

Date: October 24, 2023

At a meeting of the Town of Hempstead Industrial Development Agency (the “**Agency**”), held in the Old Courtroom, 2nd Floor, 350 Front Street, Hempstead, New York 11550 on the 24th day of October, 2023, the following members of the Agency were:

Present: Florestano Girardi, Chairman
Thomas Grech, Vice Chairman
Eric C. Mallette, Treasurer
Jack Majkut, Secretary
Robert F. Bedford, Member
Jill Mollitor, Member
Jerry Kornbluth, Member

Absent:
Recused:

Also Present: Frederick E. Parola, Chief Executive Officer
Edie Longo, Chief Financial Officer
Arlyn Eames, Deputy Financial Officer
Michael Lodato, Deputy Executive Director
Lorraine Rhoads, Agency Administrator
Laura Tomeo, Deputy Agency Administrator
John Ryan, Esq., Agency Counsel
William F. Weir, Esq., Transaction Counsel
Paul O’Brien, Esq., Transaction Counsel

After the meeting had been duly called to order, the Chairman announced that among the purposes of the meeting was to consider and take action on certain matters pertaining to acquisition of a leasehold interest in a certain industrial development facility more particularly described herein (Conklin Estates LLC 2023 Facility), and the leasing of the Facility to Conklin Estates LLC.

The following resolution was duly moved, seconded, discussed and adopted with the following members voting:

Voting Aye

Voting Nay

Recused

RESOLUTION OF THE TOWN OF HEMPSTEAD
INDUSTRIAL DEVELOPMENT AGENCY TAKING OFFICIAL
ACTION TOWARD APPOINTING CONKLIN ESTATES LLC,
A NEW YORK LIMITED LIABILITY COMPANY, ON
BEHALF OF ITSELF AND/OR THE PRINCIPALS OF
CONKLIN ESTATES LLC AND/OR AN ENTITY FORMED OR
TO BE FORMED ON BEHALF OF ANY OF THE FOREGOING
AS AGENT OF THE AGENCY FOR THE PURPOSE OF
ACQUIRING, CONSTRUCTING AND EQUIPPING THE
FACILITY AND MAKING CERTAIN FINDINGS AND
DETERMINATIONS WITH RESPECT TO THE FACILITY

WHEREAS, Conklin Estates LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Conklin Estates LLC and/or an entity formed or to be formed on behalf of the foregoing (collectively, the “**Company**”), has applied to the Town of Hempstead Industrial Development Agency (the “**Agency**”), for assistance in the acquisition of an approximately 0.8242 acre parcel of land located at 37 Conklin Avenue, Woodmere, New York (more particularly Tax Map No. Section 41, Block 23, Lots 144 (341), 150 (340) and 349) (the “**Land**”), the construction of a 2-story approximately 21,783 square foot, 16-unit residential apartment building (consisting of approximately 12 two-bedroom units and 4 three-bedroom units) with parking on ground floor and sub-level to be located thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be leased by the Agency to the Company and used by the Company as a market-rate residential housing development (the “**Project**”); and

WHEREAS, the Agency will acquire a leasehold interest in the Land and the Improvements and title to the Equipment, will sublease and lease the Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 529 of the Laws of 1971 of the State of New York, as the same may be amended from time to time (collectively, the “**Act**”); and

WHEREAS, the Agency contemplates that it will provide financial assistance to the Company in connection with the Facility, consistent with the policies of the Agency, in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, all to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein; and

WHEREAS, as of the date of this resolution, no determination for financial assistance has been made; and

WHEREAS, the Act authorizes and empowers the Agency to promote, develop, encourage and assist projects such as the Facility and to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York; and

WHEREAS, prior to the date of the Hearing (defined below), the Agency will have prepared a cost/benefit analysis with respect to the proposed financial assistance; and

WHEREAS, prior to the closing of the transaction described herein, a public hearing (the “**Hearing**”) will be held so that all persons with views in favor of or opposed to either the financial assistance contemplated by the Agency or the location or nature of the Facility can be heard; and

WHEREAS, notice of the Hearing will be given prior to the closing of the transaction described herein, and such notice (together with proof of publication) will be substantially in the form annexed hereto as Exhibit A; and

WHEREAS, the minutes of the Hearing will be annexed hereto as Exhibit B; and

WHEREAS, the Agency has given due consideration to the application of the Company and to representations by the Company that the proposed financial assistance is either an inducement to the Company to maintain the Facility in the Town of Hempstead or is necessary to maintain the competitive position of the Company in its respective industry; and

WHEREAS, the Agency has required the Company to provide to the Agency a feasibility report (the “**Feasibility Study**” and, together with the below listed items, collectively, the “**Requisite Materials**”), to enable the Agency to make findings and determinations that the Facility qualifies as a “project” under the Act and that the Facility satisfies all other requirements of the Act, and such Requisite Materials are listed below and attached as Exhibit C hereof:

1. Cost Benefit Analysis Substantiation of Need for Town of Hempstead IDA Financial Assistance, prepared by National Development Council on September 28, 2023;
2. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
3. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.; and

WHEREAS, the Agency’s Uniform Tax Exemption Policy, adopted December 20, 2022 (“**UTEP**”), which such UTEP is annexed hereto as Exhibit D, provides for the granting of financial assistance by the Agency for housing projects pursuant to Section I.A.(II); and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively, the “**SEQR Act**” or “**SEQR**”), the Agency constitutes a “State Agency”; and

WHEREAS, to aid the Agency in determining whether the Facility may have a significant effect upon the environment, the Company has prepared and submitted to the Agency an Environmental Assessment Form (“**EAF**”) and related documents (the “**Questionnaire**”) with respect to the Facility, a copy of which is on file at the office of the Agency; and

WHEREAS, the Questionnaire has been reviewed by the Agency; and

WHEREAS, the Company will agree to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Company.

NOW, THEREFORE, BE IT RESOLVED by the Town of Hempstead Industrial Development Agency (a majority of the members thereof affirmatively concurring) that:

Section 1. The Agency hereby finds and determines:

(a) Based upon the Environmental Assessment Form completed by the Company and reviewed by the Agency and other representations and information furnished by the Company regarding the Facility, the Agency determines that the action relating to the acquiring, constructing, equipping, and operation of the Facility is an “Unlisted” Action, as that term is defined in the SEQR Act. The Agency also determines that the action will not have a “significant effect” on the environment, and, therefore, an environmental impact statement will not be prepared. This determination constitutes a negative declaration for purposes of SEQR. Notice of this determination shall be filed to the extent required by the applicable regulations under SEQR or as may be deemed advisable by the Chairman or Chief Executive Officer of the Agency or counsel to the Agency.

Section 2. In connection with the acquisition, construction and equipping of the Facility the Agency hereby makes the following determinations and findings based upon the Agency’s review of the information provided by the Company with respect to the Facility, including, the Company’s Application, the Requisite Materials and other public information:

- (a) There is a lack of affordable, safe, clean and modern rental housing in the Town of Hempstead, Nassau County;
- (b) Such lack of rental housing has resulted in individuals leaving the Town of Hempstead and therefore adversely affecting employers, businesses, retailers, banks, financial institutions, insurance companies, health and legal services providers and other merchants in the Town of Hempstead and otherwise adversely impacting the economic health and well-being of the residents of the Town of Hempstead, employers, and the tax base of the Town of Hempstead;
- (c) The Facility, by providing such rental housing will enable persons to remain in the Town of Hempstead and thereby to support the businesses, retailers, banks, and other financial institutions, insurance companies, health care and legal services providers and other merchants in the Town of Hempstead which will increase the economic health and well-being of the residents of the Town of Hempstead, help preserve and increase permanent private sector jobs in furtherance of the Agency’s public purposes as set forth in the Act, and therefore the Agency finds and determines that the Facility is a commercial project within the meaning of Section 854(4) of the Act; and

- (d) The Facility will provide services, i.e., rental housing, which but for the Facility, would not otherwise be reasonably accessible to the residents of the Town of Hempstead.

Section 3. The acquisition, construction and equipping of the Facility by the Agency, the subleasing and leasing of the Facility to the Company and the provision of financial assistance pursuant to the Act will promote job opportunities, health, general prosperity and the economic welfare of the inhabitants of the Town of Hempstead and the people of the State of New York and improve their standard of living, and thereby serve the public purposes of the Act, and the same is, therefore, approved.

Section 4. Subject to the provisions of this resolution, the Agency shall (i) acquire, construct and equip the Facility; and (ii) lease and sublease the Facility to the Company.

Section 5. The Company is hereby notified that it will be required to comply with Section 875 of the Act. The Company shall be required to agree to the terms of Section 875 pursuant to the Lease and Project Agreement, dated a date to be determined (the “**Lease Agreement**”), by and between the Company and the Agency. The Company is further notified that the tax exemptions and abatements provided pursuant to the Act and the appointment of the Company as agent of the Agency pursuant to this resolution are subject to termination and recapture of benefits pursuant to Sections 859-a and 875 of the Act and the recapture provisions of the Lease Agreement.

Section 6. Counsel to the Agency is authorized and directed to work with Transaction Counsel (Nixon Peabody LLP) to prepare, for submission to the Agency, all documents necessary to affect the transfer of the real estate described in the foregoing resolution.

Section 7. The Chairman, the Chief Executive Officer, the Deputy Executive Director and Chief Financial Officer and all members of the Agency are hereby authorized and directed (i) to distribute copies of this resolution to the Company, and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 8. Any expenses incurred by the Agency with respect to the Facility, including the expenses of Transaction Counsel, shall be paid by the Company. The Company agrees to pay such expenses and further agree to indemnify the Agency, its members, directors, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency in good faith with respect to the Facility.

Section 9. The Agency may publish a notice of a Public Hearing and conduct a public hearing with respect to the location and nature of the Project and the economic benefits, if any, to be granted by the Agency to the Company, in accordance with the provisions of Section 859-a of the Act.

Section 10. This resolution shall take effect immediately.

STATE OF NEW YORK)
 : SS.:
COUNTY OF NASSAU)

We, the undersigned Chief Executive Officer and Chairman of the Town of Hempstead Industrial Development Agency, DO HEREBY CERTIFY THAT:

That we have compared the annexed extract of the minutes of the meeting of the Town of Hempstead Industrial Development Agency (the “**Agency**”), including the resolutions contained therein, held on October 24, 2023, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the proceedings of the Agency and of such resolutions set forth therein and of the whole of said original insofar as the same related to the subject matters therein referred to.

WE FURTHER CERTIFY that public notice of the time and place of said meeting was duly given to the public and the news media in accordance with the New York Open Meetings Law, constituting Chapter 511 of the Laws of 1976 of the State of New York, that all members of said Agency had due notice of said meeting and that the meeting was all respects duly held.

IN WITNESS WHEREOF, we have hereunto set our hands as of the 24th day of October, 2023.

By: _____
Frederick E. Parola
Chief Executive Officer

By: _____
Florestano Girardi
Chairman

EXHIBIT A

NOTICE OF PUBLIC HEARING

NOTICE IS HEREBY GIVEN that a public hearing pursuant to Title 1 of Article 18-A of the New York State General Municipal Law will be held by the Town of Hempstead Industrial Development Agency (the “**Agency**”) on the ____ day of November, 2023, at _____ a.m., local time, at 350 Front Street, 2nd Floor, Hempstead, New York in connection with the following matters:

Conklin Estates LLC, a limited liability company organized and existing under the laws of the State of New York, on behalf of itself and/or the principals of Conklin Estates LLC and/or an entity formed or to be formed on behalf of the foregoing (collectively, the “**Company**”), has applied to the Agency for assistance in the acquisition of an approximately 0.8242 acre parcel of land located at 37 Conklin Avenue, Woodmere, New York (more particularly Tax Map No. Section 41, Block 23, Lots 144 (341), 150 (340) and 349) (the “**Land**”), the construction of a 2-story approximately 21,783 square foot, 16-unit residential apartment building (consisting of approximately 12 two-bedroom units and 4 three-bedroom units) with parking on ground floor and sub-level to be located thereon (the “**Improvements**”), and the acquisition and installation therein of certain equipment and personal property (the “**Equipment**”; and together with the Land and the Improvements, the “**Facility**”), which Facility is to be leased by the Agency to the Company and used by the Company as a market-rate residential housing development (the “**Project**”). The Facility will be initially owned, operated and/or managed by the Company.

The Facility will be leased by the Company to the Agency pursuant to a certain Company Lease and will be subleased by the Agency to the Company pursuant to a certain Lease and Project Agreement.

The Agency contemplates that it will provide financial assistance to the Company in the form of exemptions from mortgage recording taxes in connection with the financing or any subsequent refinancing of the Facility, exemptions from sales and use taxes and abatement of real property taxes, consistent with the policies and resolutions of the Agency.

A representative of the Agency will, at the above-stated time and place, hear and accept written comments from all persons with views in favor of or opposed to either the proposed grant of financial assistance to the Company by the Agency or the location or nature of the Facility. Prior to the hearing, all persons will have the opportunity to review on the Agency’s website (<https://tohida.org/>) the application for financial assistance filed by the Company with the Agency and an analysis of the costs and benefits of the construction and on-going operation of the proposed Facility.

Dated: October __, 2023

TOWN OF HEMPSTEAD INDUSTRIAL
DEVELOPMENT AGENCY

By: Frederick E. Parola
Title: Chief Executive Officer

EXHIBIT B

MINUTES OF PUBLIC HEARING HELD ON
NOVEMBER ___, 2023 at _____ A.M.

EXHIBIT C

Requisite Materials

1. Cost Benefit Analysis Substantiation of Need for Town of Hempstead IDA Financial Assistance, prepared by National Development Council on September 28, 2023;
2. New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential Developments for IDA Benefits by Anthony Guardino, Esq.; and
3. Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

Cost Benefit Analysis Substantiation of Need for Town of Hempstead IDA Financial Assistance, prepared by National Development Council on September 28, 2023

COST BENEFIT ANALYSIS
SUBSTANTIATION OF NEED FOR TOWN OF HEMPSTEAD IDA FINANCIAL ASSISTANCE



Rendering of the Proposed Market-Rate Development

PROJECT APPLICANT AND NAME

Conklin Estates, LLC

LOCATION

37 Conklin Ave | Woodmere, NY 11598

PROJECT DESCRIPTION

Development of a 16-Unit Market-Rate Multi-Family Residential Building

REQUESTED FINANCIAL ASSISTANCE

Property Tax Abatement
Sales Tax Exemption on Building Materials and Equipment
Mortgage Recording Tax Exemption

September 28, 2023



I. ASSIGNMENT

The National Development Council (“NDC”) is a national not-for-profit economic development organization that provides development finance advisory services to municipalities and public benefit agencies throughout the country. NDC is often requested to analyze financial structures of proposed developments and determine the appropriateness of financial assistance or incentives. The Town of Hempstead IDA (the “IDA”) requested that Conklin Estates LLC (the “Applicant”) and its counsel arrange for the completion of a feasibility report that demonstrates that the tax assistance package requested of the IDA is necessary for the proposed project to be financially feasible. The purpose of this memo is to describe NDC’s project understandings and findings related to the market-rate housing development project proposed by Conklin Estates LLC.

II. PROJECT SUMMARY

Conklin Estates LLC (the “Applicant” and/or “Developer”) is applying for financial assistance for a proposed market-rate housing development in the hamlet of Woodmere, Town of Hempstead, Nassau County, NY. The Applicant is 51% owned by Guy Friedman and 49% owned by AG Group Associates LLC. The application requests a sales tax exemption on building materials and equipment, a mortgage recording tax exemption, and a property tax abatement in the form of a payment in-lieu of taxes (“PILOT”).

The subject parcel combines three residential lots that total 0.82± acres and currently contains a single, two-story residential home. The Developer intends to redevelop the land into a 21,783± square foot, two-story market-rate apartment building containing sixteen (16) apartment units. Twelve (12) will be two-bedroom / two-bathroom units ranging from 1,087± to 1,315± square feet, and four (4) will be three-bedroom / two-and-a-half bathroom units ranging from 1,439± to 1,444± square feet. Parking will be ground level and consist of seventeen (17) covered spaces and twenty-three (23) uncovered spaces, totaling forty (40) parking spaces.

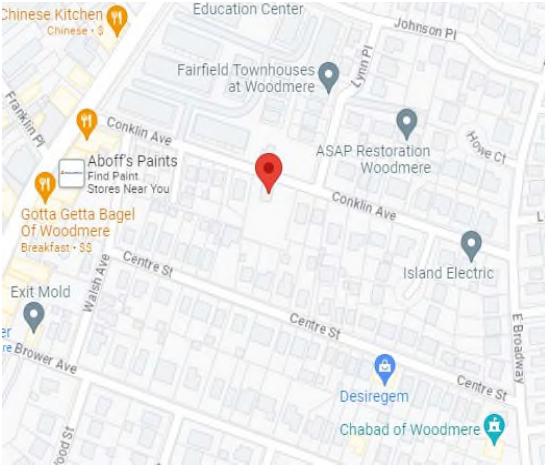
The residential program is summarized as follows:

<u>RENT ROLL</u>							
<i>Unit Description</i>	<i>%</i>	<i>Units</i>	<i>NSF*</i>	<i>Total NSF</i>	<i>Mo Rent</i>	<i>Rent/SF</i>	<i>Annual Rent</i>
Market							
2 Bed 2 Bath	75%	12	1,192	14,304	\$3,950	\$3.31	\$568,800
3 Bed 2.5 Bath	25%	4	1,441	5,764	\$4,650	\$3.23	\$223,200
Total / Average	100%	16	1,317	20,068	\$4,300	\$3.27	\$792,000

**Averaged NSF for each unit type (sizes vary)*

Each apartment will feature a private balcony. All units are market rate; there is no affordable set aside. The main pedestrian entrance and lobby will be at grade-level and accessible from the parking lot. From the lobby, one will be able to access the building’s elevator and stairwell that provide access to the upper floors.

The Applicant has requested a property tax abatement in the form of a 20-year PILOT. The IDA has proposed a 20-year schedule with fixed PILOT payments during the term. This IDA-proposed PILOT is presented in detail in **Appendix 1 on Page 8** and summarized further in **Section IV on Pages 3 and 4**.



Project Location



Satellite Image of Site

III. SOURCES & USES

The summarized sources and uses are presented below. For purposes of this analysis, NDC assumes a 65%/35% debt/equity split.

USES OF FUNDS	\$	Per Unit	Per GSF	%
Acquisition	\$1,900,000	\$118,750	\$87	18%
Construction Hard Costs	\$6,360,750	\$397,547	\$292	61%
Soft Costs	\$1,491,281	\$93,205	\$68	14%
Finance Costs	\$708,274	\$44,267	\$33	7%
TOTAL	\$10,460,305	\$653,769	\$480	100%

SOURCES OF FUNDS	\$	Per Unit	Per GSF	%
Loan	\$6,799,198	\$424,950	N/A	65%
Equity	\$3,661,107	\$228,819	N/A	35%
TOTAL	\$10,460,305	\$653,769	\$0	100%

The development budget measured in absolute dollars (\$10.5 million), on a per unit basis (\$653.8K), and on a per square foot basis (\$480) is high, but within range of other luxury market-rate residential developments on Long Island in 2023. Part of the reason the per unit costs appear high is because the units are all two-bedroom and three-bedroom apartments. Construction will take an estimated 18 months to complete.

IV. TAX BENEFITS PACKAGE

The IDA requested that the Applicant and its counsel arrange for the completion of a Real Property Assessment Analysis from SVS Standard Evaluation Services (SVS), a Long Island-based and widely

experienced real estate appraisal and services firm. SVS was retained to determine the “as complete” real estate taxes. Based upon the proposed project, the projected income stream, and the current tax rates, SVS estimated an as-completed annual tax of \$250,776, or \$15,674 per residential unit. This is an extremely high annual real estate tax for any rental housing development. This annual estimated real estate taxes would render the project financially unfeasible, as further covered in **Section V on Page 5**.



Current Site

A 20-year PILOT has reportedly been negotiated between the Applicant and the IDA, although it has not yet been approved. As proposed, the Applicant will pay current taxes of \$47,065 in Years 1-3. The PILOT will then increase by either \$10,000 or \$15,000 each subsequent year in Years 4-20. The Tax Benefit Summary below includes the PILOT as recommended as part of this analysis, a sales tax exemption on building materials and equipment, and a mortgage recording tax exemption.

IDA TAX BENEFITS				
IDA RELATED PROPERTY TAXES			SALES & USE TAX BENEFIT	
Current Taxes	\$47,065	\$2,942 per unit	Construction Cost	\$6,360,750
As Complete Full Taxes	\$250,776	\$15,674 per unit	Value of Building Materials*	79% \$5,000,000
Multiplier	5.33 x		Sales Tax	8.625%
PILOT schedule	20-year phase-in		Value of Exemption	<u>\$431,250</u>
PILOT over 20 Years	\$3,596,971			
Savings over 20 Years	<u>(\$1,823,489)</u>			
Increment over Savings	<u>\$1,773,482</u>			

*Value as input on IDA application

MORTGAGE RECORDING TAX BENEFIT		FINANCIAL ASSISTANCE SUMMARY	
Mortgage*	\$8,800,000	Real State Tax Savings Over PILOT Terms	\$1,823,489
Mortgage Recording Tax	1.05%	Mortgage Recording Tax Savings	\$66,000
Transit District Exclusion	-0.30%	Sales Tax Exemption	\$431,250
Mortgage Recording Tax Savings	0.75%	IDA Financial incentive Package	<u>\$2,320,739</u>
Value of Exemption	<u>\$66,000</u>		
		Total Project Cost	\$10,460,305
		IDA Financial Package as a % of Cost	22%

*Mortgage as input on IDA application

With the proposed PILOT, the tax increment is significant. Over \$3.5 million in real estate tax revenue is realized over the 20-year term. The average annual PILOT (\$179.8) paid over the term is a 3.8X multiplier above the \$47K current taxes. The PILOT paid over the term is an approximate 66% of



estimated full taxes, meaning that the project realizes a 34% savings during the term. The proposed PILOT schedule, as detailed in **Appendix 1 on Page 8**, is considered necessary to create financial viability.

V. SUMMARY OF NDC ANALYSIS

NDC based its analysis on the revenue, expense and costs assumptions provided by the Developer. NDC adjusted the pro forma provided by the Developer with the following assumptions:

- Permanent loan assumptions that are in line with the current market for similar projects
 - 30-year amortization
 - Rate of 6.00%
- Adjusting revenue growth to 3.00% annually for all rental units

STABILIZED OPERATING PRO FORMA (Assumed to be 3rd year of operations after new construction)							
		(1) WITHOUT PILOT		(2) WITH 3rd YEAR 20-YR PILOT		(3) WITH PILOT AVG. OVER 20-YR TERM	
		\$	Per Unit	\$	Per Unit	\$	Per Unit
Market Gross Income	16	\$840,233	\$4,376 per month				
Amenity Fee Income		\$19,976	\$104 per month				
Pet Fee Income		\$4,994	\$26 per month				
Parking Income		\$49,939	\$104 per spot per month				
Private Garage Fee Income		\$19,976	\$208 per month				
Storage Income		\$14,982	\$78 per month				
Event Space Rental Income		\$9,988					
Gross Income		\$960,087					
Residential Vacancy		(\$42,261)	5.00% vacancy				
Other Vacancy		(\$11,985)	10.00% vacancy				
Effective Gross Income		\$905,840		\$905,840		\$905,840	
Operating Expenses Excl Taxes		(\$226,791)	\$14,174	(\$226,791)	\$14,174	(\$226,791)	\$14,174
RE Taxes / PILOT		(\$250,776)	\$15,674 3rd year	(\$47,065)	\$2,942 3rd year	(\$179,849)	\$11,241 avg. during term
Total Expenses		(\$477,567)	\$29,848	(\$273,856)	\$17,116	(\$406,639)	\$25,415
Net Operating Income		\$428,273		\$631,984		\$499,201	
Debt Service		(\$493,954)		(\$493,954)		(\$493,954)	
Cash Flow		(\$65,681)		\$138,030		\$5,247	

METRICS							Typical in Market
Debt Coverage Ratio	0.87	does not work	1.28	marginal	1.01		>1.20
Cash on Cash Return	-1.79%	does not work	3.77%	marginal	0.14%		>6.0%
Yield to Cost Return	4.09%	does not work	6.04%	marginal	4.77%		>6.5%
Leveraged Pre-Tax IRR Over Term	6%	does not work	8%	marginal	8%		>10%

Rents in the proposed project are comparable to other market-rate developments in the area, at \$3,950 for a two-bedroom unit and \$4,650 for a three-bedroom unit. According to zillow.com, the median rent in Woodmere for all bedroom types is approximately \$4,000. Annual operating expenses, exclusive of the PILOT, are equivalent to about \$14,000 per unit. This is considered high for operating costs for a market-rate development. When full taxes estimated by SVS are plugged into the operating proforma



in the stabilized year, projected cash flow is negative, and the project falls far short of acceptable ratios required by investors and lenders. Simply put, the development is not financially feasible with full taxes (\$15,674 per unit) commencing immediately.

There is no instance of undue enrichment as a result of this financial incentive package. When analyzing Year 3 of the proposed 20-year PILOT, the projected debt coverage ratio (DCR) is 1.28, factoring debt service on the self-amortizing conventional loan. This means there is a 28% cushion of net operating income over debt service, which is very low for this type of project.

VI. IMPACT ON SCHOOLS

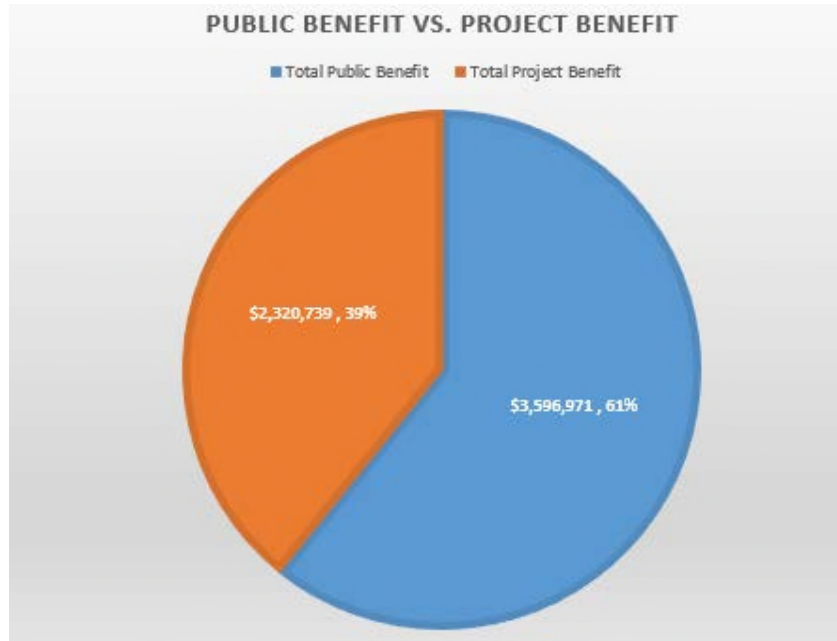
The Real Estate Institute (REI) at Stony Brook University conducted a study in 2019 that evaluated the impact of residential development on local school districts. REI evaluated fourteen (14) residential developments and surveyed the development residents and local school districts to determine new net students to the school districts. On average, one (1) student per eleven (11) units, or 9.09%, was identified as the impact on public school enrollment from the multi-family projects surveyed.

As it related to the subject 16-unit development, the 9.09% multiplier against the 16 units results in an estimated one (1) new student being added to the Woodmere school district from the development, as follows. However, it should be noted that the majority of developments conducted in the Stony Brook study were one and two-bedroom unit apartment complexes. Given this proposed development consists entirely of two and three-bedroom units, NDC estimates the number of net new students will likely be four (4) or five (5).

VII. BENEFIT SUMMARY

The below analysis shows a net positive public value. The public benefit factors the PILOT increment, while the project benefit factors exemption on the mortgage recording tax, exemption on the sales tax on building materials, and estimated savings realized from the PILOT. Not captured in the below are the new jobs to be created and intangible benefits of the proposed project. The Applicant expects thirty (30) temporary construction jobs and one (1) part-time job for the development. This project improves an underutilized property and maximizes the site's land use.

PUBLIC AND PROJECT BENEFIT SUMMARY	
Full IDA Taxes (PILOT) over 20 Years	\$3,596,971
Total Public Benefit	\$3,596,971
Real Estate Tax Savings Over 20-Year Term	\$1,823,489
Mortgage Recording Tax Benefit	\$66,000
Sales & Use Tax Benefit	\$431,250
Total Project Benefit	\$2,320,739





APPENDIX 1: PILOT SCHEDULE

PILOT SCHEDULE 37 Conklin Ave

Land Taxes	\$32,472
Current Taxes	\$47,065
Improvement Taxes	\$203,711
"As Improved" (Full) Taxes	\$250,776
Proposed Units	16
Estimated Taxes/Unit	\$15,674
Annual Escalator	1.00%

PILOT Year	Base Taxes	Improvement Taxes	"As Improved" Full Taxes	Abatement	Savings	PILOT	Increment
1	\$47,065	\$203,711	\$250,776	100%	(\$203,711)	\$47,065	\$0
2	\$47,065	\$203,711	\$250,776	100%	(\$203,711)	\$47,065	\$0
3	\$47,065	\$203,711	\$250,776	100%	(\$203,711)	\$47,065	\$0
4	\$47,536	\$205,748	\$253,284	77%	(\$158,284)	\$95,000	\$47,464
5	\$48,011	\$207,806	\$255,817	70%	(\$145,817)	\$110,000	\$61,989
6	\$48,491	\$209,884	\$258,375	66%	(\$138,375)	\$120,000	\$71,509
7	\$48,976	\$211,982	\$260,959	57%	(\$120,959)	\$140,000	\$91,024
8	\$49,466	\$214,102	\$263,568	53%	(\$113,568)	\$150,000	\$100,534
9	\$49,960	\$216,243	\$266,204	47%	(\$101,204)	\$165,000	\$115,040
10	\$50,460	\$218,406	\$268,866	41%	(\$88,866)	\$180,000	\$129,540
11	\$50,965	\$220,590	\$271,554	35%	(\$76,554)	\$195,000	\$144,035
12	\$51,474	\$222,796	\$274,270	29%	(\$64,270)	\$210,000	\$158,526
13	\$51,989	\$225,024	\$277,013	23%	(\$52,013)	\$225,000	\$173,011
14	\$52,509	\$227,274	\$279,783	20%	(\$44,783)	\$235,000	\$182,491
15	\$53,034	\$229,547	\$282,581	14%	(\$31,805)	\$250,776	\$197,742
16	\$53,564	\$231,842	\$285,406	9%	(\$20,406)	\$265,000	\$211,436
17	\$54,100	\$234,161	\$288,261	8%	(\$18,261)	\$270,000	\$215,900
18	\$54,641	\$236,502	\$291,143	7%	(\$16,143)	\$275,000	\$220,359
19	\$55,187	\$238,867	\$294,055	6%	(\$14,055)	\$280,000	\$224,813
20	\$55,739	\$241,256	\$296,995	3%	(\$6,995)	\$290,000	\$234,261
TOTAL	\$1,017,298	\$4,403,162	\$5,420,460		(\$1,823,489)	\$3,596,971	\$2,579,673

34% of full taxes

66% of full taxes

\$179,849 annual avg.

\$11,241 ann avg unit



APPENDIX 2: Pro Forma (Years 1-20)

37 Conklin Avenue																				
20-YEAR PRO FORMA																				
	1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20
Vacancy	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%	5%
Market Gross Income	792,000	815,760	840,233	865,440	891,403	918,145	945,689	974,060	1,003,282	1,033,380	1,064,382	1,096,313	1,129,203	1,163,079	1,197,971	1,233,910	1,270,927	1,309,055	1,348,327	1,388,777
Amenity Fee Income	19,200	19,584	19,976	20,375	20,783	21,198	21,622	22,055	22,496	22,946	23,405	23,873	24,350	24,837	25,334	25,841	26,357	26,885	27,422	27,971
Pet Fee Income	4,800	4,896	4,994	5,094	5,196	5,300	5,406	5,514	5,624	5,736	5,851	5,968	6,088	6,209	6,333	6,460	6,589	6,721	6,856	6,993
Parking Income	48,000	48,960	49,939	50,938	51,957	52,996	54,056	55,137	56,240	57,364	58,512	59,682	60,876	62,093	63,335	64,602	65,894	67,212	68,556	69,927
Private Garage Fee Income	19,200	19,584	19,976	20,375	20,783	21,198	21,622	22,055	22,496	22,946	23,405	23,873	24,350	24,837	25,334	25,841	26,357	26,885	27,422	27,971
Storage Income	14,400	14,688	14,982	15,281	15,587	15,899	16,217	16,541	16,872	17,209	17,554	17,905	18,263	18,628	19,000	19,381	19,768	20,163	20,567	20,978
Event Space Rental Income	9,600	9,792	9,988	10,188	10,391	10,599	10,811	11,027	11,248	11,473	11,702	11,936	12,175	12,419	12,667	12,920	13,179	13,442	13,711	13,985
Gross Income	907,200	933,264	960,087	987,691	1,016,099	1,045,335	1,075,423	1,106,389	1,138,257	1,171,055	1,204,810	1,239,550	1,275,304	1,311,102	1,349,975	1,388,954	1,429,072	1,470,363	1,512,861	1,556,601
Vacancy (residential)	(39,600)	(41,033)	(42,261)	(43,527)	(44,830)	(46,172)	(47,555)	(48,979)	(50,445)	(51,956)	(53,512)	(55,114)	(56,765)	(58,464)	(60,215)	(62,019)	(63,876)	(65,789)	(67,759)	(69,788)
Vacancy (other)	(11,520)	(11,750)	(11,985)	(12,225)	(12,470)	(12,719)	(12,973)	(13,233)	(13,498)	(13,767)	(14,043)	(14,324)	(14,610)	(14,902)	(15,200)	(15,504)	(15,814)	(16,131)	(16,453)	(16,782)
Effective Gross Income	856,080	880,481	905,840	931,939	958,800	986,444	1,014,895	1,044,177	1,074,314	1,105,332	1,137,255	1,170,112	1,203,929	1,238,735	1,274,559	1,311,431	1,349,382	1,388,444	1,428,648	1,470,031
Operating Expenses Excl Taxes	(213,772)	(220,185)	(226,791)	(233,594)	(240,602)	(247,820)	(255,255)	(262,913)	(270,800)	(278,924)	(287,292)	(295,910)	(304,788)	(313,931)	(323,349)	(333,050)	(343,041)	(353,333)	(363,933)	(374,850)
PILOT	(47,065)	(47,065)	(47,065)	(95,000)	(110,000)	(120,000)	(140,000)	(150,000)	(165,000)	(180,000)	(195,000)	(210,000)	(225,000)	(235,000)	(250,776)	(265,000)	(270,000)	(275,000)	(280,000)	(290,000)
Total Expenses	(260,837)	(267,250)	(273,856)	(328,594)	(350,602)	(367,820)	(395,255)	(412,913)	(435,800)	(458,924)	(482,292)	(505,910)	(529,788)	(548,931)	(574,125)	(598,050)	(613,041)	(628,333)	(643,933)	(664,850)
Net Operating Income	595,243	613,231	631,984	603,345	608,197	618,624	619,640	631,265	638,514	646,408	654,964	664,202	674,142	689,804	700,434	713,381	736,341	760,111	784,716	805,180
Debt Service	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)	(493,954)
Cash Flow	101,289	119,276	138,030	109,390	114,243	124,669	125,686	137,310	144,560	152,453	161,009	170,247	180,187	195,850	206,480	219,427	242,386	266,157	290,762	311,226
Debt Coverage Ratio	1.21	1.24	1.28	1.22	1.23	1.25	1.25	1.28	1.29	1.31	1.33	1.34	1.36	1.40	1.42	1.44	1.49	1.54	1.59	1.63
Cash on Cash Rate of Return	2.77%	3.26%	3.77%	2.99%	3.12%	3.41%	3.43%	3.75%	3.95%	4.16%	4.40%	4.65%	4.92%	5.35%	5.64%	5.99%	6.62%	7.27%	7.94%	8.50%
Yield to Cost	5.69%	5.86%	6.04%	5.77%	5.81%	5.91%	5.92%	6.03%	6.10%	6.18%	6.26%	6.35%	6.44%	6.59%	6.70%	6.82%	7.04%	7.27%	7.50%	7.70%
Valuation Cap Rate	5.50% cap rate																			
Outstanding Loan Balance																				
Net Sale Proceeds																				
Benefit Stream	101,289	119,276	138,030	109,390	114,243	124,669	125,686	137,310	144,560	152,453	161,009	170,247	180,187	195,850	206,480	219,427	242,386	266,157	290,762	311,315
Pre-Tax Levered IRR	8%																			



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New York Law Journal Article, dated March 22, 2017 on Eligibility of Residential
Developments for IDA Benefits by Anthony Guardino, Esq.

New York Law Journal

Real Estate Trends

WWW.NYLJ.COM

VOLUME 257—NO. 54

An ALM Publication

WEDNESDAY, MARCH 22, 2017

ZONING AND LAND USE PLANNING

Eligibility of Residential Developments for IDA Benefits

By
Anthony S.
Guardino



It has been nearly 50 years since the New York State Legislature enacted legislation authorizing industrial development agencies (IDAs) for the purpose of promoting economic development. Now, towns, cities, and counties throughout the state have created their own IDAs under General Municipal Law (GML) Article 18-A (the IDA Act) and use them to encourage—and to financially assist—a wide variety of real estate developments, often to great success.

In many instances, however, an IDA's efforts are met with objections, both in and out of court. Recently, for example, tax benefits afforded by a town's IDA to the Green Acres Mall on Long Island aroused community criticism, and led New York State Comptroller Thomas DiNapoli to announce that he would audit the IDA to determine its compliance with policies and procedures related to its approval of the project.

There also continues to be disputes over the scope of projects that may receive IDA benefits. Last August, the Supreme Court, Seneca County, rejected a challenge to a decision by the Seneca County IDA to provide tax benefits for a casino being built in the county. *Nearpass v. Seneca County Industrial Development Agency*, 53 Misc. 3d 737 (Sup.Ct. Seneca Co. 2016). The petitioners argued that the casino was not a project defined in the IDA Act and, therefore, that it was ineligible for IDA benefits. They pointed out, among other things, that when the IDA Act first was enacted, casinos were prohibited in New York, and after casinos were allowed by amendment to the New York Constitution, the IDA Act was not amended to include casinos as a project entitled to IDA benefits.

The court was not persuaded and decided, instead, that the casino facility was a commercial project under the IDA Act and, in particular, that it also was a recreation facility within the purview of GML Section 854(9).

Perhaps more surprising than a dispute over the eligibility of a casino to receive IDA benefits was a recent court case that asked whether a residential development could qualify for IDA benefits—an issue of statewide significance. In *Matter of Ryan v. Town of Hempstead Industrial Development Agency*, Index No. 5324/16 (Sup.Ct. Nassau Co. Jan. 27, 2017), the Supreme Court, Nassau County, held that a residential apartment building project fell within the definition of a project for which IDA benefits may be granted.

After first providing background on the IDA Act, this column will discuss the court's decision in *Matter of Ryan* and its implications.

The IDA Act

When the legislation governing the creation, organization, and powers of IDAs in New York State was enacted in 1969, it provided that its general purpose was "to promote the economic welfare of [the state's] inhabitants and to actively promote, attract,

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encourage and develop economically sound commerce and industry through governmental action for the purpose of preventing unemployment and economic deterioration." This intent was further evidenced by the original provision of GML Section 858, which provided that:

The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the state of New York and to improve their standard of living.

The decision by the Nassau County Supreme Court in *Matter of Ryan*¹ provides confirmation that residential developments are eligible to receive industrial development agency benefits.

In approving the bill, then-Governor Nelson Rockefeller noted that "industrial development agencies provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities." McKinney's 1969 Session Laws, Vol. 2, p. 2572.

The original legislation has been amended a number of times since 1969 to broaden the scope of permissible IDA activities. For example, the definition of project was expanded to specifically include construction of industrial pollution control facilities (L 1971, ch 978), winter recreation facilities and then recreation facilities generally (L 1974, ch 954; L 1977, ch 630), horse racing facilities (L 1977, ch 267), railroad facilities (L 1980, ch 803) and educational or cultural facilities (L 1982, ch 541).

As noted above, however, it has not been amended to specifically include casinos. And it also does not specifically include residential developments.

In 1985, however, the New York state comptroller's office was asked by the village attorney for the village of Port Chester whether construction of an apartment complex was a commercial purpose within the meaning of GML Section 854(4) and, thereby, whether it was a proper project for industrial development bond financing. In response, the Comptroller issued Opinion No. 85-51, 1985 N.Y. St. Comp. 70 (Aug. 16, 1985) (the "comptroller's opinion").

In the comptroller's opinion, the comptroller's office explained that, at its inception, the IDA Act's primary thrust was to promote the development of commerce and industry as a means of increasing employment opportunities.

The comptroller's opinion then reasoned that for an apartment complex to qualify as an eligible project under Article 18-A, it had to promote employment opportunities and prevent economic deterioration in the area served by the IDA.

The comptroller's opinion added that the comptroller's office was "not in a position to render an opinion" as to whether a project that consisted of the construction of an apartment complex was a commercial activity within the meaning of Article 18-A. Rather, it continued, such a determination "must be made by local officials based upon all the facts relevant to the proposed project."

Any such determination, the comptroller's opinion concluded, had to take into account the stated purposes of the IDA Act: "the promotion of employment opportunities and the prevention of economic deterioration."

When this issue reached the court in *Triple S. Realty v. Village of Port Chester*, Index No. 22355/86 (Sup. Ct. Westchester Co. Aug. 19, 1987), the Westchester County Supreme Court held that residential construction may be eligible for industrial development agency benefits if such construction "would increase employment opportunities and prevent economic deterioration in the area served by the IDA."

The decision by the Nassau County Supreme Court in *Matter of Ryan* provides further confirmation that

residential developments certainly are eligible to receive IDA benefits.

'Matter of Ryan'

The case arose after the Town of Hempstead Industrial Development Agency (TOHIDA) granted financial and tax benefits and assistance to Renaissance Downtowns UrbanAmerica, with respect to the construction of a new 336-unit residential apartment complex in the village of Hempstead on Long Island. That was Phase 1 of a multi-phase revitalization project that was planned to include additional mixed-use buildings and parking facilities.

The financial benefits and assistance granted by the TOHIDA included:

- exemptions from mortgage recording taxes for one or more mortgages;
- securing the principal amount not to exceed \$70 million;
- a sales and use tax exemption up to \$3.45 million in connection with the purchase/lease of building materials, services, or other personal property for the project; and
- abatement of real property taxes for an initial term of 10 years pursuant to a payment in lieu of taxes (PILOT) agreement.

Six petitioners, including a trustee for the village of Hempstead, challenged the TOHIDA's resolution in an Article 78 proceeding, arguing that an IDA could not grant benefits

for a project that was residential, either in whole or in part, in nature.

For their part, the respondents contended that the development of a residential rental building fell within the ambit of the statutory definition of a project entitled to receive an IDA's financial assistance and benefits in that it promoted "employment opportunities" and prevented "economic deterioration" in the area served by the IDA.

The court agreed with the respondents and dismissed the petition.

In its decision, the court noted that the comptroller's opinion had observed that the determination of whether construction of an apartment complex was a commercial activity within the meaning of the IDA Act had to be made by local officials based on facts relevant to the proposed project.

The court then pointed out that the TOHIDA had approved Renaissance's application for assistance with respect to the first phase of the revitalization project based on the TOHIDA's findings, that, among other things:

- the town of Hempstead was in need of attractive multi-family housing to retain workers in the town and attract new business;
- a healthy residential environment located in the town was needed to further economic growth;
- there was a lack of affordable, safe, clean multi-family housing within the town; and

- the facility would provide the nucleus of a healthy residential environment, and would be instrumental and vital in the further growth of the town.

Moreover, the court continued, the TOHIDA also found that the development of the first phase of the facility would "promote and maintain the job opportunities, health, general prosperity and economic welfare" of the town's citizens and "improve their standard of living."

Given that the project promoted employment opportunities and served to combat economic deterioration in the area served by the TOHIDA, the court upheld the TOHIDA's decision as rationally based and not arbitrary or capricious, an abuse of discretion, or an error of law.

Conclusion

IDA benefits can play an important role in real estate development. For nearly five decades, they have benefited New Yorkers in numerous situations. As the comptroller's office and the courts have recognized, a project—including a residential project—that demonstrates that it promotes employment opportunities and prevents economic deterioration is eligible to receive IDA benefits.

Ryan et al. v. Town of Hempstead Industrial Development Agency et al.

SHORT FORM ORDER

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF NASSAU

P R E S E N T : HON. JEFFREY S. BROWN
JUSTICE

-----X TRIAL/IAS PART 13
In the Matter of DONALD L. RYAN, FLAVIA
IANNACONE, JAMES DENON, JOHN M. WILLAMS,
REGINAL LUCAS and ROBERT DeBREW, JR.,

INDEX # 5324/16

Petitioners,

Mot. Seq. 1
Mot. Date 9.13.16
Submit Date 11.17.16

For A Judgment Pursuant to Article 78 of the New York
Civil Practice and Rules,

XXX

-against-

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT
AGENCY, RENAISSANCE DOWNTOWNS
URBANAMERICA, LLC, and RDU A PARCEL 1 LLC,

Respondents.

-----X

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The following papers were read on this motion:

Papers Numbered

Notice of Petition, Affidavits, Exhibits, Memorandum Annexed.....	1,2
Verified Answers.....	3,4,5
Opposing Affidavits.....	6,7,8,9,10,11,12
Reply Affidavits.....	13, 14
Sur-Reply Affidavit.....	15
Hearing Record (3 Vols.).....	16

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Application by petitioners pursuant to Article 78 to invalidate as *ultra vires* and to void the May 18, 2016 resolution passed by the Town of Hempstead Industrial Development Agency (TOHIDA) is decided as hereinafter provided.

In this Article 78 proceeding, petitioners seek to invalidate the resolution passed by respondent TOHIDA on May 18, 2016, which granted financial and tax benefits and assistance to respondent Renaissance Downtowns UrbanAmerica, LLC (Renaissance) *vis-a-vis* construction of a new 336 unit residential apartment complex on the northwest corner of the intersection of Washington and Front Streets (Phase I of the multi-phase Village of Hempstead downtown revitalization project¹ which was planned to include additional mixed use buildings/parking facilities). The Phase I property was a tax exempt Village property for at least 50 years until December 15, 2015 when it was acquired by respondent Renaissance.

The financial benefits and assistance granted include:

exemptions from mortgage recording taxes for one or more mortgages securing the principal amount not to exceed \$70,000,000;

sales and use tax exemption up to \$3,450,000 in connection with the purchase/lease of building materials, services or other personal property for the project;

abatement of real property taxes for an initial term of ten years pursuant to Payment in Lieu of Taxes Agreement (PILOT).

Based on the theory that the resolution was affected by an error of law, i.e., that residential apartment buildings are not included in the type of project or facility that is eligible for financial assistance under the General Municipal Law Article 18-A (Industrial Development Act [the IDA or the Act]), petitioners seek to invalidate the subject resolution as *ultra vires*/void.

In opposition, respondents first seek dismissal of the petition based on its alleged multiple fatal flaws including petitioners' lack of standing; failure to raise the *ultra vires* issue in the administrative proceeding before respondent TOHIDA; and failure to serve the attorney general in accordance with CPLR 7804(e).

The alleged flaws are not fatal and do not provide a basis for dismissal. Petitioners have standing to maintain an action for equitable or declaratory relief under State Finance Law § 123-b *vis-a-vis* the issue of whether the project herein falls within the definition of a "project" for which IDA benefits may be granted (*see Nearpass v Seneca County Indus. Dev. Agency*, 52 Misc 3d 533 [Sup Ct, Seneca County 2016 Falvey, J.]; *Dudley v. Kerwick*, 52 NY2d 542 [1981]; *cf.*

¹The development as outlined in the Appraisal Report (Exhibit "2" to the Petition) was approved in a unanimous 5-0, bi-partisan vote by the Village of Hempstead Board. It includes the construction of, among other things: residential units, structured parking, retail space, medical office building, mixed used artist loft with grade and basement level supermarket, surface parking office space, senior independent living apartment building, hotel and restaurant space.

Kadish v. Roosevelt Raceway Assoc., 183 AD2d 874, 875 [2d Dept 1992] [no standing under State Finance Law § 123-b (1) to challenge financing and acquisition of property by TOHIDA through bond issuance because statute specifically excludes bond issuance by a public benefit corporation). Further, the *ultra vires* issue was, in fact, raised in the administrative proceeding before respondent TOHIDA (Record: Vol, 3 Tab 25, pp 113-114), and the Nassau County Regional Office of the New York State Attorney General rejected service of the petition on the ground that the office did not represent respondent TOHIDA.

In further support of its dismissal, movants argue that the petition fails to state a viable cause of action as it is based on the false premise that an Industrial Development Agency may not grant benefits for a commercial project that is residential, either in whole or in part, in nature.

For the reasons which follow, the petition must be dismissed.

Pursuant to General Municipal Law § 858, an Industrial Development Agency

“shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, research and recreation facilities . . . and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and to improve their recreation opportunities, prosperity and standard of living.”

An Industrial Development Agency is thus a “governmental agenc[y] or instrumentalit[y] created for the purpose of preventing unemployment and economic deterioration (General Municipal Law § 852) and to “provide one means for communities to attract new industry, encourage plant modernization and create new job opportunities” (Governor’s Mem., 1969 McKinney’s Session Laws of N.Y. at 2572).

According to respondents, the development of a residential rental building falls within the ambit of the statutory definition of a project,² entitled to financial assistance and benefits, as set forth in § 854(4) of the General Municipal Law in that it “promotes employment opportunities and prevents economic deterioration in the area served by the industrial development agency” (Opns. St. Comp. No. 85-51 [N.Y.S. Cptr., 1985 WL 25843]).

In the opinion of the State Comptroller, the determination of whether construction of an apartment complex is a commercial activity within the meaning of the statute must be made by

²As set forth in § 854(4) the term “project” is broadly defined to include, in relevant part, “any land, any building or other improvement, and all real and personal properties located within the state of New York and within or outside or partially within and partially outside the municipality for whose benefit the agency was created. . . .”

local officials based upon facts relevant to the proposed project (*Id.* ["Local officials must determine, based upon all the relevant facts, whether construction of an apartment complex will promote employment opportunities and prevent economic deterioration. . . ."]). Respondents argue that TOHIDA acted within the scope of its authority in resolving to provide IDA assistance to the project since it would promote job creation and growth in a distressed area of the Village of Hempstead and serve as the first physical manifestation of the Village's Downtown Revitalization plan and a catalyst for future phases.

Here, the record establishes that a duly noticed public hearing was held regarding respondent Renaissance's application for TOHIDA assistance with respect to the first phase of the \$2.5 billion Hempstead Revitalization project for which site plan approval was already in place and a building permit issued. The resolution was granted based on respondent TOHIDA's findings, that, among other things:

- (a) The Town of Hempstead is in need of attractive multi-family housing to retain workers in the Town and attract new business;
- (b) a healthy residential environment located in the Town of Hempstead is needed in order to further economic growth;
- (c) there is a lack of affordable, safe, clean multi-family housing within the Town of Hempstead;
- (d) the facility will provide the nucleus of a healthy residential environment, and will be instrumental and vital in the further growth of the Town of Hempstead.

Respondent TOHIDA also found that:

the acquisition, construction and equipping of the Phase I Facility will promote and maintain the job opportunities, health, general prosperity and economic welfare of the citizens of the Town of Hempstead and the State of New York and improve their standard of living and thereby serve the public purposes of the Act;

the project conformed with local zoning laws and planning regulations of the Town of Hempstead; and

the project will not have a significant effect on the environment as determined in accordance with Article 8 of the Environmental Conservation Law and regulations promulgated thereunder.

The allegations proffered in opposition to the resolution, regarding traffic congestion; additional garbage/sewage; additional burden of increased student population in an already overcrowded/underfunded school district; burden of increased financial costs of municipal services to support increased population, are speculative and lack merit in the face of reasoned evaluation of the project by respondent TOHIDA as set forth in the record. As stated in the affidavit of Wayne J. Hall, Sr., Mayor of the Incorporated Village of Hempstead and Chairman of the Village Community Development Agency:

“the IDA benefits awarded to Renaissance for this particular Phase I of the development are critically important to the revitalization of the Village of Hempstead’s downtown area, and are essential to the twin goals of preventing any further physical and economic deterioration of the area, as well as promoting employment opportunities to the Village.”

As stated in the Socio-Economic Impact of the Village of Hempstead’s Revitalization Plan report, dated March 31, 2016, (Exhibit “A” to the Affidavit of Donald Monti in Opposition to Petition):

“Upon completion, the overall revitalization of the Village of Hempstead will have generated an estimated \$4 billion in economic activity, comprised of economic activity during and after the construction period.

Nearly \$3 billion of primary and secondary economic activity will be generated from construction of the development encompassing 5 million square feet, comprising 2.8 million square feet of 3,500 residential units and 2.2 million square feet of mixed use, retail, hospitality, office and other commercial uses.

This will result in new socio-economic improvements to the Village of Hempstead that will provide much needed housing for Long Island’s young professionals and active adults, and create during the construction period as many as 22,000 temporary construction and secondary jobs generating nearly \$1.4 billion in wages.

When completed, the revitalization will create approximately 6,000 permanent and 4,500 secondary jobs generating \$498 million in wages of which 1,500 of the permanent jobs generating \$125 million in wages projected to be held by Village of Hempstead residents. Thus, in total, the construction activity and resulting permanent jobs and their related secondary economic impacts are expected to generate nearly \$4 billion in primary and secondary economic impact, and over the 20 year PILOT period \$142 million in new county, town, school and village property taxes, and \$43.5 million in new county sales taxes.”

In reviewing the actions of an administrative agency, courts must assess whether the determination was the result of an error of law or was arbitrary, capricious, or an abuse of discretion such that the actions at issue were taken without sound basis in reason and without regard to the facts (*Matter of County of Monroe v Kaladjian*, 83 NY2d 185, 189 [1994], citing *Matter of Pell v Bd. of Educ.*, 34 NY2d 222, 231 [1974]; *Akpan v Koch*, 75 NY2d 561, 570-71 [1990]; *Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers*, 238 AD2d 417, 418 [2d Dept 1997]). The agency's determination need only be supported by a rational basis (*Matter of County of Monroe v Kaladjian*, *supra*; *Matter of Jennings v Comm. N.Y. Dept. of Social Svcs.*, 71 AD3d 98, 108 [2d Dept 2010]). If the determination is rationally based, a reviewing court may not substitute its judgment for that of the agency even if the court might have decided the matter differently (*Matter of Savetsky v Zoning Bd. of Appeals of Southampton*, 5 AD3d 779, 780 [2d Dept 2004]; *Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers*, *supra*). It is not for the reviewing court to weigh the evidence or reject the choice made by the agency where the evidence conflicts and room for choice exists (*Matter of Calvi v Zoning Bd. of Appeals of the City of Yonkers*, *supra*, citing *Toys "R" Us v Silva*, 89 NY2d 411, 424 [1996]; *Akpan v Koch*, *supra*).

The record at bar establishes that in adopting the challenged resolution following a public hearing, review of Renaissance's application, and the environmental effects, respondent TOHIDA did not act in excess of its jurisdiction or beyond the scope of its authority; i.e., *ultra vires*. Nor was TOHIDA's decision after review of all of the circumstances to adopt the resolution finding that the Phase I facility constituted a "project" under the IDA affected by an error of law as would warrant relief under Article 78.

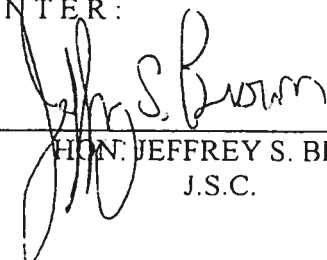
Where, as here, the project at issue promotes employment opportunities and serves to combat economic deterioration in an area served by an industrial development agency, a finding that the project falls within the ambit of the IDA is rationally based; neither arbitrary or capricious or an abuse of discretion, nor an error of law.

Accordingly, the petition is **denied** and the proceeding is hereby **dismissed**.

This constitutes the decision and order of this court. All applications not specifically addressed herein are denied.

Dated: Mineola, New York
January 25, 2017

ENTER:



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EXHIBIT D

Uniform Tax Exemption Policy

TOWN OF HEMPSTEAD INDUSTRIAL DEVELOPMENT AGENCY

UNIFORM TAX EXEMPTION POLICY AND GUIDELINES

Pursuant to the authority vested in it by Section 874(4)(a) of Title One of Article 18-A of the General Municipal Law of the State of New York, the Town of Hempstead Industrial Development Agency (HIDA) may provide financial assistance to qualified applicants for qualified projects in the form of issuance of its tax-exempt or taxable bonds or by participating in straight lease transactions.

HIDA has adopted this Uniform Tax Exemption Policy to provide guidelines for the claiming of real property, sales and use tax and mortgage recording tax abatements.

I. A. Real Property Taxes:

HIDA general policy is to grant applicants real property tax abatements for projects involving the purchase and renovation of existing buildings and the construction of new facilities. This program provides for a ten-year period phase-in on the real property taxes. The purchase price in an arms-length transaction can be used to determine the fair market value and assessed value of the property. The phase in will apply to the increased assessment/taxes resulting from the renovation of existing buildings or new construction. HIDA's general policy is to consider freezing the first three years of the taxes at an amount usually based on the current taxes as it, in its sole discretion determines considering the factors listed in Paragraph B, hereof, not one of which is determinative, provided, however that a determination to freeze or fix the assessed value/taxes shall not be considered a deviation from HIDA's uniform tax exemption policy. In addition; it is the general policy of HIDA, that it may grant full or partial tax exemptions for a period up to fifteen years, on a case- by-case basis for (I) manufacturing facilities; (II) senior housing, affordable housing, health care/assisted living facilities; (III) vacant facilities or facilities which HIDA, in its discretion, determines to be in an area of economic distress or having higher than average unemployment or similar circumstances; or (IV) facilities that will create or retain a significant number of full time jobs; or (v) qualifying retail facilities.* A determination by HIDA to grant such exemptions shall not be considered a deviation from policy.

*Retail facilities may be permitted if less than one-third of the total project cost is used for retail sales or services, or meets one of the exceptions, i.e.; a tourism destination, located in a highly distressed area or provide goods or services not otherwise readily available to the residents of the Town.

In determining payments under a payment in lieu of tax ("PILOT") agreement, HIDA will, in consultation with the Nassau County Assessor's Office, through the use of tax roll rates, the Town of Hempstead Office of Receiver of Taxes, and any Village within which the project is located, determine appropriate fixed dollar amounts for PILOT payments under the PILOT Agreement for each tax year that the PILOT Agreement is in effect, as well as the proportionate allocation of such payments amount the taxing jurisdiction.

For Urban Renewal Plans and/or Overlay Zones, the PILOT Agreement may set flat PILOT payments per unit, per year for a term of up to 10 to 15 years, or in the case of such facilities financed with tax-exempt bonds, for the term of the tax-exempt bonds.

Assisted living facilities may be granted a PILOT Agreement for a term of up to 10 to 15 years with fixed PILOT Payments to be determined by the Agency in its sole discretion. However, in the event the Assisted Living Facility is financed by tax exempt bonds, the PILOT Agreement may run concurrently with the term of the bond financing.

Senior living facilities may be granted a PILOT Agreement for a term of up to 10 to 15 years with fixed PILOT Payments to be determined by the Agency in its sole discretion. However, in the event the Senior Living Facility is financed by tax exempt bonds, the PILOT Agreement may run concurrently with the term of the bond financing.

Affordable housing projects may be granted a PILOT for a term of up to 10 to 15 years, which is calculated using a "10% Shelter Rent calculation", whereby the Applicant provides HIDA with figures equal to 10% of the annual total revenues minus the total utilities of the affordable housing project in the application, and thereafter on an annual basis.

In the event an affordable housing project is financed by tax-exempt bonds or 9% Low Income Housing Tax Credits or the project is subject to a recorded Regulatory Agreement recorded by a Municipality or a governmental entity restricting the income levels of the residents of the housing project and the amount of rent payable by the residents, the PILOT Agreement may, at the sole discretion of the Agency, run concurrently with the term of the bond financing or the term of the Regulatory Agreement or such period as may be required by a

state or federal housing agency or authority that is also providing financing or benefits to such project or such lesser period as the Agency shall determine.

Market Rate Housing Projects may be granted a PILOT for a term of 10 to 15 years, and be required to include a minimum of 10% affordable units and 10% workforce units to be maintained as such for the life of the Lease and Project Agreement. Each of the "affordable" units shall rent at a reduced rate to tenants with an annual income at or below 80% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development. Each of the "workforce" units shall rent at a reduced rent to tenants with an annual income at or below 120% of the median income for the Nassau-Suffolk primary metropolitan statistical area as defined by the Federal Department of Housing and Urban Development.

Market Rate Housing Projects project shall provide the Agency with the number of affordable units and workforce units on a yearly basis as part of the Agency's Annual Compliance, attested to under penalty of perjury by signed affidavit.

Market Rate Housing Projects may receive additional years in a PILOT Agreement if they are located in a highly distressed or blighted area, a block grant area, a local development zone, an opportunity zone, or a transit-oriented zone.

Approval of all housing projects will be at the sole discretion of the Agency's Board Members. All project applicants for Market Rate Housing Projects, Senior Housing Living Facilities, Assisted Living Facilities and Affordable Housing Projects must submit a feasibility study to the Agency demonstrating the need for the project, other existing or planned housing projects, the impact on the local taxing jurisdictions, the impact on the local school district and the expected number of children, if any, who are likely to attend the local school district, and demonstrating that the housing project complies with the Act.

B. Deviations:

In addition to, or in lieu of, the aforesaid abatement policy HIDA can determine, on a case-by-case basis, to deviate from the guidelines described above or provide enhanced benefits for a project whose scope, size or potential is expected to have a major impact for the Town of Hempstead. Enhanced benefits may exceed fifteen years, as HIDA deems appropriate. The decision of HIDA to grant or deny any such deviation shall be within the sole discretion of HIDA.

HIDA may consider any or all of the following factors in making such determination, no single one of which is determinative:

- The nature of the proposed project (i.e. manufacturing, commercial, civic, retail).
- The nature of the property before the project begins (i.e. vacant land, vacant buildings, brownfield sites, etc.).
- The economic condition of the area at the time of the application and positive economic effect that the project will have on the area.
- The extent to which a project will create or retain permanent, private sector jobs and the number of jobs to be created or retained and the salary ranges of such jobs.
- The estimated value of tax exemptions to be provided.
- The economic impact of the project and the proposed tax exemptions on affected tax jurisdictions.
- The impact of the proposed project on existing and proposed businesses and economic development projects in the vicinity.
- The amount of private sector investment generated or likely to be generated by the proposed project.
- The likelihood of accomplishing the proposed project in a timely fashion.
- The effect of the proposed project upon the environment and the surrounding area.
- The extent to which the project will utilize to the fullest extent practicable and economically feasible, resource conservation, energy efficiency, green technologies, and alternative and renewable energy measures.
- The extent to which the proposed project will require the provision of additional services, including, but not limited to, educational, transportation, police, emergency medical or fire services.
- The extent to which the proposed project will provide additional sources of revenue or taxes for the State, County, Town, municipalities and school districts in which the project is located.
- The extent to which the proposed project will provide a benefit (economic or otherwise) not otherwise available within the municipality in which the project is located.
- The number of construction jobs to be created during the construction or renovation of the project and whether the project applicant will pay prevailing wages on such construction jobs.

II. **Sales Taxes:**

Purchase of construction related equipment (by applicant) or rental or lease of construction related equipment (by applicants or contractors and subcontractors), purchases of construction and building material and purchase, rental or lease of project related equipment, furnishings and other items of personal property are made as agent for HIDA, and are, therefore, afforded full exemption from New York State sales and use tax. Operating expenses of the projects are not to be incurred as agent of HIDA and no sales tax exemption is provided therefore. Sales and use tax exemption will not be granted for the purchase, rental or lease of motor vehicles and trailers registered for over the road use.

All project applicants must agree in writing to timely filing with the New York State Department of Taxation, and HIDA of an annual statement, (and all other forms and reports as maybe required by NYS Department of Taxation including ST-60's, ST-123 and ST-340), of the value of all sales and use tax exemptions claimed in connection with facility in full compliance with the New York State General Municipal Law, in the form and at the time required thereby. The agreement will also include a total exemption amount.

Sales and use tax exemption agreements will have an expiration date based upon the estimated project completion date plus a window (i.e. six months, one year, etc.) to allow for possible delays. The duration will also be determined by the maximum total exemption dollar amount. The window period will be set on the basis of the project and any extensions of the expiration dates or increases in the dollar amount of the exemption must be approved by the HIDA board prior to the expiration date of the exemptions or the date on which the dollar amount of exemptions has been expended.

III. Mortgage Recording Tax:

Mortgages executed by HIDA in connection with project related financing are provided an exemption from New York State mortgage recording taxes. Mortgages executed by HIDA in connection with non-project related financing may be exempt from New York State mortgage recording taxes, at the discretion of HIDA. In determining whether to permit such exemptions on non-project related financing, HIDA shall consider such factors, as it deems appropriate including, but not limited to, the use of the property, the degree of investment, the degree and nature of employment and the economic condition of the area in which the facility is located.

IV. A. Recapture of Benefits:

HIDA, with respect to a particular project that receives real property tax abatements, sales and use tax exemptions or mortgage recording tax

exemptions shall require the project applicant to agree to the recapture of such benefits by HIDA pursuant to the following schedule:

Within first 4 years	100%
Within first 6 years	75%
Within first 8 years	50%
Within first 9 years	25%
After first 9 years	0%

Events that HIDA may determine will trigger recapture may include, but shall not be limited to, the following:

- Sale or closure of facility;
- Significant employment reduction or failure to meet employment goals;
- Significant change in use of facility;
- Significant change in business activities of project applicant or operator;
- Material noncompliance with or breach of terms of Agency transaction documents; or
- Failure to create or retain the number of private sector full time (or full time equivalent) or part time jobs that the company represented it would in the Company's application to HIDA.
- Failure to pay PILOT payment.
- Event of Default under the Bond or Lease Documents.

If HIDA determine to provide for recapture with respect to a particular project, HIDA also may, in its sole discretion and on a case-by-case basis, determine the timing and percentage of recapture, either prospectively or retroactively.

B. Additional Recapture Provisions

In addition to the provision for recapture set forth in Paragraph IV.A, HIDA may, in its sole discretion, and on a case-by-case basis, require recapture of benefits (either retroactively or prospectively as it determines to be appropriate in its best judgment) with respect to any project or project applicant for:

- failure to respond to HIDA inquiries concerning payments of principal and interest;

- failure to respond to HIDA inquiries concerning insurance coverage or failure to provide insurance certificates when and as required by HIDA transaction documents;
- failure to respond to HIDA inquiries regarding payment in lieu of taxes or sales and use tax exemptions;
- failure to respond to HIDA inquiries or to provide facts requested by HIDA in connection with any proceedings or determinations pursuant to Paragraph C or Paragraph D of this policy;
- failure to respond to inquiries of HIDA or failure to provide HIDA with any information or documents requested by HIDA in order to provide any federal, state or local agency with information or reports required under any applicable law, rule or regulation including without limitation information required under PAAA and PARA, number of jobs, total payroll etc.; or
- failure to provide any other information concerning the project or the project applicant or any project operator requested by HIDA.

Upon the occurrence of any of the events listed in this Paragraph IV.B, HIDA will, upon at least ten calendar days written notice to the project applicant, hold a hearing before the IDA Board, at which the project applicant will have the opportunity to provide, or explain its failure to provide, the information requested by HIDA. Within 30 calendar days after the hearing, HIDA will determine whether and to what extent it will require recapture of the value of tax exemptions granted with respect to the project by virtue of HIDA involvement.

V: VIDEO RECORDINGS OF MEETINGS

The Agency shall, to the extent practicable, stream all open meetings and public hearings on its website in real-time. The agency shall post video recordings of all open meetings and public hearings on its website within five business days of the meeting or hearing and shall maintain such recordings for a period of no less than five years.

VI: EFFECTIVE DATE

This Uniform Tax Exemption Policy shall apply to all projects for which HIDA has adopted or adopts an Inducement Resolution including refinancings after January 1, 2023, and all refinancing of any project induced or closed before January 1, 2024.

HIDA, by resolution of its Members, and upon notice to all affected tax jurisdictions as may be required by law, may amend or modify the foregoing policy as it may, from time to time, in its sole discretion determine.

Resolution: 040-2022

Adopted: 12/20/22

Ayes: 6

Nays: 0



Chairman Flo Girardi

11/21/19 – adopted by the Governance Committee

1/2/20 - Public Hearing

2/27/20 – adopted by Board of Directors

10/22/20 – Re-adopted (unchanged) by Board of Directors

9/22/21 – adopted by the Governance Committee – Resolution #045-2021 but public hearing postponed and not adopted by Board in 2021

9/20/22 – adopted by the Governance Committee

12/7/22 – Public Hearing