

**MINUTES OF THE 480th TELECONFERENCE
BOARD MEETING
OF THE
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

December 10, 2020

- MEMBERS:
- * Lt. Governor Sheila Y. Oliver, Commissioner, DCA
 - ** Kavin Mistry, Assistant Attorney General, (representing Gurbir S. Grewal, Attorney General)
 - *** Robert Shaughnessy, Assistant Deputy Director, Department of Treasury (representing Elizabeth Maher Muoio, State Treasurer)
 - **** Paulette Sibblies -Flagg, Administrator of Accreditation, Department of Banking and Insurance (representing Marlene Caride, Commissioner, Department of Banking and Insurance)
 - ***** Elisa Neira, Deputy Commissioner (representing Carole Johnson, Commissioner, Department of Human Services)

Dorothy Blakeslee
Zenon Christodoulou

HMFA STAFF
PRESENT:

Charles A Richman, Executive Director
Deb Urban, Chief of Legal and Regulatory Affairs
Katherine Brennan, Chief of Staff
Laura Shea, Chief of Programs
John Murray, Chief Financial Officer
Jeanette Nieves, Executive Board Secretary
Tanya Hudson -Murray - Managing Director of Multifamily Programs
Joseph Heath, Director of Capital Markets
Catherine Bernard, Assistant Director of MF Program Funding
Jonathan Sternesky, Manager of Policy and Legislative Affairs
Theresa Fink, Director of Finance
Jordan Moskowitz, Managing Director of Single Family Programs
Anne Hamlin, Director of Tax Credits
Darryl Applegate, Director of Regulatory Affairs
Gloria Mehnert, Paralegal III
Joel Finkelstein, Legal Research Analyst II

OTHERS
PRESENT:

George Loeser, Deputy Attorney General, Attorney General's Office
Rudy Rodas, Assistant Counsel, Governor's Authority Unit

MEMBERS
OF THE PUBLIC

Bob Guarasci, NJCDC
Jeffery Feld, Jeffery Feld, Esq.
Tracee Battis, Project Freedom Inc.

- * Letter of December 4, 2018 designating Kavin Mistry to represent Gurbir S. Grewal, Attorney General
- ** Letter of January 19, 2018 designating Robert Shaughnessy to represent the Acting State Treasurer, Elizabeth Maher Muoio
- *** Letter of January 17, 2020 designating Paulette Sibblies – Flagg to represent Marlene Caride, Commissioner, Department of Banking and Insurance
- **** Letter of November 2, 2018, designating Elisa Neira to represent, Carole Johnson, Commissioner, Department of Human Services

December 10, 2020

Lt Governor Sheila Oliver, Commissioner, Department of Community Affairs read the following into the minutes

NOTICE OF PUBLIC MEETING

The New Jersey Housing and Mortgage Finance Agency gave notice of the time, place and date of this meeting by electronic mail, regular mail and hand delivery on December 4, 2020 to the Secretary of State of New Jersey, The Star Ledger, The Times, and the Courier Post, and by posting the notice at the office of the Agency in Trenton, New Jersey. Pursuant to the New Jersey Open Public Meetings Act, a resolution must be passed by the New Jersey Housing and Mortgage Finance Agency in order to hold a session from which the public is excluded.

ROLL CALL

Prior to the Board meeting, the Board members were provided copies of two documents received from Jeffrey Feld, Esquire: a letter dated December 8, 2020 to Executive Director Richman and a copy of the municipal tax abatement handbook these documents were provided to the Board members prior to the December 10, 2020 board meeting. Mr. Feld's submissions were made a part of the record of this meeting.

APPROVAL OF MINUTES

APPROVAL OF THE PUBLIC SESSION MINUTES OF THE NOVEMBER 12, 2020 SPECIAL TELECONFERENCE MEETING OF THE HMFA BOARD – ITEM 1B.

Robert Shaughnessy moved and Dorothy Blakeslee seconded. 1. Approval of the Public Session Minutes of the November 12, 2020 Special Teleconference Meeting of the HMFA Board.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry,

Nay – None

Abstained- Elisa Neira

SINGLE FAMILY

APPROVAL TO ACCEPT SUPPLEMENTAL FUNDING FROM HUD COMPREHENSIVE HOUSING PROGRAM AND TO AMEND THE HUD CONTRACT TO REFLECT ADDITIONAL FUNDING FOR FY2020 - ITEM 2A

Dorothy Blakeslee moved and Robert Shaughnessy seconded. 1. Approval to accept Department of Housing and Urban Development (HUD) supplemental funding in the amount of \$69,711 under the HUD Comprehensive Housing Counseling Grant Program (“HUD Counseling Program”) as set forth in the Award Letter dated October 21, 2020. 2. Authorization for the Executive Director, the Chief Financial Officer or the Chief of Legal and Regulatory Affairs to (i) take any and all actions necessary; (ii) execute and deliver all

agreements, certificates, instruments and other documents necessary to receive the funding from HUD; and (iii), upon consultation with the Attorney General's Office, agree to amend the FY20 award amount to \$284,160 from \$214,449.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

APPROVAL OF UPDATES TO THE SINGLE FAMILY PARTICIPATING LENDERS GUIDE AND MORTGAGE PURCHASE AGREEMENT- ITEM 2B

Dorothy Blakeslee moved and Robert Shaughnessy seconded. 1. Approval of revision to the New Jersey Housing and Mortgage Finance Mortgage Purchase Agreement (the "Mortgage Purchase Agreement") in the form attached hereto. 2. Approval of revisions to the New Jersey Housing and Mortgage Finance Agency Mortgage Program Policy and Procedures for Participating Lenders (the "Participating Lender's Guide") in the form attached hereto. 3. Authorization is requested for the Executive Director to approve updates to spelling, punctuation, placement of text and adjustments to the order or numbering of sections of these documents, for the purpose of providing clarity or improved organization to the documents.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

SUPPORTIVE HOUSING

HMFA #07660 - 20 SNYDER AVENUE SUPPORTIVE HOUSING – APPROVAL OF A MORTGAGE FINANCING COMMITMENT -ITEM 3A

Robert Shaughnessy moved and Zenon Christodoulou seconded. 1. Approval of a subsidy mortgage commitment for an estimated \$477,000 in construction and permanent financing from the Special Needs Housing Subsidy Loan Program ("SNHSLP") for a project known as 20 Snyder Avenue Supportive Housing, HMFA #07660 (the "Project"), upon the terms and conditions set forth in the RFA.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

MULTIFAMILY

APPROVAL OF AMENDMENTS TO THE MULTIFAMILY GUIDELINES -ITEM 4A

Paulette Sibblies – Flagg moved and Kavin Mistry seconded. 1. Approval to amend the limits on the Total Development Costs in the Multifamily Underwriting Guidelines and Financing Policy (the "Multifamily Guidelines") for the Multifamily Programs and Lending as set forth in the RFA. 2. Authorization for the Executive Director and the Chief of Programs to approve amendments to correct errors in or clarify the Guidelines, so long as such amendments do not result in a change in policy or implementation of the Guidelines as currently approved. Any amendments that would change the underlying policy or

implementation of the Guidelines from the form in which it is now presented shall remain subject to Agency Board approval. 3. Authorization for the Executive Director, the Chief of Programs, the Chief Financial Officer, the Chief of Legal and Regulatory Affairs, in consultation with the Attorney General's Office, to execute any and all documents necessary to effectuate the above actions.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kevin Mistry, Elisa Neira

Nay – None

Abstained- None

MULTI FAMILY – NINE PERCENT TAX CREDIT

HMFA #03424– BRANCBURG SENIOR APARTMENTS – APPROVAL OF A MORTGAGE FINANCING COMMITMENT - ITEM 5A

Kavin Mistry moved and Dorothy Blakeslee seconded. 1. Approval of a mortgage recommitment for an estimated \$4,343,000 in permanent financing from the Agency Revenue Bond Financing Program for a project known as Branchburg Senior Apartments, HMFA #03424 (the "Project"), upon the terms and conditions set forth in the RFA. 2. Approval of a mortgage commitment for an estimated \$625,000 in permanent financing from the Special Needs Housing Subsidy Loan Program for the Project, upon the terms and conditions set forth below.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kevin Mistry, Elisa Neira

Nay – None

Abstained- None

MULTI FAMILY – FOUR PERCENT TAX CREDIT-CONDUIT

HMFA #03489– BALTIC PLAZA – APPROVAL OF A MORTGAGE FINANCING COMMITMENT - ITEM 6A

Robert Shaughnessy moved and Paulette Sibblies-Flagg seconded. 1 Approval of a mortgage commitment for an estimated \$19,389,000 in permanent financing from the Agency Conduit Bond Program for a Project known as Baltic Plaza, HMFA #03489 (the "Project"), upon the terms and conditions set forth in the RFA. 2. Agency approval of the transfer of 100% ownership interest in the Project from SP Baltic Plaza, LP (the "Seller"), to Standard Baltic Venture LP, (the "Buyer"). 3. Subordination of the Agency's prepayment Deed Restriction and Regulatory Agreement during the term of the new Agency financing, as applicable. 4. Authorization for the Executive Director or any Agency Chief to execute any, and all documents necessary to effectuate the above actions.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kevin Mistry, Elisa Neira

Nay – None

Abstained- None

HMFA #07681 – ARGUS ELLISON DEVELOPMENT – APPROVAL OF A DECLARATION OF INTENT
-ITEM 6B

Zenon Christodoulou moved and Kavin Mistry seconded. Approval of a “Declaration of Intent” stating the intention of the Agency, subject to the availability of volume cap, to issue tax- exempt bonds in an estimated amount not to exceed \$22,860,000 in construction and permanent financing for a project known as Argus Ellison Development, HMFA #07681 (the “Project”). Approval of this "Declaration of Intent" is intended to establish for tax purposes the eligibility for reimbursement with the proceeds of the Bonds of certain costs paid prior to the issuance of the Bonds (the “Original Expenditures”) associated with pre-bond sale and development work on the Project. By this action, the Board expresses its present intent to issue the Bonds for the Project and its reasonable expectation that it will reimburse Original Expenditures with proceeds of the Bonds, and declares its intent that the Declaration of Intent be determined to be a declaration of official intent under Treas. Reg. Section 1.150-2 (the “Reimbursement Regulations”) promulgated under the Internal Revenue Code of 1986, as amended (the “Code”).

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

HMFA #03494 – AUDUBON TOWERS – APPROVAL OF A MORTGAGE FINANCING COMMITMENT
- ITEM 6C

Dorothy Blakeslee moved and Kavin Mistry seconded. 1. Approval of a mortgage commitment for an estimated \$13,000,000 in construction and permanent financing from the Multifamily Conduit Bond Program for a project known as Audubon Towers, HMFA #03494 (the “Project”), upon the terms and conditions set forth in the RFA. 2. Agency approval of the transfer of 100% ownership interest in the Project from Audubon Towers Limited Partnership (the “Seller”), to Audubon Towers 2020 LLC (the “Buyer”). 3. Approval of a waiver from the Agency’s Required Payment and Repayments Regulation at N.J.A.C. 5:80-5.9(a)(1), pursuant to N.J.A.C. 5:80-19.1, to preserve the long-term affordability of the Project. 4. Board approval to prepay the existing Agency mortgage loan(s) for Audubon Towers. 5. Subordination of the Agency’s prepayment Deed Restriction and Regulatory Agreement during the term of the new Agency financing, as applicable. 6. Authorization for the Executive Director or any Agency Chief to execute any and all documents necessary to effectuate the above actions.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

HMFA #03449 – ASPEN STRATFORD – APPROVAL OF A DECLARATION OF INTENT - ITEM 6D

Paulette Sibblies-Flagg moved and Kavin Mistry seconded. Approval of a “Declaration of Intent” stating the intention of the Agency, subject to the availability of volume cap, to issue tax- exempt bonds in an estimated amount not to exceed \$13,058,000 in permanent financing for a project known as Aspen Stratford, HMFA #03449 (the “Project”). Approval of this "Declaration of Intent" is intended to establish for tax purposes the eligibility for reimbursement with the proceeds of the Bonds of certain costs paid prior to the issuance of the Bonds (the “Original Expenditures”) associated with pre-bond sale and development work on the Project. By this action, the Board expresses its present intent to issue the Bonds for the Project and its reasonable

expectation that it will reimburse Original Expenditures with proceeds of the Bonds, and declares its intent that the Declaration of Intent be determined to be a declaration of official intent under Treas. Reg. Section 1.150-2 (the “Reimbursement Regulations”) promulgated under the Internal Revenue Code of 1986, as amended (the “Code”).

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kevin Mistry, Elisa Neira

Nay – None

Abstained- None

MULTI FAMILY – FOUR PERCENT TAX CREDIT

HMFA #03395 – BARCLAY STREET HOUSING – APPROVAL OF A MORTGAGE FINANCING COMMITMENT - ITEM 7A

Robert Shaughnessy moved and Kevin Mistry seconded. 1. Approval of a mortgage commitment for an estimated \$12,415,000 in permanent only financing from the Agency Revenue Bond Financing Program for a project known Barclay Street Housing, HMFA #03395/SNHTF #500 (the “Project”), upon the terms and conditions set forth in the RFA. 2. Approval of a subordinate mortgage commitment for an estimated \$1,000,000 in construction and permanent financing from the Special Needs Housing Trust Fund (“SNHTF”) for the Project, upon the terms and conditions set forth below. 3. Approval of a subordinate mortgage commitment for an estimated \$4,500,000 in permanent only financing from the Hospital Partnership Subsidy Pilot Program (“HPSPP”) for the Project, upon the terms and conditions set forth below.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kevin Mistry, Elisa Neira

Nay – None

Abstained- None

CAPITAL MARKETS

Capital Market Items 8A (HMFA #03497 Corinthian Towers) Item 8B (HMFA #03435 Crestbury Apartments) and Item 8C (HMFA #03342A Baldwin Oaks) have been submitted separately for early approval.

HMFA #1388A –WHITLOCK MILLS CONDUIT REVENUE NOTE – APPROVAL OF AN AMENDED CONDUIT RESOLUTION– ITEM 8D

Robert Shaughnessy moved and Kevin Mistry seconded. 1. Approval of the attached Resolution Amending and Supplementing a Resolution dated November 9, 2017 which authorized and directed the execution, delivery, and issuance of the New Jersey Housing and Mortgage Finance Agency’s Multifamily Conduit Revenue Note (Whitlock Mills Project), in a principal amount not to exceed \$26,321,000 and which also approved and authorized other matters in connection therewith.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kevin Mistry, Elisa Neira

Nay – None

Abstained- None

REGULATORY AFFAIRS

HMFA #02977 – HERITAGE VILLAGE AT GALLOWAY– APPROVAL FOR RELEASE OF COMMERCIAL CONDOMINIUM UNIT – ITEM 9A

Dorothy Blakeslee moved and Kavin Mistry seconded. 1. Approval of a release of a portion of the property collateral from the liens of the Conduit Bond Program mortgage, CDBG mortgage, and related regulatory controls with respect to the commercial condominium unit on the first floor of the Heritage Village at Galloway project, known as 288 West White Horse Pike in Galloway Township, Atlantic County (a/ka Block 526, Lot 11.01 on the Galloway Township Tax Map). 2. Authorization for the Executive Director, the Chief of Staff, the Chief Financial Officer, the Chief of Legal and Regulatory Affairs and the Chief of Multi-Family Programs to execute any and all documents necessary to effectuate the above actions.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

HMFA #09332– 329 PARK AVENUE – APPROVAL FOR SUBORDINATION OF AFFORDABLE HOUSING PROGRAM LOAN – ITEM 9B

Zenon Christodoulou moved and Kavin Mistry seconded. 1. Approval of a new or amended subordination agreement in favor of an increased mortgage loan amount from Community Loan Fund of New Jersey, Inc., for an approximate total of \$2,827,566, as further described below. 2. Authorization for the Executive Director, the Chief of Staff, the Chief Financial Officer, the Chief of Legal and Regulatory Affairs and the Chief of Multi-Family Programs to execute any and all documents necessary to effectuate the action requested.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

HMFA #2173/SNHTF #87 –BRIDGE HAVEN SUPPORTIVE HOUSING – APPROVAL FOR A TRANSFER OF PROJECT BY MERGER – ITEM 9C

Robert Shaughnessy moved and Kavin Mistry seconded. 1. Board approval of the transfer of ownership of the Bridge Haven Supportive Housing project, HMFA #2173/SNHTF#87, from AAH of Bergen County, Inc. to Advance Housing, Inc. by merger. 2. Authorization for the Executive Director, Chief Financial Officer, Chief of Legal and Regulatory Affairs, Chief of Multifamily Programs and the Chief of Staff to execute any and all documents necessary to effectuate the above actions.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

FINANCE

APPROVAL OF THE AGENCY’S FISCAL YEAR 2021 BUDGET – ITEM 10A

Robert Shaughnessy moved and Kavin Mistry seconded. 1. Approval of the Fiscal Year 2021 Budget by the Agency Board.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None -

APPROVAL OF THE AGENCY’S INDEPENDENT AUDITOR CONTRACT – ITEM 10B

Robert Shaughnessy moved and Kavin Mistry seconded. 1. Authorization to appoint CliftonLarsonAllen LLP, (CLA) as the Agency’s independent certified public accounting firm to perform the annual financial audit of the Agency and other auditing and related services for fiscal year ended December 31, 2020, through the fiscal year ended December 31, 2024.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

TAX CREDIT

APPROVAL OF A WAIVER OF THE LIMITS ON TOTAL DEVELOPMENT COST FOR PROJECTS AWARDED 9% TAX CREDITS THROUGH THE CLOSE OF THE CALENDAR YEAR 2020 – ITEM 11A

Paulette Sibblies – Flagg moved and Kavin Mistry seconded. 1. Approval of a waiver of limits on Total Development Costs as set forth at N.J.A.C. 5:80-33.4(a), 33.5(a), 33.6(a), 33.7(a) and 33.8(a)2 as a result of the COVID-19 pandemic for 9% projects awarded through the close of calendar year 2020.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

OTHER BUSINESS

RESOLUTION OF APPRECIATION FOR RETIRING STAFF – ITEM 12A

Zenon Christodoulou moved and Paulette Sibblies-Flagg seconded.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

APPOINTMENT OF EXECUTIVE DIRECTOR – ITEM 12B

Robert Shaughnessy moved and Kavin Mistry seconded. 1. Approval of the appointment of Melanie R. Walter as Executive Director of the New Jersey Housing and Mortgage Finance Agency, effective January 1, 2021, in accordance with NJSA 55:14k-5j. 2. Approval of the election of a Secretary/Treasurer for the New Jersey Housing and Mortgage Finance Agency, in accordance with NJSA 55:14k-4n.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

MOTION TO ADJOURN

Dorothy Blakeslee moved and Robert Shaughnessy seconded a Motion to Adjourn at 11:08 a.m.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

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BOARD MEETING
OF THE
NEW JERSEY HOUSING AND MORTGAGE FINANCE AGENCY**

December 10, 2020

- MEMBERS:
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 - *** Robert Shaughnessy, Assistant Deputy Director, Department of Treasury (representing Elizabeth Maher Muoio, State Treasurer)
 - **** Paulette Sibblies -Flagg, Administrator of Accreditation, Department of Banking and Insurance (representing Marlene Caride, Commissioner, Department of Banking and Insurance)
 - *****Elisa Neira, Deputy Commissioner (representing Carole Johnson, Commissioner, Department of Human Services)

Dorothy Blakeslee
Zenon Christodoulou

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Darryl Applegate, Director of Regulatory Affairs
Gloria Mehnert, Paralegal III
Joel Finkelstein, Legal Research Analyst II

OTHERS

PRESENT:

George Loeser, Deputy Attorney General, Attorney General's Office
Rudy Rodas, Assistant Counsel, Governor's Authority Unit

MEMBERS

OF THE PUBLIC

Bob Guarasci, NJCDC
Jeffery Feld, Jeffery Feld, Esq.
Tracee Battis, Project Freedom Inc.

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- **** Letter of November 2, 2018, designating Elisa Neira to represent, Carole Johnson, Commissioner, Department of Human Services

The following Capital Market Items 8A (HMFA #03497 Corinthian Towers) Item 8B (HMFA #03435 Crestbury Apartments) and Item 8C (HMFA #03342A Baldwin Oaks) have been excerpted from the December 10th, 2020 board meeting and submitted for early approval.

CAPITAL MARKETS

HMFA #03395 – CORINTHIAN TOWERS– APPROVAL OF CONDUIT BOND DOCUMENTS – ITEM 8A

Dorothy Blakeslee moved and Kavin Mistry seconded. Approval of the attached Resolution Authorizing and Directing the Execution, Delivery, Issuance and Sale of the New Jersey Housing and Mortgage Finance Agency’s Multifamily Conduit Revenue Note (Corinthian Towers), in an aggregate principal amount not to exceed \$28,600,000 and for the authorization and approval of a forward lending agreement and other related documents in connection with the contemplated issuance, and Authorizing Other Matters in Connection Therewith (the “Resolution”).

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

HMFA #03435 – CRESTBURY APARTMENTS– APPROVAL OF CONDUIT BOND DOCUMENTS – ITEM 8B

Paulette Sibblies-Flagg moved and Kavin Mistry seconded. Approval of the attached Resolution Authorizing and Directing the Execution, Delivery, Issuance and Sale of the New Jersey Housing and Mortgage Finance Agency’s Multifamily Conduit Revenue Bonds (Crestbury Apartments), in an aggregate principal amount not to exceed \$48,731,100 and authorizing and approving the execution and delivery of a Trust Indenture and Related Instruments and authorizing other matters in connection therewith.

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kavin Mistry, Elisa Neira

Nay – None

Abstained- None

HMFA #03342A –BALDWIN OAKS – APPROVAL OF AMENDMENTS TO THE CONDUIT BOND DOCUMENTS – ITEM 8C

Dorothy Blakeslee moved and Kevin Mistry seconded. Approval of the attached Resolution Authorizing and Directing the Execution, Delivery, Issuance and Sale of the New Jersey Housing and Mortgage Finance Agency’s Multifamily Conduit Revenue Note (Baldwin Oaks Project), in an aggregate principal amount not to exceed \$43,392,000; and Authorizing and Approving the Execution and Delivery of a Funding Loan Agreement, a Project Loan Agreement, and Related Documents and Authorizing Other Matters in Connection Therewith (the “Resolution”).

Aye – Lt Governor Sheila Oliver, Robert Shaughnessy, Paulette Sibblies-Flagg, Zenon Christodoulou, Dorothy Blakeslee, Kevin Mistry, Elisa Neira

Nay – None

Abstained- None



RECEIVED
DEC 07 2018
EXECUTIVE DIRECTOR

PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 080
TRENTON NJ 08625-0080

GURBIR S. GREWAL
Attorney General

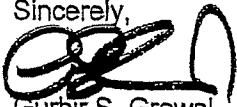
December 4, 2018

Sheila Y. Oliver, Lieutenant Governor
Chair
New Jersey Housing and Mortgage Finance Agency
637-South Clinton Avenue
P.O. Box 18550
Trenton, New Jersey 08650-2085

Dear Lieutenant Governor Oliver:

I am writing to appoint my designee to serve on the board of the New Jersey Housing and Mortgage Finance Agency (the "Agency").

I hereby appoint Susan K. Fischer, Assistant Attorney General as my designee to serve on the board of the Agency. AAG Fischer is authorized to represent me in my absence at the meetings of the Agency, to vote in my stead, and to otherwise act on my behalf. In the event of AAG Fischer's absence, Aimee Manocchio Nason, Deputy Attorney General is authorized to represent me in my absence at the meetings of the Agency, to vote in my stead, and to otherwise act on my behalf. In the event of the absence of AAG Fischer and DAG Manocchio Nason, Kavin K. Mistry, Assistant Attorney General & Deputy Director, Division of Law is authorized to represent me in my absence at the meetings of the Agency, to vote in my stead, and to otherwise act on my behalf.

Sincerely,

Gurbir S. Grewal
Attorney General

- c: Michelle L. Miller, Director, Division of Law
- Elissa Westbrook Smith, Chief of Staff, Division of Law
- Kavin K. Mistry, Deputy Director, Division of Law
- Susan K. Fischer, Assistant Attorney General
- Aimee Manocchio Nason, Deputy Attorney General
- Jonathan Garelick, Deputy Chief of Staff, Office of the Attorney General
- Charles Richman, Executive Director, NJHMFA





State of New Jersey
Office of the State Treasurer
PO BOX 002
TRENTON NJ 08625-0002

PHILIP D. MURPHY
Governor
Sheila Y. Oliver
Lt. Governor

Elizabeth Maher Muoio
Acting State Treasurer

January 19, 2018

Claudia Lovas, Acting Executive Director
NJ Housing and Mortgage Finance Agency
637 South Clinton Avenue
PO Box 18550
Trenton, NJ 08650

Dear Acting Executive Director Lovas:

I hereby designate Robert Shaughnessy, Department of Treasury to act as my permanent designee at all the meetings of the New Jersey Housing and Mortgage Finance Agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Maher Muoio".

Elizabeth Maher Muoio
Acting State Treasurer



State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF THE COMMISSIONER

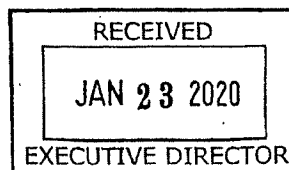
PO BOX 325

TRENTON, NJ 08625-0325

TEL (609) 292-7272

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor



MARLENE CARIDE
Acting Commissioner

January 17, 2020

Charles A Richman, Executive Director
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
PO Box 18550
Trenton, NJ 08650

Re: NJ HMFA Board Meeting Designee

Dear Mr. Richman:

My designee for the New Jersey Housing Mortgage and Finance Agency Board meetings is Paulette Sibblies-Flagg of the Division of Banking.

Ms. Sibblies-Flagg can be reached at paulette.sibblies-flagg@dobi.nj.gov, telephone (609) 940-7347.

Very truly yours,

Marlene Caride
Commissioner

cc: Justin Zimmerman, Chief of Staff
Richard Mumford, Director of Banking
Paulette Sibblies-Flagg, Division of Banking



**State of New Jersey
Department of Human Services**

P.O. BOX 700
TRENTON NJ 08625-0700

PHILIP D. MURPHY
Governor

Carole Johnson
Commissioner

Sheila Y. Oliver
Lt. Governor

November 2, 2018

Charles A. Richman
Executive Director
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
P.O. Box 18550
Trenton, NJ 08650-2085

Dear Mr. Richman:

Please be advised that I have designated Elisa Neira as the Department of Human Services' representative for the New Jersey Housing and Mortgage Finance Agency Board. Should Ms. Neira not be available, Steve Shultz will serve as the alternate.

Meeting materials should be sent to the following mailing address:

Elisa Neira
NJ Department of Human Services
P.O. Box 700
Trenton, New Jersey 08625
609-984-5550 – Office
Elisa.Neira@dhs.state.nj.us

Please let me know if you have any questions or need further information. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carole Johnson".

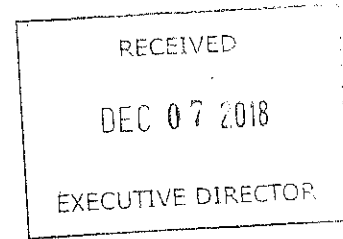
Carole Johnson
Acting Commissioner

CJ/lk

c: Jill Shortway Ippolito
Elisa Neira
Steven Shultz
Lynn Kotch



State of New Jersey
OFFICE OF THE ATTORNEY GENERAL
DEPARTMENT OF LAW AND PUBLIC SAFETY
PO Box 080
TRENTON NJ 08625-0080



PHILIP D. MURPHY
Governor

SHEILA Y. OLIVER
Lt. Governor

GURBIR S. GREWAL
Attorney General

December 4, 2018

Sheila Y. Oliver, Lieutenant Governor
Chair
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
P.O. Box 18550
Trenton, New Jersey 08650-2085

Dear Lieutenant Governor Oliver:

I am writing to appoint my designee to serve on the board of the New Jersey Housing and Mortgage Finance Agency (the "Agency").

I hereby appoint Susan K. Fischer, Assistant Attorney General as my designee to serve on the board of the Agency. AAG Fischer is authorized to represent me in my absence at the meetings of the Agency, to vote in my stead, and to otherwise act on my behalf. In the event of AAG Fischer's absence, Aimee Manocchio Nason, Deputy Attorney General is authorized to represent me in my absence at the meetings of the Agency, to vote in my stead, and to otherwise act on my behalf. In the event of the absence of AAG Fischer and DAG Manocchio Nason, Kavin K. Mistry, Assistant Attorney General & Deputy Director, Division of Law is authorized to represent me in my absence at the meetings of the Agency, to vote in my stead, and to otherwise act on my behalf.

Sincerely,

Gurbir S. Grewal
Attorney General

- c: Michelle L. Miller, Director, Division of Law
Elissa Westbrook Smith, Chief of Staff, Division of Law
Kavin K. Mistry, Deputy Director, Division of Law
Susan K. Fischer, Assistant Attorney General
Aimee Manocchio Nason, Deputy Attorney General
Jonathan Garelick, Deputy Chief of Staff, Office of the Attorney General
Charles Richman, Executive Director, NJHMFA





State of New Jersey
Office of the State Treasurer
PO BOX 002
TRENTON NJ 08625-0002

PHILIP D. MURPHY
Governor
Sheila Y. Oliver
Lt. Governor

Elizabeth Maher Muoio
Acting State Treasurer

January 19, 2018

Claudia Lovas, Acting Executive Director
NJ Housing and Mortgage Finance Agency
637 South Clinton Avenue
PO Box 18550
Trenton, NJ 08650

Dear Acting Executive Director Lovas:

I hereby designate Robert Shaughnessy, Department of Treasury to act as my permanent designee at all the meetings of the New Jersey Housing and Mortgage Finance Agency.

Sincerely,

A handwritten signature in black ink, appearing to read "Elizabeth Maher Muoio".

Elizabeth Maher Muoio
Acting State Treasurer



State of New Jersey

DEPARTMENT OF BANKING AND INSURANCE

OFFICE OF THE COMMISSIONER

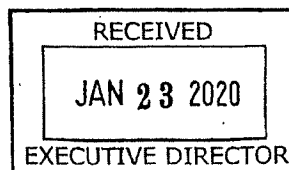
PO BOX 325

TRENTON, NJ 08625-0325

TEL (609) 292-7272

PHIL MURPHY
Governor

SHEILA OLIVER
Lt. Governor



MARLENE CARIDE
Acting Commissioner

January 17, 2020

Charles A Richman, Executive Director
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
PO Box 18550
Trenton, NJ 08650

Re: NJ HMFA Board Meeting Designee

Dear Mr. Richman:

My designee for the New Jersey Housing Mortgage and Finance Agency Board meetings is Paulette Sibblies-Flagg of the Division of Banking.

Ms. Sibblies-Flagg can be reached at paulette.sibblies-flagg@dobi.nj.gov, telephone (609) 940-7347.

Very truly yours,

Marlene Caride
Commissioner

cc: Justin Zimmerman, Chief of Staff
Richard Mumford, Director of Banking
Paulette Sibblies-Flagg, Division of Banking



**State of New Jersey
Department of Human Services**

P.O. BOX 700
TRENTON NJ 08625-0700

PHILIP D. MURPHY
Governor

Carole Johnson
Commissioner

Sheila Y. Oliver
Lt. Governor

November 2, 2018

Charles A. Richman
Executive Director
New Jersey Housing and Mortgage Finance Agency
637 South Clinton Avenue
P.O. Box 18550
Trenton, NJ 08650-2085

Dear Mr. Richman:

Please be advised that I have designated Elisa Neira as the Department of Human Services' representative for the New Jersey Housing and Mortgage Finance Agency Board. Should Ms. Neira not be available, Steve Shultz will serve as the alternate.

Meeting materials should be sent to the following mailing address:

Elisa Neira
NJ Department of Human Services
P.O. Box 700
Trenton, New Jersey 08625
609-984-5550 – Office
Elisa.Neira@dhs.state.nj.us

Please let me know if you have any questions or need further information. Thank you.

Sincerely,

A handwritten signature in blue ink, appearing to read "Carole Johnson".

Carole Johnson
Acting Commissioner

CJ/lk

c: Jill Shortway Ippolito
Elisa Neira
Steven Shultz
Lynn Kotch

Jeffrey S. Feld, Esq.
11 Alexander Lane
Short Hills, New Jersey 07078
973.476.7309 (tele)
hardwaredad@aol.com

December 8, 2020

(crichman@njhmfa.gov)
Charles A. Richman, Executive Director
NJHMFA
P.O. Box 18550
Trenton, New Jersey 08650-2085

Re: NJHMFA December 10, 2020 at 9:00 AM Virtual Public Meeting

Dear NJHMFA Executive Director Richman:

I respectfully request that this letter (and exhibit) be distributed to all NJHMFA Board Members prior to the December 10, 2020 virtual public meeting. In addition, I respectfully request that receipt and distribution of this letter be acknowledged in the official December 10, 2020 virtual public record prior to the NJFMA Board considering and taking any official action on any long term tax exemption related agenda item.

I incorporate herein by reference all my prior communications to the NJHMFA concerning the invalidity of all post April 17, 1992 non-urban renewal entity NJHMFA long term tax exemptions under State law.

I reserve my right to appear and to participate orally during the December 10, 2020 virtual NJHMFA public meeting and to supplement this letter.

“Our Government is the potent, the omnipresent teacher. For good or for ill, it teaches the whole people by its example. Crime is contagious. If the Government becomes a lawbreaker, it breeds contempt for law; it invites every man to become a law unto himself; it invites anarchy.”

Justice Louis Brandeis, *Olmstead v. United States*, 277 U.S. 438 (1928)

“‘Deliberate indifference’ is a state of mind equivalent to ‘recklessly disregarding a known and substantial risk.’”

**United States Supreme Court Justice Sotomayor
Valentine v. Cullier, 592 U.S. __ (Nov. 16, 2020) (Dissent)**

“Government is not free to disregard the First Amendment in times of crisis. . . . Even if the Constitution has taken a holiday during this pandemic, it cannot become a sabbatical. . . . [W]e may not shelter in place when the constitution is under attack. Things never go well when we do.”

**United States Supreme Court Justice Neil Gorsuch
Roman Catholic Diocese of Brooklyn v. Cuomo, 592 U.S. __ (Nov. 25, 2020) (Concurrence)**

“There is no requirement that a person must be aware that the conduct is criminal. It is enough that he knew he had a legal duty and violated it-in other words, that he acted unlawfully.”

USA v. Gilmore, No. 20-1234 (3d Cir. Dec. 4, 2020)

“As someone who spent an entire career pursuing facts, investigating corruption and trying to hold public officials accountable, I must say that what is oozing from our body politic these days, and has been for the last four years-and what is being sanctioned across the nation by a legion of enablers, vocal and silent-is some of the most fundamentally corrosive and corrupting behavior I have ever seen.”

Lee Seglem, retired executive director of the New Jersey State Commission of Investigation

“Op-Ed: Politics- The Silent Republican” The Sunday Star Ledger (Dec. 6, 2020)

“By requiring that businesses adhere to higher standards of care for their clients, we are ensuring that our residents are protected from sloppy practices that cause real damage to their financial well being and our economy.”

Press Release: “AG Grewal Announces New Jersey’s Participation in 86.3 Million Consumer Financial Protection Settlement With Nationstar Mortgage” (Dec. 7, 2020)

I submit this letter on behalf of myself as an Essex County taxpayer and as an officer of the court. I am no stranger to this fiduciary body. I seek enhanced transparency, accountability and adherence to the rule of law. I also seek virtual civic participation uniformity throughout the State. Technology is a great “watchdog” equalizer. It allows one to access and to compare all underlying material transactional documents relating to stealth taxpayer subsidies. It allows one to spot new drafting templates. It allows one to monitor municipal regulators.

These are very strange times. Mysterious circumstances have brought us together. My questions should not be dismissed out-of-hand. I am not an obstructionist. I have offered my developed expertise to cure and to problem solve repetitive negligent, reckless and intentional statutory errors and omissions. Ongoing federal investigations and guilty pleas cannot be ignored. The ongoing dispute over the NJHMFA I administrative appellate record and the Appellate Division request to review all disputed public records in-camera cannot be ignored.

Moreover, on or about November 18, 2020, the State Division of Local Government Services issued and posted the attached Long Term Tax Exemption Handbook. This Handbook concurred with my long term tax exemption analysis. This Handbook guides NJHMFA Related Finance Board Long Term Tax Exemption Official Action. Accordingly, as of November 18, 2020, implicit in all NJHMFA agendas is the NJHMFA representation and warranty that all underlying long term tax exemptions comply with State law and the November 18, 2020 Long Term Tax Exemption Handbook.

This Board is a creation of State law. This Board is a fiduciary of a public trust. This Board cannot ignore intervening binding and precedential case law and persuasive New Jersey Law Journal editorials. See, *Johnson & Johnson v. Director, Division of Taxation*, __N.J. __ (Dec. 7, 2020) (LaVecchia dissenting as to majority’s misapplication of basic rules of statutory construction); *IMO Application for Medical Marijuana Alternate Treatment Center*, __N.J. Super.__ (App. Div. Nov. 25, 2020) (Fisher, together with Moynihan & Gummer, finding agency scoring system produced arbitrary and unexplained results and therefor vacating final agency decision and remanding for further proceedings); Editorial: “The Administrative State: Still Quasi After All These Years-But Not For Long” *New Jersey Law Journal*, 226 N.J.L.J. 3078 (Dec. 7, 2020); Editorial: “NJ Supreme Court Should Rely on NJ Constitution” 226 N.J.L.J. 3018 (Nov. 30, 2020); Greg Land “Judge Certifies Inmate Phone Class Action, Saying Defense “Poisoned” the Litigation,” *New Jersey Law Journal*, 226 N.J.L.J. 3060 (Dec. 7, 2020).

It is in this context that I submit these new and open questions.

Preliminary

Open Virtual Meeting Civic Participation Procedural Due Process Questions

1. Has the NJHMFA amended its meeting by-laws and adopted a virtual civic participation policy and procedure?
2. Are State Executive Branch Entities-creations of State law and fiduciaries of a public trust-exempt from entertaining public questions and comments prior to taking official action on posted and published agenda listed items?
3. Do State Executive Branch Entities-creations of State law and fiduciaries of a public trust-have a constitutional, statutory or common law duty to respond to pertinent agenda item questions and comments prior to taking official action on the agenda item?
4. Why does the NJHMFA refuse to disclose the name of the project’s “housing sponsor” and whether the “housing sponsor” is an urban renewal entity in the agenda item caption?
5. Why isn’t the proposed amount of a Bond Issuance disclosed in the Agenda Caption?
6. If a Project is listed as an agenda item, under what authority are the request for action memo, the application, the housing sponsor’s formation documents, the underlying long term tax exemption financial agreement, the municipal approval legislation and the written long term tax exemption net benefits fiscal impact study exempt from production under the Open Public Records Act, the Open Public Meetings Act and the Common Law Right to Access?
7. Why does the NJHMFA deny stakeholders virtual prior meeting access links to the underlying agenda item application and transactional documents?
8. Does the NJHMFA virtual access denial policy deny stakeholders equal protection and treatment under the law?
9. If local municipalities and counties are providing 48 hours prior virtual access to agenda items, why are State executive branch entities-also creatures of State law and fiduciaries of a public trust-excluded and exempted from the same 48 hours prior virtual access policies and procedures?
10. Does the NJHMFA’s current policy in denying prior meeting virtual access to the Agenda Packet violate the terms and spirit of the due process clauses of our Federal and

- State Constitutions, the Open Public Meetings Acts, the Open Public Records Act and DLGS issued virtual meeting guidelines?
11. Is this current access denial policy a reasonable restriction of political free speech under our federal and state constitutions?
 12. How does this prior virtual access denial policy promote our State public policies in favor of transparency, a robust marketplace of competing ideas and informed civic participation?
 13. Does the denial of immediate virtual access to all agenda items violate the terms and spirit of the April 2010 Feld V Order enjoining the City of Orange Township from denying stakeholders immediate access to the Agenda Packet and Bill List prior to the local governing board meeting?
 14. Does this prior denial access rule contradict the terms and spirit the statutory notice and access rules governing local municipal land use boards?
 15. Has the NJHMFA obtained an updated written legal opinion as to the validity of its virtual access denial policy under State law, including Local Finance Notice 2020-21?
 16. Does our Attorney General have an inherent conflict of interest on this issue?

Substantive Long Term Tax Exemption Issues

Post November 18, 2020 Questions

17. Were each NJHMFA Board Member provided with a copy of the Long Term Tax Exemption Handbook issued and posted by the State Division of Local Government Services on or about November 18, 2020?
18. Do all the underlying agenda item long term tax exemptions comply with this Long Term Tax Exemption Handbook?
19. Does a municipality and redeveloper have the discretion to contractually agree to a rate of return lower than the above market statutory rate of return?
20. Pursuant to the terms of the underlying long term tax exemption financial agreements, will any portion of the revenues flow to the local school systems?
21. Does each application comply with the Long Term Tax Exemption Handbook issued November 18, 2020?
22. Was a written net benefits fiscal impact study attached to each application?
23. Is the internal rate of return used to calculate the net benefits fiscal impact lower than the statutory long term tax rates net profits/net revenue's statutory rate?
24. Based upon current 30 year long term US Treasury interest rates, is it fair and equitable for Opportunity Zone Fund investors whose long term capital gains may be zero to obtain a guaranteed 12% rate of return at the expenses of distressed municipal taxpayers?
25. Are any portion of the proposed bonds taxable?
26. Will the bonds be sold in a private or public sale?
27. Will the bonds be sold pursuant to a municipal offering statement?
28. Who are the appointed bond counsel in each transaction?
29. Are any projects located within a duly designated Opportunity Zone?
30. Are any projects relying upon financing from an Opportunity Zone Fund?

Open and Outstanding November 18, 2020 Questions

31. Whether a municipality-a creation of State law-has the post CY 2002 authority to approve a discretionary legislative non-urban renewal entity long term tax exemption by resolution and not by ordinance? See, Millennium Tower Urban Renewal v. Mun. Council of Jersey City, 343 N.J. Super. 367 (Law Div. 2001).
32. Whether constitutional required long term tax exemption land tax credit and profit limitation language must be contained in any non-urban renewal entity NJHMFA long term tax exemption financial agreement approved by the municipality? Town of Secaucus v. City of Jersey City, 20 NJ Tax 384 (Tax Ct 2002).
33. When did the NJHMFA approve the OAHS Netherwoods non-urban renewal entity NJHMFA long term tax exemption financial agreement template?
34. Whether my pending non-urban renewal entity NJHMFA long term tax exemption litigation and the NJHMFA receipt of a federal subpoena in February 2019 must be disclosed in the Multi-Family Pool Bond related municipal capital markets disclosure materials? . In re Approval of a Financing Commitment for the Project Known as Norman Towers, HMFA #03451, A- 4583-19 (“NJHMFA I”); Jeffrey S. Feld, et al v. City of Newark, ESX-L-26117-19 (“Newark II”).

Accordingly, I respectfully request that NJHMFA approval or public funding be subject to: (i) a representation and warranty that all underlying long term tax exemption financial agreements comply with the Long Term Tax Exemption Handbook issued on or about November 18, 2020, (ii) adequate disclosures of my pending NJHMFA I appeal, Newark II and the February 2019 federal subpoena and (iii) post meeting written responses to my basic underlying non-urban renewal entity long term tax exemption due diligence questions contained herein.

Should you require additional information and supporting documentation, please feel free to contact me.

Respectfully yours,

/s/ Jeffrey S. Feld

Jeffrey S. Feld

Enc.

cc: Katherine Brennan, NJHMFA Chief of Staff (kbrennan@njhmfa.gov)
Laura Shea, NJHMFA Chief of Legal & Regulatory Affairs (lshea@njhmfa.gov)
Tanya Hudson-Murray, NJHMFA Director of Multi-Family Programs and Lending (thudson-murray@njhmfa.gov)
Daryl Applegate, NJHMFA Director of Regulatory Affairs (dapplegate@njhmfa.gov)
Anne H. Hamlin, NJHMFA Director of Tax Credits (ahamlin@njhmfa.gov)
Joseph Heath, NJHMFA Director of Capital Markets & Bond Compliance (jheath@njhmfa.gov)
Vladimir Palma, Esq., NJHMFA I/ Newark II DAG (Vladimir.Palma@law.njoag.gov)
George Loesser, Esq., NJHMFA I DAG (george.loesser@law.njoag.gov)
Aimee Manocchio-Nason, Esq., NJHMFA I DAG (aimee.manocchio-nason)

@law.njoag.gov)

Kavin Mistry, Esq., NJHMFA I DAG (kavin.mistry @law.njoag.gov)



MUNICIPAL TAX ABATEMENT HANDBOOK

**State of New Jersey
Philip D. Murphy, Governor**

**Department of Community Affairs
Lt. Governor Sheila Y. Oliver, Commissioner**

**Division of Local Government Services
Melanie R. Walter, Director
101 S. Broad Street
Trenton, NJ 08625
P.O. Box 803
Trenton, NJ 08625-0803**

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INTRODUCTION

The purpose of this first edition of the Division of Local Government Services Municipal Tax Abatement Handbook is to equip local officials to better evaluate and, when appropriate, award municipal tax abatements that foster economic development, enhance the municipal tax base, expand community resources, and advance other public policy objectives. To accomplish this, this document presents a variety of useful tips and strategies for local governments considering municipal tax abatements. It also includes some municipal ordinance and financial agreement templates and sample language, as well as a list of key considerations and questions to ask. To frame the issue, it includes an overview of the short- and long-term tax exemption law itself. This information is coupled with a series of best practices and observations provided by the municipal technical advisors at the Division of Local Government Services. We hope that it helps local officials implement municipal tax abatements and PILOTs in a legally compliant manner that maximizes local value and provides for the best interests of the community and its residents.

In 2010, the Office of the State Comptroller prepared [*A Programmatic Examination of Municipal Tax Abatements*](#) (OSC Report). This report is crucial reading for municipal officials evaluating potential tax abatements. This excellent guide summarizes the law and draws upon best practices for tax abatements from around the state.

In addition, [*The Redevelopment Handbook: A Guide to Rebuilding New Jersey's Communities, 2nd Edition*](#) (handbook) is also critical information for municipal practitioners to internalize prior to embarking on redevelopment and tax abatements. The Department of Community Affairs and the NJ Chapter of the American Planning Association created this handbook to outline the redevelopment planning process and the steps for implementing redevelopment (including the selection of a redeveloper and exploring tax exemptions and abatements).

The Municipal Tax Abatement Handbook expands on some of the information provided in the above documents, equipping local officials with practical strategies for the exploration of abatements, establishment of the municipal redevelopment team, and a framework for their roles in the administration and oversight of tax abatements. This document then pairs with the rest of our Tax Abatement Toolkit, which offers “plug and play” analytical tools and a public data module that allows local officials to vet and establish baseline numbers for different standard categories of municipal tax abatement project proposals to better inform their holistic evaluation of the project’s potential benefits.

The cornerstone of this analytical suite is the Division of Local Government Services’ new [*PILOT Financial Agreement Forecast \(PFAF\)*](#). The PFAF is a spreadsheet tool that can be used to evaluate the net cost to the municipality of any given PILOT scenario. All a local official needs to do is input the details of a PILOT proposal to generate this baseline forecast. The PFAF takes budget data each municipality provides to the Division through the FAST system and calculates a baseline cost of services from the municipality associated with the proposed project. It then compares it to the financial benefits from the PILOT. This allows local officials to understand the level of local tax and operational subsidy being provided to the project, which can inform their balancing of priorities during consideration of each proposal.

The new DLGS statewide [PILOT Database and Viewer](#), then allows local units to peruse existing PILOT terms across the state, helping them understand the universe of terms that exists, and make comparisons across their county, region, and the state. This is a vital source of information for local units seeking to understand the marketplace.

BASICS OF THE TAX EXEMPTION AND ABATEMENT LAWS

The Long-Term Tax Exemption Law (N.J.S.A. 40A:20.1 et seq.) empowers municipalities to grant tax exemptions to private entities undertaking redevelopment and housing projects. The exemptions may continue for a term of up to 30 years from project completion or up to 35 years from the execution of the tax exemption agreement.

The Five-Year Exemption and Abatement Law (N.J.S.A. 40A:21.1 et seq.) authorizes municipalities to grant short-term tax abatements and exemptions for home improvements, commercial and industrial improvements, and the improvement or conversion of multiple dwellings.

The NJ Economic Opportunity Act of 2013 (N.J.S.A. 52:27D-489p et seq.) also authorizes tax exemptions, within the Garden State Growth Zone, under certain circumstances. The “Garden State Growth Zone” or “growth zone” encompasses:

1. “The four New Jersey cities with the lowest median family income based on the 2009 American Community Survey from the US Census, (Table 708. Household, Family, and Per Capita Income and Individuals, and Families Below Poverty Level by City: 2009)”;
2. “A municipality which contains a Tourism District as established pursuant to section 5 of N.J.S.A. 5:12-219 and regulated by the Casino Reinvestment Development Authority”;
3. An aviation district, which “means all areas within the boundaries of the ‘Atlantic City International Airport,’ established pursuant to N.J.S.A. 27:25A-24, and the Federal Aviation Administration William J. Hughes Technical Center and the area within a one-mile radius of the outermost boundary of the ‘Atlantic City International Airport’ and the Federal Aviation Administration William J. Hughes Technical Center.”

Under N.J.S.A. 52:27D-489s(b), “every Garden State Growth Zone Development Entity that owns real property, or leases real property for a period of not less than 30 years, within a Garden State Growth Zone, and that undertakes the clearance, re-planning, development, or redevelopment of such property is hereby granted an exemption on improvements to such eligible property for any new construction, improvements, or substantial rehabilitation of structures on real property for a period of 20 years from receiving a final Certificate of Occupancy, provided however, that a municipality located within the Garden State Growth Zone shall, by ordinance, opt-in to such program within 90 calendar days of the enactment [of N.J.S.A. 52:27D-489p et seq.]”.

Also, an owner located within a Garden State Growth Zone that does not qualify as a Garden State Growth Zone Development Entity that performs any “new construction, improvements, or substantial rehabilitation improvements” is entitled to an exemption on the improvements for a period of five years, per N.J.S.A. 52:27D-489s(e).

Municipalities that have opted for designation as a Garden State Growth Zone must read and understand the specific requirements of this law and its impact on tax abatements.

HMFA PROJECTS AND TAX EXEMPTION CONSIDERATIONS

Projects that seek approval and funding through the New Jersey Housing and Mortgage Finance Agency (HMFA) are subject to additional requirements. HMFA has a model PILOT agreement and a suggested percentage of annual gross revenue of 6.28%, which establishes the agency's project recommendation and baseline for federally subsidized affordable housing development projects. However, municipalities should also complete an analysis of the project as described herein when making determination as to the value of the PILOT.

Some HMFA-affiliated tax credit projects use the percentage of annual gross revenue paid to the municipality as a factor in determining points given to a project. A point system is used to rank projects for the receipt of tax credits.

Rather than relying exclusively on the developer description regarding the limitations of these factors, it is strongly recommended that a municipality consult directly with HMFA for a complete understanding of their program standards.

ESTABLISHING YOUR MUNICIPAL TAX ABATEMENT POLICY THROUGH A MUNICIPAL ORDINANCE

Developing a governing ordinance is an essential preliminary step for any local unit contemplating issuing tax exemptions.

The tax exemption laws exist to incentivize private developers to invest in the development of a property or area of a municipality in a manner that may not be economically viable without a financial incentive. The abatement reflects the local unit's policy interest in advancing economic development at the abated site, and its willingness to sacrifice some tax revenue in the short to mid-term in exchange for attaining those policy goals. This is a delicate balance because too little subsidy may cause a municipality to fail to realize the development objective, but too much may unduly burden other taxpayers who must offset the subsidy through their own tax dollars.

Understanding the scope and cost of municipal services associated with a new development project can help to ensure this balance is achieved. Therefore, each municipality should consider what municipal services are impacted by a given project as part of its analysis of the abatement proposal. This tells the municipality how its budget appropriations may be altered by the project's completion.

Additionally, each municipality should evaluate the advantages the project proposal will yield. Most projects that receive abatements bring a variety of financial and development advantages to their host community. The annual service charge or payment in lieu of taxes (PILOT) help to cover the cost of municipal services described above but are less than what would be obtained through conventional taxation. Meeting other local needs, such as spurring economic development, providing affordable housing, expanding public transportation options, or creating new jobs or essential services access may more than compensate for the financial cost of a project. Considering

the value of these advantages and balancing them with the financial analysis to ensure the municipality is receiving a net benefit from each project is crucial to full evaluation of an abatement proposal. Setting forth the local unit's development objectives and methodology by ordinance will help to guide this analysis in a consistent and effective manner.

Developing an ordinance outlining the process for reviewing and granting or denying tax abatements allows the municipality to investigate and determine the standards they want to employ in determining whether to grant a tax abatement in advance of a time sensitive application's presentation. By understanding the law and contemplating its implications for the municipality before any specific project presents itself, a municipality can better equip itself to evaluate each project and ensure it will align with local interests. This preparation can also signal to potential developers a municipality's readiness to partner in a qualifying project, thereby jump-starting crucial redevelopment conversations.

A municipal tax abatement policy ordinance should include:

1. Application requirements to apply for a tax exemption:
 - a. Property details – ownership, survey, etc.
 - b. Statement of reasons for seeking a tax exemption.
 - c. Description of the benefits to the community if granted.
 - d. Detailed description of the improvements to be made to the property, including architectural and site plans and an estimate of total cost certified by the architect or engineer.
 - e. Statement disclosing the sources and uses of capital to fund the project.
 - f. A fiscal plan and cash flow statement for the project outlining, among other things, the purchase price of the site and improvements, detailed mortgage payouts, construction loan payouts and any other payments associated with the sale and prior owner, schedule of annual gross revenue, estimated expenditures for operation and maintenance, payments of interest, amortization of debt and reserves and payments to the municipality.
 - g. Detailed construction schedule with milestone dates.
 - h. Statement of fair market value of the property when filing the application and estimate of fair market value upon project completion.
 - i. Statement of the current and projected tax levy.
 - j. Disclosure of ownership or interest in the property.
 - k. Estimate of the number and types of temporary and permanent jobs.
2. Application and other fees.
3. Composition of the municipal Internal Review Committee and its process for making recommendations for tax exemptions.
4. Outline of factors the internal review committee shall take into consideration, which will likely include:
 - a. Whether the project will result in housing and what percentage of housing the municipality requires to be affordable.
 - b. Comparison of estimated PILOT payments versus conventional taxes on the expected property value at completion.
 - c. Estimated cost of providing municipal services to the project.

- d. Project compliance with the municipal master plan, zoning ordinances, and redevelopment plans.
- e. Degree of economic necessity for the tax exemption.
- f. Whether the project meets or exceeds economic development objectives and potential for the site.
- g. Whether the project may serve as a catalyst or anchor in a targeted region.
- h. Extent to which improvements will enhance the health and welfare of the municipality.
- i. The property assessment at the time of application and the estimated property assessment after project completion along with the associated tax levies.
- j. Status of current tax payments and other municipal charges or liens for the current property and for any other property in the municipality owned or controlled by the developer.
- k. Whether there are any outstanding property maintenance violations on the property or for any other property in the municipality owned or controlled by the developer.

DEVELOPING AN INTERNAL REVIEW COMMITTEE

Armed with the municipal redevelopment ordinance, which establishes a framework for decision-making, it is strongly recommended that the municipality create an Internal Review Committee to undertake the initial evaluation of any application. This body exists to evaluate developer applications and financial reports, independent financial reports, and other pertinent information, then to decide whether to recommend a tax abatement to the decision-making body.

The Internal Review Committee's composition may vary by municipality, but typically includes a combination of the municipal manager or administrator, the chief finance officer, tax assessor, tax collector, economic development director, housing director, engineer, planner and municipal counsel. In addition, review of the proposal by other departments, such as police, fire, and public works may be warranted to determine if the project conforms to the ordinance and to ensure negotiation and execution of an equitable financial agreement.

The decision of whether and what type and duration of tax abatement may apply to a project should be considered on an individual basis using the specific criteria and processes set forth in the municipal ordinance. Relevant criteria may include:

1. Does the scope, purpose or magnitude of the project meet the municipal redevelopment objectives?
2. What impact will the project have on local property taxes?
3. Is the developer able to secure financing for the project?
4. Is there a significant benefit to the project, as determined through a comprehensive cost benefit analysis that should include consideration of any economic spillover benefits to surrounding areas?
5. Does the estimated assessed value of the redevelopment project, when the current property tax is applied, make the project too expensive to sell or lease in comparison to similar projects within the municipality or within like communities?

6. Will the project cost translate into rents that are not competitive with other projects in the municipality or with surrounding communities?
7. Will the payments in lieu of taxes meet the cost of services provided by the municipality for the project in a manner similar to the tax cost for same services borne by current taxpayers? If not, are the other associated benefits sufficient to warrant this subsidy?
8. What is the minimum tax abatement that can be provided to make the project possible?
9. What duration of tax abatement is appropriate for the project? Municipalities should not assume that all projects require a 30-year tax exemption.

DEVELOPING TAX ABATEMENT FINANCIAL AGREEMENTS

Municipalities are encouraged to develop a standard financial agreement with general provisions that would pertain to every tax abatement that is granted and conform to the standards set forth in the municipality's abatement ordinance. Municipalities should not rely on developers' attorneys to craft this important document. With a standard agreement in hand to protect the municipality's core objectives, the municipality is better equipped to negotiate project specific terms and conditions.

In a typical tax abatement scenario, a municipality will still assess conventional property taxes on the value of the land, and a PILOT is authorized as an alternative to property taxes on the value of the improvement.

Currently, PILOTs may be calculated in one of two ways. The first method allows the municipality to charge up to 2% of the total project cost (TPC). The second method applies a percentage of the project's annual gross revenues (AGR).

Clarifying the municipality's cost associated with the provision of services impacted by development prior to and as part of the financial agreement is also advisable. This includes, for example, determining how much it costs to provide police and other vital services to current property owners and what, if any, of that cost will be altered by and/or should be borne by the proposed redevelopment project.

Within this general framework, the financial agreement should include:

1. Details of improvements to be constructed.
2. Detailed construction schedule which requires the commencement of the construction no later than one year from the date the tax exemption is approved.
3. Term of the financial agreement and tax exemption.
4. Calculation used to determine annual service charge, gross revenue, administrative fee and other financial factors.
5. Commencement of annual service charge and schedule for its payment and/or escalation charges, in accordance with the statute, over the term of the exemption. Statement indicating that the charges shall not decrease during the term of tax exemption even as a result of the annual audit of gross revenue or project cost. Land value to remain under conventional taxation.
6. Municipality pays 5% of annual service charge to county pursuant to N.J.S.A. 40A:20-12.

7. Interest on delinquent payments set at the highest rate permissible under NJ law for late payments, just as for any other delinquent taxpayer.
8. Sale or assignment provisions.
9. Indemnification provisions.
10. Default provisions.
11. Grounds for termination of the tax exemption:
 - a. Failure to commence or complete construction on schedule.
 - b. Failure to pay municipal charges, including but not limited to annual service charges, administrative fees, permit fees, connection fees etc. within certain time frames.
 - c. Failure to timely submit certified audits of total project cost or gross revenue.
 - d. Failure to disclose a change in use of the project during the term of tax exemption.
 - e. Failure to disclose additional income derived from any source related to the property.
 - f. Failure to maintain the habitability of the property in accordance with state law.
 - g. Failure to arrange an annual inspection with the municipality to conduct interviews with the property occupants as to project maintenance.
 - h. Failure to address property maintenance violations effecting health and safety of the public.
12. Administration and oversight requirements:
 - a. Required permits and inspections on an ongoing basis.
 - b. Quarterly reports to the tax assessor, and other municipal officials regarding the status of the permit and construction activity on the project from the date the tax exemption is granted through issuance of the final certificate of occupancy.
 - c. Establish practices for the conversion from taxation to exempt as COs are issued for part of project or total project.
 - d. Establish practices and timeframes for billing and collection of annual service charges and administrative fees.
 - e. Submission of final project cost audit to CFO and CFO review.
 - f. Developer to submit annual audits of the project and time frame for submission. Review process by CFO. Bill for any increases as agreed upon.
 - g. Process to declare a violation of agreement and termination.
 - h. In the event of a municipal revaluation, Internal Review Committee has the right to review agreement and modify terms as appropriate.
 - i. Termination when time frames reached.
 - j. Non-wavier language.
13. Other unique municipal requirements (if any) which may include provisions such as:
 - a. Workforce requirements.
 - b. Contracting requirements.
 - c. Pay-to-play compliance.
 - d. Affirmative action.
 - e. Payroll taxes.
 - f. Residential and housing regulations.
 - g. Trust fund contributions
 - h. Affordable housing requirements.

CONDUCTING A COST - BENEFIT ANALYSIS

When a municipality is approached about a potential development project or receives an application for a tax abatement, it will generally include the developer's estimates and projections setting forth their financial needs and the costs associated with the project. These projections should be fully vetted. Independent assessment and questioning are vital to informed local decision-making. Thoroughly review the documents provided and ask common sense questions to gain an understanding of what is being proposed and how it may impact the municipality. It may be prudent for the municipality to hire a financial advisor to assist them in this process, depending upon the proposal's complexity, the local unit's available in-house expertise, and its level of experience with economic development and redevelopment. In some cases, the cost of independent review may be borne by the developer. Once an independent financial report is in-hand, the municipality's Internal Review Committee can ask questions and evaluate the conclusions reached. A comprehensive financial analysis will likely include the following:

1. An internal rate of return (IRR). This used to determine the developer's potential need for financial assistance.

Tips for understanding IRR:

- a. Question why and verify that the IRR percent being using is appropriate for this type of development.
 - b. Understand what a typical IRR is for this type of development and what factors could alter it.
 - c. For any assumptions in the analysis, ask how it was developed and what industry-specific objective standards are being utilized.
2. A 10-year pro forma under conventional taxation and a 10-year pro forma under a PILOT. This calculates the expected project revenues and costs, including full taxes vs PILOT. A calculation of the market value of the property is used. This calculation is based on the projected net operating income or NOI for the project, excluding taxes, and a capitalization rate plus the effective tax rate as a percentage.

Tips for understanding the pro forma:

- a. How is the potential project revenue calculated?
- b. How are the projects structural reserves calculated?
- c. Why is the specific capitalization (cap) rate percent being used?
- d. How does this cap rate percent vary when various factors change, such as type of development?
- e. What does the yield on cost percentage indicate about the development?
- f. For any assumptions in the analysis, ask how it was developed and what industry-specific objective standards are being utilized.

Municipalities are encouraged to use the Division's [PILOT Financial Agreement Forecast \(PFAF\)](#) to examine the proposed project and establish a baseline understanding of the financial costs and benefits to the municipality.

3. A Fiscal impact study that compares the municipality's existing revenue from the property to the projected revenue from the PILOT. The difference is the incremental annual revenue for the municipality.

To attain real value from this exercise requires putting the data in context. Understanding the cost of providing municipal services for the subject property is a fundamental component in determining the PILOT. Municipalities should calculate this information annually during the budget process.

The following chart demonstrates, in a simplified format, what this kind of analysis entails, summarizing the more standard services a municipality provides, and allocating their associated costs for a hypothetical project. Each municipality should determine which municipal services to include for each development.

**Table 1:
EXAMPLE
Municipal Cost of Services Analysis**

<u>Department</u>	<u>Final Budget</u>	<u>Per Capita</u>	<u>Per Parcel</u>	<u>Monthly Per Capita</u>	<u>Monthly Per Parcel</u>
Administration	\$2,443,876	\$ 10.85	\$ 30.32	\$ 0.90	\$ 2.53
Finance	\$2,823,240	\$ 12.53	\$ 35.02	\$ 1.04	\$ 2.92
Law	\$1,750,000	\$ 7.77	\$ 21.71	\$ 0.65	\$ 1.81
Fire	\$40,617,417	\$ 181.38	\$ 506.95	\$ 15.58	\$ 42.25
Police	\$50,929,106	\$ 214.02	\$ 598.19	\$ 17.84	\$ 49.85
Public Works	\$16,392,098	\$ 72.75	\$ 203.34	\$ 6.06	\$ 16.95
Human Resources	\$3,247,630	\$ 14.41	\$ 40.29	\$ 1.20	\$ 3.36
Solid Waste	\$9,850,000	\$ 43.72	\$ 122.19	\$ 3.64	\$ 10.18
Total	\$128,053,367	\$ 557.43	\$1,558.01	\$ 46.91	\$ 129.85

The financial analysis is a primary component of the PILOT analysis. However, there are other factors that are pertinent to each use case. The unique circumstances of each municipality must be considered along with the numbers. Below are some examples of important non-financial factors that the Internal Review Committee should be considering during its assessment of each project proposal. Their relative value will depend upon the municipality's needs:

1. Does the development address urban blight by enhancing the physical appearance of the community?
2. Does it address the need for affordable housing whether through COAH requirements or community-based need?
3. Will it assist in the elimination of food deserts?
4. Does it create long-term job opportunities for community members?
5. Is it a catalyst development that will spur other economic investment?
6. Will it enhance the gateway into the community or expand a vital commercial corridor?
7. Will it provide a sustainable future tax rate once the PILOT ends?
8. Does it address a need identified in the municipal master plan?
9. Will it attract visitors to the community who will become patrons of stores and restaurants?
10. Will it be a regional employment center that will bring people to shop and dine in the community?

ADMINISTRATION AND OVERSIGHT OF AUTHORIZED TAX ABATEMENTS

Each municipality engaged in the municipal tax abatement process will need to assign a team of municipal officials who are responsible for negotiating, administering and overseeing all executed financial agreements. The officials involved in this process may vary, but often include the municipality's chief administrative officer, who, depending on the form of government, may be the municipal manager, administrator or mayor. The municipal attorney, the chief finance officer, tax collector, tax assessor, and construction official are also generally assigned duties related to the administration and oversight of financial agreements.

Annual Oversight Process:

Tax abatement administration and oversight is an active and ongoing process. Municipalities must remain engaged; they cannot merely file the agreement away and expect its terms to self-effectuate. Routine monitoring should include the following:

- Ensure compliance with construction timeframes and milestones.
- Review annual audits, including the certified audit of project cost, gross revenues, and annual financial operations. Seek developer clarification of any items that don't make sense or require additional detail or explanation. Don't just put the report in the drawer.
- Review payment of taxes, PILOTS, administrative fees, water and sewer charges, permits and inspections fees. Ensure they are billed, paid, and collected in a timely manner.

- Review the conditions under which the abatement was granted, as outlined in financial agreement:
 - Has the developer claimed employment numbers for construction and operation? Have these been met?
 - Are they required to hire residents for construction and operation? Has this occurred?
 - Have any other specific requirements or milestones been met?
- Does the developer have any property maintenance violations? Have these been corrected?
- If the agreement is violated at any stage, do you need to issue any related notices? Can or has the violation been cured? Does the violation rise to the level of default or termination?

RENEWAL OF A TAX ABATEMENT

Redevelopment and municipal tax abatement law provides for renewal of a redevelopment designation and authorization of a PILOT under certain conditions. One example of a basis for extension is remodeling or recapitalization of projects currently authorized for tax abatements. Not scrutinizing requests for renewal may lead to improper extension, failure to obtain an appropriate local benefit, or perpetual tax abatements. This is counter to the intent of the governing law, which contemplates providing a defined period of abatement, after which all residents and services provided by the municipality benefit from a fully taxable property. Renewal should only be granted where there is clear proof that continued abatement is necessary to the continued success of the project, and the project remains beneficial to the whole community. To inform this determination, requests for an extension should be assessed using the evaluation process used to grant the initial abatement. If the request seeks continued abatement to support remodeling or recapitalization, a thorough review should be completed to determine if the improvements are an unsustainable financial burden for the project. Municipalities should question if it is equitable to provide an additional tax abatement period for ordinary repairs, remodeling and maintenance. Community benefits sufficient to warrant continued subsidy must exist.

CONCLUSION

Our state's complex statutory scheme allows for unique opportunities to attract quality development to New Jersey's municipalities. A robust and efficient local process enhances the odds of successful development. Engaging in thoughtful advance planning facilitates attraction and review of proposals. Comprehensive review ensures local benefits are maximized and a race to the bottom avoided, while providing the necessary support for competitive and advantageous projects. Ultimately, through careful attention to and knowledge of the laws and best practices in this complex field, municipalities can obtain real immediate value and achieve lasting economic benefits through a properly administered municipal tax abatement program. This Handbook, and the rest of the Division's Tax Abatement Toolkit, exists to support local units' success in these endeavors.