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INTER-OFFICE COMMUNICATION

DATE : July 12, 2011

TO: Honorable Committee on Economic and Community Development

FROM: John Jorgensen, Acting Corporation Counsel

SUBJECT: File No. INF 11-267; Allocation of CDBG funds

At the June 13, 2011 meeting of your committee, the above referenced item was referred to DHHS and to this office for a report "relative to an update on River Hills not spending CDBG funds allocated to them appropriately (selling them for cash), as well as options . . . on dealing with the issue". This office was asked to "specifically review the County's legal right within the agreement with the federal government on what could or could not be imposed by Milwaukee County if negotiations do not work."

It should first be noted that neither River Hills nor any of the other suburbs has spent CDBG funds inappropriately. All CDBG funds are spent on projects that qualify under the under applicable program regulations and conform to Milwaukee County's consolidated plan. What has occurred is that River Hills, because its population (particularly with regard to the lower-income, elderly and disabled individuals whom CDBG-funded projects are typically intended to serve) is relatively small, has been hard pressed to identify qualifying projects in that village for its share of CDBG funding. In 2007, with the approval of MCDHHS, River Hills voluntarily transferred its allocations for that year and the four preceding years to the City Glendale, which applied those funds to an accessibility project that met all applicable program standards.

It has been suggested that a donor municipality (such as River Hills in the case described in the foregoing paragraph) could enter into an agreement to receive non-CDBG monetary consideration from the recipient municipality in exchange for consenting to the transfer of its allocation of CDBG funds. That has occurred in other jurisdictions. To date, it has not occurred in Milwaukee County, but if it did occur, it would not violate any law or regulation governing the administration of the CDBG program, provided of course that the CDBG funds are ultimately applied to a qualifying project or projects in a manner that conforms to CDBG program requirements. Our opinion on this question is consistent with written advice Milwaukee County has received from local HUD officials who oversee the program in Milwaukee County.

It appears that the Committee is interested in the extent to which it can exert control over the municipalities with respect to the use of CDBG funds allocated to them. Control over the use of those funds presents a practical political issue rather than a legal one.

There is not, as the referral from your committee suggests, an “agreement with the federal government” that gives the County enforceable rights over allocation of CDBG funds. In 2003, this office, together with the Director of Housing and Community Development, provided your committee with a report that included a brief review of relevant aspects of the CDBG program as it operates in an “urban county”. A copy of that report is attached. As we noted in that report, the statutes and regulations that govern the administration of the CDBG block grant program do not prescribe how an urban county and its constituent municipalities should distribute available funding among themselves: “The Housing and Community Development Act and the implementing federal regulations do not mandate the administrative structure or the distribution formula now in place for the CDBG program in Milwaukee County. In fact, they do not mandate any particular administrative or distribution formula.” HUD officials agree: “There are no statutory or regulatory provisions that stipulate how the Urban County decides to allocate CDBG funds amongst the various units or general local government or unincorporated areas making up the Urban County. The only requirements affecting activity choices and locations are that an activity must be eligible and must meet a national objective. In addition, CDBG fund usage should conform to your Consolidated Plan” (Sept. 3, 2004 letter from Robert Berlan, Director of the HUD’s Wisconsin Office of Community Planning and Development to Leonard Jackson, Program Coordinator).

The current CDBG distribution formula and project approval process is the product of a negotiated compromise among the County and the participating municipalities, operating through the Intergovernmental Cooperation Council. With only minor changes, this system has worked since 1978. Other lawful systems are possible. However, any administrative framework and distribution formula must, as a practical matter, balance the County Board’s interest in controlling the administration of the program and allocation of the grant funds with the demands of the participating municipalities for some measure of equity and autonomy.

I hope these observations are helpful to you.

Respectfully submitted:

/s/ John Jorgensen

JOHN JORGENSEN

Acting Corporation Counsel

**COUNTY OF MILWAUKEE
INTER-OFFICE COMMUNICATION**

DATE: July 11, 2003

TO: Honorable Committee on Economic and Community Development

FROM: Nancy Olson, Director of Housing and Community Development
John Jorgensen, Principal Assistant Corporation Counsel

SUBJECT: **Community Development Block Grant (CDBG) Program**

On June 9, 2003, your Committee took up a report prepared by Nancy Olson, Director of the Housing and Community Development Division, in which she summarized the history of Milwaukee County's involvement in administering the CDBG program. The Committee voted to refer the matter to this office and to the Director of the Housing and Community Development Division for additional information regarding the structure and administration of the CDBG program and, in particular, "whether Milwaukee County has unilateral authority to make decisions regarding the program".

As a certified "urban county", 42 U.S.C. s. 5302 (6)(A), Milwaukee County is entitled to apply for and receive CDBG funding for itself and the 16 smaller municipalities with which the County has entered into cooperation agreements. Therefore, Milwaukee County has the authority to administer the program by selecting qualifying projects and entering into subrecipient agreements with suburban municipalities or private agencies to fund those projects, and the concomitant responsibility to ensure that CDBG funds are used in accordance with all program requirements, 24 CFR s. 570.501.

The federal Housing and Community Development Act, 42 U.S.C. s. 5301, *et seq.*, and the implementing regulations, 24 CFR Part 570, establish general structural requirements applicable to all CDBG programs, including Milwaukee County's. A "metropolitan city", which is defined to include the "central city" of a recognized metropolitan area and any other city with a population over 50,000, 42 U.S. C. s. 5302(a)(4), is entitled to apply for and receive CDBG funding for itself. This means that the cities of Milwaukee, Wauwatosa and West Allis can and do operate their own CDBG programs. Milwaukee County qualifies to receive CDBG funding as an "urban county" because its population (excluding the population of the metropolitan cities)¹ exceeds 200,000. The County must enter into "cooperation agreements" with the governments of those cities and villages (described in the regulations as "units of general local government") in order to qualify as an urban county, 24 CFR s. 570.307(b).

¹ A municipality can be either a metropolitan city, if it qualifies by population, or part of an urban county, but it cannot be both at the same time, 24 CFR s. 570.307(e)

In addition, HUD regulations impose numerous technical requirements which an urban county must fulfill, including the submission of a "consolidated plan" conforming to the requirements of 24 CFR Part 91. All these requirements are described at length in a notice which HUD sends to potentially qualifying counties. HUD's determination that a county qualifies for a CDBG entitlement as an urban county is effective for three federal fiscal years. Milwaukee County is currently certified for federal fiscal years 2003-2005. The County's current cooperation agreements with participating cities and villages are effective for "program years" (which are calendar years) 2003-2005.

Historically, the allocation of available CDBG funds between the County and the participating suburbs and among those suburbs has been negotiated through the Intergovernmental Cooperation Council (ICC) for Milwaukee County. The resulting formulas for distribution of the funds are described in Ms. Olson's May 30, 2003, report addressed to Chairman Holloway.

The Housing and Community Development Act and the implementing federal regulations do not mandate the administrative structure or the distribution formula now in place for the CDBG program in Milwaukee County. In fact, they do not mandate any particular administrative structure or distribution formula. The Act and regulations require that the individual projects undertaken with CDBG funds are eligible for assistance under the Act, 42 U.S.C. s. 5304, and that they satisfy one or more of the national objectives enumerated in the regulations, 24 CFR s. 570.208. They also provide that any public agency which is the recipient or subrecipient of a CDBG grant must adhere to a welter of administrative requirements relating to financial management, cost accounting, monitoring, record keeping, and the like, *see*, 24 CFR 570.502. They do not, however, provide any specific direction to urban counties and their constituent municipalities with regard to how CDBG funding should be distributed within an urban county or how the affected municipalities should organize themselves to allocate that funding and make other decisions concerning the administration of the program.

You ask whether Milwaukee County has "unilateral authority" to make decisions regarding the CDBG program. Milwaukee County has substantial authority to make those decisions. The County is entitled to receive CDBG funding as an urban county. The suburbs (except for Wauwatosa and West Allis) have no such entitlement. If they do not participate with Milwaukee County as part of an urban county, they would not receive any CDBG funding unless the State decides to allocate funding to them out of the State's grant. As the applicant for and recipient of the grant, the County bears primary responsibility to ensure that the grant is administered in conformance with all the applicable statutes and regulations. It is, therefore, appropriate that the County should have the final say in structuring the program and allocating the funds.

Nevertheless, as a practical and political matter, the County's ability to act unilaterally in that regard is subject to some constraints. Unless a sufficient number of suburbs agree to participate and execute the required cooperation agreements, the County cannot meet the 200,000 population threshold, and no one gets any money. It is reasonable to assume that each suburb will demand, as conditions of participation, that the program, as it affects that suburb, be administered with some measure of even-handedness, and that the suburb has something to gain by participating. Therefore, in order to obtain the broad participation necessary to achieve entitlement status as an urban county, it will probably be necessary for the County to continue to

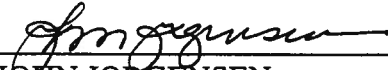
negotiate fund allocation and related administrative matters through the ICC or some similar county-wide collaborative group.

We hope these observations are helpful to you.

Respectfully submitted:

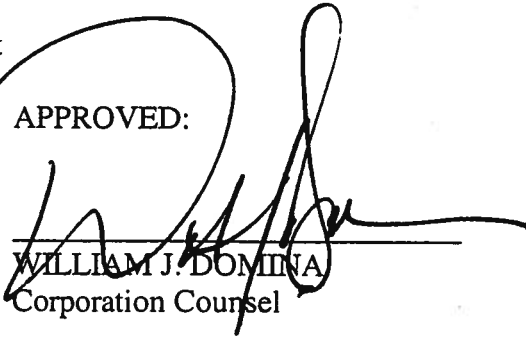


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