

To: Mayor Hemminger and Chapel Hill Town Council

From: Tara Kachgal

Date: October 11, 2021

Re: Petition to Address the Town's Ethical and Moral Responsibilities Related to the 2003 Open Space Bond Referendum

In this petition, I am asking Town leaders to respond to the ethical and moral issues raised by the proposed development of 110 Jay Street into affordable housing. As Town staff members Sarah Viñas, Nate Broman-Fulks, and Emily Holt acknowledged in their response to fellow community member Robert Beasley's petition (dated June 8, 2021), the Town purchased 110 Jay Street with funds from a November 2003 Open Space Bond referendum. The Town, in its September 7, 2021, answer to Mr. Beasley's petition, asserted that “there is no legal conflict with repurposing a site that was originally purchased with open space bond funding almost 15 years ago for affordable housing development.” The outside counsel hired by the Town cited North Carolina statute Chapter 160(a)-265 as giving the Town the authority to change the use of the tract at its discretion:

*Section 160A-265 of the General Statutes adopted in 1981 gives the Council power to change the use of the property. Specifically, that Section authorizes a town council “In [its] discretion ... (i) hold, use, **change the use thereof to other uses, or (ii) sell or dispose of real and personal property, without regard to the method or purpose of its acquisition or to its intended or actual governmental or other prior use.**” [no emphasis added]*

We are not convinced of the Town's interpretation of this statute, as noted in Mr. Beasley's answer dated September 8, 2021. But, today, I wish to address other issues not addressed in the Town's response.

The Open Space Bond referendum was part of a package of bond referenda put to Chapel Hill voters for capital costs related to parks and recreation facilities, open spaces, sidewalk and street improvements, library improvements, and public building improvements. The slogan for the bond campaign was “Invest in Chapel Hill.” The August 25, 2003, [memo](#) calling for a public hearing for the bond referendum includes the following resolution: “\$2,000,000 to pay capital costs of acquiring real property in order to maintain, protect, limit the future use of or otherwise conserve open spaces and areas.”

The memo also contains the Town's official notice of its intent to file an application with the state's Local Government Commission to issue the general obligation bonds (see Exhibit A). Here is the text:

The Bonds shall be subject to the approval of the voters of said town, shall be issued for the following purposes, and shall be issued in the following respective maximum amounts: \$5,000,000 to pay capital costs of providing parks and recreation facilities; \$2,000,000 to pay capital costs of acquiring real property in order to maintain, protect, limit the future use of or otherwise conserve open spaces and areas; \$5,600,000 to pay capital costs of providing sidewalk and street improvements; \$16,260,000 to pay capital costs of providing library improvements; and \$500,000 to pay capital costs of providing public building improvements.”

In the bond order that follows authorizing the issuance of the open spaces bond is the following language: “The Town Council of the Town of Chapel Hill, North Carolina has ascertained and hereby determines that it is necessary to acquire land or rights in land for the preservation of open spaces and areas and to pay the capital costs of such improvements.” The intent is clear: to use public financing to acquire land “to maintain, protect, limit the future use of or otherwise conserve open spaces and areas.”

This intent is also clearly stated in the [ballot measure](#) that Chapel Hill residents approved on November 4, 2003:

SHALL the order authorizing \$2,000,000 of bonds secured by a pledge of the faith and credit of the Town of Chapel Hill to pay capital costs of the acquisition of land or rights in land for the preservation of open spaces and areas, and a tax to be levied for the payment thereof, be approved?

This intent is reinforced in the discussion of the bond at the [public hearing](#) that was called on September 8, 2003. Regarding the distinction between the proposed parks and recreation and open space bonds, Bond Attorney Robert Quick, of Womble Carlisle, is paraphrased as saying “Open space bonds are for open space alone. This could, of course, include greenways and trails, but it generally means space that is purchased to be used as a buffer ...those areas are not normally developed at all.”

I ask, How do Town leaders justify disregarding the will of Chapel Hill voters to acquire land to preserve it as open space? How can it be ethically or morally conscionable to “repurpose” land that was purchased with public financing for a specific purpose into something else? The Town addresses none of these concerns in its response to Mr. Beasley. Only legal authority is cited to defend the Town's ability to change the use of 110 Jay Street “without regard to the method or purpose of its acquisition or to its intended or actual governmental or other prior use.”

Furthermore, the Town views it as entirely discretionary whether it needs to reimburse the Open Space Bonds funds if 110 Jay Street were to be developed: “The law likely would not require reimbursement of open space bond funding if Chapel Hill changes the use. However, the Town could nevertheless elect to repay bond funding for the proportionate value of the land purchased as a way of releasing the land from the funding’s original intent.” This stance is outrageous and shows a stunning lack of respect for Town residents and general notions of ethics and accountability regarding the democratic process and stewardship of public monies. The Town is saying that it can completely override the will of voters whenever it feels like it. That is unacceptable to me.

The ethical and moral dimensions of the Town's proposed development of 110 Jay Street—land purchased with public financing to preserve open spaces--have clearly not been examined by Town leaders. I would like Town leaders to answer the following questions:

1. How do Town leaders justify disregarding the will of Chapel Hill voters to acquire land to preserve it as open space?
2. How can it be ethically or morally conscionable to “repurpose” land that was purchased with public financing for a specific purpose into something else?
3. How does the Town justify its view that it can, if it so chooses, repay bond funding to “release the land from the funding's original intent”? Is repaying the bond funding sufficient to do so? Is it respectful to the voters who approved this bond measure for a specific purpose at the urging of Town leaders?