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VIA HAND DELIVERY
FOR DISCUSSION PURPOSES ONLY
SUBMITTED WITHOUT PREJUDICE

Town of New Lebanon Planning Board Members
14755 Route 22
PO Box 328
New Lebanon, NY 12125

Members of the Zoning Board of Appeals
14755 Route 22
PO Box 328
New Lebanon, NY 12125

Re: Tilden Commons Project and Property Tax Information

Dear Members of the Planning Board and ZBA:

This firm represents Hudson River Housing, Inc. with respect to the proposed Tilden Commons Affordable Housing Project (“Tilden Project”). It has come to our attention that certain Planning Board members have raised concerns regarding the property tax implications associated with the proposed Tilden Project. While property tax matters are not germane to the application before the Planning Board and are not properly a condition of any approvals, the following is a summary of the anticipated property tax obligations associated with the proposed Tilden Project for your information purposes.

I. The Proposed Tilden Project Could Be the Largest Taxpayer in the Town of New Lebanon.

The proposed Tilden Project, if approved, would result in new construction of a multi-story, mixed use, approximately 41-room low-income affordable housing and commercial building including a grocery store on the first level of the building. The property would be taxable, and the owner anticipates paying all fair and appropriate property taxes charged by the local Taxing Jurisdictions, *i.e.* the Town, County, School District, and any applicable special district charges.

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Under NY law, all real property is subject to taxation, unless specially exempted by express statutory provision. The low-income housing portion of the proposed Tilden Project would be assessed based on Real Property Tax Law § 581-a, which mandates assessors utilize a uniform methodology where the assessed value is calculated using an income capitalization approach. The actual income and expenses are reported to the assessor on an annual basis and used as the inputs in the income capitalization analysis. Since the owner of an affordable housing project is not collecting market rents, the RPTL § 581-a formula ensures that the owner will not be excessively assessed and taxed as if they were receiving market rents. Similarly, the actual expenses on the property must be taken into consideration, as affordable housing projects incur considerable and often above market expenses.

Other traditional methods of valuation, such as comparable sales or cost approach or an income approach based on comparable market rentals, are prohibited when an assessor calculates the value of an affordable housing project. The commercial portion of the property (*i.e.*, the grocery store) would be separately assessed based on traditional assessment methodologies.

The property with the highest assessed value on the 2025 Town of New Lebanon final assessment roll is a spiritual retreat center owned by Abode of the Message, Inc. (Tax Map Number 30.-1-10.111) assessed at a fair market value of \$4,000,000. However, this property receives a full tax exemption for educational use and generates no property tax for the Town, County or School District. The highest assessed property on the taxable portion of the assessment roll is owned by Sassafra Living Trust (Tax Map Number 30.-1-9.3) assessed at a fair market value of \$1,865,000. Subject to final project approvals by the Planning Board, Zoning Board of Appeals and applicable state regulatory agencies, the proposed Tilden Project's property tax assessment could be considerably more than Trust's \$1,865,000 assessment, even when utilizing the mandatory § 581-a income capitalization approach to derive the value for assessment purposes. The new construction will create additional assessed value and revenues for each of the local Taxing Jurisdictions.

In New York, the tax levy is the total amount of money a local government needs to raise through property tax. The annual property tax levy increase is capped at 2% or the rate of inflation, whichever is lower, unless an override is necessary by vote. New construction projects can increase the tax base. Where a property is exempt but subject to payment in lieu of tax ("PILOT") agreement, the PILOT payment receivable from the prior tax year is added to the levy calculation while the PILOT payment in the coming fiscal year is deducted from the equation. *See* tax levy formula below from the Office of the State Comptroller ("OSC").

The law requires each local government, prior to adopting a budget, to submit to the OSC all information necessary for calculating the tax levy limit for the coming fiscal year. The calculation of the tax levy limit does not change based on discretionary budgetary decisions. The tax levy limit is calculated based on factors that are generally known, including the prior year's tax levy, the tax base growth factor, PILOT payments receivable in the prior fiscal year and the coming fiscal year, the exclusion pertaining to excess expenditures related to tort actions for the prior fiscal year, the allowable levy growth factor and available carryover, if any. *See* tax levy formula below.

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Depending on how the PILOT agreement is negotiated, the PILOT payment may adjust the amount the Taxing Jurisdiction can levy. However, a PILOT payment will be received presumptively replacing what the Taxing Jurisdiction would have received if the assessed value was fully accounted for in the formula which should not have an impact on revenues.

Office of the New York State Comptroller
 Thomas P. DiNapoli • State Comptroller

Property Tax Cap
 Formula for Determining Tax Levy Limit: School Districts

Base Formula

$$\left(\left(\left(\begin{array}{l} \text{Total taxes levied for} \\ \text{prior fiscal year} \end{array} + \begin{array}{l} \text{Prior year} \\ \text{reserve offset} \end{array} - \begin{array}{l} \text{Reserve} \\ \text{amount} \\ \text{(including} \\ \text{interest} \\ \text{earned)} \end{array} \right) \times \begin{array}{l} \text{Tax base} \\ \text{growth} \\ \text{factor}^2 \end{array} \right) + \begin{array}{l} \text{PILOTs} \\ \text{receivable in the} \\ \text{prior fiscal year} \end{array} - \begin{array}{l} \text{Capital tax levy} \\ \text{exclusion, prior} \\ \text{fiscal year} \end{array} - \begin{array}{l} \text{Tort exclusion,} \\ \text{prior} \\ \text{fiscal year} \end{array} \right)$$

$$\times \begin{array}{l} \text{Allowable levy} \\ \text{growth factor} \\ \text{(1.00 to 1.02)}^2 \end{array} - \begin{array}{l} \text{PILOTs} \\ \text{receivable in} \\ \text{coming fiscal} \\ \text{year} \end{array} + \begin{array}{l} \text{Available} \\ \text{carryover, if} \\ \text{any} \end{array} = \text{Tax Levy Limit}$$

+ Exclusions

$$\text{Tax Levy Limit} + \begin{array}{l} \text{Tax levy necessary for} \\ \text{expenditures resulting} \\ \text{from court} \\ \text{orders/judgments} \\ \text{arising out of tort} \\ \text{actions for any amount} \\ \text{in excess of 5\% of the} \\ \text{total taxes levied in} \\ \text{the prior fiscal year} \end{array} + \begin{array}{l} \text{Capital tax levy} \end{array} + \begin{array}{l} \text{Tax levy necessary to pay} \\ \text{for increases to the system} \\ \text{average actuarial} \\ \text{contribution rate (ERS) or} \\ \text{normal contribution rate} \\ \text{(TRS) of pension funds over} \\ \text{2 percentage points} \end{array} = \text{Tax Levy Limit,} \\ \text{with Exclusions} \\ \text{(if applicable)}^3$$

¹ Tax base growth factor: Based on Tax and Finance determination of "quantity change," such as new construction, newly taxable status of existing property, or measurable improvements to taxable property within the boundaries of the local government or school district.

² Allowable levy growth factor: Lesser of 1.02 or inflation factor (percent change in CPI for the 12-month period ending 6 months before the start of the coming fiscal year over the prior 12-month period), but never lower than 1.00.

³ If school districts propose to exceed this, they must get 60% voter approval for an override.

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Division of Local Government and School Accountability

II. The Proposed Tilden Project May Require a Payment In Lieu of Tax (“PILOT”) Arrangement to Secure Regulatory Approval

The proposed Tilden Project will be subject to regulatory approval by NYS Homes and Community Renewal (“HCR”). As part of the application and vetting process, the owner must detail the project’s scope, local support and approvals, proposed use of the property, operating budget including estimated income and expenses to determine the project’s eligibility for approval, incentives and project viability. When scoring affordable housing applications, HCR will award points to projects that secure a favorable PILOT agreement as it demonstrates local support for the project, increases financial feasibility of the project and supports long-term affordability of the project by reducing operating expenses. The number of points varies depending on the specific HCR program and the level of tax benefit the PILOT provides.

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While the proposed Tilden Project may not include a contemplated PILOT agreement at this time, after filing the application with HCR they will review the project's financial feasibility, among various other project aspects. HCR may determine that a PILOT agreement should be pursued as a condition of necessary funding approval to ensure the proposed Tilden Project's long-term financial sustainability. As of now, the project developer's financial model does not support the need for a PILOT, but that is only the estimated perspective of the developer. The project developer does not have complete control over this outcome. HCR will direct the project developer on this issue during the application review process. For that reason, the project developer must remain open to a potential PILOT arrangement at a future time.

A PILOT agreement is also beneficial to both the project owner and the Taxing Jurisdictions because it creates consistency for all parties in terms of budgeting. That is, by negotiating payments for a specific term the Taxing Jurisdictions can consistently predict revenues, and the project owner can predict annual property tax expenses to avoid annual variation in assessed values and potential litigation seeking assessment reductions if the RPTL § 581-a formula is miscalculated by the assessor. The PILOT payments would be distributed to all Taxing Jurisdictions in their proportionate share.

Where there is no PILOT agreement, property tax expenses will be estimated based on the mandatory RPTL § 581-a formula and provided to HCR with the application for regulatory approval. However, without a PILOT agreement, the applicant may receive fewer points and potentially jeopardize regulatory approvals and funding awards negatively affecting the project's financial feasibility.

If a PILOT is pursued at the direction of HCR or to increase its eligibility for regulatory approvals from HCR, the underlying exemption would likely be based on the Private Housing Finance Law ("PHFL") which governs the formation, operation and taxable status of housing development fund companies ("HDFC's"). The purpose of the PHFL is to enable housing companies to participate more effectively in existing municipal, state and federal assistance programs and to make more effective use of other sources of financing which may be available for low-income housing.

PHFL § 577 is a permissive exemption wherein the project owner applies to the local legislative body to request approval of a partial or full exemption from property taxation on a parcel for a period less than forty years. If the exemption request is approved, the parties will enter into a PILOT agreement to secure negotiated payments, the project owner would still be required to make annual financial statement filings with the assessor to ensure the assessments were calculated with the appropriate inputs. Special district taxes would still be owed even if the property enjoys a partial or full PHFL § 577 exemption.

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III. Final Thoughts

The proposed Tilden Project is intended to support the State's initiative to address the critical need for affordable housing for low-income individuals in communities such as the Town of New London. Should a PILOT be required during the regulatory approval process, the Taxing Jurisdictions will have the opportunity to voice any concerns and participate in negotiations with the property owner at that time. The Planning Board and ZBA have no authority to condition approval of the application pending before the Board on waiver of any future PILOT agreements with the Taxing Jurisdictions or to continue to raise this issue as a concern as it relates to the proposed Tilden Project application.

Thank you for your attention to this matter and for your consideration of the proposed Tilden Project application based on all lawful conditions in the Town zoning ordinance and Fair Housing laws.

Respectfully submitted,



Emanuela D'Ambrogio

cc: Javier Gomez