

part of #1.

INTER-OFFICE COMMUNICATION

DATE : July 11, 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:

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