

Use of CDBG Funds to Settle a Loan

September 1, 1993

MEMORANDUM FOR: Elmer C. Binford, Deputy Regional Administrator-
Regional Housing Commissioner, 7S

ATTENTION: Miguel Madrigal, Director
Kansas City Regional Office, 7C

Kenneth G. Lange, Manager
St. Louis Field Office, 7.3S

FROM: Andrew Cuomo, Assistant Secretary
for Community Planning and Development, C

SUBJECT: City of St. Louis Waiver Request for Northside Shopping Center - Community Development Block Grant Program

This is in response to Kenneth G. Lange's memorandum of June 21, 1993, requesting a waiver pursuant to 24 CFR 570.5 to allow Community Development Block Grant (CDBG) funds to be used to settle an outstanding \$800,000 loan owed to a bank by the Planned Industrial Expansion Authority (PIEA), a non-profit entity, for acquisition of real property. Since I believe this would constitute an ineligible use of CDBG funds, a waiver of pre-agreement costs cannot be authorized. Such a conclusion is based on the following understanding of the facts.

The St. Louis Development Corporation (SLDC) has been engaged in pre-development planning for a proposed twenty acre community shopping center, anchored by a major general merchandiser and a supermarket. The proposed center may also contain a branch bank, a restaurant, two to three neighborhood services stores and a medical clinic. The site plan permits an eight-acre expansion in a second phase for a home improvement store of up to 90,000 square feet. Financing for the project is expected to come from a combination of \$8 million in store equity, approximately \$3 million in Tax Increment Financing bonds, and up to \$3.5 million in direct municipal grants. Approximately 300 permanent jobs are expected to be created by the project.

In 1992, SLDC acquired one-half of the required land through PIEA by borrowing \$200,000 from the CDBG-funded Business Development Support Services Program administered by the St. Louis Local Development Company (LDC) for use as a downpayment and a loan of \$800,000 from the Mark Twain Bank. The grantee seeks to retire PIEA's \$800,000 outstanding debt with the City's 1993 CDBG funds in order to move the project forward, release a collateral lien on PIEA-owned property and proceed with other planned activities not related to this project. The City has asked for a waiver of the pre-agreement cost requirements of 570.200(h).

The CDBG regulation at 570.200(h) authorizes the use of CDBG funds to reimburse certain costs that are incurred prior to grant award. A waiver of the regulations may be granted to permit reimbursement of other costs incurred prior to grant award, provided the activities are eligible and were undertaken in compliance with applicable CDBG requirements, such as citizen participation, environment, procurement, etc. Reimbursement cannot occur until after a waiver is authorized. The City's 1993 program year began January 1, 1993.

In reviewing this request, the paramount issue is eligibility. Given the information provided in this waiver request, it is clear that the grantee would be funding an ineligible activity. In attempting to facilitate the grantee's request to carry out the proposed project, we explored the regulations to determine how CDBG assistance might be provided. While the regulations at 24 CFR 570.201(a) and 203(a) permit CDBG funds to be used to acquire real property, retiring an existing debt on property that has already been acquired (e.g., title transfer has taken place) does not constitute a bonafide acquisition of the property. Section 570.203(b) authorizes assistance of any form to a for-profit business, which could include refinancing of property acquisition. However, the PIEA is a non-profit entity. Section 570.204 permits certain subrecipients to receive CDBG funds to carry out community economic development projects (and permits certain activities which are not otherwise eligible to be carried out), however, it is our understanding that the PIEA does not qualify as one of the eligible types of subrecipient under the requirements of this section.

To the extent that the project will require funds for other aspects, it might be possible to use CDBG monies in other ways. The Entitlement Communities Division would be willing to work with the Field Office to determine the eligibility of other activities involved in this project. In the interim, I recommend that the St. Louis Field Office notify the grantee of the ineligibility of the proposed project as currently structured and, if appropriate, attempt to obtain information from the grantee to determine whether there are other eligible uses for the CDBG funds. If you have any questions concerning this, please contact the Entitlement Communities Division at (202) 708-1577.

cc: Robert P. Allen, SC