

R15

11.5.19

Describe their response, or provided written comments/input:

Please see Letters of Support (Attachment C) from the above entities and other vested community partners.

PROJECT BUDGET: Attach a dated and detailed line item project budget estimate for your funding request. If the request involves a Town-owned asset, provide the project's projected operating expenses, including maintenance.

Please see Attachment A for the Project Cost Estimate. Maintenance for the playgrounds is provided by Facilities Department of the Monomoy Regional School District (MRSD) and is funded through the MRSD General Fund.

The playgrounds are located on Town-owned land under lease to the Monomoy Regional School District. Please see Attachment G for the lease and details of the Exclusive Use Line.

COST ESTIMATE(S):

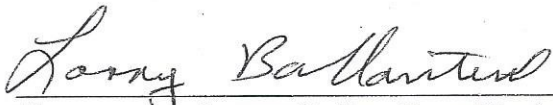
\$681,034 — Harwich Community Playground

Attach cost estimates or firm quotes (if available) for all projects.

Please see Attachment A.

LAND and/or BUILDING ACQUISITION PROJECTS: The following **must** also be submitted, as applicable:

- Surveys and/or plot plans for the property
- Appraisals and agreements, if available.
- Name of present owner and attach copy of deed conveying property unto present owner.
- Property address, Harwich Assessor's property identification (Map#, Parcel #).
- For proposed Open Space land purchases, be prepared to discuss public access with the Committee.



**Signature – Larry Ballantine, Chairman
Harwich Board of Selectmen**

Printed Name: Larry Ballantine

Date 11/4/19

11.5.19

R15

Patti Macura

From: John Giorgio <JGiorgio@k-plaw.com>
Sent: Tuesday, November 05, 2019 4:40 PM
To: Christopher Clark
Cc: Patti Macura
Subject: Harwich Community Play Ground Facility - Community Preservation Act Funding Application
Attachments: Amendment - CPC Funds.pdf

Dear Mr. Clark;

You have asked my opinion on three questions surrounding the CPA application for funding to replace the Castle in the Clouds playground equipment located on the Harwich Community Playground ("Facility"), including accessibility improvements.

As I understand the facts, the Facility is located on land owned by the Town of Harwich which is leased to the Monomoy Regional School Committee. In December 2018, the Town and the Regional School Committee entered into an intermunicipal agreement setting forth the terms of use for the Facility. The IMA includes a provision that any upgrades to the Facility will require mutual consent from the Board of Selectmen and the Regional School Committee. The IMA also provides that the Facility will be for the exclusive use of students of the Regional School District during school hours, but would be open to the general public during non-school hours. The Community Preservation Committee received an application for funding for this Project from the Harwich PTO. You have further informed me that the estimated cost of the project is \$625,000.

First, you have asked whether the Town and/or the Regional School Committee are the more appropriate applicants for the Project. In my opinion, based on the existing lease agreement and the IMA, the Town and Monomoy exercise joint control over the Facility. As such, in my opinion, it is more appropriate for the Town to act as the applicant and Monomoy to act as a co-applicant for this Project before the CPC, as you have recommended.

Second, you have asked whether there is any prohibition on the use of CPA funds for the Facility where the Town and Monomoy have entered into an IMA that reserves the exclusive use of the Facility to Monomoy during school hours, while maintaining that the Facility is open to public use during non-school hours. In my opinion, I see no prohibition against the use of CPA funds for a Facility with such a restriction. While I agree that it is the intent of the CPA that funds be used for the general benefit of the residents of the Town, given the fact that this Facility is located on land leased to Monomoy by the Town and in light of the provisions of the IMA, said restriction is reasonable under the circumstances. After all, Monomoy is a public regional school district that serves all of the residents of Harwich (and Chatham) who attend district schools. Reserving the use of the Facility to district school children and teachers during school hours promotes safety for the students and provides a dedicated Facility for the benefit of the students and teachers. Furthermore, there is nothing in the CPA that requires full access to facilities funded under the CPA to the general public at all times. In my opinion, this restriction is rationally related to the public benefit received from such a facility and is, therefore, a valid public purpose for the expenditure of CPA funds.

Third, you have asked what the proper procurement process will be if Town Meeting appropriates CPA funds for the Facility and whether the CPC recommendation and Town Meeting vote may include a requirement that construction oversight of the project be provided by a Town employee such as the Town's Facility Maintenance Director. In my opinion, the construction of this Facility by the Town would be considered a public works construction project subject to the public bidding requirements of G.L. c. 30, §39M. Although having an owners project manager is not required under the law because this is not a public building project and the estimated cost does not exceed \$1.5 Million, nevertheless, given safety concerns, ADA compliance, and liability issues, it would be legally prudent to have a licensed

construction supervisor oversee the construction of the Facility. In my opinion, such a requirement may be imposed as part of the CPC recommendation that must be made to Town Meeting, and I would recommend that the vote of Town Meeting appropriating the funds for this Project include the requirement for a Town employee who is a licensed construction supervisor to oversee the installation of the Project.

Please let me know if you have any questions.

Very Truly Yours;

John

John W. Giorgio, Esq.

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From: Patti Macura [mailto:pmacura@town.harwich.ma.us]
Sent: Tuesday, November 05, 2019 3:37 PM
To: John Giorgio <JGiorgio@k-plaw.com>
Cc: Christopher Clark <cclark@town.harwich.ma.us>
Subject: FW: Town of Harwich - CPC Amended Funds Request Forms

Patricia Macura
Selectmen/Administrator's Office
Town of Harwich
pmacura@town.harwich.ma.us
508-430-7513 x3319

From: Patti Macura
Sent: Thursday, October 31, 2019 9:31 AM
To: 'John Giorgio' <JGiorgio@k-plaw.com>
Subject: Town of Harwich - CPC Amended Funds Request Forms

Good morning John – Attached are all the documents for the amended CPC funds request

Please let me know should you need anything further.

Thank you

Patti