

Memorandum

7
Harold
Inventors

To: The Honorable Roger G. Peckham
The Honorable Board of Trustees
Village Manager Richard W. Dieterich

From: Michael J. Castellino

Date: September 1, 2005

Re: Analysis of Housing Acquisition, Rehabilitation and Sale Project

We have been asked to provide advice concerning the Village's legal ability to purchase, renovate and sell homes, the purpose of which would be to encourage and facilitate home ownership (as opposed to rental) by Village residents (the "Project"). We have been informed that the Village's Housing Authority Committee (the "Committee") would like to commit \$120,000 to the Project and has requested an amendment or supplement to the Village's appropriation ordinance to provide for that sum. We also understand that the Village does not have new revenues to commit to such expenditures, and that the Committee has proposed obtaining the majority of the funding through bank loans.

Our advice is that the Village not pursue this course of action, for several reasons. First, we are unaware of any statutory authority for the Project. Additionally, the Village has adopted its appropriation ordinance for fiscal year 2005-06 (the "Ordinance"), and state law only allows for supplemental appropriations in limited circumstances, none of which appear to be present here. Finally, even if the other hurdles were not present, the Village would be subjecting itself to other potential financial liabilities by undertaking the Project.

Statutory Authority for the Project

As a non-home rule unit, the Village has only those powers expressly granted by statute or by the Illinois Constitution, powers incident to those expressly granted and powers indispensable to the accomplishment of the declared objectives of the Village. There does not appear to be any grant of authority allowing the Village to undertake the Project. In fact, pursuant to the Housing Authorities Act (the "Act"), the legislature did authorize the creation of housing authorities, which are distinct municipal corporations and bodies corporate and politic. Under the Act, housing authorities have certain powers that seem to be consistent with what the Committee would like the Village to

do, including investigating housing conditions, purchasing real property and selling or otherwise transferring real property. The existence of the Act leads to the conclusion that the legislature has recognized a need for those functions, that a housing authority is more suited to conduct them and that if it was intended for a municipality to do so, the legislature would have so provided. Moreover, the Act further provides that a village must have a population of more than 25,000 in order to form a housing authority.¹

The sections in the Code providing generally for acquisition of real property by the Village are also problematic. Those sections provide that a municipality may purchase real property for a public purpose. In this case, the public purpose has not been completely identified. While it can certainly be argued that upgrading the Village's housing stock—and eliminating blighted conditions in the process—is a valid public purpose, it is unclear as to whether this, as opposed to simply reducing the amount of rental property in the Village, is the actual goal of the Project.

Appropriations

State law does not support a supplemental appropriation of \$120,000 for the Project. As you know, the Illinois Municipal Code (the "Code") requires the Village to adopt an annual appropriation ordinance within the first quarter of each fiscal year. The Village adopted the Ordinance on July 26, 2005. Pursuant to the Code, the Village may not make any further appropriation at any time within this fiscal year unless such an appropriation is first sanctioned (1) by a petition signed by electors of the Village numbering more than 50 percent of the votes cast for mayor at the April 2005 consolidated election or (2) by referendum.

The Code does allow for a supplemental appropriation ordinance if additional revenue becomes available to the Village, if additional revenue is estimated to be received by the Village after the adoption of the Ordinance or if there is additional revenue from fund balances available when the Ordinance was adopted but that were not appropriated at that time. The facts as presented to us indicate that none of these conditions is met, but rather that no new revenue is available.

The Code further provides that no Village official may add to the Village's expenditures anything over and above the amount provided in the

¹ A prior version of the Act allowed for creation of housing authorities in municipalities with 10,000 or more inhabitants. The requirement was changed to 25,000 by Public Act 87-200, effective January 1, 1992. We have been advised that the Village did at one time create a housing authority, but that it is "inactive". Because of the population requirement, it must have been formed prior to January 1, 1992. Additional analysis would be required to determine whether this entity does in fact still legally exist.

Ordinance. Further, the Code prohibits any contracts being entered or any expenses being incurred unless an appropriation has been previously made. Pursuant to the Code, any such contracts or expenses are null and void.

Other Liabilities

Even if we put aside the above analysis, which we feel is dispositive, the Village would be exposing itself to other potential financial liabilities if it were to undertake the Project. The Code provides that municipalities may only borrow money from banks or other financial institutions for terms not to exceed one year. If funds were not available within that year to repay the loan, then the Village would be in default. Also, the Village would lose money if it were unable to sell a home for as much as it cost to acquire and rehabilitate the property. Finally, we have been advised that the Committee has considered using volunteer labor to perform some of the rehabilitation work. This is likely not something that would be seen as the "business" of the Village and would create a level of risk that is probably not appropriate for a municipality. (Third-party contracts with proper appropriations may be a different story.) It must also be considered that, because the property would be owned by the Village, the Village could be exposed to potential personal injury lawsuits and damages in the event that a worker was hurt while performing the work.

Conclusion

Based on the facts as we understand them, our advice is that the Village not pursue the Project. Statutory authority for the Project appears to be lacking. Appropriation of funds for the Project at this time is not authorized. Even if the first two hurdles could be overcome, the Village would be exposing itself to financial risks by undertaking the Project.

Please contact us with any questions.