

Jodi Gingiss

Community Development Administrator



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May 13, 2015

Mr. Ray Willis
Director, Community Planning & Development
US Department of Housing & Urban Development
Ralph Metcalfe Federal Building – 24th Floor
77 W. Jackson Boulevard
Chicago, IL 60604-3507

Dear Mr. Willis:

Lake County ("County") is writing to request that the US Department of Housing & Urban Development provide a waiver to the Code of Federal Regulation (CFR) requirements at 24 CFR 570.611 - Conflict of Interest. A waiver is requested in the following case:

Potential for up to \$357,500 investment by Lake County of 2015 HOME Investment Partnership funds in affordable housing to be developed by Community Partners for Affordable Housing (CPAH) – a community land trust and Community Housing Development Organization (CHDO). As recommended for a community land trust model, CPAH has on its board qualified low income individuals who also are tenants or owners living in CPAH properties that have been assisted with HOME funds. In CPD Notice 93-42, HUD has acknowledged the community land trust model as an excellent model for the provision of affordable housing. Please see CPAH's Conflict of Interest Certification attached as **Exhibit A**.

Under 24 CFR 570.611 paragraph (d), an exception can be granted on a case-by-case basis when certain threshold requirements are met and certain factors are considered. In determining to request an exception to paragraph (b) of the Conflict of Interest section found at 24 CFR 570.611, the County has confirmed the situation meets the following federal threshold requirements:

- ✓ An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law (**Exhibit B**); and
- ✓ A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made. (**Exhibit C**).

In determining to request an exception to paragraph (b) of the Conflict of Interest section found at 24 CFR 570.611, the County has confirmed the federally required factors to be considered for exceptions:

24 CFR 570.611(d)(2) - Conflict of Interest Exception Factors	Exception Factor Review
Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project that would otherwise not be available	Confirmed: The benefit to CPAH – as a community land trust – of having board members who are also current tenants and owners is that these board members provide both an essential degree of experience and a means for CPAH to meet community land trust requirements.
Whether an opportunity was provided for open competitive bidding or negotiation	Confirmed: CPAH maintains an open, competitive process for selecting its tenants and owners.
Whether the person affected is a member of a group or class of low- or moderate-income	Confirmed: CPAH the tenants and owners of CPAH properties are low- or moderate-income.

persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class	
Whether the affected person has withdrawn from his or her functions or responsibilities, or the decision-making process with respect to the specific assisted activity in question	Confirmed: In the rare case that a CPAH tenant or owner serving on the board were to be in a position to vote on an issuing impacting a CPAH property either occupied or to be occupied by the tenant/owner, this board member would recuse themselves from the decision making process.
Whether the interest or benefit was present before the affected person was in a position as described in paragraph (b) of this section	Confirmed: In most cases, a CPAH board member who is also a CPAH tenant or owner would be a CPAH tenant or owner before becoming a board member, so the act of being on the board would not result in the benefit of becoming a CPAH tenant or owner. In some rare cases, a CPAH tenant could become a CPAH board member before later becoming a CPAH home owner. In this rare case, the selection of the board member to become a CPAH home owner would be through the same open, competitive means of selecting home owners as mentioned above.
Whether undue hardship will result either to the recipient or the person affected when weighed against the public interest served by avoiding the prohibited conflict	Confirmed: By not considering CPAH as a potential CHDO recipient of HOME funds due to the presence of tenant/owner board members (that meet a community land trust requirement), the County would be prevented from leveraging the community land trust model for producing affordable housing. This model is especially critical in a high-priced housing market like Lake County.
Any other relevant considerations	<i>Not applicable</i>

Thank you for your consideration of this matter. To enable consideration by the HCDC to invest 2015 funds in CPAH, it would be most helpful to know HUD's response if possible by a sub-committee meeting on May 28, 2015 and no later than the second public hearing of the 2015 Action Plan on June 10, 2015.

Thank you!

Sincerely,



Jodi Gingiss
Community Development Administrator

Exhibit A

Conflict of Interest Disclosure

Section 2 - Certifications - Conflict of Interest-Potential Conflict

The applicant organization/entity has determined it cannot certify compliance with 24 CFR Part 92.356 and as outlined herein the application requirements. This does not preclude the applicant from submitting an application; however a formal conflict of interest consultation process is required. Please complete the information below, and submit this page and a request to begin consultation to the Community Development Division via e-mail at communitydevelopment@lakecountyl.gov immediately (prior to submission of an application). A Division staff member will contact you at the information provided below to outline the process and required action.

The undersigned of Community Partners for Affordable Housing (name of organization/entity) cannot certify compliance with Conflict of Interest regulations as per 24 CFR Part 92.356, and has identified the following potential conflicts (describe conflicts in narrative form below):

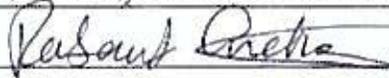
CPAH and Lake County submitted a formal conflict of interest waiver in 2013 for the below potential conflict of interest per 24 CFR Part 92.356. The conflict of interest waiver was approved by HUD at that time. CPAH will comply with any and all additional requirements, if any.

Potential Conflict - Homeowners & Tenants on CPAH Board of Directors

HUD CPD Notice 93-42 provides guidance on the use of HOME funds by Community Land Trusts. The notice states that, "In essence, CLTs are considered CHDOs for the purpose of the HOME program and are eligible for the same opportunities afforded to CHDOs." It goes on to state that, "Community Land Trusts are, perhaps, one of the most effective means of ensuring permanent affordability of resident ownership simply because the trust maintains ownership of the land." The notice goes on to describe CLTs as having a "Board of directors which includes a majority of members who are elected by the corporate membership and is composed of equal numbers of (1) lessees, (2) corporate members who are not lessees, and (3) any other category of persons described in the bylaws of the organization." CPAH is structured and operated as a Community Land Trust and, as described in the HUD CPD Notice and as a major tenant of the CLT structure, one third of CPAH's Board of Directors are low-income lessees (homebuyer and tenants who live in CPAH homes) who represent the interest of low-income community members and the homebuyer/tenant perspective. This is a valued and core component of the CLT model. However, the Consortium's conflict of interest statement indicates that, "no officers, employees, agents, elected or appointed officials, or consultants may occupy a HOME-assisted affordable housing unit." Since HUD has (i) acknowledged the core Board structure of CLT's, (ii) praised the model and (iii) indicated that CLT's should be treated as a CHDO and eligible for HOME funds, CPAH seeks a formal waiver from the above mentioned consortium potential conflict. The one-third of low income CPAH board members who live in CPAH units recuse themselves from any discussion or vote related to their particular property. In addition, the actual regulation at 92.356(f)(1) states that, "No owner, developer or sponsor of a project assisted with HOME funds (or officer, employee, agent, elected or appointed official or consultant of the owner, developer or sponsor) whether private, for-profit or non-profit (including a community housing development organization (CHDO) when acting as an owner, developer or sponsor) may occupy a HOME-assisted affordable housing unit in a project." It goes on to state that "this provision does not apply to an individual who receives HOME funds to acquire or rehabilitate his or her principal residence or to an employee or agent of the owner or developer of a rental housing project who occupies a housing unit as the project manager or maintenance worker." As such, we do not believe there is an actual conflict.

In submitting this form, the applicant will seek assistance in completing a required Conflict of Interest consultation, and agrees that in submitting an application, the organization/entity will comply with all

requirements and requests for information as part of the consultation process. In the event that the Consortium will be required to complete a conflict of interest waiver per the requirements of 24 CFR Part 92.356, the applicant agrees to disclose any related and required information as relevant to making a final determination regarding the conflict. Should the applicant not be willing to meet the requirements of the Conflict of Interest consultation and subsequent processes, the Consortium will not accept an application for funds.

Legal Name of Applicant: Community Partners for Affordable Housing
Signature: 
Name: *(please type)* Robert Anthony
Title: Executive Director
Date: April 27, 2015

Contact information for consultation:

Name: Robert Anthony
Phone: 847-681-8746
E-mail: ranthony@cpahousing.org

Exhibit B

An opinion of the recipient's attorney that the interest for which the exception is sought would not violate State or local law



OFFICE OF THE
STATE'S ATTORNEY
LAKE COUNTY, ILLINOIS

MICHAEL G. NERHEIM
STATE'S ATTORNEY

May 7, 2015

Mr. Ray Willis
Director, Community Planning & Development
US Department of Housing & Urban Development
Ralph Metcalfe Federal Building – 24th Floor
77 W. Jackson Boulevard
Chicago, IL 60604-3507

Re: Community Partners for Affordable Housing
HOME – conflict of interest waiver

Dear Mr. Willis:

I am an attorney for the County of Lake, Illinois (“County”). The County has requested that I opine on the question of whether a grant of federal HOME funds from the County, as recipient of those funds, to the Community Partners for Affordable Housing (“CPAH”) violates state or local law. After a review of the applicable state statutes and County ordinances, as well as the representations described below, it is my opinion that this grant would not violate state law or Lake County ordinances.

The CPAH is a community land trust, which is a not-for-profit organization that maintains continuous ownership of residential properties to assure that those properties always remain available to qualified low income residents. CPAH has on its board qualified low income individuals who also are tenants in CPAH properties. The County wishes to award up to \$357,500 to the CPAH for 2015, which the CPAH in turn will use for purchasing and rehabilitating properties for qualified low income individuals per applicable federal regulations. In recent years the County has made similar yearly awards to CPAH for this purpose.

The County has asked whether the County’s making this award to CPAH violates any local or state law. I have reviewed the Illinois Public Officer Prohibited Activities Act (50 ILCS 105/1 et seq.), the Illinois Gift Ban Act (5 ILCS 430/10-1 et seq.), and the Illinois Criminal Code (720 ILCS 5/33-3). Based on the representations of the County and CPAH as set forth above, and in the absence of any information or documentation to suggest that any County Board member or any member of the County’s Housing and Community Development Commission (HCDC), which has authority to recommend approval of the award, has any direct or indirect pecuniary interest in the CPAH or serves in any decision-making capacity for CPAH, it is my opinion that the County’s proposed award of HOME funds to the CPAH does not violate any of these statutes. Additionally, I am not

**Lake County
Building**
18 N. County St.
Waukegan, IL 60085

(847) 377-3000
Fax (847) 360-1538

Child Support
18 N. County St.
Waukegan, IL 60085

(847) 377-3131
Fax (847) 360-1097

**Children's Advocacy
Center**
123 N. O'Plaine Rd.
Gurnee, IL 60031

(847) 377-3155
Fax (847) 360-6850

Civil Division
18 N. County St.
Waukegan, IL 60085

(847) 377-3050
Fax (847) 360-0661

**Felony Division
Drug Division
Cyber Division
Special Investigations**
18 N. County St.
Waukegan, IL 60085

(847) 377-3000
Fax (847) 360-1538

Felony Review Division
Robert H. Babcox
Justice Center
20 S. County St.
Waukegan, IL 60085

(847) 377-3025
Fax (847) 263-6179

Juvenile Trial Division
Robert W. Depke
Juvenile Justice Complex
24647 N. Milwaukee Ave.
Vernon Hills, IL. 60061

(847) 377-7850
Fax (847) 634-8831

**Misdemeanor Division
Traffic Division**
18 N. County St.
Waukegan, IL 60085

(847) 377-3000
Fax (847) 625-7129

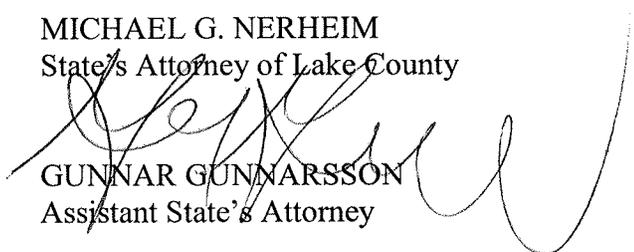
aware of any other Illinois statute that is implicated or violated by this contemplated transaction. Finally, I have also reviewed the Lake County Ethics Ordinance and the Conflict of Interest provisions of the By-Laws of the HCDC. It is my opinion that neither the County Ethics ordinance nor the HCDC's conflict of interest provision is violated by the contemplated transaction.

Note, however, that this opinion is strictly limited to reviewing the County's award of the said grant to the CPAH. I do not address whether the CPAH itself complies with state or local law in allowing some of its board members to lease units owned by the CPAH.

In summary, then, based on the representations that have been made to me concerning this transaction, it is my opinion that the County's contemplated award of the said grant does not violate Illinois law or Lake County ordinances.

Very truly yours,

MICHAEL G. NERHEIM
State's Attorney of Lake County



GUNNAR GUNNARSSON
Assistant State's Attorney

cc: Lake County Community Development

Exhibit C

Disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made law