

Water and Sewer Tap Fees

February 28, 1995

MEMORANDUM FOR: Joseph K. Aversano, Director, Community Planning and Development, Division, 3.4C

FROM: Kenneth C. Williams, Deputy Assistant Secretary for Grant Programs, CG

SUBJECT: Request for Eligibility Determination - Water and Sewer Tap Fees for the City of Newport News, Virginia

This is in response to your memorandum asking how the payment of water and sewer tap fees which will be charged to low-income homeowners could be eligible as a Community Development Block Grant (CDBG)-funded activity. According to your memorandum, the Peninsula Habitat for Humanity is constructing housing for very low-income persons on infill lots in an older existing neighborhood in Newport News, Virginia. The City will be charging the property owners tap fees which will then be used by the City to defray the cost of installing new water lines in other development areas.

The payment of a fee is not an eligible activity by itself, but may be part of an eligible activity. The use of Community Development Block Grant (CDBG) funds to pay fees on behalf of low- and moderate-income residents to tap into water and sewer lines is generally eligible under the provisions of §570.200(c), Special assessments under the CDBG program. The definition of a special assessment in the regulations is "the recovery of the capital costs of a public improvement, such as streets, water or sewer lines..." This section of the regulations states that if CDBG funds are used to pay such fees for low- and very low-income residents, the existing public improvement becomes an assisted activity which must have been built in compliance with all applicable CDBG requirements for assisted activities, including environmental, citizen participation, and Davis-Bacon requirements. According to your memorandum, CDBG funds were not

used for the original construction of the water line which has been in place for many years, nor are CDBG funds being used for the actual physical hookup of the water and sewer lines to the new residences, and it does not appear that the City could document compliance with CDBG requirements.

Moreover, in this case, the City is not using the fees to recover the costs of the existing improvement, but rather to pay the costs of installing future water lines in other areas. Therefore, the proposed use of CDBG funds by the City does not constitute an eligible special assessment. The use of CDBG funds for the payment of access fees would only be eligible as a special assessment if the exact nature of the future public facility were known and it could be determined that the public facility itself would be eligible and meet national objective and other requirements.

Staff did consider whether the payment of such fees on behalf of lower income persons could be eligible as a public service at §570.201(e). However, we had previously determined that when the fee proceeds

are to be used for the provision of a public facility which is eligible at §570.201(c), the payment of the fees would not constitute a public service as that term is used in the CDBG program at §570.201(e).

Therefore, after careful consideration, we have determined that the payment of these access fees is not an eligible CDBG activity. However, this activity does have merit and the Department is considering publishing a proposed rule change for public comment to make such activities eligible in the future.

In the interim, the City may be willing to consider waiving the payment of these fees for low and moderate-income persons, or of funding another eligible aspect of the project in order to free up other sources of funding that could be used to pay the fees on behalf of the homeowners.

If you have any further questions, please contact the Entitlement Communities Division on (202) 708-1577.

cc: John E. Wilson, SC