

**CITY OF MADISON
OFFICE OF THE CITY ATTORNEY
Room 401, CCB
266-4511**

Date: March 20, 2009

MEMORANDUM

TO: Jeanne Hoffman, Facilities and Sustainability Manager

FROM: Anne Zellhoefer, Assistant City Attorney *AZ*

RE: **BERKELEY FINANCING INITIATIVE FOR RENEWABLE AND SOLAR TECHNOLOGY**

You have asked whether the City of Madison could introduce a program similar to the Berkeley Financing Initiative for Renewable and Solar Technology ("Berkeley FIRST").

Background

Berkeley FIRST is a pilot program designed to assist residential and commercial property owners with financing the installation of solar photovoltaic systems on their properties. Under Berkeley FIRST, the City provides upfront financing (up to \$37,500 per property) to participating property owners who contract directly with qualified private solar installers and contractors. The property owners are required to repay the City for the amount of the upfront assistance, plus interest and administrative fees, over a twenty-year period as a special levy on their tax bills.

To provide the source of funding for the program, Berkeley formed a Special Tax District and issued bonds on the District's behalf. The proceeds of the bonds were then used to fund the installation of the photovoltaic systems. The bonds are to be repaid with special taxes levied over a twenty-year period against the participating properties. Berkeley records a special tax lien on any property benefited under the program, and failure to pay the taxes results in penalties, interest and eventually foreclosure of the property by the county tax collector.

The pilot program is administered on behalf of the City by a local non-profit organization acting as a third party administrator. The administrator's fees are included as a portion of the special tax levied against the benefited properties.

Wisconsin Law

Section 66.0701, et seq, permits towns, villages and cities to levy and collect special assessments to pay for the cost of installing or constructing any public work or improvement, and to charge such cost against the properties benefited thereby. A public work or improvement, generally speaking, is one for use of a public body. In determining whether a project constitutes a public work, the pertinent factors include the nature and character of the project, the ownership, use and maintenance of the project, and whether the work is being done for the municipality. The use of public funding does not make a project a public work, nor does the presence of a valid public purpose. Elliot v. Morgan, 214 Wis. 253,264 (Ct. App. 1997). Solar systems installed on private property under the Berkeley FIRST program are owned and maintained by private property owners and are installed for their private use, and therefore cannot be construed as a public work or improvement subject to special assessment in Wisconsin. In order to fashion a program for Madison structured like Berkeley's, the state's law governing special assessments would have to be amended to allow the City to specially assess property owners for financing the installation of private improvements to their properties.

Section 66.0627, Wis. Stats., permits towns, villages and cities to impose a special charge against real property for current services rendered by allocating all or part of the service to the property served. A "service" under this provision includes traditional municipal services such as snow and ice removal, recycling, garbage and refusal disposal, tree care, weed elimination and dead animal removal. It is questionable whether a loan from a municipality to a private property owner to fund a solar energy installation could be construed as a special charge. In addition, Wisconsin law does not permit a special charge to be repaid in installments. Sec. 66.0627(4), Wis. Stats.

Alternatives

Short of seeking amendments to the special assessment and special charge statutes in Wisconsin, there are other potential avenues for the City of Madison to fund the installation of solar photovoltaic systems on private property, and to secure the repayment of its expenses. The City could develop a solar installation loan program similar to the capital revolving fund loan program, under which the City would provide low interest loans to property owners to fund the installation of energy saving systems to their properties. These loans could be secured by a mortgage on the benefited property that could be structured to be either assumable by a new owner or due on sale.

Please let me know if you have any questions.

AZ:sob