PECONIC BAY COMMUNITY PRESERVATION FUND
ADVISORY OPINIONS BUREAU

Advisory Opinion 2013-1

Opinion Requested By: Town of Shelter Island
Issued June 24, 2013

Town Law Section 64-e (3), (4), (6), and (9)

Interests or rights in real property may be acquired for use as a "dog park", with Peconic Bay Community Preservation Fund monies, provided, (1) the real property interests or rights were approved for acquisition in the community preservation fund project plan as a parks and recreation area and were actually acquired for such purposes,(2) such use is compatible with the natural, scenic, historic and open space character of such lands, and (3) no CPF funds are used for the improvement of the land as a "dog park" or its operation and maintenance as a "dog park".

The Town of Shelter Island has requested an advisory opinion regarding whether the Town may acquire interests or rights in real property for use as a "dog park" with funds from the Community Preservation Fund (CPF).

For the purposes of this opinion, a "dog park" is defined as a park for dogs to exercise and play off-leash in a controlled environment under the supervision of their owners. These parks have varying features, although they typically offer a 4' to 6' fence; separate, double-gated entry and exit points; adequate drainage; benches for humans; shade for hot days; parking close to the site; water; tools to pick up and dispose of animal waste in covered trash cans; and regular maintenance and cleaning of the grounds. Dog parks may also offer wheel-chair access, a pond for swimming; and a separate enclosure for small dogs.

A dog park is simply an area that people can bring their dogs to so they can have a little off-leash time to run around and visit with other dogs and people. Many dog parks are part of the public park system, funded by taxpayer dollars and usually with no screening or oversight.

Town Law, Section 64-e (3) (b) states that one purpose of the CPF is "to acquire interests or rights in real property for preservation of community character…."

Town Law, Section 64-e (4) defines "community character" and subparagraph (a) includes the "establishment of parks, nature preserves, and recreation areas;"

Further, Town Law, Section 64-e (9) states that CPF lands shall be administered and managed in a manner that "**allows public use and enjoyment** in a manner compatible with the natural, scenic, historic, and open space character of such lands;".

The State of New York provides no statutory definition of what constitutes a "park or recreation area". The common definition of park is "an area of land, usually in a largely natural state, for the **enjoyment of the public**, **having facilities for rest and recreation**, often owned, set apart, and managed by a city, state, or nation." In New York, based on case law, the definition is at least that inclusive.

It is our opinion that a dog park clearly meets these requirements and would be considered a park or recreation area under New York State Law, including being subject to the alienation requirements of such law.

Once it is determined that a "dog park" is a "park or recreational area", it can clearly be determined whether CPF funds can be used to acquire land to be used a "dog park".

Since the CPF can be used to acquire lands for parks and recreation purposes and a "dog park" is a park or recreation area, it is our opinion that CPF funds may be used to acquire lands to establish a dog park, provided all the requirements of Town Law, Section 64-e, authorizing the CPF are met.

For example, Town Law, Section 64-e (6) requires that the property be included as part of the Town's community preservation fund project plan, including the proposed use of the parcel (e.g. parks, open space, farmland, or historic preservation). The use of the property must be consistent with the project plan. Of course, in making the determination to include the land for such use, the town

would have to determine that the land could be used as a "dog park" in a manner "compatible with the natural, scenic, historic, and open space character of such lands" as required by paragraph (9) of the section.

It is understood that the CPF statute only permits CPF funds to be utilized **to acquire the land** for a "dog park". The development of the land with capital and other improvements for active recreation use with CPF funds is not permitted. Further, there is no authority to use CPF management and stewardship funds for the operation and maintenance of such a "dog park". Such improvements, operation and maintenance would have to be accomplished with non-CPF funds.

It is further noted that if such lands were acquired for another legal CPF purpose (e.g. historic preservation), but not "a park or recreation area", before such lands could be used as a "dog park", the town would first have to amend its CPF project plan to permit such use. Such a change must be accomplished by local law, which also includes the need for a public hearing before approval. If the Town does not have to amend its CPF project plan, then only a public hearing and Town Board resolution is needed. Again, the town would have to determine that the land could be used as a "dog park" in a manner "compatible with the natural, scenic, historic, and open space character of such lands" as required by paragraph (9) of the section.

Accordingly, it is our opinion that CPF funds may be used to acquire land for a "dog park" provided the Town acts in a manner consistent with the conditions outlined in this opinion.