

Using CDBG Funds for Phase 3 of Downtown Streetscape Project

April 9, 1992

Honorable Jan Meyers
House of Representatives
Washington, DC 20515-1603

Dear Representative Meyers:

Thank you for your letter dated March 11, 1992, to Secretary Kemp regarding the use of \$200,000 in Community Development Block Grant (CDBG) funds for Phase III of a downtown streetscape project in Olathe, Kansas. This phase of the project is to install sidewalks and improvements around the Johnson County Courthouse and a county administration building in Olathe. You have requested a reversal of the determination made by the U.S. Department of Housing and Urban Development (HUD) that this activity is not eligible for CDBG funding. The Assistant Secretary for Community Planning and Development has reviewed the determination made by the HUD Regional Office regarding the eligibility of this activity and has decided to uphold it.

Your letter indicates that HUD gave preliminary approval for the use of CDBG funds for all phases of this project. In 1988 HUD did approve certain activities in Phase I of this project which involved the use of CDBG funds for street and sidewalk improvements. Because of the design and nature of these activities, HUD determined that these improvements served the downtown businesses in that part of the city, and that those businesses served the population in the surrounding low- and moderate-income neighborhoods.

Although Phase III appears to be similar to Phase I, HUD has determined that it is substantially different from Phase I in terms of the primary beneficiaries of the improvements. The public improvements to be carried out under Phase III are directly related to enhancing the county buildings, and as such HUD has determined that this project will be primarily serving the population using those county buildings, that is, the population of the entire county as opposed to the residents of the neighborhoods immediately surrounding the buildings. Even though residents of the surrounding neighborhoods will peripherally benefit from the use of these improvements, the main beneficiaries will be those persons using and working in the county buildings.

Section 105(c)(2) of the Housing and Community Development Act of 1974, as amended, states that for an activity to qualify in the CDBG program on the basis of serving an area, it must be clearly designed to meet the identified needs of the low- and moderate-income persons of the area. The general rule is that an area benefit activity must serve an area where the concentration of low- and moderate-income persons is at least 51 percent. Some communities, such as Johnson County, however have few areas with this high a percentage so the rule allows those communities to use the "exception criteria". This allows those communities to undertake area benefit activities in residential areas where the proportion of low- and moderate-income persons falls within the top 25 percent of all areas within their jurisdiction in

terms of the degree of concentration of low- and moderate-income persons. For Johnson County this means that an activity can qualify as an area benefit activity if the service area has a low- and moderate income population of at least 38 percent. Since the countywide population is 26 percent low- and moderate-income, the proposed activity does not meet the criteria for area benefit.

With respect to eliminating blight in the downtown area, there is no indication that the area qualifies as a "blighted" area as required by the regulations at 24 CFR 570.208(b)(1). For an area to meet these criteria, it must meet a definition of a slum, blighted, deteriorated or deteriorating area under State or local law, and throughout the area there must be a substantial number of deteriorated or deteriorating buildings or public improvements. In addition, the activity must address one or more of the conditions which contributed to the deterioration of the area. The burden of proof is on the community to show that the activity qualifies on this basis, and the records did not indicate that these criteria have been met.

I hope that this letter satisfactorily addresses your concerns. Thank you for your interest in the CDBG program.

Very sincerely yours,

Russell K. Paul
Assistant Secretary