

MEMORANDUM FROM



Christopher C. Canada, Esq.
Direct Dial: 518.736.2921
Email: ccanada@hodgsonruss.com

To: Donald Csaposs, Chief Executive Officer
Town of Guilderland Industrial Development Agency

Date: March 21, 2025

Subject: Analysis of Authority to Complete Housing Projects

INTRODUCTION

You have advised us that the Town of Guilderland Industrial Development Agency (the “Agency”) has been approached by one or more developers regarding potential requests for “financial assistance” (as defined in the hereinafter defined GML) in connection with projects involving multi-family, affordable, senior-designated, or other housing facilities (each a “Housing Project”). The Agency is considering an in-meeting discussion regarding whether and how the Agency can be involved in Housing Projects. Industrial Development Agencies (each, an “IDA”) across New York State (the “State”) take a variety of approaches towards Housing Projects, with some electing to avoid them altogether. However, there has also been a trend among elected officials to encourage public entities to focus on housing. For example, in July, 2023, the State Governor released Executive Order No. 30 which directed state agencies, authorities, and entities to prioritize funds for the construction of housing.¹ You have asked for some guidance regarding the Agency’s authority to complete Housing Projects and any limitations on such authority. In connection with the Agency’s inquiries, we reviewed (1) the General Municipal Law of the State of New York (the “GML”), (2) guidance released by the New York State Authorities Budget Office (the “ABO”) and the New York State Comptroller (the “Comptroller”) and (3) related case law regarding whether and how the Agency is authorized to undertake and complete Housing Projects.

BACKGROUND

Pursuant to the GML (as amended from time to time), the State Legislature (the “Legislature”) has created and organized Agencies as public benefit corporations of the State and enacted general laws relating to the powers of each.² The Legislature has granted to Agencies the powers contained in certain general

¹ N.Y.S. Exec. Order No. 30, *Directing State Agencies, Authorities, and Entities to prioritize the Allocation of certain Discretionary Funds to those Localities that Promote the Construction of Housing* (2023).

² See N.Y. GEN. MUN. LAW art. 18-a, tit. 1.

laws, including, but not limited to, the GML.³ Because Agencies are “creature[s] of statute,”⁴ they only have the powers granted, or necessarily implied, by the GML – more specifically, Section 858 of the GML.⁵

Each of the powers set forth in Section 858 of the GML must be exercised by an IDA to accomplish its “fundamental purpose.”⁶ According to the State Attorney General, the “fundamental purpose” of IDAs is “to promote, develop, encourage, and assist in the acquiring, constructing, maintaining, and furnishing of...” various projects.⁷ The projects specifically authorized by Section 858 of the GML include “industrial, manufacturing, warehousing, commercial, research... facilities... and continuing care retirement facilities...”⁸ Generally, if a project is not identified in Section 858 of the GML, Agencies are not permitted to undertake or complete them. Notably, the GML does not identify “housing” as a specific project to be undertaken by Agencies. Therefore, an IDA’s authority to undertake Housing Projects is limited to those projects which would qualify as another type of authorized project under the GML.

Historically, it has been understood that Housing Projects can qualify as valid Agency projects if they are “commercial projects” under the GML. For example, in Opinion 85-51 of the Comptroller (a copy of which is attached hereto as Exhibit A), the Comptroller was asked “whether construction of an apartment complex is a commercial purpose within the meaning of [the GML] and, thereby, a proper project for industrial development bond financing.”⁹ The Comptroller cited opinion 82-360 which noted that the primary purpose of Agencies is to complete projects.¹⁰ However, the Comptroller further indicated that “an essential element of any valid project seems to be the promotion of employment opportunities and the prevention of economic deterioration in the area...”¹¹ Therefore, the Comptroller opined that “for an apartment complex to qualify as an eligible project under [the GML], it must constitute a commercial project...”¹² and must promote employment and prevent economic deterioration.¹³

Recognizing the trend towards Housing Projects, various State organizations, including the ABO, have released updated guidance regarding the same. For example, in November, 2023, the ABO gave a presentation for the New York State Economic Development Council which focused strongly on Housing Projects and the evidence required to demonstrate that a Housing Project is an authorized IDA project. The ABO acknowledged that housing has become a hot-button issue in the State and that Housing Projects can provide a necessary benefit to communities. The ABO indicated, however, that Executive Order No. 30

³ See N.Y. GEN. MUN Law § 858.

⁴ Op. Atty’ Gen. N.Y. 2014-F1 (Sept. 9, 2014), *citing* Matter of AG-II Acquisition Corp. v. Bd. Of Assessors of County. Of Nassau, 21 Misc. 3d 543, 545 (Sup. Ct. Nassau Co. 2008).

⁵ See *id.*, *citing* Matter of Flynn v. State Ethics Com’n, 87 N.Y.2d 199, 202 (1995); see also N.Y. GEN. MUN Law § 858.

⁶ See Op. Atty’ Gen. N.Y. 2014-F1.

⁷ *Id.*

⁸ N.Y. GEN. MUN Law § 858.

⁹ 1985 Op. N.Y. Comptroller 85-51 (Aug. 16, 1985).

¹⁰ See *id.* *citing* 1982 Op. N.Y. Comptroller 82-360 (Dec. 30, 1982).

¹¹ *Id.*

¹² *Id.*

¹³ See *id.*

was not sufficient to demonstrate that Housing Projects are authorized under the GML. Instead, the ABO cited Comptroller Opinion 85-51 and emphasized that Agencies need to link Housing Projects to (a) the GML, (b) the Agency’s mission statement, and (c) the Agency’s policies and procedures.

ANALYSIS

The following discussion will analyze the process for linking a Housing Project to (a) the GML, (b) the Agency’s mission statement, and (c) the Agency’s policies and procedures.

To link to the GML, the ABO placed a strong emphasis on (1) workforce housing and (2) multi-use or adaptive reuse facilities. Multi-use facilities generally include both retail and housing elements, and can more readily be established as a valid “commercial” project given (a) the sales, tourism, and other commerce, and (b) the full-time equivalent employment opportunities to be generated by the retail element of such projects. Adaptive reuse projects generally involve the reconstruction and renovation of existing facilities which may be difficult to develop and would contribute to blight if not otherwise improved. Adaptive reuse projects have been found to be valid “commercial” projects by preventing economic deterioration and maintaining a community’s ability to maintain and attract individuals to work and shop in the area.

Workforce housing projects include facilities where all or a portion of the units in the facility are reserved for individuals or households earning a certain percentage of the “area median income” (“AMI”). Generally, the facilities target individuals earning between 60-120% of the AMI to attract middle income earners who may not otherwise find the area affordable. Middle-income earners generally make up the “workforce,” and, therefore, such facilities are seen as maintaining employment and commerce in a given area. However, the ABO has advised that such projects require additional evidence to demonstrate an area’s need for maintaining its workforce through additional housing. For example, the ABO has advised that workforce housing projects should be accompanied by economic impact studies demonstrating the need for workforce housing in a particular area. Additionally, the ABO has suggested completing Housing Projects in tandem with other industrial, manufacturing, or commercial projects. For example, projects involving large manufacturing facilities could be used as supporting evidence for an additional Housing Project. If the manufacturing project is expected to generate high employment levels, new housing will be necessary to promote the job opportunities at the manufacturing project.

To link to an IDA’s mission statement and policies, the ABO placed an emphasis on whether an IDA’s administrative materials demonstrate a clear understanding of the housing needs in its area. If an IDA plans to participate in more Housing Projects, the ABO has indicated that such IDA should commission an economic impact study to identify area housing needs and discuss such needs in its mission statement. Additionally, the ABO has indicated that such IDA’s policies should include housing specific criteria to (a) give clear guidance to applicants regarding the requirements for receiving financial assistance, and (b) establish a uniform method for oversight of such projects. Some IDAs that have adopted policies specific to Housing Projects include: Erie County Industrial Development Agency (“ECIDA”), Nassau County Industrial Development Agency (“NCIDA”), Onondaga County Industrial Development Agency (“OCIDA”), and Ulster County Industrial Development Agency (“UCIDA”). Each of these IDAs includes housing specific criteria in its respective Uniform Tax Exemption Policy (each a “UTEP”), and ECIDA references job promotion, economic welfare and workforce housing in its mission statement.¹⁴

¹⁴ See Erie County Industrial Development Agency, *Our Mission*, available at: <https://www.ecidany.com/our-mission>.

ECIDA's UTEP primarily reiterates ECIDA's "Adaptive Reuse Policy"¹⁵ which focuses on remediating blight, but also includes an addendum related to for-profit market rate rental senior citizen housing.¹⁶ The Adaptive Reuse Policy references data set forth in real estate market surveys which demonstrated a need for revitalizing existing real estate. Additionally, ECIDA's policies (a) set forth factors demonstrating why the adaptive reuse projects would not be feasible without financial assistance, (b) focus on preventing further economic deterioration, and (c) identify required criteria which projects must meet to be considered. By establishing various policies and procedures specifically related to the consideration of Housing Projects, the ABO has indicated that ECIDA would be well-suited to determine that a Housing Project constituted a "commercial project" which ECIDA was authorized to undertake, and would have strong evidence in support of this determination.

Similarly, NCIDA developed an "Enhanced Assistance Policy," related to "Qualifying Increased Affordability Residential Rental Housing Projects."¹⁷ The Enhanced Assistance Policy indicates a public policy goal of providing affordable housing and lowered income eligibility thresholds for affordable units and indicates that NCIDA could obtain third-party consultants to evaluate the benefits of specific Housing Projects.¹⁸ The Enhanced Assistance Policy also sets forth specific criteria for enhanced financial assistance, including (1) the number of affordable units, (2) the type of financing the project expects to receive, (3) whether the project is located in an underdeveloped or distressed area, and (4) whether the project is located in a transit oriented development district.¹⁹ Additionally, NCIDA's UTEP includes a section related to adaptive reuse projects.²⁰

OCIDA's UTEP includes criteria related to adaptive reuse and housing projects.²¹ The criteria to be used by OCIDA to evaluate adaptive reuse projects include (a) the age of the structure, (b) whether, and for how long, the structure is vacant, (c) any financial or structural difficulties associated with redeveloping the structure, and (d) the net increase in the assessed value of the structure due to the completion of an OCIDA project.²² Additionally, if a project involves housing, the UTEP provides questions that must be answered by OCIDA while reviewing such project, including (1) whether the project will fulfill an unmet

¹⁵ See Erie County Industrial Development Agency, *Adaptive Reuse Policy* (Nov. 26, 2008), available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ecidany.com/documents/ecida_adaptive_reuse_policy_revision.pdf.

¹⁶ See Erie County Industrial Development Agency, *Uniform Tax Exemption Policy* (Apr. 1, 2022), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.ecidany.com/documents/2023%20Website%20Document%20Website%20updates%202023/UTEP-Policy-2023.pdf>.

¹⁷ See Nassau County Industrial Development Agency, *Strategic Additional/Enhanced Financial Assistance for Qualifying Increased Affordability Residential Rental Housing Policy*, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nassauida-assets.s3.amazonaws.com/production/documents/2021-05/Affordable-Housing-Policy.pdf>.

¹⁸ See *id.*

¹⁹ See *id.*

²⁰ See Nassau County Industrial Development Agency, *Uniform Tax Exemption Policy* (March 31, 2022), §4(e), available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://nassauida-assets.s3.amazonaws.com/production/documents/2022-04/UNIF-TAX-EXEMPT-POLICY-NCIDA-%282022%29.pdf>.

²¹ See Onondaga County Industrial Development Agency, *Uniform Tax Exemption Policy* (Feb. 15, 2024), available at: <https://ongoved.com/wp-content/uploads/2024/05/UTEP-2-15-24.pdf>.

²² See *id.*

housing need, and (2) whether there is third-party evidence (such as an economic impact study) related to the need for housing. The OCIDA UTEP also sets forth different abatement schedules for market-rate, workforce, and senior lifestyle housing projects.²³ The OCIDA UTEP defines “workforce housing” projects as those designating 10-15% of units to households earning between 80-120% of AMI.²⁴ Generally, the OCIDA UTEP provides more desirable abatements to affordable housing and senior housing.²⁵

UCIDA’s UTEP sets forth specific criteria for evaluating Housing Projects and establishes a real property tax abatement schedule unique to Housing Projects which would calculate payments in lieu of taxes based on the units in a given project facility.²⁶ The abatement schedule would generally be more favorable for a workforce housing project.²⁷ UCIDA’s UTEP defines “workforce housing” as a Housing Project undertaken to provide housing for employees of another facility which would qualify as a valid IDA project (including industrial, manufacturing, warehouse, and other facilities).²⁸ Additionally, the UCIDA has adopted a separate Housing Projects Policy which limits the types of Housing Projects to be considered by the IDA to continuing care retirement facilities and workforce housing.²⁹

In this case, the Agency’s mission to “[a]ssist in the enhancement and diversity of the economy of the Town of Guilderland by acting in support of Projects in the Town that create and/or retain jobs...,”³⁰ does not explicitly contemplate “housing.” Additionally, the Agency’s policies do not explicitly contemplate housing and the Agency has not considered an economic impact study or other evidence regarding the Town’s housing needs. While the Agency may be able to determine the “commercial” nature of some Housing Projects, it has not established the evaluative infrastructure and evidence which may be required to support such determinations. Therefore, any Housing Projects undertaken by the Agency, particularly workforce housing projects, could be found to lack proper authorization.

If the Agency desires to begin considering Housing Projects, it should first consider establishing specific criteria in its UTEP or other policies and gathering independent supporting material, including letters of support from local officials or an economic impact study by a third party. With respect to amending its UTEP, the Agency should note that Section 874 of the GML requires the Agency to solicit

²³ See *id.*

²⁴ See Onondaga County Industrial Development Agency, *Uniform Tax Exemption Policy, Housing Exhibit/Matrix*, available at: <https://ongoved.com/wp-content/uploads/2025/01/Housing-Exhibit-A-1-1.pdf>.

²⁵ See OCIDA UTEP *supra* note 21.

²⁶ See Ulster County Industrial Development Agency, *Uniform Tax Exemption Policy*, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ulstercountyida.com/wp-content/uploads/2024/11/UTEP-Word-11-4-24-66043851-v2.pdf>; see also Ulster County Industrial Development Agency, *Uniform Tax Exemption Policy Matrix – Housing*, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ulstercountyida.com/wp-content/uploads/2024/11/UNIFORM-TAX-EXEMPTION-MATRIX-HOUSING-NOVEMBER-202466044056.2.pdf>.

²⁷ See *id.*

²⁸ See *id.*

²⁹ See Ulster County Industrial Development Agency, *Housing Projects Policy*, available at: <chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://ulstercountyida.com/wp-content/uploads/2024/11/HOUSING-POLICY-NOVEMBER-2024-25046797-v2.pdf>.

³⁰ See Town of Guilderland Industrial Development Agency, *Mission Statement*, available at: chrome-extension://efaidnbmnnnibpcajpcglclefindmkaj/https://www.abo.ny.gov/annualreports/MissionStatements/IDA/Guilderland_IDA_Mission.pdf.

input from any “affected tax jurisdictions” prior to adopting a UTEP. Generally, we interpret that to require the Agency to conduct a public hearing before making any substantive amendments to the Agency’s UTEP. With respect to developing a housing policy or considering changes to the Agency’s mission statement or existing policies, the Agency should consider gathering supporting evidence from local officials and/or third party analyses and discussing the Agency’s findings in open session prior to preparing or adopting new policy materials. From our perspective, revisions to an IDA’s policies, other than with respect to a UTEP, do not generally necessitate holding a public hearing regarding same. However, the due diligence required to revise existing policies or establish a new policy may still require several months, particularly if the Agency determines to solicit an economic impact study or other analysis.

EXHIBIT A

COMPTROLLER OPINION 85-51

- SEE ATTACHED -

Opns St Comp, 1985 No. 85-51 (N.Y.St.Cptr.), 1985 WL 25843

New York State Comptroller
NYCPTR Opn No. 85-51
August 16, 1985

TO: GEORGE A. O'HANLON, ESQ., VILLAGE ATTORNEY
VILLAGE OF PORT CHESTER

General Municipal Law, §§ 852, 854(4)

1. INDUSTRIAL DEVELOPMENT AGENCIES—POWERS AND DUTIES—CONSTRUCTION OF APARTMENT COMPLEX

Local officials must determine, based upon all the relevant facts, whether construction of an apartment complex will promote employment opportunities and prevent economic deterioration and thereby be a proper project for industrial development bond financing.

*1 We have been asked whether construction of an apartment complex is a commercial purpose within the meaning of [section 854\(4\) of the General Municipal Law](#) and, thereby, a proper project for industrial development bond financing.

Article 18-A of the [General Municipal Law](#) (§§ 850-888) contains the provisions of law governing the creation, organization and powers of industrial development agencies in New York State. The legislation (L 1969, ch 1030), at the time of its original enactment in 1969, provided that its general purpose was “to promote the economic welfare of its [the State's] inhabitants and to actively promote, attract, 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 [§ 858 of the General Municipal Law](#), 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:...”

In approving chapter 1030 of the Laws of 1969, Governor 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). Based upon the foregoing, it is our opinion that, at its inception, the primary thrust of the industrial development legislation was to promote the development of commerce and industry as a means of increasing employment opportunities.

The original legislation has been amended a number of times since 1969 to broaden the scope of permissible industrial development activities. Specifically, the definition of a “project” has been expanded to 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, most recently, educational or cultural facilities (L 1982, ch 541). None of these amendments would bring construction of an apartment complex specifically within the ambit of a permissible project for industrial development financing. Therefore, for an apartment complex to qualify as an eligible project under Article 18-A of the General Municipal Law, it must constitute a commercial project as that term was originally used in Article 18-A.

*2 With respect to whether construction of an apartment complex may be viewed generally as a commercial activity within the meaning of Article 18-A, this Office has stated that, while the courts are inclined to construe the grant of powers to industrial development agencies broadly, an essential element of any valid commercial activity appears to be the promotion of employment

opportunities and the prevention of economic deterioration in an area for whose benefit the industrial development agency was created (1982 Opns St Comp No. 82-360, p 455) In *Grossman v Herkimer County Industrial Development Agency*, 60 AD2d 172, 400 NYS2d 623, the court held that development of a mercantile building and attendant creation of 100 job opportunities was a proper project for an industrial development agency to finance. Thus, to qualify for industrial development bond financing, a project should be one which promotes employment opportunities and prevents economic deterioration in the area served by the industrial development agency.

This Office is not in a position to render an opinion as to whether a project which consists of the construction of an apartment complex is a commercial activity within the meaning of Article 18-A of the General Municipal Law. Such a determination must be made by local officials based upon all the facts relevant to the proposed project. We do note, however, that any such determination should take into account the stated purposes of the New York State Industrial Development Agency Act, that is, the promotion of employment opportunities and the prevention of economic deterioration. Please note that, in considering the question of State law raised by this inquiry, we have not considered any requirements of the Internal Revenue Code with respect to issuance of industrial development bonds nor the provisions of Executive Order No. 48, adopted October 3, 1984, prescribing industrial development bond allocations pursuant to the federal Deficit Reduction Act of 1984.

Opns St Comp, 1985 No. 85-51 (N.Y.St.Cptr.), 1985 WL 25843

End of Document

© 2023 Thomson Reuters. No claim to original U.S. Government Works.