

RESOLUTION NO. 1857

A RESOLUTION OF THE COUNCIL OF THE CITY OF SALISBURY, MARYLAND AUTHORIZING A REFUND TO THE WICOMICO COUNTY HOUSING AUTHORITY OF TAX SALE PROCEEDS RELATING TO FIVE PROPERTIES AND A WRITE-OFF OF ALL REMAINING TAX LIABILITIES RELATED TO WICOMICO LEASED HOUSING AUTHORITY PROPERTIES LOCATED IN SALISBURY AND AUTHORIZING THE MAYOR TO SIGN A COOPERATION AGREEMENT WITH THE WICOMICO COUNTY HOUSING AUTHORITY TO PROVIDE FOR A PAYMENT IN LIEU OF TAXES FOR HOUSING AUTHORITY PROPERTIES LOCATED IN THE CITY

WHEREAS, Wicomico County Housing Authority (WCHA) has a wholly owned subsidiary Wicomico Leased Housing Corporation (WLHC); and

WHEREAS, the WLHC owns five properties within the City limits; and

WHEREAS, the WLHC properties were never classified as tax-exempt, even though their parent is a tax-exempt entity, and, as a result were billed for property taxes, which were not paid; and

WHEREAS, the WLHC properties were erroneously sold at tax sale and the City collected \$1,769.84 in proceeds from the tax sale; and

WHEREAS, the WLHC requests that the tax sale proceeds be refunded to the tax certificate holders through payment to Wicomico County such that the WCHA and the WLHC would then have clear title to the property; and

WHEREAS, the WLHC also requests that all other taxes owed on these properties be written off by the City (the amount is approximately \$34,500); and

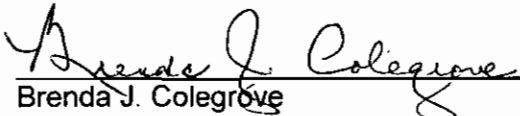
WHEREAS, once clear title to these properties is obtained, with the refunds and write offs, the WCHA intends to transfer the WLHC properties into the WCHA name; and

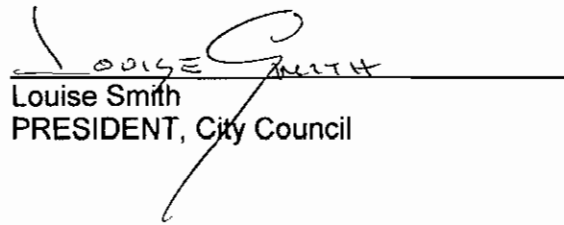
WHEREAS, the WCHA will enter into a cooperation agreement with the City to make annual Payments in Lieu of Taxes for all the WHCA properties located in the City, including the five WLHC properties;

NOW, THEREFORE, BE IT RESOLVED that the Salisbury City Council authorizes the Department of Internal Services to refund tax sale proceeds and to write off all remaining tax liabilities related to the Wicomico Leased Housing Authority properties and authorizes the Mayor to sign the attached Cooperation Agreement with Wicomico County Housing Authority.

THE ABOVE RESOLUTION was introduced and duly passed at a meeting of the Council of the City of Salisbury, Maryland held on the 9th day of November, 2009 and is to become effective immediately upon adoption.


ATTEST:


Brenda J. Colegrove
CITY CLERK


Louise Smith
PRESIDENT, City Council

APPROVED BY ME THIS

10th DAY OF November, 2009


James Tretton, Jr.
MAYOR, City of Salisbury

Memo

To: John R. Pick, City Administrator
From: Pamela B. Oland, Director of Internal Services *PBO*
Date: November 3, 2009
Re: Wicomico Housing Authority

The City of Salisbury has been approached by the Wicomico Housing Authority with regards to creating a Payment In Lieu of Taxes Agreement (PILOT) for the Housing Authority properties located within the City limits.

Additionally, the Housing Authority would like the City to refund \$1,769.84 of taxes received at tax sale for 5 properties owned by Wicomico Leased Housing Corporation (WLHC) (a wholly owned subsidiary of the Housing Authority). The WLHC properties were never classified as tax exempt in the billing system and taxes have been billed and unpaid back to FY 1997. In discussions with City staff members, these properties were never previously put up for tax sale by the County, even though requests had been made by the City. In June 2007, the County placed these five (5) properties which are located in the City limits, and others located throughout the County, including Fruitland, which are owned by WLHC up for tax sale. During that process the County only asked for the FY 2007 taxes outstanding, not the full outstanding balance. The properties sold at the sale. After the sale, the WLHC requested that the City, County and Fruitland refund the tax collected amount, so that the properties could be redeemed by the Housing Authority and transferred into the Housing Authority name. Once that occurs, the properties would be tax exempt. The County and Fruitland have refunded the money received at tax sale to the buyers so that WLHC could have clean title to the properties. In addition to the taxes WLHC would like refunded, the City Council would also need to approve a write off of all other tax years outstanding, which totals \$34,511.12 related to these properties.

For the redemption, the Housing Authority would be willing to sign a PILOT for all Housing Authority properties (including these 5), by which the City would receive a payment every year. Attached please find a copy of that PILOT agreement. The Housing Authority is asking that the City forgo all back taxes, including the amounts received at tax sale for the right to this PILOT agreement.

Currently, the City does not collect anything on the Housing Authority properties and even though taxes have been billed on the WLHC properties nothing has been collected since prior to 1997. The PILOT agreement would give the City a portion of the rent collected on the property. The PILOT is not a guarantee for payment. The language in it is to the benefit of the Housing Authority (see section 3e), but since we do not currently collect anything in regards to these properties, the agreement has the potential to increase our current cash flow.

Attached please find a memo from TJ Maloney with additional information regarding these properties. According to Mr. Maloney, the benefit of having this matter resolved and having the Housing Authority having clean title to the property is this would facilitate the receipt of federal funding to upgrade these properties.

City Council discussed this issue at the October 19, 2009 work session and requested that the administration move forward with a resolution allowing for the refund of the taxes paid at the tax sale for the five (5) WLCH properties as well as the write off of all outstanding taxes for these properties. Additionally, the resolution would allow the Mayor to sign a cooperation agreement with the Housing Authority for these five properties as well as all other Housing Authority properties. Attached is a copy of a resolution that has been drafted in accordance with the discussion at the Council's work session.

COOPERATION AGREEMENT

THIS AGREEMENT, entered in to this 10th day of November, 2009, by and between the **WICOMICO COUNTY HOUSING AUTHORITY** (herein called the "Local Authority") and the **CITY OF SALISBURY**, a Maryland Municipal Corporation and body public (herein called the "Local Government").

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the parties hereto do agree as follows:

- 1) Whenever used in this Agreement:
 - a) The term "Project" shall mean only those properties now located within the corporate limits of the Local Government set out on Exhibit A, which were developed and/or owned and operated by Local Authority as low-rent housing, and including such low-rent housing titled to Wicomico Leased Housing as set forth hereinafter.
 - b) The term "Taxing Body" shall mean the City of Salisbury, a Maryland Municipal Corporation and body politic, sometimes also referred to as "the Local Government."
 - c) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and non-dwelling rents (excluding all other income of such Project), less the cost to the Local Authority of all dwelling and non-dwelling utilities.
- 2) The Local Authority shall endeavor (a) to secure a contract or contracts with HUD for loans and annual contributions covering one or more Projects and to administer such Project or Projects, each which are currently located within the corporate limits of the Local Government and as set forth on Exhibit A. The obligations of the parties hereto shall apply to each such Project.
- 3) (a) Local Authority's Projects now existing within the corporate limits of the Local Government are exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. With respect to any Project, so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purpose, or (ii) any contract between the Local Authority and HUD for loans or annual contributions, or both, in connection with such Project remains in force and effect or (iii) any bonds issued in connection with such Project, or any monies due to HUD in connection with such Project remain unpaid, whichever period is the longest, the Local Government agrees that it will not levy or impose any real or personal property taxes or special

assessments upon such Project(s) or upon the Local Authority with respect thereto. During such period, the Local Authority shall make annual payments (herein called "Payment(s) in Lieu of Taxes") in lieu of taxes and special assessments, and in payment for the public services and facilities furnished from the time to time without other cost or charge for or with respect to such Project.

(b) Each such annual Payment(s) in Lieu of Taxes (PILOT) shall be made after the end of the fiscal year established for such Project, and shall be in an amount equal to either (i) ten percent (10%) of the Shelter Rent charged by the Local Authority in respect to such Project during the fiscal year or (ii) the amount permitted to paid by applicable State law in effect on the date such payment is made, whichever amount is lower.

(c) PILOT payments hereunder shall be determined upon a municipal fiscal year commencing July 1, 2009 and ending June 30, 2010.

(d) Local Authority shall make its PILOT payment to Local Government no later than December 31st following the end of the municipal fiscal year for which such payment is due.

(e) Upon failure of the Local Authority to make any Payment(s) in Lieu of Taxes, no lien against any Project or assets of Local Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof.

(f) Local Authority shall pay, in addition to and not as part of such PILOT, the standard charges and/or assessments as would be due were the Project operated as a private enterprise for utility and other services provided by Local Government.

- 4) With respect to any new project for low-rent housing, the commencement of which is after the date of execution of this Agreement, the Local Government and Local Authority agree to enter into good faith negotiations to reach an agreement setting forth the rights and responsibilities of each, including, but not limited to, a formula for determining a Payment in Lieu of Taxes by Local Authority to Local Government for said new project.
- 5) No Cooperation Agreement, however titled, named or designated, heretofore entered into between the Local Government and the Local Authority shall be constructed not to apply to any Project covered by this Agreement after the execution of this Agreement.
- 6) So long as any contract between the Local Authority and HUD for loans (including preliminary loans) or annual contributions, or both, in connection with any Project shall remain in force and effect, or so long as any bonds issued in connection with any Project or any monies due to HUD in connection with such Project remain unpaid, this Agreement shall not be abrogated, changed or modified without the consent of both the Local Government and the Local Authority. The privileges and

obligations of the Local Authority and its successors and assigns, and of the Local Government shall remain in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Local Authority or any other public body or governmental agency including HUD, authorized by law to engage in the development or administration of low-rent housing projects. If at any time the beneficial title to, or possession of, any Project is held by such other public body or governmental agency, including HUD, the provisions hereof shall inure to the benefit of and may be enforced by, such other public body or governmental agency, including HUD.

- 7) The parties recognize and agree that the property known and designated as - see Attachment A - now located within the corporate limits of the Local Government is or may be at the execution of this Agreement titled to Wicomico Leased Housing, although it is beneficially owned by Local Authority, and it shall be considered an "existing property" within the corporate limits of the Local Government for the purposes of this Agreement.

IN WITNESS WHEREOF, the Local Government and the Local Authority have respectively signed this agreement caused their seals to be affixed and attested as of the day and year first above written.

ATTEST:

WICOMICO COUNTY HOUSING AUTHORITY

Deanda J. Colegrove

By: Sarcinia Church (SEAL)
(Title)

CITY OF SALISBURY

Deanda J. Colegrove

By: Orton Jr. (SEAL)
(Title) MAYOR



City of Salisbury
Wicomico Housing Authority Properties

Tax ID	Street Address
05012260	615 Jefferson St.
05024986	145 Davis St.
05024994	147 Davis St.
05025001	509 Decatur Ave.
05025028	511 Decatur Ave.
05025036	624 Hammond St.
05025060	1016 Queen Anne St.
05025079	1014 Queen Anne St.
05025087	500 Truitt St.
05025095	520 Priscilla St.
05025117	625 Jefferson St.
05025125	709 Grace St.
05025133	200 Linwood Ave.
05056659	627 Jefferson St.
09059172	607 Lake St.
09059180	609 Lake St.
09059199	611 Lake St.
09059202	613 Lake St.
13022151	729 S. Division St.
13029229	507 Mulberry St.
13050449	300 Buena Vista Ave.
13050457	301 Buena Vista Ave.
13050465	303 Buena Vista Ave.
13050473	304 Buena Vista Ave.
13050481	305 Buena Vista Ave.
13050503	307 Buena Vista Ave.
13050511	309 Buena Vista Ave.
13050538	311 Buena Vista Ave.
13050546	313 Buena Vista Ave.
13050554	313 E. Locust St.
13050562	410 Poplar St.
13050589	310 E. Carroll St.
13050600	744 S. Division St.
13057699	312 E. Carroll St.
13059268	526 Washington St.

Wicomico Leased Housing Properties

05025044	613 Jefferson St.
05025052	700 Jefferson St.
09061371	613 Delaware Ave.
09061398	611 Delaware Ave.
09061401	609 Delaware Ave.

Memorandum

To: Pam Oland, City of Salisbury
CC: Narcinda Church, Executive Director, WCHA
From: Thomas J. Maloney, Esquire
Date: 10/14/2009
Re: Wicomico County Housing Authority/Wicomico Leased Housing Corporation

The matter now pending before the Salisbury City Council relates to the Property Tax/PILOT agreement by and between the Wicomico County Housing Authority ("WCHA") and the City of Salisbury ("City") with respect to properties owned by the WCHA and/or its wholly owned subsidiary Wicomico Leased Housing Corporation ("WLHC") within the City limits.

INTRODUCTION

This matter came to issue as a result of several properties owned by the WCHA and/or WLHC that were sent to tax sale for the non-payment of taxes either in Wicomico County, the City of Fruitland ("Fruitland"), or the City.

The specific properties sent to tax sale which lie in the City are as follows:

- a. 613 Jefferson Street/ Account No. 05-025044
Amount collected \$392.45
- b. 700 Jefferson Street/ Account No. 05-025052
Amount collected \$392.06
- c. 613 Delaware Avenue/ Account No. 09-061371
Amount collected \$328.49
- d. 611 Delaware Avenue/ Account No. 09-061398
Amount collected \$328.42
- e. 609 Delaware Avenue/ Account No. 09-061401
Amount collected \$328.42

These properties were owned by WLHC, a wholly owned subsidiary of the WCHA. Wicomico County has informed the WCHA that it disbursed to the City the sum of \$1,769.84 as the total proceeds from the tax sale. Both Wicomico

County and Fruitland have subsequently agreed to repay the amounts for which the properties were sold directly to the tax certificate holders such that the WCHA and the WLHC would then be in good title to the property. The significance of the WCHA and WLHC having good title to the property is that the WLHC properties could be conveyed to the WCHA at which time they will then be eligible for federal grants to upgrade the properties.

BACKGROUND

The WLHC was organized in 1972 through the initiative of the WCHA. The WCHA, organized in 1965 by the Wicomico County Council, had created 175 conventional public housing units and leased 100 units from private owners. In 1971, the WCHA requested the County Council to approve an application to HUD for 200 more conventional units. The Council actually approved 100, 50 for families and 50 for the elderly. When this request was eventually considered by the Baltimore area office of HUD, their reply was that no authorization could be given for more conventional units. After several months of failed attempts to get private developers to build acceptable units, the WCHA learned that it was possible to create a not-for-profit corporation which could sell tax-exempt bonds, whose payment in 20 years would be assured by the federal government's annual contributions contract; the interest rate on which these bonds would be low enough to enable the non-profit corporation to have the units built and lease them to the housing authority at rentals covered by the annual contributions contract. Upon approval by HUD, the WLHC was created. As a result, certain properties located within the City limits of Salisbury are owned by WLHC rather than WCHA and remain on the tax records. Taxes for those properties have never been paid, the properties were referred to Wicomico County for tax sale.

CURRENT STATUS

As of today's date, PILOT Agreements have successfully been negotiated between the WCHA and Fruitland and Wicomico County. A copy of the fully executed Fruitland PILOT Agreement is attached hereto and referred to as "Exhibit A". The terms of the County's PILOT Agreement are substantially the same as set forth in Exhibit A. The County Attorney has advised that the PILOT will be presented to the County Council on October 20, 2009.

In addition, the WCHA has prepared for recordation all of the documentation necessary in order to convey the properties currently in the name of WLHC to WCHA. However, the documents cannot be recorded until such time as all of the properties in WLHC's name have been redeemed from the tax sale. Therefore, until such time as the WCHA and the City come to terms with regard to a new PILOT Agreement and the redemption of the above referenced properties from tax sale, no further action can be taken by the WCHA with regard to any of the properties.

October 14, 2009

Specifically, this includes the inability of WCHA to acquire additional grant funds for the City properties in order to renovate the properties as it has done with its Fruitland properties, much to the pleasure of the Fruitland Town Council. To date, the funds remain available, however, until the properties are redeemed from the tax sale, federal grant funding will not be available.

Attached hereto and incorporated herein by reference as "Exhibit B" is a copy of the old Cooperation Agreement entered into by and between the City and WCHA. You will note, pursuant to the terms of that Cooperation Agreement, that any default in the Agreement would not constitute a lien on any of the property that will precipitate a tax sale to collect the lien. Furthermore, attached hereto and incorporated herein by reference as "Exhibit C" for your review is a copy of an opinion from the Office of the Attorney General dated November 17, 1986 wherein the Attorney General opines that under Maryland Law, the WCHA is not subject to municipal taxes.

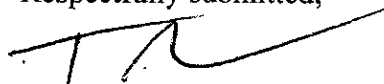
REQUEST PENDING

The request currently pending before the City being made by the WCHA is for the City to reimburse back to the County the sum of \$1,769.84 in order that the County may redeem the tax sale certificates issued as a result of the sale of the above referenced properties. Furthermore, the WCHA requests that the outstanding taxes for the above referenced properties be shown as "-0-" such that the deed conveying the properties from the WLHC to WCHA can be recorded among the Land Records of Wicomico County.

Upon recordation of the deed and the execution of a new PILOT Agreement, the WCHA can pursue grants to improve the properties such that they are available for families which meet the requisite criteria at which time rents will be paid and monies received from those rents will be used to pay payments under the PILOT Agreement.

The WCHA looks forward to presenting this issue to the City and to a favorable conclusion of this matter such that it can pursue the business of providing safe and affordable housing to deserving families.

Respectfully submitted,



Thomas J. Maloney, Esquire
Attorney for
Wicomico County Housing Authority

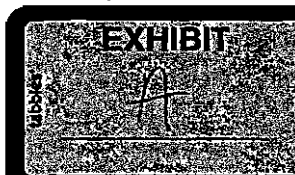
COOPERATION AGREEMENT

THIS AGREEMENT, entered in to this 27th day of April, 2009, by and between the **WICOMICO COUNTY HOUSING AUTHORITY** (herein called the "Local Authority") and the **CITY OF FRUITLAND**, a Maryland Municipal Corporation and body public (herein called the "Local Government").

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the parties hereto do agree as follows:

- 1) Whenever used in this Agreement:
 - a) The term "Project" shall mean only those properties now located within the corporate limits of the Local Government set out on Exhibit A, which were developed and/or owned and operated by Local Authority as low-rent housing, and including such low-rent housing titled to Wicomico Leased Housing as set forth hereinafter.
 - b) The term "Taxing Body" shall mean the City of Fruitland, a Maryland Municipal Corporation and body politic, sometimes also referred to as "the Local Government."
 - c) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and non-dwelling rents (excluding all other income of such Project), less the cost to the Local Authority of all dwelling and non-dwelling utilities.
- 2) The Local Authority shall endeavor (a) to secure a contract or contracts with HUD for loans and annual contributions covering one or more Projects and to administer such Project or Projects, each which are currently located within the corporate limits of the Local Government and as set forth on Exhibit A. The obligations of the parties hereto shall apply to each such Project.
- 3) (a) Local Authority's Projects now existing within the corporate limits of the Local Government are exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. With respect to any Project, so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purpose, or (ii) any contract between the Local Authority and HUD for loans or annual contributions, or both, in connection with such Project remains in force and effect or (iii) any bonds issued in connection with such Project, or any monies due to HUD in connection with such Project remain unpaid, whichever period is the longest, the Local Government agrees that it will not levy or impose any real or personal property taxes or special



assessments upon such Project(s) or upon the Local Authority with respect thereto. During such period, the Local Authority shall make annual payments (herein called "Payment(s) in Lieu of Taxes") in lieu of taxes and special assessments, and in payment for the public services and facilities furnished from the time to time without other cost or charge for or with respect to such Project.

(b) Each such annual Payment(s) in Lieu of Taxes (PILOT) shall be made after the end of the fiscal year established for such Project, and shall be in an amount equal to either (i) ten percent (10%) of the Shelter Rent charged by the Local Authority in respect to such Project during the fiscal year or (ii) the amount permitted to be paid by applicable State law in effect on the date such payment is made, whichever amount is lower.

(c) PILOT payments hereunder shall be determined upon a municipal fiscal year commencing July 1, 2009 and ending June 30, 2010.

(d) Local Authority shall make its PILOT payment to Local Government no later than December 31st following the end of the municipal fiscal year for which such payment is due.

(e) Upon failure of the Local Authority to make any Payment(s) in Lieu of Taxes, no lien against any Project or assets of Local Authority shall attach, nor shall any interest or penalties accrue or attach on account thereof.

(f) Local Authority shall pay, in addition to and not as part of such PILOT, the standard charges and/or assessments as would be due were the Project operated as a private enterprise for utility and other services provided by Local Government.

- 4) With respect to any new project for low-rent housing, the commencement of which is after the date of execution of this Agreement, the Local Government and Local Authority agree to enter into good faith negotiations to reach an agreement setting forth the rights and responsibilities of each, including, but not limited to, a formula for determining a Payment in Lieu of Taxes by Local Authority to Local Government for said new project.
- 5) No Cooperation Agreement, however titled, named or designated, heretofore entered into between the Local Government and the Local Authority shall be constructed not to apply to any Project covered by this Agreement after the execution of this Agreement.
- 6) So long as any contract between the Local Authority and HUD for loans (including preliminary loans) or annual contributions, or both, in connection with any Project shall remain in force and effect, or so long as any bonds issued in connection with any Project or any monies due to HUD in connection with such Project remain unpaid, this Agreement shall not be abrogated, changed or modified without the consent of both the Local Government and the Local Authority. The privileges and

obligations of the Local Authority and its successors and assigns, and of the Local Government shall remain in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Local Authority or any other public body or governmental agency including HUD, authorized by law to engage in the development or administration of low-rent housing projects. If at any time the beneficial title to, or possession of, any Project is held by such other public body or governmental agency, including HUD, the provisions hereof shall inure to the benefit of and may be enforced by, such other public body or governmental agency, including HUD.

- 7) The parties recognize and agree that the property known and designated as Brinkley Heights Blk A Lots 48, 50, 52, 54, 56, 58, 60 + 60 - 100 Feet, now located within the corporate limits of the Local Government is or may be at the execution of this Agreement titled to Wicomico Leased Housing, although it is beneficially owned by Local Authority, and it shall be considered an "existing property" within the corporate limits of the Local Government for the purposes of this Agreement.

IN WITNESS WHEREOF, the Local Government and the Local Authority have respectively signed this agreement caused their seals to be affixed and attested as of the day and year first above written.

ATTEST:

WICOMICO COUNTY HOUSING AUTHORITY

Diane C. Nelson

By: *Narcinda Church* (SEAL)
(Title)

CITY OF FRUITLAND

Diane C. Nelson
Diane C. Nelson, City Clerk

By: *Gregory J. Blinde* (SEAL)
Gregory J. Blinde, President
Fruitland City Council

Fruitland

112 Brown Street	Fruitland, MD	21826
407 Cartwright Avenue	Fruitland, MD	21826
418 Cartwright Avenue	Fruitland, MD	21826
420 Cartwright Avenue	Fruitland, MD	21826
422 Cartwright Avenue	Fruitland, MD	21826
424 Cartwright Avenue	Fruitland, MD	21826
426 Cartwright Avenue	Fruitland, MD	21826
428 Cartwright Avenue	Fruitland, MD	21826
302 Dulany Avenue	Fruitland, MD	21826
309 Dulany Avenue	Fruitland, MD	21826
301 Dulany Avenue	Fruitland, MD	21826
304 Dulany Avenue	Fruitland, MD	21826
205 Dulany Avenue	Fruitland, MD	21826
303 Dulany Avenue	Fruitland, MD	21826
203 Dulany Avenue	Fruitland, MD	21826
201 Dulany Avenue	Fruitland, MD	21826
311 Dulany Avenue	Fruitland, MD	21826
313 Dulany Avenue	Fruitland, MD	21826
315 Dulany Avenue	Fruitland, MD	21826
317 Dulany Avenue	Fruitland, MD	21826
103 Leslie Street	Fruitland, MD	21826
202 Leslie Street	Fruitland, MD	21826
203 Leslie Street	Fruitland, MD	21826
204 Leslie Street	Fruitland, MD	21826
206 Leslie Street	Fruitland, MD	21826
208 Leslie Street	Fruitland, MD	21826
205 Leslie Street	Fruitland, MD	21826
416 St. Luke Road	Fruitland, MD	21826
202 Theodore Street	Fruitland, MD	21826
203 Theodore Street	Fruitland, MD	21826
204 Theodore Street	Fruitland, MD	21826
206 Theodore Street	Fruitland, MD	21826
205 Theodore Street	Fruitland, MD	21826
207 Theodore Street	Fruitland, MD	21826
419 Ogle Ave	Fruitland, MD	21826
421 Ogle Ave	Fruitland, MD	21826
423 Ogle Ave	Fruitland, MD	21826
425 Ogle Ave	Fruitland, MD	21826
427 Ogle Ave	Fruitland, MD	21826
429 Ogle Ave	Fruitland, MD	21826
431 Ogle Ave	Fruitland, MD	21826
415 Ogle Ave	Fruitland, MD	21826
417 Ogle Ave	Fruitland, MD	21826

Exhibit A

ORC

COOPERATION AGREEMENT

This Agreement entered into this 21st day of August, 1967, by and between Wicomico County Housing Authority (herein called the "Local Authority") and the City of Salisbury, Maryland (herein called the "Local Government").

WITNESSETH:

In consideration of the mutual covenants hereinafter set forth, the parties hereto do agree as follows:

1. Whenever used in this Agreement:

(a) The term "Project" shall mean any low-rent housing hereafter developed as an entity by the Local Authority with financial assistance of the Public Housing Administration (herein called the "PHA"); excluding, however, any low-rent housing project covered by any contract for loans and annual contributions entered into between the Local Authority and the PHA, or its predecessor agencies, prior to the date of this Agreement.

(b) The term "Taxing Body" shall mean the State or any political subdivision or taxing unit thereof in which a Project is situated and which would have authority to assess or levy real or personal property taxes or to certify such taxes to a taxing body or public officer to be levied for its use and benefit with respect to a Project if it were not exempt from taxation.

(c) The term "Shelter Rent" shall mean the total of all charges to all tenants of a Project for dwelling rents and non-dwelling rents (excluding all other income of such Project), less the cost to the Local Authority of all dwelling and non-dwelling utilities.

(d) The term "Slum" shall mean any area where dwellings predominate which, by reason of dilapidation, overcrowding, faulty arrangement or design, lack of ventilation, light or sanitation facilities, or any combination of these factors, are detrimental to safety, health



3. (a) Under the constitution and statutes of the ~~State of Maryland~~ , all Projects are exempt from all real and personal property taxes and special assessments levied or imposed by any Taxing Body. With respect to any Project so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Local Authority and the PHA for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project, or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Local Government agrees that it will not levy or impose any real or personal property taxes or special assessments upon such Project or upon the Local Authority with respect thereto. During such period, the Local Authority shall make annual payments (herein called "Payments in Lieu of Taxes") in lieu of taxes and special assessments and in payment for the public services and facilities furnished from time to time without other cost or charge for or with respect to such Project.

(b) Each such annual Payment in Lieu of Taxes shall be made after the end of the fiscal year established for such Project, and shall be in an amount equal to either (i) ten percent (10%) of the Shelter Rent charged by the Local Authority in respect to such Project during such fiscal year or (ii) the amount permitted to be paid by applicable state law in effect on the date such payment is made, whichever amount is the lower.

(c) The Local Government shall distribute the Payments in Lieu of Taxes among the Taxing Bodies in the proportion which the real property taxes which would have been paid to each Taxing Body for such year if the Project were not exempt from taxation bears to the total real property taxes which would have been paid to all of the Taxing Bodies for such year if the Project were not exempt from taxation; Provided, however, That no payment for any year shall be made to any Taxing Body in excess of the amount of the real property taxes which would have been paid to such Taxing Body for such year if the Project were not exempt from taxation.

(d) Upon failure of the Local Authority to make any Payment in Lieu of Taxes, no lien against any Project or assets of the Local Authority shall attach, nor

4. The Local Government agrees that, subsequent to the date of initiation (as defined in the United States Housing Act of 1937, as amended) of each Project and within five years after the completion thereof, or such further period as may be approved by the PHA, there will be elimination (as approved by the PHA) by demolition, condemnation, effective closing, or compulsory repair or improvement, of unsafe or insanitary dwelling units situated in the locality or metropolitan area of the Local Government substantially equal in number to the number of newly constructed dwelling units provided by such Project; Provided, that, where more than one family is living in an unsafe or insanitary dwelling unit, the elimination of such unit shall count as the elimination of units equal to the number of families accommodated therein; and Provided, further, that this paragraph 4 shall not apply in the case of (i) any Project developed on the site of a Slum cleared subsequent to July 15, 1949 and that the dwelling units eliminated by the clearance of the site of such Project shall not be counted as elimination for any other Project or any other low-rent housing Project, or (ii) any Project located in a rural non-farm area.

5. During the period commencing with the date of the acquisition of any part of the site or sites of any Project and continuing so long as either (i) such Project is owned by a public body or governmental agency and is used for low-rent housing purposes, or (ii) any contract between the Local Authority and the PHA for loans or annual contributions, or both, in connection with such Project remains in force and effect, or (iii) any bonds issued in connection with such Project or any monies due to the PHA in connection with such Project remain unpaid, whichever period is the longest, the Local Government without cost or charge to the Local Authority or the tenants of such Project (other than the Payments in Lieu of Taxes) shall:

- (a) Furnish or cause to be furnished to the Local Authority and the tenants of such Project public services and facilities of the same character and to the same extent as are furnished from time to time without cost or charge to other dwellings.

such vacated areas; and, insofar as it is lawfully able to do so without cost or expense to the Local Authority or to the Local Government cause to be removed from such vacated areas, insofar as it may be necessary, all public or private utility lines and equipment;

(c) Insofar as the Local Government may lawfully do so, (i) grant such deviations from the building code of the Local Government as are reasonable and necessary to promote economy and efficiency in the development and administration of such Project, and at the same time safeguard health and safety, and (ii) make such changes in any zoning of the site and surrounding territory of such Project as are reasonable and necessary for the development and protection of such Project and the surrounding territory;

(d) Accept grants of easements necessary for the development of such Project; and

(e) Cooperate with the Local Authority by such other lawful action or ways as the Local Government and the Local Authority may find necessary in connection with the development and administration of such Project.

6. In respect to any Project the Local Government further agrees that within a reasonable time after receipt of a written request therefor from the Local Authority:

(a) It will accept the dedication of all interior streets, roads, alleys, and adjacent sidewalks within the area of such Project, together with all storm and sanitary sewer mains in such dedicated areas, after the Local Authority, at its own expense, has completed the grading, improvement, paving, and installation thereof in accordance with specifications acceptable to the Local Government;

(b) It will accept necessary dedications of land for, and will grade, improve, pave, and provide sidewalks for, all streets bounding such Project or necessary to provide adequate access thereto (in consideration whereof the Local Authority shall pay to the Local Government such amount as would be assessed against the Project site for such work if such site were privately owned); and

(c) It will provide, or cause to be provided, water mains, and storm and sanitary sewer mains, leading to such Project and serving the bounding streets

agreed hereunder to furnish or cause to be furnished to the Local Authority or to the tenants of any Project, the Local Authority incurs any expense to obtain such services or facilities, then the Local Authority may deduct the amount of such expense from any Payments in Lieu of Taxes due or to become due to the Local Government in respect to any Project or any other low-rent housing Projects owned or operated by the Local Authority.

8. No Cooperation Agreement heretofore entered into between the Local Government and the Local Authority shall be construed to apply to any Project covered by this Agreement.

9. So long as any contract between the Local Authority and the PHA for loans (including preliminary loans) or annual contributions, or both, in connection with any Project shall remain in force and effect, or so long as any bonds issued in connection with any Project or any monies due to the PHA in connection with such Project remain unpaid, this Agreement shall not be abrogated, changed or modified without the consent of the PHA. The privileges and obligations of the Local Government hereunder shall remain in full force and effect with respect to each Project so long as the beneficial title to such Project is held by the Local Authority or any other public body or governmental agency, including the PHA, authorized by law to engage in the development or administration of low-rent Housing Projects. If at any time the beneficial title to, or possession of, any Project is held by such other public body or governmental agency, including the PHA, the provisions hereof shall inure to the benefit of and may be enforced by, such other public body or governmental agency including the PHA.

IN WITNESS WHEREOF, the Local Government and the Local Authority have respectively signed this agreement and caused their seals to be affixed and attested as of the day and year first above written.

(SEAL)

Attest.

~~NAME OF MUNICIPALITY~~
(Corporate Name of Municipality)

BY Mayor Dallas J. Smith
(Title)

JACK SCHWARTZ
Chief Counsel
Opinions and Advice
576-6344

RALPH S TYLER
Chief Counsel
Litigation
576-6342

EVELYN O. CANNON
Principal Counsel
Trial Litigation
576-6330

ELLEN A. CALLEGARY
Special Assistant
576-6314

JEANNE D HITCHCOCK
Special Assistant
576-6310

CATHERINE M. SHULTZ
Special Assistant
576-6317

JAMES G. KLAIR
Chief Counsel
Administration and
Counsel to the Courts
576-6320

ROBERT A. ZARNOCH
Chief Counsel
Legislation
124 Legislative Services Bldg
Annapolis, Maryland 21401
841-2889
554 2889 D.C. Metro



Copy - [unclear]

DEBORAH K. CHASANOW
Chief, Criminal Appeals Division
576-6422

JAMES J. MINGLE
Chief, Educational Affairs Division
576-6450

JOSEPH L. EVANS
Chief, Criminal Investigation
576-6382

GARY E. BAIR
Chief, Medicaid Fraud Control Unit
576-6321

STEVEN J. COLE
Director, Consumer and Investor Affairs
Chief, Consumer Protection Division
576-6350

SUSAN M. RITTENHOUSE
Commissioner, Securities Division
576-6360

MICHAEL F. BROCKMEYER
Chief, Antitrust Division
576-6470

TTY for Deaf
Baltu Area 576-6372
D.C. Metro 565-0451

OFFICE OF THE ATTORNEY GENERAL

Munsey Building
Calvert and Fayette Streets
Baltimore, Maryland 21202-1909

STEPHEN H. SACHS
Attorney General

(301) 576-6300

ELEANOR M. CAREY
Deputy Attorney General
576-6320

CHARLES O. MONK, II
Deputy Attorney General
576-6328

DENNIS M. SWEENEY
Deputy Attorney General
576-6330

WRITER'S DIRECT DIAL NO
576-6584

November 17, 1986

Mr. Richard S. Adkins, Chairman
Wicomico County Housing Authority
911 Booth Street
Salisbury, Maryland 21801

Dear Mr. Adkins:

You have requested our opinion on whether property owned by the Wicomico County Housing Authority (the "Authority") is subject to municipal property taxes in the absence of the usual agreement between a municipality and the Authority for payments in lieu of taxes. For the reasons given below, we conclude that the Authority's property is not subject to municipal taxes, whether or not the municipality and the Authority agree on payments in lieu of taxes.

I

Background

The Housing Authority plans to construct 12 single-family homes as part of its low rent public housing program. Three of those homes will be located within the City of Fruitland. As

OPINION OF THE ATTORNEY GENERAL

Cite as: Opinion No. 86-059 (November 17, 1986) (unpublished)



part of the approval process for the Authority's acquisition of those three lots, the federal Department of Housing and Urban Development ("HUD") solicited comments from the City regarding the proposal. Letter from Thomas T. Hobbs, Manager, HUD, to Wendell G. Mezick, President, Fruitland City Council (December 11, 1984). The City offered no adverse comments on the proposal, and the Housing Authority proceeded to acquire the lots. Construction of the houses is scheduled to begin in the near future.

As is usual in such cases, the Authority asked the City to enter into a "cooperation agreement" incorporating payments by the Authority to the City in lieu of property taxes. The City has declined to enter into the cooperation agreement. The City has stated that it "supports the concept of public housing and has only praise for the Wicomico County Housing Authority"; thus, it "has no objection to public housing units being erected in the City." Nonetheless, it asserts that it has power, which it declines to waive, to tax the Authority's property. Letter from Richard M. Pollitt, Jr., City Manager, to Dean K. Reger, Acting Manager, HUD (August 14, 1986).

II

Authority's Tax Exemption

The Wicomico County Housing Authority, like all local housing authorities, was established under Article 44A of the Maryland Code. Article 44A, §22 expressly exempts the property of any housing authority from municipal and other taxes: "The property of an authority or of a nonprofit housing corporation is declared to be used for essential public and governmental purposes and such property and an authority shall be exempt from all taxes and special assessments of the city, the State or any political subdivision thereof."¹ Thus, the statute is clear that the City has no power to impose its taxes on property owned by the Authority.

In Matthaei v. Housing Authority of Baltimore City, 177 Md. 506, 515 (1939), the Court of Appeals held that housing projects validly constructed by housing authorities are properly exempt from municipal taxes: "The property is to be owned by a public

¹ Another provision - Article 44A, §20 - generally exempts real property owned by a housing authority from levy and execution. But see note 3 below.

agency, formed for the exercise of the police power." Moreover, the court directly addressed precisely the question raised by the City of Fruitland concerning the appropriateness of "waiving" taxes on the Authority's property:

"[T]o an objection that the City bargains away its taxing power in granting an exemption in its contract with the local authority, it seems to be a sufficient answer, disregarding any other, that the exemption in this instance is of property of a public agency for the accomplishment of a public municipal purpose The State enactment, as has been stated, provides in terms for the exemption." Id.

However, the City need not lose all potential revenue from property owned by the Authority. Article 44A, §22 provides for payments to the City in lieu of taxes otherwise assessable on the property:

"[A]n authority ... shall make payments to the city or political subdivision of the State in which a housing project is wholly or partly located in such amount, if any, as may be set by mutual agreement between such authority ... and city or political subdivision of the State; provided, however, that the sum to be paid to the city or political subdivision shall not exceed an amount equal to the regular taxes levied upon similar property."

Thus, the City may receive revenues from the Authority's property by entering into an agreement with the Authority for such payments.

At the same time, the statutory provision for payments in lieu of taxes clearly indicates that the City has no right to such revenues in the absence of an agreement with the Authority. The payments to be made by the Authority are to be "in such amount, if any, as may be set by mutual agreement." Hence, in the absence of a mutual agreement setting the amount of payments in lieu of taxes, the Authority has no liability to the City for any payments.²

² However, we do not mean to suggest that any housing authority may avoid liability for payments to a municipality by the simple expedient of declining to agree with the municipality on an appropriate amount for those payments. To the contrary, we think that Article 44A, §22's provision that each housing authority "shall make payments to the city or political subdivision" in lieu of taxes requires the authorities to negotiate in good faith to reach a mutually satisfactory agreement on the amount of those payments. Only
(Continued)

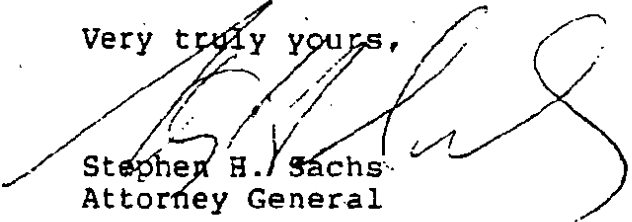
The tax exemption for property owned by housing authorities is by no means unusual. To the contrary, property owned by public agencies and used for public purposes is generally exempt from taxation. See, e.g., §7-210 of the Tax-Property Article. Article 44A, §22 protects the strong public interest in the provision of low-income housing from the restraints that localities might otherwise impose through the exercise of the taxing power. But, at the same time, that section recognizes the interest of localities in obtaining an adequate level of revenue from properties within their jurisdiction. The provision for negotiated payments in lieu of taxes establishes the mechanism by which those interests may be balanced to the benefit of the public as a whole.³

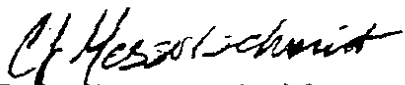
III

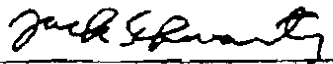
Conclusion

In summary, it is our opinion that property owned by the Wicomico County Housing Authority is exempt from taxation by the City of Fruitland, whether or not the Authority and the City have entered into an agreement for payments in lieu of taxes.

Very truly yours,


Stephen H. Sachs
Attorney General


C.J. Messerschmidt
Assistant Attorney General


Jack Schwartz
Chief Counsel
Opinions & Advice

where, as in this case, a municipality refuses to enter into any agreement is a housing authority relieved of its duty to make payments.

³ Further, we note that municipalities and counties have express statutory authorization to collect payments due them in lieu of taxes "in the same manner as all such taxes are now, or may hereafter be, collectible." Article 44A, §20.