Project Manager of such a project does not have to be an employee or volunteer of that Town entity, the project itself must be authorized and supervised by the Town entity.

Note that lessors of Town property are considered "private" applicants for purposes of Chapter 30 and prevailing wages. In addition, if the town owns land, but the building on that land is owned by a private entity, then a project which involves the building submitted by the owner is considered a private project.

Special requirements for "private" projects

CPC requires a grant agreement between most "private" projects and the Town. The grant agreement must be in force before funds are released for the project.

A historical preservation, conservation or agricultural preservation restriction may be required also.

Note for all projects

All purchases of real property using CPA funding for private or Town use must have a deed restriction held by an appropriate entity.

CPC, for both Town and private projects, follows the Town requirements that any project over \$25,000 requires an RFP and sealed bids, any project between \$10,000 and \$24,999 requires three written bids, and any project under \$10,000 may submit oral bids to the CPC.

Acquisitions of real property interests under CPA are exempt from MGL c.30B, but an appraisal prior to acquiring any real property interest must be made. The municipality cannot appropriate more than the appraised value to acquire the real property interest.

What is the role of the Town Administrator in CPA funding?

The Town Administrator serves as the Procurement Officer for the Town. So-called Town projects may be subject to Chapter 30B procurement and prevailing wages requirements. Therefore, CPC and the Town Administrator coordinate on determining if the project is subject to those requirements. If relevant, the Town Administrator assists CPC in arranging for RFPs and opening of sealed bids.

In addition, the Town Administrator assists CPC with contracts, grant agreements, and deed restrictions, which require approval by the Board of Selectmen.

How do I know if my project can be funded with CPA funds?

The chart below demonstrates the allowable uses of CPA funds in each of the CPA project categories: open space, recreation, housing, and historic preservation. Section 2 of the CPA legislation defines each category. This chart is critical for determining whether a proposed project is eligible for CPA funding. Projects are only eligible for CPA funding if they fit in a **green** box below.

	Open Space	Historic	Recreation	Housing
Acquire	Yes	Yes	Yes	Yes
Create	Yes	No	Yes	Yes
Preserve	Yes	Yes	Yes	Yes
Support	No	No	No	Yes
Rehabilitate and/or Restore	Yes, if acquired or created with CPA funds	Yes	Yes (new 7/8/2012)	Yes, if acquired or created with CPA funds

Chart adapted from "Recent Developments in Municipal Law", Massachusetts Department of Revenue, October 2012.

The CPA requires that communities spend, or set aside for future spending in reserves, a minimum of 10% of their annual CPA revenues for each of the three following categories:

open space/recreation, historic preservation, and community housing. The remaining 70% of the funds are undesignated, and can be used for any allowable project in any of the CPA categories. This gives each community tremendous flexibility to determine its own priorities.

Open Space

Open space includes, but is not limited to, the following:

- Land to protect existing and future well fields
- Aquifers, recharge areas, and watershed land
- Agricultural land
- Grasslands, fields and 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
- Land for recreational use (see separate category information, below)

CPA funds may be spent on the acquisition, creation, and preservation of open space, and for the rehabilitation or restoration of any open space that has been acquired or created using CPA funds. It is important to note that a permanent deed restriction is required for all real property interests acquired under CPA. This restriction must be filed as a separate instrument, such as a Conservation Restriction (CR) or Agricultural Preservation Restriction (APR), and until this step has been completed, the terms of the CPA acquisition have not been technically fulfilled.

Historic Preservation

Section 2 of the CPA defines historic resources, preservation, and rehabilitation. Under CPA, an historic resource is defined as a building, structure, vessel, real property, document or artifact that is either:

- listed on the State Register of Historic Places; or
- determined by the local Historic Commission to be significant in the history, archeology, architecture, or culture of the city or town.

CPA funds may be spent on the acquisition, preservation, rehabilitation and restoration of historic resources. Communities using CPA funds on historic resources must adhere to the United States Secretary of the Interior's Standards for the Treatment of Historic Properties. (See chart below and a list of the Standards.)

Community Housing

Section 2 of CPA defines community housing.

The United States Department of Housing and Urban Development (HUD) income guidelines are used to determine who is eligible to live in the affordable housing units developed by communities with their CPA funds. Housing developed with CPA funds may be offered to those persons and families whose annual income is less than 100 percent of the areawide median income, as determined by HUD.

Please note, though, that communities may choose to limit certain housing units created with CPA funds to those persons and families earning less than 80 percent of the areawide median

income annually, as determined by HUD. This allows communities to include these units on their Subsidized Housing Inventory (SHI) with the state. CPA funds may be spent on the acquisition, creation, preservation and support of community housing, and for the rehabilitation or restoration of community housing that has been acquired or created using CPA funds. The CPA requires that whenever possible, preference be given to the adaptive reuse of existing buildings or construction of new buildings on previously developed site.

Land for Recreational Use (Outdoor Recreation)

Section 2 also defines recreational use. The focus for CPA recreational projects is on **outdoor** passive or active recreation, such as (but not limited to) the use of land for:

- Community gardens
- Trails
- Noncommercial youth and adult sports
- Parks, playgrounds or athletic fields

CPA funds may not be spent on ordinary maintenance or annual operating expenses; only capital improvements are allowed. In addition, CPA funds may not be used for horse or dog racing facilities, or for a stadium, gymnasium, or similar structure. This prohibition has generally been interpreted to mean that CPA funds may be used only for outdoor, land-based recreational uses and facilities.

CPA funds may be used for the acquisition of land to be used for recreation, or for the creation of new recreational facilities on land a community already owns. A 2012 amendment to CPA broadened the law to also allow for the rehabilitation of existing, outdoor recreational facilities. The amendment made it clear that with respect to land for recreational use, "rehabilitation" could include the replacement of playground equipment and other capital improvements to the land or the facilities thereon to make them more functional for their intended recreational use.

Another change ushered in by the 2012 amendment was a prohibition on the use of CPA funds for the acquisition of artificial turf for athletic fields. Communities may still use their CPA funds for other aspects of a field project, but must appropriate non-CPA funds to acquire the artificial turf surface.

Source: Community Preservation Coalition website.

If still not clear, applicants are encouraged to discuss this with the Chair and/or Vice-Chair of the CPC or request to be placed on the agenda for a preliminary discussion with the entire committee. If required, the CPC consults the Department of Revenue and/or the Community Preservation Coalition for guidance. In some cases, it is necessary to consult with Town Counsel.

What are the first steps when the project is in the historical preservation category?

The applicant should do two things: (1) check the Westport Historic Inventory list on the town website under the Westport Historical Commission (WHC) or at the CPC website to determine if the historic resource is on that list. (2) Contact the Chair of the Westport Historical Commission about being placed on the WHC agenda for a review of the project.

There are two scenarios for eligibility: The historic resource is on the Westport Historic Inventory or it is not. In both cases, the WHC may review the project. Note carefully that if it is not on the Inventory, the WHC must make a determination as to whether the historic

resource (building, structure, object) is locally significant. If the WHC determines it is not, then the project is not eligible for funding under the Historical Preservation Category of the CPA. If the historic resource is on the Inventory, then the WHC will provide assistance to the CPC's review of a project's scope of work. You should therefore be prepared to give full details of your proposal and provide recent photos of resources that are buildings or structures.

All rehabilitation work must meet the Secretary of Interior's Standards for Rehabilitation which are listed below. Applicants should take these standards into account when preparing the project for submission to the WHC and the CPC.

What are the Secretary of Interior Standards for historic rehabilitation?

The Standards (Department of Interior regulations, 36 CFR 67) pertain to historic buildings of all materials, construction types, sizes, and occupancy and encompass the exterior and the interior, related landscape features and the building's site and environment as well as attached, adjacent, or related new construction. The Standards are to be applied to specific rehabilitation projects in a reasonable manner, taking into consideration economic and technical feasibility.

1. A property shall be used for its historic purpose or be placed in a new use that requires minimal change to the defining characteristics of the building and its site and environment.
2. The historic character of a property shall be retained and preserved. The removal of historic materials or alteration of features and spaces that characterize a property shall be avoided.
3. Each property shall be recognized as a physical record of its time, place, and use. Changes that create a false sense of historical development, such as adding conjectural features or architectural elements from other buildings, shall not be undertaken.
4. Most properties change over time; those changes that have acquired historic significance in their own right shall be retained and preserved.
5. Distinctive features, finishes, and construction techniques or examples of craftsmanship that characterize a property shall be preserved.
6. Deteriorated historic features shall be repaired rather than replaced. Where the severity of deterioration requires replacement of a distinctive feature, the new feature shall match the old in design, color, texture, and other visual qualities and, where possible, materials. Replacement of missing features shall be substantiated by documentary, physical, or pictorial evidence.
7. Chemical or physical treatments, such as sandblasting, that cause damage to historic materials shall not be used. The surface cleaning of structures, if appropriate, shall be undertaken using the gentlest means possible.
8. Significant archeological resources affected by a project shall be protected and preserved. If such resources must be disturbed, mitigation measures shall be undertaken.

9. New additions, exterior alterations, or related new construction shall not destroy historic materials that characterize the property. The new work shall be differentiated from the old and shall be compatible with the massing, size, scale, and architectural features to protect the historic integrity of the property and its environment.
10. New additions and adjacent or related new construction shall be undertaken in such a manner that if removed in the future, the essential form and integrity of the historic property and its environment would be unimpaired.

How is a project approved? What role does Town Meeting play?

A project is first reviewed by the CPC for its eligibility under CPA. Applicants are asked about other financing available for that project including possible matching funds. The project itself is examined for its clarity and scope, public purpose, and completeness. Recommendations may be given by CPC as to required bid processes and other matters but the applicant is expected to have researched those matters before applying. Often the applicant must return with further information – it is not common that a project is approved at one meeting. If an applicant substantially changes his or her application, complete new documentation must be presented at the meeting in which the changed application is presented. The CPC, once it tentatively approves a project for Town Meeting recommendation, will advertise a public hearing for that project, and, if then approved for recommendation, the CPC will submit it for the warrant of Town Meeting (usually held in the spring) where it is subject to a vote for appropriation of funding. Applicants should factor these time consuming steps into their plans. Projects not previously reviewed and recommended by the CPC cannot be part of the public hearing. It is recommended that applicants contact the CPC as early as possible to prevent delays. The CPC will appoint a member to be a liaison from the CPC with the project manager.

When do funds become available?

Funds become available depending on the source of appropriated funds used by CPC to fund a project. If previously appropriated reserves are used, the funds are available immediately following Town Meeting. If the next fiscal year funds are used, they become available July 1 (beginning of fiscal year) after a Town Meeting.

How do Project Managers get approval to commence work?

Project Managers should report to the CPC Chair or Vice-Chair their intentions to commence work. The project will be put on the CPC agenda.

For private projects, contracts of the project manager with other parties will be reviewed, plans discussed, and any other questions vetted. If relevant to the project, three bids should be obtained for a contract and made available to the CPC for review. If there is no RFP, then a request for bids should be as specific as possible regarding the scope of work. Such specificity provides a framework to evaluate each bid on specific grounds and therefore support choosing a bidder on a broader basis than just the amount of the bid. It is not required to take the lowest bid, but good reasons must be presented to allow acceptance of a higher bid. The project manager should keep the liaison member informed of the progress or of any problems, and should report to the CPC at least quarterly.

How are expenditures reimbursed for approved CPC projects?

For private sector projects, contracts must be approved by the CPC. CPC will give project managers further information about the requirements depending on the project facts. Each CPC approved project gets a project number assigned by the Town Accountant. The project manager should submit invoices to the CPC for payment and should also verify with his or

her signature that the work has been done. Invoices can be submitted to the CPC liaison or to the CPC Clerk. In most cases, the invoice is reviewed at the next CPC meeting. In some cases the Chair or Vice-Chair may approve payment. Payment is then made within the next few weeks. The project manager should follow up on these matters. (Be sure you photocopy your paperwork.)

Can CPA funds be released in advance of work being done under the project?

Yes, in special cases, the CPC has the right to release funds in advance for such reasons as acquiring matching funds. In such a case, a formal grant agreement needs to be drawn up, signed by the CPC and the Board of Selectmen. It should be noted that the funding for the project must have already been approved at Town meeting before any funds can be released.

Is acknowledgement of CPA funding necessary? If so, how?

Yes, all recipients of CPA funds in Westport must make acknowledgement of the source of these funds in promotional and online materials, printed programs, signage, press releases, events, talks and/or educational materials. If written credit is not applicable, verbal credit should be given. When restoration or preservation of historic properties is done, a sign clearly visible to the road must be posted. Project managers should make every effort to acknowledge the role of CPA funding for the project, no matter how small. CPC can give the recipient more details on this matter if required.

Do recipients of CPA funds have to report to the CPC?

Yes, recipients should report back to the CPC either in writing or in person after the project is approved at Town Meeting and before commencement of project, during the project, and with one final reporting once completed. Details will be given to each recipient.

Contact Points and further information.

Town Website: <http://www.westport-ma.com/community-preservation-committee/>

CPC Clerk: CPC@Westport-MA.Gov

CPC Chair: Betty Slade dcolebslade@aol.com

CPC Vice-chair: Tim Gillespie timothyhgil@gmail.com

Westport Historical Commission Chair: Rud Lawrence Rudlaw1@gmail.com

Community Preservation Coalition website: <http://www.communitypreservation.org/>

Prevailing Wage matters: Bureau of Labor Standards, Mr. John Ronan, 617-626-6976

Do the State's Procurement Laws Apply to CPA Projects? See:

www.communitypreservation.org/enews/procurement_JP.htm