



Mayor Joshua Garcia

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City of Holyoke

Law Department

COPY
Finance

April 19, 2022

Holyoke Members of the City Council
City Hall
536 Dwight Street
Holyoke, MA 01040

CITY OF HOLYOKE
BY CITY COUNCIL
DATE April 19, 22
REFERRED TO COMMITTEE ON
Finance
BRENNA MURPHY MCGEE, CLERK

RE: Legal Expenditure of Community Preservation Funds

Dear Honorable Members of the City Council:

During the City Council meeting conducted on April 5, 2022, a question arose as to whether community preservation funds could be used to maintain a building owned by Girls, Inc. located at 480 Hampden Street. More specifically, there was a concern that the proposed work constituted “maintenance” and that Massachusetts General Law Chapter 44B [hereinafter referred to as “M.G.L. c. 44B”.] does not allow community preservation funds to be used for “maintenance” work.

It is correct that M.G.L. c. 44B, §5(b)(2) prohibits the expenditure of community preservation funds for “maintenance” work. However, M.G.L. c. 44B, §2 defines maintenance as being “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.” For the purpose of being thorough, I also reviewed the definitions of “Capital Improvement” and “Rehabilitation” as set forth in M.G.L. c. 44B, §2., and the definitions are as follows:

“Capital improvement” is defined as being reconstruction or alteration of real property that:

- 1) materially adds to the value of the real property or appreciably prolongs the useful life of the real property;
- 2) becomes part of the real property or is permanently affixed to the real property so that removal would cause material damage to the property or article itself; and
- 3) is intended to become a permanent installation or is intended to remain there for an indefinite period of time.”



I note that the definition of “real property” in M.G.L. c. 44B, §2 includes “buildings”.

“Rehabilitation” is defined in relevant part as “capital improvements, or the making of extraordinary repairs, to historic resources, open spaces, lands for recreational use and community housing for the purpose of making such historic resources, open spaces, lands for recreational use and 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; provided, that with respect to historic resources, ‘rehabilitation’ shall comply with the Standards for Rehabilitation stated in the United States Secretary of the Interior’s Standards for the Treatment of Historic Properties codified in 36 C.F.R. Part 68;***”.

There is no provision in either the M.G.L. c. 40, §8D [the statute which regulates local Historic Commissions] or M.G.L. c. 44B [a/k/a Massachusetts Community Preservation Act] which requires historic resources to be registered with the state or federal historic registries prior to issuing CPA funds. In fact, M.G.L. c. 44B, §2 defines “Historic Resources” as “a building, structure, vessel real property, document or artifact that is listed on the state register of historic places or has been determined by the local historic preservation commission to be significant in the history, archeology, architecture or culture of a city or town.”

I have been informed by the Holyoke Historic Commission that it determined that 480 Hampden Street, Holyoke, MA is a historic resource on November 10, 2021.

It is clear that, pursuant to M.G.L. c. 44B, §5, community preservation funds may be used to acquire, preserve, rehabilitate and restore historic resources. While M.G.L. c. 44B, §2 does not define the term “restoration”, Black’s Law Dictionary defines the term “restore” as “placing the owner of a thing in the state in which he formerly was.” Wikipedia defines the term “restoration” as “the act of restoring something to its original state**.”

In order to determine whether the proposed work is “maintenance” work or is a “rehabilitation” [or “capital improvement], or a restoration of the historic resource located at 480 Hampden Street, I have reviewed the Project Application submitted by Girls, Inc., which includes a report from Barry Engineers and Constructors, Inc, proposed bid, and a budget. I note that I have found no case law providing guidance as to how a court would answer this question.

According to the budget, which sets forth the expenditures totaling the amount of the money being requested, [i.e \$150,000], Girls, Inc. broke down the work into five (5) categories, and they are as follows:



- 1) Masonry work, including some rebuilding, and repointing and cleaning of the façade: The proposed work listed under this category is for brick repair, vine removal and cleaning. The overall summary contained in last page of the report prepared by Barry Engineers and Constructors, Inc. provides as follows:

“Proposed architectural renovations do not include major structural alterations. The exterior brick masonry walls require complete inspection of all surfaces. Brick and masonry repairs will include removal and replacement of decayed bricks and mortar joints and repointing followed by cleaning and sealing. The brick façade of the West Addition requires further inspection and it is not expected to require major repair.”

This opinion given by Barry Engineers and Constructors, Inc. regarding the work to be performed is, in my view, evidence that the proposed work is not a capital improvement, rehabilitation or renovation because the proposed work is the repair or replacement of decayed brick and is not a major structural alteration. If the proposed work called for the replacement of complete brick walls or foundation, instead of repair of some of the decayed brick, I think that a complete replacement or reconstruction of a brick wall would qualify as a capital improvement; thereby rendering the use of community preservation funds as allowable. Unfortunately, since the proposed work is only for the repair or replacement of some decayed bricks, I am of the opinion that these charges are not allowed in accordance with M.G.L. c. 44B, §5.

- 2) Slate roof restoration: The work listed under this category is, for the most part, repairs to the slate roof. Again, given the opinion provided by Barry Engineers and Constructors, Inc., this proposed work is for repair and is not a major structural alteration. If the roof were being replaced, instead of just shingle replacement, I think that such a roof replacement would constitute a capital improvement; thereby rendering the use of community preservation funds as allowable. Unfortunately, since the proposed work is for the repair or replacement of shingles, I am of the opinion that these charges are not allowed in accordance with M.G.L. c. 44B, §5.
- 3) Additional Costs: The costs are for Historic Preservation Consulting and a permanent CPA Plaque Allowance. These charges do not constitute a capital improvement, a rehabilitation, or a renovation. Also, I have found no authority which allow expenditures for these types of costs to be paid for by CPA funds.

Respectfully Submitted,

Attorney Kathleen E. Degnan