

Present: Christopher Morely (Chairman), Sherrill Cline, Jim Hill,
Richard Bell, Lynne Remington, John Drobinski and Georgette
Heerwagen
Absent: Seamus O'Kelly

At 7:37 p.m., Chairman Morely called the meeting to order.

Ms. Kablack announced that Sheila Stewart was not re-appointed to the Finance Committee, and thus she is no longer its representative to the CPC. A new CPC member representing the Finance Committee will be selected at a later date.

Community Housing - Update

Present: Sudbury Community Housing Specialist Beth Rust

Sudbury Community Housing Specialist Beth Rust was welcomed to the meeting to present the Committee with an update of housing-related activities. Handouts highlighting her presentation were presented to the Committee.

Ms. Rust reviewed the process used by the Sudbury Housing Trust (SHT), to select the fourth home to be purchased under the Home Preservation Program. Ms. Rust explained the role the Trust plays in selecting the property and negotiating the sale price. The typical target homes are \$325,000 to \$375,000 for a three-bedroom, 1.5 to 2-bath home. The SHT was approached by two local homeowners offering their properties for sale, one of which was recently selected in the Pine Lakes area.

Ms. Kablack noted that the SHT and Town never take ownership of the homes and that the price of the unit is restricted at the HUD 80% of area median income guidelines. She also stated that the homes are purchased with deed restrictions in perpetuity.

Ms. Rust, Ms. Cline and Ms. Kablack explained for the clarification of Ms. Remington what the process is for determining who benefits from property appreciation.

Ms. Cline asked for further clarification regarding the "all-in prices" presented. Ms. Rust responded that the "all-in price" includes repairs, taxes and inspections. Chairman Morely noted that many homes in Sudbury have not been re-assessed in years.

Ms. Kablack stated that the program has been favorably received. However, she further noted that this per unit cost is expensive for the Town, utilizing almost all of the 10% SHT allocation approved at Town Meeting each year to complete one unit.

In addition, Ms. Rust reported that the SHT continues to administer its Small Grant program, which awards grants up to \$3,000 per household to Sudbury residents who meet the specified income restrictions. Three grant cycles are advertised each year. The

program has given 14 awards totaling \$40,000 from 33 applications received. Ms. Kablack stated the program helps seniors stay in their homes, since funds are primarily used for health and safety repairs, and the predominant recipients have been seniors.

In the past year, Ms. Rust also reported that the SHT created housing 2 units in collaboration with the Greater Worcester Habitat for Humanity on Dutton Road. The SHT provided the initial land and contributed towards the funding gap at the end of the project.

Ms. Rust briefly summarized the SHT's Maynard Road Project and its efforts to create affordable housing units. The property was purchased in June 2008, and feasibility studies, an environmental review, demolition, conceptual design, and a request for proposal for a developer were completed. A Chapter 40B application was filed with the State. In the Spring of 2010, the design was significantly modified to address and mitigate neighborhood concerns regarding streetscape, curb cuts, driveways, building design and grading. Ms. Rust stated the Trust is currently discussing a reduction in the number of units, as well as other site plan changes, with the neighbors. The SHT will meet on June 11, 2010 to review a revised plan.

Ms. Remington asked about the current neighborhood perception of the project. It was noted that the SHT may consider reducing the units to four, per Town guidelines. Ms. Rust and Ms. Kablack stated there is a broad range of outcomes, including withdrawal of the Zoning Board of Appeals (ZBA) application currently under consideration. The consensus was that the eventual project plan is difficult to predict at this time. Ms. Remington and Mr. Hill opined that the concerns of the neighbors should be listened to, since it is their neighborhood.

Mr. Drobinski noted that another eventual outcome could be that the current application is withdrawn and the land is sold by the Trust. It is possible that a different developer could buy the property and propose another Chapter 40B project with even more than six units. Mr. Hill stated that he does not believe it sends the right message to the community if the Town does not follow its own guidelines.

Ms. Cline opined that the neighbors have said they would accept four units and now have changed their request to three units. She noted that six units allows for qualification for State funding. Ms. Cline believes this is an integral factor to consider. She stated that the SHT has revised the plans many times to satisfy the neighbors, but that the neighbors keep broaching new concerns at ZBA hearings.

Ms. Remington opined that the neighbors keep opposing the revised plans because they still reflect six units, which is opposed by the neighborhood. Ms. Cline reiterated that the SHT has worked diligently to address the objections raised. She emphasized that the purpose of the CPA and SHT is to build affordable housing, and in so doing, they should maximize all funding resources available.

Chairman Morely opined that the current proposal is an excellent design for the parcel.

Ms. Remington disagreed, stating that it is not just a neighborhood group which is scrutinizing this project. As a result of the Town Meeting discussion, she stated it has now become an area constituency opposed to the project as presented.

Ms. Cline opined that many of the comments made by Mr. Tripoli at Town meeting were misstatements, which the Moderator did not allow to be rebutted. She believes that had the Town Meeting discussion been allowed to present the Town-side of the argument, the project would not have been so negatively perceived by some in attendance.

Ms. Remington reiterated her disagreement, noting that there is a lot of concern regarding six units, with only 14 parking spaces. She believes there is tremendous community support for the SHT, but not for this many units located in an already busy area.

Ms. Remington noted that the SHT received its funding at Town Meeting by only one vote.

Ms. Kablack noted that the SHT will reason through all the arguments and considerations to reach the best conclusion for the community. She further stated that the SHT conducts open meetings, which the public can attend. Ms. Kablack further stated that the SHT is imminently aware that its funding and/or existence could be in jeopardy through next year's Town Meeting process. She stated that the per unit subsidy cost for three or four units versus six would need to be evaluated.

Mr. Hill noted that affordable housing would not disappear if the SHT were eliminated, but rather proposals would be presented at Town Meeting.

Ms. Heerwagen asked for clarification of the Town's Chapter 40B density guidelines.

Ms. Kablack responded that State guidelines allow for eight units per acre, which is only constrained by septic and/or wetland issues. The Town's guidelines recommend 4 units on a parcel of this size. Ms. Heerwagen opined that the location is not great to begin with regarding traffic, and she believes this project proposes too many more cars near this busy intersection.

Ms. Rust returned to her presentation, reporting that she continues to function as a lottery and monitoring agent for Sudbury, serving as an advocate for affordable homebuyers, qualifying applicants and maintaining waiting lists, monitoring and enforcing deed restrictions, and performing regional services as a lottery agent for surrounding communities.

Ms. Rust emphasized that regional opportunities and interest in housing has increased. Sudbury continues to participate in the WestMetro HOME Consortium and has received approximately \$22,000 in annual funds. Ms. Rust further reported that the preparation of a Housing Production Plan (HPP) is underway, and she provided copies of a memo dated

May 20, 2010, sent to the Board of Selectmen, which explained the initiative. She explained that the HHP is a tool that enables a town to have more control over Chapter 40B developments. Ms. Kablack briefly summarized a few active Comprehensive Permit projects pending, including one for 120 rental units.

Ms. Rust reported that the Community Housing Office continues its work maintaining the Town's subsidized housing inventory, which has increased from 3.9% to 4.9% in the past four years. She has also been appointed to the State Homeownership Advisory Committee and has been invited to participate as a member of the CHAPA 40B training subcommittee.

Information regarding the funding of Ms. Rust's position from FY07 through FY11 was provided. Ms. Kablack noted that the Committee would vote later this evening regarding the use of Administrative funds for this position.

At 8:37 p.m., Chairman Morely thanked Ms. Rust, and he concluded the discussion.

Community Preservation Act Projects - Updates

Ms. Kablack distributed to the Board copies of a "CPC Project Update dated June 2010" listing.

Carding Mill Pond Harvesting – Ms. Kablack stated the project needs to be done by 6/30/10. She will notify Frank Lyons of this information.

Mahoney/Melone Feasibility Studies - Ms. Kablack reported the final reports have not yet been received and \$8,822 remains in the account.

Bruce Freeman Rail Trail Base Map – Ms. Kablack stated the base map has not been completed. Ms. Remington asked why not, and Ms. Kablack responded that the survey was not yet accepted by the Town.

Town Center - Ms. Kablack stated that a process is now underway to resume this project.

Nobscot Phase II - Ms. Kablack stated the payment for phase 2 is due by June 30, 2011.

Walkways - Ms. Kablack stated walkways have been designated for construction on North Road, from Haynes to Pantry Road.

Town Clerk Historic Documents - Ms. Kablack stated the project is underway and several books have been restored.

Town Hall Vaults – Ms. Kablack will contact the Town Clerk for a status report.

CSX Parcel Acquisition - Ms. Kablack distributed copies to the Board of a letter from the Massachusetts Department of Revenue to Sudbury resident Carole Wolfe dated March 19, 2009, suggesting that CPA funds could not be used to buy a rail trail. The Board was also in previous receipt of a communication from Sudbury resident Dan Depompei, questioning what entity should purchase the CSX parcel, since the property is "rail banked" allowing possible future return to rail service. Mr. Depompei assumes that the CPC, when recommending CPA funds for purchase of property takes direction from Mass. General Law, which he believes prohibits purchase of "estates at will." Thus, Mr. Depompei believes it is more appropriate for the State or Federal government to purchase this property.

Ms. Kablack reported that she contacted the Community Preservation Act Coalition for its opinion. It was during these discussions, that she became aware of the letter sent to Ms. Wolfe in March 2009. Town Counsel Paul Kenny's initial response to the communications was that CSX is not rail-banking the parcel, but rather abandoning it. Town Counsel will continue to research the matter.

Mr. Hill briefly updated the Committee on the following Historic projects:

Revolutionary War Cemetery - the project will continue for another year.

Hosmer House – the project is going out to bid for air conditioning, which will help preserve the paintings stored in the building. The inside is nearly completed. Floors should be completed after July 4th, followed by stone work

Hearse House Relocation & Restoration – the project will need to be completed by June 30, 2010. Ms. Kablack will coordinate the invoices with the Sudbury Historical Commission.

Hosmer Painting Appraisal – Mr. Hill believes the project is completed, since funds will expire on June 30, 2010. He will check with Lynn MacLean as to whether a brochure is still planned.

Town Hall Windows – Mr. Hill reported that the first bid was received for \$100,000, which is over the appropriation amount. A second opinion and bid will be sought.

Historic Properties Surveys/ Cemeteries – Mr. Hill stated the projects are continuing as planned.

Parsonage Exterior - Mr. Hill stated the project is almost complete and the brick work is done.

Cemetery Tomb Doors – Mr. Hill reported the project went out to bid for \$9,000 to repair both doors and restore the iron work. The court has ordered restitution payments from the responsible party, which will be sent directly to the Town.

Cemetery Radar Search – Mr. Hill reported the project is in process.

79 Lincoln Lane – Mr. Bell reported that the grants have not yet been allocated.

Sudbury Housing Authority (SHA) Reconstruction - Ms. Cline reported that work is progressing and that the SHA is awaiting approval from the State on their funding application.

Sudbury Housing Authority (SHA) Buy-Down Funds – Ms. Cline stated the condominium project is not moving ahead at this time.

Miscellaneous

CPC – FY11 Administrative Budget - Update

Ms. Kablack distributed copies of a “Proposed CPC FY11 Administrative Budget to the Committee for review and discussion purposes. She briefly summarized revisions and the categories noted.

Mr. Hill questioned why the \$22,000 of revenue generated by Ms. Rust’s activities is not deducted off her \$72,000 salary. Ms. Kablack stated that the Sudbury Housing Trust pays ½ of the salary, and this has increased over several years, and that it is possible that the Housing Trust may be able to cover more of Ms. Rust’s salary next year. However, she later clarified that the \$22,000 revenue generated remains with the SHT and is used to fund the Small Grants Program, which is not a CPA-eligible project. Ms. Kablack explained that the SHT has only \$700,000 of reserves compared to \$7 million held by the Committee.

Chairman Morely opined that, in essence, it is all CPA money. He reviewed the history of the funding of the Community Housing Specialist position. Ms. Kablack noted that the external revenue received is held separately.

On motion duly made and seconded, it was unanimously:

VOTED: To approve the “CPC FY11 Administrative Budget” as presented and reviewed this evening.

Minutes

On motion duly made and seconded, it was:

VOTED: To approve the minutes of March 3, 2010.

Ms. Heerwagen, Ms. Remington and Mr. Drobinski abstained from the vote.

On motion duly made and seconded, it was also:

VOTED: To approve the minutes of April 5, 2010.

Mr. Drobinski abstained from the vote.

CPC Future Meeting Schedule

The next meeting of the CPC is to be determined, and will be scheduled and announced for a date in either late September or October.

On motion duly made and seconded, it was unanimously:

VOTED: To adjourn the meeting at 9:14 p.m.

Proposed CPC FY11 Admin. Budget

Salaries

Community Housing Specialist (17.5 hrs/wk)	\$36,000
P&Z Coordinator (5 hrs/wk)	\$ 6,500
Recording Secretary (5 hrs/wk)	\$ 5,000
Town Counsel Services	\$ 1,200
Town Planner Services	<u>\$ 5,000</u>

Subtotal **\$53,700**

Project Feasibility/Other \$20,000

Coalition Membership \$ 3,750

Office Expense \$1,000

Subtotal **\$24,750**

TOTAL \$78,450

5% of \$1,806,000 = \$90,300

FY11 Admin Budget Approved = \$80,000

Community Housing Update

CPC Agenda June 10, 2010

The Community Housing activities fall under two umbrellas – those activities undertaken by the Sudbury Housing Trust, and those undertaken by the Community Housing Office in the Department of Planning and Community Development.

This corresponds to the funding of the Community Housing Specialist, funded equally by the Sudbury Housing Trust and the Community Preservation Administrative funds.

Sudbury Housing Trust activities

The housing programs and activities undertaken by the Sudbury Housing Trust include the following.

a) Implement Home Preservation Program

The Home Preservation Program converts existing market rate homes to affordable units. This program started with CPA funds and the Trust has continued to fund the program and provide the required subsidies.

The basic process includes finding the buyer and finding the property.

- Finding an eligible buyer – hold lottery after 4 months of marketing, and certify compliance of buyer. Work with buyer to execute Purchase and Sale and well as obtaining financing.
- Finding an appropriate property – review all appropriate homes (well maintained 3-bedroom, 1.5 or 2-bath home with a sales price of \$325,000 to \$375,000), negotiate offer, obtain inspection, oversee repairs, work as agent to seller and buyer through closing.

The four homes (closed 2/14/08, 8/27/08, 4/14/09, 6/23/2010) are listed below.



	Home #1	Home #2	Home #3	Home #4	averages
Asking Price	\$359,900	\$349,500	\$349,900	\$365,000	\$356,075
Purchase Price	\$340,000	\$339,000	\$300,000	\$356,500	\$333,875
Inspections	\$815	\$425	\$415	\$855	\$628
Repairs	\$21,315	\$11,575	\$9,609	\$0	\$10,625
Taxes	\$0	\$1,250	\$4,251	\$3,200	\$2,175
All in price	\$340,815	\$340,675	\$304,666	\$360,555	\$336,678
Buyer Price	\$175,000	\$158,000	\$150,000	\$186,000	\$167,250
Subsidy	\$165,815	\$182,675	\$154,666	\$174,555	\$169,428
Closing Date	2/21/2008	8/27/2008	3/27/2009	6/23/2010	
ASSESSMENTS	\$346,600	\$284,000	\$389,400	\$374,900	
SQUARE_FEET	1392	1162	960	1568	
ACRE	0.53	0.21	0.49	0.115	
YEAR_BUILT	1956	1962	1952	1995	

b) Administer Small Grants Program

Assist eligible residents apply and contract for health and safety repairs. Eligibility includes income restrictions (must be under 100% area median income), house assessment under median assessment, and must be a Sudbury resident.

Grant recipients agree to notify the Sudbury Housing Trust at least 60 days prior to listing their home for sale, which has generated one property of interest.

There are three grant cycles annually, January, May and September, this May is the seventh grant cycles.

There have been 33 applicants, 14 awards, \$40k awarded, \$27K paid. This is generally covered by the Town Crier.

c) Create housing units through Habitat For Humanity

Worked with Greater Worcester Habitat for Humanity for over four years, providing land, initial funding and closing funding.

d) Create housing units at Maynard Road

Purchased and assist in presentations, wrote and oversee execution of RFPs for demolition services, architectural services, and development, propose workforce housing pilot to DHCD.

June 2008: Purchased property with televised approval of Board of Selectmen

Summer 2008: Demolished abandoned buildings and cleared property. Performed environmental testing.

Winter 2009: Completed preliminary architectural drawings, meetings attended by abutter.

Spring 2009: Concept plan presented at Town Meeting; NOAH selected as developer.

Fall 2009: Application for 40B filed with state, including Selectmen support, covered in Town Crier.

Winter 2010: Community meeting held, with many comments. Strong comment to adhere to Town-issued 40B guidelines (4 units). ZBA hearing opens.

Spring 2010: Design significantly modified to address comments and mitigate concerns: streetscape, curbcut, driveway, building design, grading. Working sessions held between architects, neighbors, project leaders.

Current status: Neighbors require maximum of three units (less than the 40B guidelines set forth), as well as hidden parking and other site conditions. The Trust is meeting June 11, with the agenda item to review plan. Options include: maintain ZBA application at 6 units, reduce to 4 units (per guidelines), reduce to 3 units (per neighbors), withdraw ZBA application. Anything less than 6 units will forego the opportunity to apply for state subsidy.

e) House local residents and employees

Administer the lotteries and other housing opportunities in Sudbury, performing extensive local outreach resulting in 70% of our units owned by Sudbury teachers, town workers and residents.

Perform regional services for neighboring communities for lottery and monitoring agent work, which provides external funding to the Trust. Additionally this has led to the discussion of establishing a regional housing entity with Lincoln, Concord, Lexington, Bedford and Weston.

f) Regional efforts

Special Needs Housing: Received grant award for \$5k from CHAPA to fund a regional analysis of special needs housing.

Set model for other towns to implement Municipal Affordable Housing Trusts, presenting the model at MHP conferences.

Community Housing activities

The housing programs and activities undertaken by the Sudbury Housing Trust include the following.

a) HOME Consortium Administration

Participate in the requirements of the WestMetro HOME Consortium, include attendance at meetings, preparation and reporting of annual action plans, results, fair housing analysis, and strategic plans as required by HUD. Receive program funds of \$22,000 annually. Funding a buy-down units at Old County Road with 5-years of HOME funds.

b) Monitoring Agent

Monitor Sudbury Affordable Housing through deed restriction enforcement.

c) Update Housing Plans

Undertake the creation of a Housing Production Plan per the legislative requirements. [See attached memo to Selectmen]

d) Manage the Subsidized Housing Inventory

Work with DHCD to update the SHI.

	SHI Units	SHI %	Change	Facilitated by CHS/Trust	Detail
June 2006	218	3.9%			
June 2007	256	4.6%	38	36	36 Orchard Hill, 2 Snowberry
June 2008	266	4.8%	10	2	2 Old County Rd, 1 Home Preservation, 6 Commons
June 2009	264	4.7%	-2	4	2 Habitat, 2 Home Preservation, -6 Commons
June 2010	275	4.9%	11	1	2 DMR, 2 Old County Rd, 1 Home Preservation, 6 SHA
			61	47	

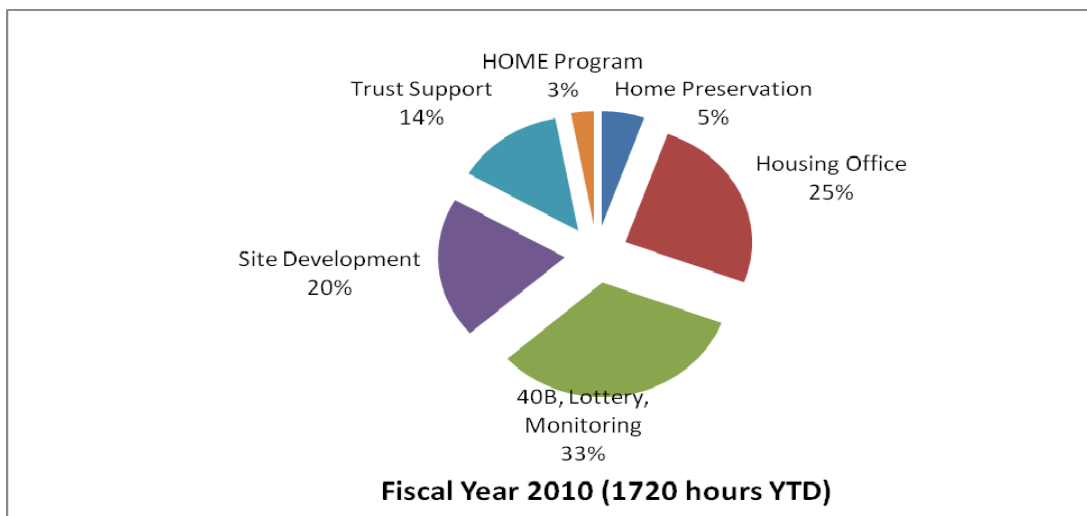
e) Regional Efforts

Appointed by Governor to the state Homeownership Advisory Committee, making contacts at all State departments involved with housing – facilitating requests and responses.

Member of CHAPA 40B training sub-committee. Testified at State hearing on Local Preference. Hosted Chicago elected officials for tour of affordable housing

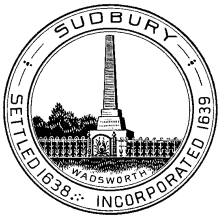
Position Funding

The position is not from the operating budget. It is a full time position funded from the Housing Trust and CPA, for f2010 totaling \$69k. Community Housing Specialist position has been staffed since May 2006, fulltime since FY09.



CPC Project Update
June 2010

Project Name	Remaining Balance	Expiration	Responsible Party
Revolutionary War Cemetery	\$125,408	none	SHC
Hosmer House	\$86,977	none	SHC
Carding Mill Pond Harvesting	\$9,628	6/30/2010	
Mahoney/Melone Feasibility Studies	\$8,822	None	Planning Dept.
Hearse House Relocation	\$10,112	6/30/2010	SHC
SHA Unit Buy-Down Funds	\$360,000	6/30/2014	SHA
BFRT Base Map	\$52,684	6/30/2010	Planning Dept.
Town Center	\$30,000	none	Planning Dept.
Hosmer Painting Appraisal	\$2,800	6/30/2010	SHC
Town Hall windows	\$46,800	none	SHC
SHA Reconstruction	\$600,000	6/30/2011	SHA
CSX	\$420,000	none	Planning Dept.
Nobscot Phase II	\$2,040,000	6/30/2011	Planning Dept.
Walkways	\$202,668	none	Planning/DPW
Historic Projects - Home Survey/Cemeteries	\$9,756	none	SHC
Parsonage Exterior	\$15,548	none	SHC
79 Lincoln Lane	\$25,000	none	ConCom
Town Clerk Historic Documents	\$132,175	none	Town Clerk
Rail Trail Base Map	\$25,000	6/30/2010	Planning Dept.
Tomb Door Restoration	\$30,000	none	SHC
Cemetery Radar Search	\$20,000	none	SHC
Town Hall Vaults	\$67,795	none	Town Clerk



Town of Sudbury

Planning and Community Development Department

Jody A. Kablack, Director
Beth Rust, Community Housing Specialist

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Housing@town.sudbury.ma.us

May 20, 2010

To: Board of Selectmen
From: Beth Rust, Community Housing Specialist
RE: Housing Production Plan
CC: Jody Kablack

Due to the increased 40B activity in Town, the Planning and Community Development Department has taken another look at the state requirements for a Housing Production Plan ("HPP"). A HPP is a tool that enables the Town to have more control over 40B developments. This memo reviews the requirements and regulations for the Housing Production Plan, and asks the Selectmen to indicate approval to proceed to create such a plan. Once a HPP is completed, the Plan must be adopted by both Planning Board and Board of Selectmen.

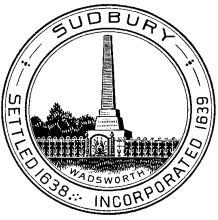
When a municipality has a certified Housing Production Plan, comprehensive permit decisions by the Zoning Board of Appeals ("ZBA") to deny or approve with conditions will be deemed "consistent with local needs" under MGL Chapter 40B. "Consistent with local needs" means that the decision of the ZBA will be upheld by the Housing Appeals Committee ("HAC"). The period of certification is one year period following certification if the municipality has produced affordable units totaling 0.5% of the total housing units in Town (28 units for Sudbury) or two years if it has produced 1.0% of total housing units (55 units) pursuant to the approved plan.

For background purposes, Sudbury has 275 affordable units on our Subsidized Housing Inventory, or 4.9% of our 2000 housing stock, which is counted toward the State affordable housing goal. We are 283 units short of the 10% mandate.

In the DHCD Chapter 40B regulations, municipalities that demonstrate significant progress towards their affordable housing production are able to deny a comprehensive permit. The detailed regulations for this are promulgated through the Housing Production Program regulation at 760 CMR 56.03.

The Sudbury 2005 Housing Plan includes many of the HPP requirements and can be used as the basis for the HPP (housing needs analysis, description of needed housing mix, strategies and action plan), however the goals set in the 2005 Plan did not attempt to achieve the required number of units for certification. With the 3 potential private 40B applications on the horizon, plus the recent efforts of the Sudbury Housing Authority and the Sudbury Housing Trust, there is the potential to produce the required number of units in either 1 or 2 years. Now is time to complete the plan and certification. The steps required are:

- 1. Step 1: Write the plan and have it approved.** The plan must be written and approved before units counted for certification are created.
- 2. Step 2: Permit projects with 28 to 56 affordable units over one year or two.** This then certifies the plan. 40B units are created when the ZBA decision is filed.
- 3. Step 3: The next 40B project can be denied** for one or two years.



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Said another way, if Sudbury had an approved plan, and 28 units in one year, or 56 units in two-years, are approved, then any subsequent 40B projects could be denied for up to one or two years after that.

There are a number of active Comprehensive Permit projects in Sudbury that may justify preparing a Housing Production Plan ahead of the 2011 schedule (when the new Census data is available). The plan can be done in-house by the Community Housing Specialist, and would be a priority project with public process over 8-12 weeks. Below is the list of new Comprehensive Permit projects to assist in this discussion:

Project	Status	Total Units	Affordable Units
Landham Crossing: 192 Boston Post Road	Project Eligibility Letter pending	32	8
Pine Groves, Old Lancaster Road	Project Eligibility Letter pending	12	3
Johnson Property, Landham Road	Project Eligibility Letter pending	120	120 (all units counted in rental dev.)
B'nai Brith project, Mercury Property	In feasibility - age restricted rental?	56	56 (all units counted in rental dev.)
TOTAL		226	193



March 19, 2009

Ms. Carole Wolfe
637 Concord Road
Sudbury, MA 01776

Re: CPA Purchase of Rail Bed Land
Our File No. 2009-203

Dear Ms. Wolfe:

You inquire about the Town of Sudbury's possible acquisition of rail bed land owned by CSX using Community Preservation Act ("CPA") funds. You represent that the Town intends to devote the land to recreational uses consistent with the CPA. *See* G.L. c. 44B, § 2. However, you state that the acquisition would be subject to "a rail banking agreement between Sudbury and CPX as part of the purchase agreement." You suggest that, pursuant to federal law, "Sudbury cannot inhibit or prevent a return of the rail bed to rail use at any future date?" In the circumstances described CSX would hold a reversionary interest in the subject land, which would permit CSX to return the property to rail use on 90 days' notice to the Town.

Federal laws regulating railroads and land used for rail beds are outside the expertise of the Bureau of Municipal Finance Law. Accordingly, we express no opinion on any question of federal law. This opinion is confined to the permissibility of using CPA funds to buy land under the terms of the described "rail banking agreement" giving the seller of the land the right to return it to a commercial use upon the prescribed notification.

We perceive two statutory impediments to the acquisition of a real property interest on terms such as you have described. First, the CPA precludes acquisition of an interest in land consisting of "an estate at will or at sufferance and any estate for years having a term of less than 30 years...." G.L. c. 44B, § 2. Estates at will are characteristically "uncertain and defeasible." *Benedict v. Morse*, 51 Mass. 223, 229 (1845). "Estates at will may be determined by either party by three months' notice in writing for that purpose" G.L. c. 186 § 12. (In this context, "determine" means "terminate." *See O'Reilly v. Frye*, 263 Mass. 318, 320 (1928).) In the circumstances you relate, Sudbury would effectively take an estate at will because CSX would have a right to resume the commercial use of the property on the exact timetable specified at G.L. c. 186, § 12. CPA funds may not be used to purchase such an interest in land. *See generally* G.L. c. 44B, § 12.

Second, as you note, real property interests purchased with CPA monies "shall be bound by a permanent deed restriction that meets the requirements of chapter 184, limiting the use of the interest to the purpose for which it was acquired." G.L. c. 44B, § 12(a). To comply with G.L. c. 184, § 31, the mandated restriction would have to create "an [enforceable] right ... in perpetuity, whether or not stated in the form of a restriction, easement, covenant, or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land

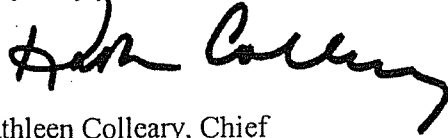
Ms. Carole Wolfe

Page 2

... appropriate to retaining land" in recreational use as defined by the CPA. Any resumption of a use of land for railroad purposes would seem to be incompatible with a deed restriction requiring perpetual recreational use as defined at G.L. c. 44B, § 2. In the circumstances you describe, it does not appear possible to limit the land to recreational use within the meaning of the CPA and impose the mandated deed restriction. Without the deed restriction called for at G.L. c. 44B, § 12(a), property cannot be acquired under the CPA.

In sum, the CPA does not provide for acquisition of land the recreational use of which cannot be ensured because of the seller's reservation of a right to return the land to commercial use. I hope this information proves helpful.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Kathleen Colleary".

Kathleen Colleary, Chief
Bureau of Municipal Finance Law

KC: DG