

Subj: FYI from Sybil Richards: Response to KP BOF Request for a Legal Opinion re: Mill River and OTHRA is attached
Date: 8/19/2011 7:54:16 A.M. Eastern Standard Time
From: LGilden@ci.stamford.ct.us
To: gbosakjr@aol.com, KathleenMurphy1@aol.com, marylou.rinaldi@ge.com, RKolenberg@aol.com, smirkin@optonline.net, TAbbazia@optonline.net

From: Gilden, Lorraine C
Sent: Thursday, August 18, 2011 8:57 AM
To: 'Kathleen Murphy'
Cc: Bosak Jr., Gerald
Subject: FYI from Sybil Richards: BOF Request for a Legal Opinion re: Mill River and OTHRA is attached

Attached is the response to the Board of Finance's request.

Sybil V. Richards, Deputy Corporation Counsel
City of Stamford, Office of Legal Affairs
888 Washington Blvd, 9th Floor
Stamford, CT 06901
Tel: 203-977-5726

QUESTIONS PRESENTED: MILL RIVER & OLD TOWN HALL

The requested, legal responses to the Board of Finance's questions concerning the Mill River (Collaborative) project and Old Town Hall are set forth below.

Mill River

Notwithstanding efforts to obtain information, the Board of Finance knows very little about the legal structure of the Mill River development project or the entities involved with the project, let alone about the financial and operational aspects of the project.

The questions presented below under "Mill River - TIF Questions" are based on the assumption that the Mill River project is a Municipal Development Project created and implemented pursuant to Sections 8-186 through 8-200(b) of the Connecticut General Statutes ("CGS"). If that is not the case, please let me know what statutes apply and I will redraft the impacted questions.

In general, the Board wants to know (i) what entities are involved with the Mill River project; (ii) what are the duties and responsibilities of the entities and of the elected Boards and the Mayor; (iii) who has oversight and decision-making authority for this project; (iii) does this project qualify for TIF financing; (iv) have TIF bonds been issued for this project, if not, why not and the implications; (vi) is it appropriate under governing law to be budgeting and appropriating \$1.5 million, for example, in 2011 for Mill River TIF payments; (vii) should the Board ask for an accounting of the Mill River TIF appropriation; (viii) what state and federal grants are legally available for this project; (ix) does the Administration have any authority to use general obligation bonds proceeds in excess of approved bond authorizations for this project; (x) assuming bond authorizations have been exceeded, what remedies are available to the City to recover bond proceeds in excess of bond authorizations; and (xi) what any other legal issues as Corporation Counsel should the Board be asking about this project?

The questions summarized below are intended to help organize a response to the general legal questions presented.

Mill River – TIF Questions

1. Does the Mill River Corridor project qualify as a "development project" within the meaning of CGS Sec. 8-187(4) which provides:

"development project" means a project conducted by a municipality for the assembly, improvement and disposition of land or buildings or both to be used principally for industrial or business purposes and includes vacated commercial plants?

Although Section 6-18.1 of the Stamford Charter and Code of Ordinances designates the Urban Redevelopment Commission as the City's "Development Agency", the answer to the question above is no. The Mill River Corridor project does not qualify as a

“development project” within the meaning of CGS Sec. 8-187(4) because the purpose of the Mill River Collaborative’s agreement with the City is primarily for open space and passive recreational uses and not “principally for industrial or business purposes”.

2. Is the Mill River Collaborative the designated development agency for the Mill River Corridor project? (see CGS Sec. 8-188) If not, is there a development agency for the Mill River Corridor project and, if so, what is the name of the entity?

Please refer to my answer in question numbered one above.

3. Does the Mill River Corridor project qualify for grants under CGS Sec. 8-190 (Planning grants and special planning grants) or Sec. 8-195? If not, why not?

This is not a legal question. Whether the Mill River Corridor project may qualify for state grants should be directed to Grants Administration, which identifies grants for which City projects may be eligible.

4. What state and federal grants does the Mill River Corridor project qualify for? What grant funds have been received or approved and what grant applications are pending?

Please see my answer to question numbered three above.

5. Is the Mill River Fund, described in the 2010 CAFR, the special fund of the City referred to in CGS Sec. 8-189, which receives the tax incentive payments **to be used in each fiscal year** to pay, among other things, the principal of and interest due on loans, moneys advanced to, or indebtedness incurred to finance the Mill River Corridor development project?

This is not a legal question. Please direct this particular question to the Director of Administration, who is in charge of managing City accounts.

6. Assuming the 2010 debt service for the Mill River Corridor development project was approximately \$600,000 and there are no other debt related expenses, was it proper for the Administration to budget and appropriate \$1.5 million in fiscal year 2010 for the Mill River TIF?

This is a question for outside bond counsel.

7. Assuming there is no debt outstanding to finance the Mill River Corridor development project, are the Mill River tax incentive payments (approximately \$1.5 million) paid to the City in the same manner as taxes on all other property are paid; in other words not to the Mill River Fund?

This is a question for outside bond counsel.

8. If there has never been a TIF bond offering for the Mill River Corridor development project, is it proper to have a balance in the Mill River Fund at the end of the fiscal year?

This is a question for outside bond counsel.

9. Can the TIF payments be used for anything other than paying debt service, capitalized interest and related credit enhancements? Should the Board ask for an accounting for all the Mill River TIF appropriations to-date?

This is a question for outside bond counsel.

10. What are the duties, obligations and decision-making authority does the Board of Finance, Board of Representatives, the Mayor, the Mill River Collaborative, the Urban Redevelopment Commission or other entity have, respectively, under the Mill River Corridor development project?

This is not a legal question. Although the Board of Finance can request a legal opinion from this office, this office does not have to provide it with a list or a summary of all agreements about the Mill River Collaborative.

Mill River - General Obligation Bonds Questions

11. Assuming the Board of Finance and the Board of Representatives approved resolutions containing appropriations in the aggregate of \$17,378,000 and bond authorizations of \$2.1 million, what authority, if any, does the Administration have to use bond proceeds in excess of the \$2.1 million in bond authorizations to fund the Mill River Corridor project?

This is a question for outside bond counsel.

12. Should the Board ask for an accounting of the bond proceeds spent on the Mill River project?

This is not a legal question but a fact-based question that depends on the will of the majority of the Board of Finance.

13. What remedies are available to the City to recover the unauthorized use of general obligation bond proceeds?

This is a question for outside bond counsel.

Old Town Hall

In connection with the Old Town Hall project, as of June 30, 2010, the City has loans and advances of \$12+ million outstanding to "For Profit" entities, and is holding in reserve restricted cash of \$2+ million for the benefit of these "For Profit" entities. According to the 2010 CAFR, Old Town Hall Redevelopment Agency ("OTHRA") has current liabilities of \$3.4 million, and apparently no source of funds to pay its debts as they become due.

The Board of Finance is requesting a legal opinion as to whether or not the loans/advances (identified below) to the "For Profit" entities are in compliance with the City's Charter, CT State Statutes, IRS code and the Board of Finance's and Board of Representatives' authorizations?

In particular, (i) does the City have the authority to loan general obligation bond proceeds to a private borrower; (ii) has there been a loss of the outstanding bonds' tax exempt status as a result of the so-called private activity bond rules; and (iii) are the disclosures in the 2010 CAFR for Old Town Hall correct; (iv) and are there any other questions Corporation Counsel believes are appropriate to raise?

These are questions for outside bond counsel to address.

Other Subsidiary Questions:

1. Corporation Counsel has opined that the City has no legal obligation to provide funding to the Old Town Hall Redevelopment Agency ("OTHRA"). Do the Administration's representations in the 2010 CAFR (i) that "the activities of OTHRA provide services entirely or almost entirely to the City," (p. 34) or (ii) that "As long as OTHRA is not generating sufficient rental income to cover its operating costs and debt service requirements, the City, through Old Town Hall manager, Inc., is responsible for covering those costs," (p.74) create any funding or other liability for the City? If so, should the Administration correct/amend the statements in the CAFR before it is filed with the State? What services does OTHRA provide to the City?¹

¹ The purpose of OTHRA was to carry out redevelopment in accordance with Chapter 130 of the CGS. (p. 427) Sec 8-125 defines redevelopment as :

(1) "Redevelopment" means improvement by the rehabilitation or demolition of structures, by the construction of new structures, improvements or facilities, by the location or relocation of streets, parks and utilities, by replanning or by two or more of these methods;

Note: QALICB was formed to acquire, rehabilitate and otherwise deal with the project (Old Town Hall).

These are not legal questions.

2. Does the Administration have the authority to advance funds to cover (un-appropriated) expenses of the Master Tenant, including debt service, tenant build-outs, construction completion expenditures, utility costs, taxes, etc.?

Assuming your use of the word "funds" in this context relates to bond funds, then this is a question for outside bond counsel.

3. Does the Administration have the authority to waive the property taxes that are due on Old Town Hall?

If by the word "Administration" you are referring to the Board of Representatives, then the answer to your question is the Stamford Charter and Code of Ordinances does not contain provisions that would allow for a waiver of real property taxes for Old Town Hall under the expressed provisions of said charter and ordinances. If Old Town Hall is eligible for local, real property tax relief permitted under the state statutes, that would be a matter for its counsel and/or tax professional to identify.

4. Does the City's accounting for OTHRA in the CAFR, as a blended component unit, subject the City to any liability?

This is a question for outside bond counsel.

5. What remedies are available to the City to recover the unauthorized use of general obligation bond proceeds?

This is a question for outside bond counsel.

Background –Loan/Advances/Sale/Restricted Cash

On October 14, 2008, the City of Stamford (the Lender) loaned Old Town Hall Investment Fund, LLC, an unrelated, for profit entity, an amount of \$5,634,332. The loan bears interest at .7%, requires quarterly payments of interest only, and is due in 420 months, or on October 14, 2043.

The City of Stamford in connection with the sale of Old Town Hall to Old Town Hall QALICB (QALICB) was paid \$4,785,588, \$2,254,380 of which the City took back a promissory note from QALICB ("City Loan") and a mortgage on the project property as security for the repayment of the City Loan. The balance of the sale proceeds, \$2,531,208, was deposited for the benefit of Old Town Hall Manger, Inc. as a Cash Collateral Reserve Account.

OTHRA transferred \$5,932,216 to Old Town Hall Manager, Inc. ("Manager") Manager then made an equity investment of \$5,932,216 into QALICB for a 90% membership interest in QALICB. An outstanding question is: Where did OTHRA get the \$5.9+ million?

The City of Stamford apparently advanced an undisclosed amount of cash to cover US Bank's Historic Tax Credit Equity contribution, as well.