

## Lawyer Helps City, Art Museum Secure \$3.8M HUD Loan: Vacant Plant Will Be New Cultural Center

By Rebecca J. Berfanger



William F. Griffin, Jr.

Sprague Electric Co. — the North Adams electronics manufacturer that employed thousands for nearly half-a-century — closed its doors in 1985 leaving a vacant plant that occupied 13 acres, nearly one-third of the city's downtown.

When faced with the issue of what to do with the available space, North Adams considered using the dormant plant's large buildings as a museum to house oversized art.

The result: the Massachusetts Museum of Contemporary Art (Mass. MoCA), which opened to the public in 1999.

Four years after the museum opened, North Adams and Mass. MoCA received a 20-year, \$3.8 million federal loan for Phase II of the development of the former Sprague Electric site, which includes the construction of a new Northern Berkshire County Courthouse and an office building that will house Donovan O'Connor, one of western Massachusetts' largest law firms.

A legal team from the Boston firm of Davis, Malm & D'Agostine, headed by William F. Griffin Jr., was brought in by the Massachusetts Community Development

Block Grant Program to represent the City of North Adams and the state Department of Housing and Community Development (DHCD). Griffin says that Davis, Malm was hired because of its work with the state agency and on past-loan transactions. Assisted by associates Amy L. Fracassini and Ann M. Sobolewski, Griffin says his team worked "shoulder to shoulder" with the museum's local counsel, John B. DeRosa of Freedman, DeRosa & Rondeau in North Adams.

The \$3.8 million loan was obtained from the U.S. Department of Housing and Urban Development as a Section 108 loan. The loan is an offshoot of the Community Development Block Grants program, a federally funded program that allows states to ration federal funds to non-entitlement communities (populations of less than 50,000).

The Section 108 loan, in addition to \$2 million from a HUD Economic Development Initiative Grant; a \$1.7 million Community Development Action Grant from DHCD; a \$4.2 million state grant from special legislation; and approximately \$400,000 in private contributions to the museum, brought the total funding for Phase II to about \$12 million.

To apply for the Section 108 loan, in October 2002 North Adams submitted some 500 pages on how the museum space in the area combats slum and blight — a qualification for a HUD loan. In March 2003, HUD gave its initial approval along with additional requirements that were met prior to Griffin's involvement in the process last May.

One of the challenges of this particular loan, according to Griffin, was the short turnaround period. The deal began in

mid-May and was approved just under deadline in late-July. The main reason for the short deadline? Interest rates were too good to miss out on, Griffin says.

"The cutoff was in late July," Griffin says. "That doesn't mean that after the deadline you can't get any money, but that the money will be a floating rate until July of next year, when [the federal government] will fix the new interest rates."

He adds: "The museum was extremely concerned about a window of opportunity that was closing, which might cost them a couple million dollars in interest costs over the life of the 20-year loan."

### Mixed-Use Development

One of the benefits of the way the deal was structured, Griffin notes, was that he was able to get a good deal for his client: a mixed-use development of the art museum and commercial tenants.

"The idea is, by the generosity of the state and of the city, the museum has all these buildings and will invest in these buildings and lease them to be able to throw off costs of the museum," Griffin states.

Because Griffin was working with multiple parties, including HUD, the City of North Adams, Mass. MoCA, four different state agencies that were "quarterbacked" by DHCD, Williams College, and existing and potential tenants, Griffin compares the project to a Rube Goldberg device, with all sorts of moving parts that fit together to fund Phase II.

Although "each of these grants had different requirements," says Griffin, "none of the granting sources will allow funds from that grant to be used for the fit up of government-owned buildings, which

meant we could build the courthouse, but couldn't put in wallpaper and fixtures." To do that, they received a separate gift from a private individual.

Another challenge that Griffin faced was that "each of the government sources required that the money they were putting up had to be traced into the right department." To handle that aspect, Griffin drafted an escrow agreement into which all the money flowed. Funds had to be taken out on requisitions, and the museum and the city had to certify that the money from the Section 108 loan was only used for what it was intended.

A conflict from receiving federal and state money, Griffin explains, stemmed from the Legislature's 1988 enabling act, which has a "prohibition on the sale of any portion of the property that was used for cultural purposes." He says this was a problem because "HUD had a requirement that they needed a first mortgage on the collateral that was being financed from the loan. But we couldn't give them a first mortgage because we couldn't encumber the buildings."

Griffin says he had to explain to HUD "that this was a leasehold mortgage because the City of North Adams owned the real estate and leased it to the museum for nothing a

year. So I persuaded HUD that what they wanted was a leasehold mortgage."

The next step, he says, was to figure out a legitimate way to pay the mortgage but not violate the 1988 legislation.

Griffin notes that the courthouse was an exception because it was on a lot that was separate from any cultural space, "but on the rest of the site, commercial and cultural [sites] were interspersed. I came up with the idea of doing a sublease from the museum to a wholly owned subsidiary of the commercial space, then doing basically a subleasehold mortgage to secure the loan."

Griffin then told HUD his "fairly exotic" plan for a subleasehold mortgage. In the end, Griffin was successful.

The final hurdle with getting the loan as a subleasehold mortgage was "the museum was concerned that the income that was deriving from the commercial leases would all be taxable now because it wasn't owned by a 501c3 [nonprofit] entity."

That problem was avoided by using a "disregarded entity," Griffin explains. "You have a single-member LLC, which from the IRS' point of view is a non-entity. From the IRS' point of view, nothing happened and the [tax-exempt] museum in effect leased the property back to itself."

## Federal Funding Available

Griffin stresses that the federal money is available for other projects as well.

"With the state budget being so tight, and the state passing the budget crunch to the municipalities by cutting local aid, every dollar of state and municipal revenue has intense competition from various sources that would otherwise be available for community development to put into a museum," Griffin explains.

"But federal dollars are still there and still guaranteed," he notes, "so the cities can leverage these future grants and borrow against them, loan them to private enterprises for 20 years for low fixed rates."

Federal funding is available for some private ventures as well, as long as they meet HUD's criteria, he adds.

But Griffin says that handling this deal was not just about securing a good fixed rate.

"I get a sense of accomplishment for solving a puzzle and something that's good for the City of North Adams, good for the community in western Mass., and good for the patrons of the arts in that area."

Questions or comments may be directed to the writer at [rberfanger@lawyersweekly.com](mailto:rberfanger@lawyersweekly.com). **MLW**

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