

January 16, 2025

To: City of Whitewater Community Development Authority
From: Rick Manthe City Attorney
RE: Innovation Center Property

The City of Whitewater Community Development Authority (“CDA”) Director requested an opinion as to the ownership of the Innovation Center and any property restrictions related to the property. In sum, (1) the City of Whitewater (“City”) owns the Innovation Center property, and (2) there is likely a restriction on the sale of the property related to an economic development grant received in 2009.

Innovation Center Background

In 2009 the University of Wisconsin-Whitewater (“University”) submitted a grant application with the federal Economic Development Administration (“EDA”) to aid the development of the Innovation Center. In 2010, the grant was awarded to the University to develop the Innovation Center. The Innovation Center has since been constructed, and the City, CDA, and University jointly operate the Innovation Center.

Analysis

1. Ownership of Innovation Center.

The Innovation Center property is owned by the City of Whitewater. In 2012, a certified survey map (“CSM”) created the Innovation Center parcel. The CSM certificate indicates that the City of Whitewater owned the property and had the original parcel split. There is no notation on the CSM indicating a conveyance of the Innovation Center property. Additionally, no deeds or other documents conveying ownership have been recorded against the property since the CSM. Based on the documents currently available to us, it is our opinion that the City of Whitewater actually owns the Innovation Center property.

2. Conveying the Innovation Center Property.

Conveying the Innovation Center will likely be difficult as it would require approval from the EDA and likely repaying a portion of the original grant funds.

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The original grant agreement between the University and EDA provides that “[t]he recipient may not dispose of, modify the use of, or change the terms of the real property title, or other interest in the project site and facilities without permission and instructions from” the EDA grant officer. Section K.02 Grant Agreement.¹

Additionally, the EDA grant has federal regulations that encumber the property, and the property could not be sold or undergo a change in use without consent of the EDA. 2 C.F.R. § 200.311(d). If the City did sell the property, it must pay the EDA approximately sixty percent of the sale price as that was the EDA’s original cost share for the project. 2 C.F.R. § 200.311(d)(2). If the City were to change the use of the property, but retain ownership, then either the City or University would need to pay the EDA an amount equal to approximately sixty percent of the fair market value of the property and improvements. 2 C.F.R. § 200.311(d)(1). As explained below, it is unclear whether the City or University would make the payment based on available documents.

What complicates this restriction is that the grant agreement is between the University and the federal government. The City would likely be considered a “subrecipient” of the grant since the property is owned by the City. It is very likely the sale and use restrictions also apply to the City as a subrecipient of the grant funds. Typically there would be an agreement between the grant recipient (the University) and the subrecipient (the City). No agreement has been found though. Regardless, various federal regulations make clear that subrecipients are also bound by the original terms of the grant. Thus, even though the grant agreement is between the University and EDA, it is very likely those same restrictions apply to the City.

Further, given that the CDA currently plays an active role in managing the Innovation Center, it is important to note that a change in use or a sale of the property will likely require collaboration between the CDA, City, and University in any dealings with the EDA to get consent for selling or changing the use of the property. If the parties are not aligned, EDA may not approve any changes to the Innovation Center property.

Conclusion

In summary, the City of Whitewater owns the Innovation Center property, and it would require EDA approval to change the use or sell the property.

¹ There is also a requirement that the grant recipient record a security interest to the federal government for the real estate. We have not been able to find such a recording.