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Patricia King
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Commissioner Mark Boughton
State of Connecticut
Department of Revenue Services
450 Columbus Boulevard, Suite 1
Hartford, CT 06103-1837

Dear Commissioner Boughton,

I write in response to your letter to Cathy Carbonaro-Schroeter, dated August 31, 2021 (Re: 2021 Connecticut Neighborhood Assistance Act Approved Programs List). Thank you for your concern and for bringing to the attention of the City of New Haven (“City”) that Post Project Audit reports (“PPAs”) are incomplete for certain programs in New Haven which received corporate donations under the R.E. Van Nortstrand Neighborhood Assistance Act tax credit program (“NAA tax credit program”) for one or more tax years from 2015 through 2020.

In reviewing our records, we have identified that PPAs for 2015 were inadvertently not submitted. Pursuant to the City’s statutory obligation to review and submit PPAs from each program receiving at least \$25,000.00 under the NAA tax credit program, Conn.Gen.Stat. §12-637a, please find the enclosed copies of PPAs for tax year 2015 for the following programs which received at least \$25,000.00 in corporate directed donations and must be received from the program by the City and submitted to the Commissioner of DRS (“Commissioner”).

PPAs for tax year 2015 are included for the following programs:

- Connecticut Center for the Performing Arts (CAPA)
- Neighborhood Housing Services of New Haven
- New Haven Homeownership Center
- Yale New Haven Hospital
- Greater New Haven Community Loan Fund
- F.O.H. Inc.
- Edgewood Elm Housing, Inc.
- Yedidei Hagan, Inc.
- Yeshiva of New Haven, Inc.

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To ensure your records are complete, I have also included the complete packages as submitted for tax years 2016, 2017, 2018, and 2019. I note that the package of PPAs for tax year 2020 is not yet due because while the funding donations were made in 2020, the project work is being performed through December 31, 2021, so necessary documentation is not yet available. Ms. Carbonaro-Schroeter will submit the full package for tax year 2020 in early 2022. I further note that none of the programs you identified as missing PPA reports for one or more years – Edgewood Corners Inc., Edgewood Elm Housing, Inc., Edgewood Village, Inc., F.O.H. Inc., Yedidei Hagan Inc., and Yeshiva of New Haven, Inc. – received any corporate donations in 2020.

As to the eligibility of certain applicants, this office has exhaustively reviewed the current language of the statutes relevant to the NAA tax credit program, as well as the history of the of the 2010 amendment to the Act. Our reading of the Act and the 2010 amendment make clear that the municipality’s role in approving the participation of a nonprofit applicant is limited to review of the application for completeness and conformity with program goals and allowed projects. I recognize that the Act’s current language is ambiguous in that the requirement that the municipal legislative body hold a public hearing on the applications is inconsistent with the limited nature of the municipality’s role in the approval process. Specifically, the Act’s language provides in relevant part:

Any municipality desiring to obtain benefits under the provisions of this chapter shall, after approval by the legislative body of such municipality, submit to the Commissioner of Revenue Services a list on a form prescribed and made available by the commissioner of programs eligible for investment by business firms under the provisions of this chapter. . . . Each municipality [is required to] hold at least one public hearing on the subject of which programs shall be included on such list prior to the submission of such list to the commissioner.” Conn.Gen.Stat §12-632(a)(1).

Upon review and approval for completeness by the municipal legislative body, the municipality is required to forward the list of approved applicants to the Commissioner for review and a decision as to eligibility to participate in the program. “Such proposals shall be submitted to the commissioner on or after September fifteenth but no later than October first of each year. Such proposals shall be approved or disapproved by the Commissioner of Revenue Services based on the compliance of such proposal with the provisions of this chapter and regulations adopted pursuant to [the Act]. Conn.Gen.Stat. §12-632(c).

While the Act’s current language continues to suggest that there is a dual role for the municipality in the approval or disapproval of applicants, a review of the 2010 amendment makes clear that is not the case.

The Act’s amendment in 2010 significantly curtailed the role of the municipality in the review and approval process. In 2010, “[t]he General Assembly amended the approval process under the R.E. Van Norstrand Neighborhood Assistance Act, The [2010 amendment] eliminate[d] the municipalities’ role in approving a business firm’s

application, leaving the Commissioner as the sole decision-maker.” John R. Shaughnessy, Scott E. Sebastian, *2010 Connecticut Tax Law Developments*, 85 Conn. B.J. 71, at 74 (2011). Specifically, the General Assembly removed the statutory language by which the municipality was empowered to issue a preliminary approval or disapproval. *Id.*¹

The significant changes resulting from the 2010 amendment to the Act’s language limited a municipality in its scope of review to only the completeness of a given application, thus reducing the role of the municipality to simply acting as a pass through. – whether or not the City or our Board of Alders desires to include a given nonprofit on the list of approved programs was rendered irrelevant to the municipal approval process.

Finally, it is my understanding that Mayor Justin Elicker recently spoke with you and asked whether there are grounds for the DRS to deny nonprofit applicants on the grounds that the entities or their programs are associated with, or directed by, a person convicted of sexual assault on a minor or minors, or on the grounds that the entity is engaged in litigation that may affect the nonprofit applicant’s ability to complete the project as proposed; and that if DRS determined there are such grounds, that DRS do so. On behalf of Mayor Elicker, I reiterate his request for your guidance on this question, given the statutory limitations on a municipality’s role in the approval process. I look forward to your timely response.

Thank you again for your time and consideration in this matter of important public policy.

Very truly yours,

Michael J. Pinto

Atty. Michael J. Pinto
Assistant Corporation Counsel

¹ Sec. 7. Subsection (c) of section 12-632 of the general statutes is repealed and the following is substituted in lieu thereof (Effective July 1, 2010):

(c) Any business firm which desires to engage in any of the activities or programs approved by any municipality pursuant to subsection (a) of this section and listed pursuant to subsection (b) of this section may apply to the Commissioner of Revenue Services for a tax credit in an amount as provided in section 12-633, 12-634, 12-635 or 12-635a, *as amended by this act*. The proposal for such credit which shall be made on a form prescribed and made available by the commissioner, shall set forth the program to be conducted, the neighborhood area to be invested in, the plans for implementing the program and such other information as said commissioner may prescribe. Such proposals shall be submitted to the commissioner on or after September fifteenth but no later than October first of each year. ~~The commissioner shall refer the proposal to the agency designated by the municipality to oversee implementation of the program pursuant to the provisions of subsection (a) of this section, and such agency shall, within thirty days of the date of referral, approve or disapprove the proposal. Failure of such agency to respond within thirty days of the date of referral shall be deemed to constitute disapproval of such proposal. Following such referral and approval or disapproval, such~~ Such proposals shall be approved or disapproved by the Commissioner of Revenue Services based on the compliance of such proposal with the provisions of this chapter, ~~municipal agency approval or disapproval~~ and regulations adopted pursuant to this chapter. The commissioner may only approve proposals received in his office between September fifteenth and October first of each year. ~~after approval by the municipal agency affected by such proposal. If, in the opinion of the Commissioner of Revenue Services, and the municipality or municipalities affected, a business firm's investment can, for the purposes of this chapter, be made through contributions to a neighborhood organization as defined in subsection (h) of section 12-631, tax credits may be allowed in amounts as provided in section 12-633, 12-634, 12-635 or 12-635a, as amended by this act.~~ (deletions in strikethrough; additions in blue)