

STATE OF RHODE ISLAND
PROVIDENCE, SC.

SUPERIOR COURT

HARRISBURG ASSOCIATES, LLC :
LERNER ASSOCIATES, LLC, :
THE ALICE BUILDING, LLC, :
PEERLESS LOFTS, LLC, :
SMITH/KEEN, LP :
LAPHAM 290, LLC, :
RWB ASSOCIATES, LLC, :
276 WESTMINSTER, LLC, :
CLEMENCE 91, LLC, and :
DOWNCITY REVITALIZATION FUND 1, LLC, :
Plaintiffs :

vs. :

C.A. NO.: PC-2020-04757

THE CITY OF PROVIDENCE, :
ELY SSE PARE, in her capacity as :
Tax Assessor Of the City of Providence, and :
JAMES LOMBARDI, III, in his capacity as :
Treasurer of the City of Providence, :
Defendants :

AFFIDAVIT OF SEAN BOUCHARD

Sean Bouchard, being duly sworn, hereby deposes and says:

1. I submit this affidavit in support of the motion of the City Council of the City of Providence ("City Council") to intervene in the captioned proceeding. I make this affidavit based on personal knowledge.

2. On December 16, 2019, I was hired as the Director of Policy and Research of the City Council. My duties included drafting all resolutions and ordinances for City Councilors; reviewing state and national legislation to determine potential impacts to the City; and advising on process and procedure based upon the State Open Meetings Act, the City Charter, the City Council Rules, and Roberts Rules of Order.

3. In May of 2021, I was appointed the Deputy Chief of Staff of the City Council. My duties included continuing the work of the Director of Policy while also overseeing the work of the Council's communications staff. The Communications staff was responsible for all press releases, event planning, social media, and mailings on behalf of the councilors.

4. On January 1, 2023, I was appointed Chief of Staff of the City Council and served in that position until July 3, 2023. My duties included overseeing the council staff of 16 employees who were responsible for handling all constituent service, scheduling, policy, communication, and project management requests from councilors. In addition to overseeing the council staff, the Chief of Staff is also responsible for working with and assisting the other areas of City government, including the City Clerk's office, Probate Court, Municipal Court, Archives, and the offices of the City Treasurer and Internal Auditor.

5. In the performance of my duties I have become fully familiar with the practices of the City Council, including the practices of the City Council during meetings of the City Council and any standing committee such as the Finance Committee and the Committee on Claims and Pending Suits. All meetings of the City Council and of standing committees such as the Finance Committee and the Committee on Claims and Pending Suits are attended by an attorney from the Law Department, usually an Assistant City Solicitor, upon whom the City Council and staff rely for guidance concerning legal and factual issues affecting the rights and duties of the Council.

6. In the performance of my duties I have regular dealings with the Internal Auditor of the City of Providence, who throughout my employment by the City has been

Gina Costa. The Internal Auditor is appointed by the City Council and she and I have worked together regularly in matters of importance to the City Council, including the matter that is the subject of this affidavit.

7. I understand that under the Providence Home Rule Charter, the Internal Auditor has the power and duty to perform audits of all offices, departments and other agencies of the city, including whether the audited entity is in compliance with the state constitution, this Charter, city ordinances, and all other applicable laws and regulations. I also know that the city internal auditor is entitled to access to the books and records of all offices, departments and other agencies of the city, and all city employees including myself have the duty to supply such information and documents concerning the affairs of the city as the internal auditor may request.

8. In February of 2022 the Internal Auditor informed me that she had recently learned from the City Tax Assessor Janesse Muscatelli that certain real estate in the City of Providence that had been under a Tax Stabilization Agreements ("TSA") would no longer be under a TSA beginning with tax year 2022, even though the time period for the TSA had not expired. The City Solicitor then informed her that these properties would thereafter be taxed under the statute known as the 8 Law, which provides for taxation at the rate of 8% of gross income. Ms. Costa provided me with a copy of the consent order entered in this case on June 8, 2021, a copy of which is attached hereto as Exhibit 1 (the "Consent Order"). I was not previously aware of this consent order, which was entered when Elyse Pare was the City Tax Assessor. It was never submitted to the City Council (for approval or otherwise). Indeed, as discussed below, it was not part of any proceedings of the City Council or any standing committee of the City

Council until it was mentioned in passing by the City Finance Director at a meeting of the Finance Committee on May 16, 2022.

9. When she forwarded the Consent Order to me in February of 2022, the Internal Auditor said she thought this was a matter that needed to be looked into for the City Council, as she was concerned that it appeared to be very detrimental to the City's finances, not properly authorized, and not consistent with the law concerning reduced taxes for low-income properties. I reviewed the Consent Order and had similar concerns. I then began attempting to obtain information from City officials necessary to understand the facts and advise the City Council.

10. I then sent an email on February 16, 2022 to then City Tax Assessor Janisse Muscatelli with a copy to Assistant City Solicitor Nicholas Poulos, asking why these properties were no longer going to be subject to their TSAs. That email is included in the email chain attached as Exhibit 2. In response Assistant City Solicitor Poulos referred to a "Consent Judgment." I then sent an email to Attorney Poulos concerning this "Consent Judgment" which is also part of that email chain and stated in pertinent part as follows:

As you have raised the issue of the Consent Judgment, which I believe is the same one that I was finally able to review a copy of this week, there are several questions that I have regarding this matter.

1. My understanding is that the Judgment is a departure from long standing city policy surrounding 8 law. Is there precedent for the City having ever applied 8 law to commercial property or commercial space within a mixed use development in the past? If so, could you please provide context and an explanation for how commercial space qualifies for a tax exemption that is clearly intended for residential property.
2. It appears that according to this Judgment, the City is willing to accept students as qualifying tenants for purposes of affordable

housing. If that is in fact the case, does this mean that all landlords who rent to college students in the City are now eligible for 8 law treatment from the Assessors office? If not, what distinction is being drawn between the properties subject to the Consent Judgment and any other landlord in the City.

3. To expand further on item 2, is the City willing to categorize rental units for students as qualifying affordable housing units for access to use of funds from the Affordable Housing Trust Fund? I believe the City Council needs to be aware if that is in fact the case.
4. Was a fiscal note prepared to assess the financial impacts of entering into this Consent Judgment?

There are likely additional legal and policy questions I have regarding the Consent Judgment but I would ask for a response to the above questions for the time being. Although I believe I have reviewed the entirety of the Consent Judgment, I would also ask that the Solicitor's office provide a complete copy of the Consent Judgment along with the fiscal note.

Thank you and I look forward to your response...

11. I never received a written response from Attorney Poulos or anyone in City administration that answered these questions, although I and City Internal Auditor Costa pressed on numerous occasions for a response. Attached hereto as Exhibit 3 is an email chain memorializing those unsuccessful efforts through April 6, 2022. This chain includes City Internal Auditor Costa's email on April 5, 2022, stating that she believed the Consent Order's allowance for reduced taxation for properties for thirty years was "illegal." This email chain includes my email to Providence Chief Financial Officer Lawrence Mancini on April 6, 2022, which stated as follows:

Chief Mancini,

I received your phone call yesterday. You stated that reval has occupied the Assessor's time and I would receive a fiscal note asap.

While I did ask for that before the reval numbers were released, I am a little worried that the Law Department would simply sign a consent

agreement that converts the collection of commercial taxes of multimillion dollar valued properties to 8% of rent collections, considers the commercial space as 8 law also, without a fiscal note. It doesn't make sense to me. It was a consent agreement, not judgement. Did anyone run numbers - for the City?

I am trying to keep everyone on the same page of my concerns.

12. In response Chief Mancini stated on April 6, 2022 that "I do hope that we can produce a preliminary fiscal impact as quickly as possible."

13. As part of that email chain I responded to Chief Mancini and City Solicitor Jeffrey Dana on April 6, 2022 as follows:

Good Afternoon Everyone,

I am glad to hear that Finance is working on the fiscal impacts side of things. I would also ask if it would be possible to receive answers to my questions that were posed in my email back on February 15th. If the questions were confusing I am happy to clarify, however **it has been over a month and a half without a written response. I believe this is the only time in my over two and half years with the City that I have been unable to receive any written response to an email I've sent.** That is both a credit to the administration's responsiveness over the years and a glaring issue for me on why these questions are proving so problematic. Please let me know if there is anyone else I should copy to this email in order to receive an adequate response.

[emphasis supplied]

14. Neither Chief Mancini nor City Solicitor Jeffrey Dana answered these questions.

15. I learned that the Consent Order was referred to during a meeting of the City Council Finance Committee in May of 2022, and that City Tax Assessor Janesse Muscatelli promised that it would be brought before the Finance Committee of the City Council.

16. I was informed of that promise at the time and agreed with Internal Auditor Costa that, in light of the administration's failure to even respond to the problems we had noted with the Consent Order, the reasonable and most efficient way to proceed was to wait and raise those issues when the Tax Assessor, as promised, submitted the Consent Order to the City Council Finance Committee in connection with a tax abatement certificate.

17. The tax abatements for the properties involved in this case were put on the agenda for the meeting of the Finance Committee following the Council's summer recess which was scheduled for September 22, 2022.

18. City Internal Auditor Costa and I agreed that the agenda item for this tax certificate at the meeting on September 22, 2022 would be the opportunity to assert the City Council's authority and demand a response to my and City Internal Auditor's concerns with the Consent Order, failing which the Finance Committee could insist that City officials provide us with the information we needed, or simply deny the requested abatements and show that the Consent Order was a nullity. However, that meeting was cancelled.

19. The agenda item involving the tax certificate to abate taxes was not brought before the Finance Committee again until the meeting scheduled for November 1, 2022. I again expected that these concerns would be addressed at that meeting. However, the Tax Assessor provided an amended tax certificate to the Finance Committee which deleted the request for tax abatements concerning the properties in this case. The Finance Committee of the City Council approved this tax certificate but

did not address the properties in the Consent Order because it did not have before it the request for tax abatements concerning the properties in this case.

20. I was aware that, after the tax abatements for these properties were deleted from the agenda, Internal Auditor Costa sent an email to City Solicitor Jeffrey Dana that sought a written response to (*inter alia*) the question of “When will the consent judgements be brought to Council for the abatements on the various properties that provide for retroactive tax relief?” That email is attached as Exhibit 4.

21. He responded by email dated November 29, 2022, attached hereto as part of Exhibit 4, which stated as follows:

With respect to Consent Judgments which provide potential tax relief, according to Providence Code of Ordinances Chapter 2, Art. VI, Sec. 2-99(b)(4), Consent Judgements do not need Council approval for “matters concerning appeals for relief from tax assessment.” Generally, when a plaintiff has a claim for monetary damages against the City, they must present their claim to the City Council. RIGL § 45-15-5. “[I]n case just and due satisfaction is not made” to the complainant after forty days, the complainant “may commence his or her action against the treasurer for the recovery of the complaint.” *Id.* Naming the Treasurer in suits for monetary relief is consistent with Home Rule Charter, because the Treasurer is vested with the “custody of all public funds belonging to or under the control of the city.” Sec. 602(b)(4). Tax appeals, however, are different creatures. Tax appeals are requests for relief from property assessment. Initially, it was “the uniform practice” to “bring such actions against the town treasurer.” *Fish v. Higbee*, 22 R.I. 223, 225, 47 A. 212, 212 (1900). However, this changed with the passage of P.L. 1932, ch. 1945, now § 44-5-26. This statute specifies that, when petitioning to the Superior Court, “**the assessors of taxes** of the city or town in office at the time the petition is filed shall be made parties respondent.” Sec. 44-5-26(b) (emphasis added). Ordinarily, “[o]fficial capacity suits naming officers or employees are generally treated as actions against the entity employing the officer or employee and not as actions against an individual.” 56 Am. Jur. 2d *Municipal Corporations, Etc.* § 746, Westlaw (database updated May 2018); see also *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (“[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.”). Historically, this 1932 change from naming the Treasurer as respondent to the Tax Assessor

has been interpreted by courts and municipalities as statutory authority for the Tax Assessor to settle tax assessment claims as needed.

22. That was the first time the City Council was informed that City Solicitor Dana claimed that the Consent Order did not require City Council approval.

23. I discussed this response with Internal Auditor Costa. We agreed that City Council approval of the Consent Order was required. She undertook to look into the facts and prepare a recommendation to the Finance Committee. Her recommendation dated December 1, 2022 is attached hereto as Exhibit 5. After looking into the matter, City Internal Auditor Costa concluded that “[i]t is my recommendation to hire outside counsel to challenge consent order 2020-04757.”

24. The election for the new council had already taken place, and the new council and new council president were to be seated on January 3, 2023. I was going to be Chief of Staff as of January 1, 2023. It was decided that the Internal Auditor’s recommendation that the City Counsel “hire outside counsel to challenge consent order 2020-04757” would be addressed by the new council in the new year.


25. On February 23, 2023 I attended a meeting in the Mayor’s office with City Council President Rachel Miller, City Solicitor Jeffrey Dana, and Mayor Brett Smiley to discuss the Consent Order. Both City Solicitor Dana and Mayor Smiley said they had read City Internal Auditor Costa’s memorandum dated December 1, 2022 that recommended that the Council hire outside counsel to challenge the Consent Order. At the meeting the Council President and I told the Mayor and the City Solicitor that the Council’s position is that the Consent Order was illegal and did not bind the City absent City Council approval.

26. At that meeting City Solicitor Dana said that going to court to vacate the Consent Order should not be necessary as his office was negotiating with counsel for the Plaintiffs to amend the Consent Order to remove the provisions in the Consent Order which then concerned us. It seemed reasonable for the City Council to allow that process to proceed and wait until the Consent Order was either satisfactorily amended or we were informed that was not to be the case.

27. During the period from January 3, 2023 through May of 2023, I repeatedly contacted the Mayor's staff to inquire concerning the status of these negotiations and was informed on numerous occasions that they were delayed but were still on-going. To emphasize the importance of this matter the City Council had gone forward on March 16, 2023 and authorized the retention of counsel to challenge the consent order. That resolution is attached hereto as Exhibit 6. Even after this resolution, the Mayor's Chief of Staff continued to advise me that the negotiations to fix the Consent Order were ongoing, and that they thought that the City Council should put off any litigation until those negotiations were concluded.


Sean Bouchard

SUBSCRIBED AND SWORN to before me this th27 day of July, 2023.


NOTARY PUBLIC
My Commission Expires: 07/01/2026
#765739

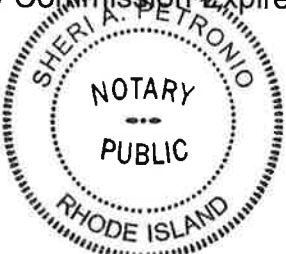


Exhibit 1

Case Number: PC-2020-04757
Filed in Providence/Bristol County Superior Court
Submitted: 5/14/2021 3:23 PM
Envelope: 3102136
Reviewer: Jaideen H.

total residential units at each Plaintiff's respective property for occupancy by tenants who have an income of no greater than one hundred percent (100%) of the area median income (AMI) for each respective property within forty-five (45) days of the entry of this Consent Order.¹ Each respective Plaintiff shall have the option to terminate the restrictive covenant in favor of the City of Providence upon providing ninety (90) days written notice to the Tax Assessor and City Solicitor's Office. In the event that any Plaintiff and the City wish to extend the restrictive covenant beyond thirty (30) years, nothing herein shall preclude the parties from doing so.

3. In exchange for restricting the units for occupancy by tenants making no more than one hundred percent (100%) AMI, the City agrees that each Plaintiffs' respective properties will be subject to a real property tax that is equal to eight percent (8%) of each properties' previous years' gross scheduled income pursuant to R.I.Gen.Laws §44-5-13.11 retroactive to tax year 2020's first quarterly payment of July 24, 2020.
4. The Plaintiffs shall have ninety (90) days from the date of the recording of the restrictive covenant to demonstrate compliance with the requirement that each of the Plaintiffs' respective properties has twenty five percent (25%) of its residential units restricted for occupancy by tenants making no more than one hundred percent (100%) of AMI.

¹ As pled in the Complaint, the Plaintiffs' respective properties are as follows:

1. Harrisburg Associates, LLC – 89 Eddy Street, Providence, RI
2. Lerner Associates, LLC – 90 Eddy Street, Providence, RI
3. The Alice Building, LLC – 236 Westminster Street, Providence, RI
4. Smith/Keen, LP – 1 Fulton Street, Providence, RI
5. Lapham 290, LLC – 290 Westminster Street, Providence, RI
6. Peerless Lofts, LLC – 150 Union Street, Providence, RI
7. Clemence 91, LLC – 91 Clemence Street, Providence, RI
8. RWB Associates, LLC – 270 Westminster Street, Providence, RI
9. 276 Westminster, LLC – 276 Westminster Street, Providence, RI
10. Downcity Revitalization Fund I, LLC – 326 Westminster Street, Providence, RI

Case Number: PC-2020-04757
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5. Failure on the part of any Plaintiffs to demonstrate compliance with the requirements that Plaintiff's respective properties has twenty-five percent (25%) of its residential units restricted for occupancy by tenants making no more than one hundred percent (100%) of AMI will result in retroactive assessment such that full and fair taxation without the benefit of R.I.Gen.Laws §44-5-13.11 shall become immediately due and payable upon 10 days notice on the part of the City.
6. The 2021 tax bills for each Plaintiffs' property shall be adjusted to reflect an assessment pursuant to R.I.Gen.Laws §44-5-13.11 and the Plaintiffs shall receive a credit from the Defendants for any overpayment of taxes that has occurred since tax year 2020's first quarterly payment of July 24, 2020 provided that the Plaintiff must bring the Plaintiffs' properties into compliance with the terms of the restrictive covenant referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of said restrictive covenant.
7. In the event that one of the Plaintiffs is unable to bring its respective property into compliance with the terms of the restrictive covenant referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of the restrictive covenant, each respective property shall receive retroactive assessment such that full and fair taxation without the benefit of R.I.Gen.Laws §44-5-13.11 shall become immediately due and payable upon 10 days notice. . That particular Plaintiff shall be given until December 31, 2021 to bring the property into full compliance in order to begin being assessed taxes pursuant to §44-5-13.11 for tax year 2022.
8. Lapham 290, LLC ("Lapham Owner"), 276 Westminster, LLC, RWB Associates, LLC, Clemence 91, LLC agree to withdraw and forever forgo any right, entitlement, or benefit

Case Number: PC-2020-04757
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provided under the existing TSA beginning with tax assessment as of December 31, 2020
for tax year 2021 and thereafter.

By agreement of the parties:

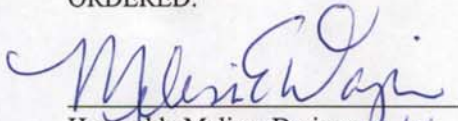
Plaintiffs,
By their attorney,

/s/ Nicholas J. Hemond, Esq.
Nicholas J. Hemond, Esq. #8782
DarrowEverett, LLP
One Turks Head Place, Suite 1200
Providence, Rhode Island
401-453-1200
nhemond@darroweverett.com

Defendants,
By their attorney,

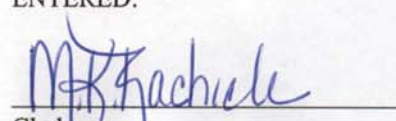
/s/ Jeffrey Dana, Esq.
Jeffrey Dana, Esq.
City Solicitor
444 Westminster Street, Suite 220
Providence, Rhode Island
401-680-5333
jdana@providenceri.gov

ORDERED:



Honorable Melissa Darigan 6/8/21

ENTERED:



Clerk

Dated: 6/8/21

Case Number: PC-2020-04757
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Submitted: 5/14/2021 3:23 PM
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CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2021, I filed and served a true copy of the within document through the electronic filing system on the counsels of record for the opposing parties.

This document, electronically filed and served, is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Sean M. Rock

Exhibit 2

Costa, Gina

From: Costa, Gina
Sent: Wednesday, February 16, 2022 11:10 AM
To: Bouchard, Sean; Poulos, Nicholas
Cc: Muscatelli, Janesse; Jones, Jacinta; Lombardi III, Jim; Mancini, Lawrence
Subject: RE: expired or revoked TSA's final TAX year 2021

Tracking:	Recipient	Read
	Bouchard, Sean	Read: 2/16/2022 11:14 AM
	Poulos, Nicholas	
	Muscatelli, Janesse	Read: 2/16/2022 11:38 AM
	Jones, Jacinta	Read: 2/16/2022 1:28 PM
	Lombardi III, Jim	Read: 2/16/2022 11:38 AM
	Mancini, Lawrence	Read: 2/16/2022 11:19 AM

All,

I would love to have a copy of the consent judgement and the fiscal note.

Was is a judgement or agreement?

Chief Mancini,

Can you provide me with the annual loss in tax revenue from this?

From: Bouchard, Sean <Sbouchard@providenceri.gov>
Sent: Wednesday, February 16, 2022 10:49 AM
To: Poulos, Nicholas <Npoulos@providenceri.gov>
Cc: Muscatelli, Janesse <Jmuscatelli@providenceri.gov>; Costa, Gina <Gcosta@providenceri.gov>; Jones, Jacinta <Jjones@providenceri.gov>; Lombardi III, Jim <Jlombardi@providenceri.gov>; Mancini, Lawrence <Lmancini@providenceri.gov>
Subject: RE: expired or revoked TSA's final TAX year 2021

Nick,

That is extremely disconcerting to hear that the City would enter into a TSA without binding the property owner for the real estate in question. When it comes time to revisit the TSA ordinance it is imperative that the property owner is the only party eligible to enter into a TSA with the City and that all TSA's be recorded against the title to the subject property.

Based on your response, does this mean that lot 263 is no longer subject to the terms of the TSA and will therefore be taxed on its full assessed value moving forward?

As you have raised the issue of the Consent Judgment, which I believe is the same one that I was finally able to review a copy of this week, there are several questions that I have regarding this matter.

1. My understanding is that the Judgment is a departure from long standing city policy surrounding 8 law. Is there precedent for the City having ever applied 8 law to commercial property or commercial space within a mixed use development in the past? If so, could you please provide context and an explanation for how commercial space qualifies for a tax exemption that is clearly intended for residential property.
2. It appears that according to this Judgment, the City is willing to accept students as qualifying tenants for purposes of affordable housing. If that is in fact the case, does this mean that all landlords who rent to college students in the City are now eligible for 8 law treatment from the Assessors office? If not, what distinction is being drawn between the properties subject to the Consent Judgment and any other landlord in the City.
3. To expand further on item 2, is the City willing to categorize rental units for students as qualifying affordable housing units for access to use of funds from the Affordable Housing Trust Fund? I believe the City Council needs to be aware if that is in fact the case.
4. Was a fiscal note prepared to asses the financial impacts of entering into this Consent Judgment?

There are likely additional legal and policy questions I have regarding the Consent Judgment but I would ask for a response to the above questions for the time being. Although I believe I have reviewed the entirety of the Consent Judgment, I would also ask that the Solicitor's office provide a complete copy of the Consent Judgment along with the fiscal note.

Thank you and I look forward to your response,

Sean

From: Poulos, Nicholas
Sent: Wednesday, February 16, 2022 10:10 AM
To: Bouchard, Sean <Sbouchard@providenceri.gov>; Muscatelli, Janesse <Jmuscatelli@providenceri.gov>
Cc: Costa, Gina <Gcosta@providenceri.gov>; Jones, Jacinta <Jjones@providenceri.gov>
Subject: Re: expired or revoked TSA's final TAX year 2021

I will add that Lapham 290 voluntarily withdrew from their TSA as part of the Consent Judgment in the Harrisburg matter that I know you all are well-aware of.

From: Poulos, Nicholas
Sent: Wednesday, February 16, 2022 10:01:25 AM
To: Bouchard, Sean; Muscatelli, Janesse
Cc: Costa, Gina; Jones, Jacinta
Subject: Re: expired or revoked TSA's final TAX year 2021

Plat 4 Lot 263 was the subject of a lawsuit. Please note that I'm going to get into attorney-client discussions here.

For whatever reason, when the City processed the TSA for Lot 263, we never got the approval or sign-on from the fee owner of the property. Simply put, the TSA was with the lessee and the lessee alone. As a result, when the lease was terminated, we could not enforce the TSA against the fee-simple owner. While the TSA generally does run with the land, without the consent of the owner of the land, there's really nothing we could have done.

However, that TSA covered three lots—Lots 261, 262, and 263. The judgment in that case did not touch Lots 261 and 262. Only Lot 263 was removed from the TSA.

I do not know why the TSA was not signed with Capital Properties, the fee owner, on board. Capital Properties is an entity that has sued the City several times over tax matters to great success.

From: Bouchard, Sean
Sent: Wednesday, February 16, 2022 9:28:49 AM
To: Muscatelli, Janesse
Cc: Costa, Gina; Jones, Jacinta; Poulos, Nicholas
Subject: RE: expired or revoked TSA's final TAX year 2021

Good Morning Janesse,

It appears the Omni garage is coming off stabilization as 2022 is the last year of abatement. Could you or Nick provide background on why Lapham, Kinsley, Capital Cove, and Royal Oaks are no longer going to be subject to stabilization when they are still in the middle of their TSA terms?

Thank you,

Sean

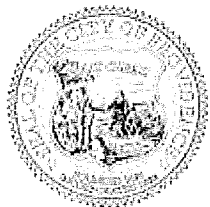
From: Costa, Gina
Sent: Wednesday, February 16, 2022 9:23 AM
To: Bouchard, Sean <Sbouchard@providenceri.gov>
Subject: FW: expired or revoked TSA's final TAX year 2021

From: Muscatelli, Janesse <Jmuscatelli@providenceri.gov>
Sent: Tuesday, February 15, 2022 4:09 PM
To: Jones, Jacinta <Jjones@providenceri.gov>
Cc: Costa, Gina <Gcosta@providenceri.gov>; Poulos, Nicholas <Npoulos@providenceri.gov>
Subject: expired or revoked TSA's final TAX year 2021

Hi Jacinta,

Here is my list of TSA property that will no longer be subject to stabilized payments beginning with tax year 2022. I know you mentioned responding as a group.. did you create a Microsoft team project or a group email? Let me know, happy to reshare for all.

Plat	Lot	Parcel Size (SF)	Project Name	1st year abated	Last Year Abated
20	382	32,415	Peerless	2002	2021
20	154	4,617	Harrisbury/Lerner	2002	2021
25	170	10,934	Mercantile Block	1999	2021
9	610	19,453	City Kitty	2017	2021
32	234	9,614	Pilgrim Lofts	2017	2021
62	545	130,480	Grasso	2017	2021
84	162	9,962	Federal Hill Pizza	2017	2021
20	408		Lapham 290 LLC	2018	2032
20	407		Lapham 290 LLC	2018	2032
20	63		Lapham 290 LLC	2018	2032
20	63		Lapham 290 LLC	2018	2032
24	411	10,920	Kinsley	2017	2028
4	263	64,561	Capital Cove P1	2005	2024
26	391	6,944	Omni (1)	2017	2021
18	19	9,426	Royal Oaks	2016	2030
18	354	-	Royal Oaks	2016	2030
26	382	55,488	Omni garage	2018	2022



PROVIDENCE A CITY THAT WORKS

JANESSE MUSCATELLI
 DEPUTY TAX ASSESSOR
 TAX ASSESSOR'S OFFICE
 Providence City Hall
 25 Dorrance Street, Room 208
 Providence, Rhode Island 02903
 401 680-5229 Ext. 5643 OFFICE
 401 680-5632 FAX
 jmuscatelli@providenceri.gov
 www.providenceri.com

Exhibit 3

Costa, Gina

From: Mancini, Lawrence
Sent: Wednesday, April 6, 2022 12:30 PM
To: Bouchard, Sean; Costa, Gina
Cc: Silveria, Sara; Lombardi III, Jim; Dana, Jeff; Poulos, Nicholas
Subject: RE: expired or revoked TSA's final TAX year 2021

Good afternoon Deputy Chief Bouchard:

I am respectfully deferring to the Solicitor's office on the questions that were contained in your February 16, 2022 email that pertain to the consent decree itself.

I will continue to pursue the fiscal impact information that both you and Auditor Costa have requested in as timely a manner as is practical, at the present moment.

Thank you
Larry



Lawrence J. Mancini

Chief Financial Officer
Finance Department
Providence City Hall
25 Dorrance Street
Providence, RI 02903
lmancini@providenceri.gov
(401) 620-5351 | Ext.
Fax: (401) 621-8102
Call to Connect | [PVD311](tel:4016203111)

From: Bouchard, Sean <Sbouchard@providenceri.gov>
Sent: Wednesday, April 6, 2022 12:17 PM
To: Mancini, Lawrence <Lmancini@providenceri.gov>; Costa, Gina <Gcosta@providenceri.gov>
Cc: Silveria, Sara <Ssilveria@providenceri.gov>; Lombardi III, Jim <Jlombardi@providenceri.gov>; Dana, Jeff <Jdana@providenceri.gov>
Subject: RE: expired or revoked TSA's final TAX year 2021

Good Afternoon Everyone,

I am glad to hear that Finance is working on the fiscal impacts side of things. I would also ask if it would be possible to receive answers to my questions that were posed in my email back on February 16th. If the questions were confusing I am happy to clarify, however it has been over a month and a half without a written response. I believe this is the only time in my over two and half years with the City that I have been unable to receive any written response to an email I've sent. That is both a credit to the administration's responsiveness over the years and a glaring issue for me on why these questions are proving so problematic. Please let me know if there is anyone else I should copy to this email in order to receive an adequate response.

Thank you,

Sean

From: Mancini, Lawrence

Sent: Wednesday, April 6, 2022 12:07 PM

To: Costa, Gina <Gcosta@providenceri.gov>

Cc: Silveria, Sara <Ssilveria@providenceri.gov>; Bouchard, Sean <Sbouchard@providenceri.gov>; Lombardi III, Jim <Jlombardi@providenceri.gov>; Dana, Jeff <Jdana@providenceri.gov>

Subject: RE: expired or revoked TSA's final TAX year 2021

Madam Auditor:

Thank you for expressing a valid concern.

Finance is also concerned anytime a revenue loss occurs that was not expected or was not projected in the ordinary course of taxable/non-taxable calculations.

Given my explanation yesterday, that I do need the Assessor's assistance in preparing the fiscal impact, as she did explain that there were a number of qualifiers that she needed to determine in the various 8-Law properties, as to tenant income eligibility and qualifications, etc.

I do hope that we can produce a preliminary fiscal impact as quickly as possible.



Lawrence J. Mancini

Chief Financial Officer
Finance Department
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25 Dorrance Street
Providence, RI 02903
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Call to Connect | PVD311

□

From: Costa, Gina <Gcosta@providenceri.gov>

Sent: Wednesday, April 6, 2022 11:30 AM

To: Mancini, Lawrence <Lmancini@providenceri.gov>

Cc: Silveria, Sara <Ssilveria@providenceri.gov>; Bouchard, Sean <Sbouchard@providenceri.gov>; Lombardi III, Jim <Jlombardi@providenceri.gov>; Dana, Jeff <Jdana@providenceri.gov>

Subject: RE: expired or revoked TSA's final TAX year 2021

Chief Mancini,

I received your phone call yesterday. You stated that reval has occupied the Assessor's time and I would receive a fiscal note asap.

While I did ask for that before the reval numbers were released, I am a little worried that the Law Department would simple sign a consent agreement that converts the collection of commercial taxes of multimillion dollar valued properties to 8% of rent collections, considers the commercial space as 8law also, without a fiscal note. It doesn't make sense to me. It was a consent agreement, not judgement. Did anyone run numbers – for the City?

I am trying to keep everyone on the same page of my concerns.

From: Costa, Gina
Sent: Tuesday, April 5, 2022 10:57 AM
To: Mancini, Lawrence <Lmancini@providenceri.gov>
Cc: Silveria, Sara <Ssilveria@providenceri.gov>; Bouchard, Sean <Sbouchard@providenceri.gov>; Lombardi III, Jim <Jlombardi@providenceri.gov>; Dana, Jeff <Jdana@providenceri.gov>
Subject: FW: expired or revoked TSA's final TAX year 2021

Good morning Chief,

I do not agree that these restricted covenants are legal due to the fact that the City Solicitor, solely, negotiated them for 30 years. The City Council can only offer 20 year stabilizations. How can an entity receive a 20 year tax stabilization and then a 30 year restricted covenant. I know that you are unable to respond to those questions, but hopefully the solicitor can.

But, I hope that you have been working on the fiscal note I asked for almost a month ago. I am very concerned about the fiscal impact this will have on the City. If TSAs are converting to 8Law – there is zero benefit to the City. I have estimated that the loss in tax revenue is about \$1,000,000 per year. I am asking that a formal, more accurate fiscal note be completed.

This tax revenue loss will have to be made up. Is the City really going to shift the burden to residential? Do you plan on increasing commercial? Do you anticipate a shift in tax reliance from one class to another? What is being done to prevent ALL remaining multimillion dollar properties from doing the same? Has anyone considered changing state law?

Can you provide me with a date that I can expect a response, or was it intentional to wait to see how much residential property values have increased?

From: Costa, Gina
Sent: Wednesday, March 9, 2022 12:50 PM
To: Bouchard, Sean <Sbouchard@providenceri.gov>; Poulos, Nicholas <Npoulos@providenceri.gov>; Dana, Jeff <Jdana@providenceri.gov>
Cc: Muscatelli, Janesse <Jmuscatelli@providenceri.gov>; Jones, Jacinta <Jjones@providenceri.gov>; Lombardi III, Jim <Jlombardi@providenceri.gov>; Mancini, Lawrence <Lmancini@providenceri.gov>; Pollock, Nicole <npollock@providenceri.gov>; Nickerson, Bonnie <bnickerson@providenceri.gov>
Subject: RE: expired or revoked TSA's final TAX year 2021

Hi,

I am also following up on some form of formal response. I am still awaiting a fiscal not to determine the tax savings to this owner and the implication of all current and future developments that provide housing, because it apparently does not have to qualify as affordable (as defined by HUD) to get this "tax break".

From: Bouchard, Sean <Sbouchard@providenceri.gov>
Sent: Monday, February 28, 2022 3:26 PM
To: Poulos, Nicholas <Npoulos@providenceri.gov>; Dana, Jeff <Jdana@providenceri.gov>
Cc: Muscatelli, Janesse <Jmuscatelli@providenceri.gov>; Costa, Gina <Gcosta@providenceri.gov>; Jones, Jacinta <Jjones@providenceri.gov>; Lombardi III, Jim <Jlombardi@providenceri.gov>; Mancini, Lawrence

<Lmancini@providenceri.gov>; Pollock, Nicole <npollock@providenceri.gov>; Nickerson, Bonnie
<bnickerson@providenceri.gov>

Subject: RE: expired or revoked TSA's final TAX year 2021

Good Afternoon All,

I am circling back on my below email from February 16th to see if there has been any movement on answers to my initial questions. If responses are still being formulated I would appreciate an update as to when we can expect the responses in full.

Thank you,

Sean

From: Bouchard, Sean

Sent: Wednesday, February 16, 2022 10:49 AM

To: Poulos, Nicholas <Npoulos@providenceri.gov>

Cc: Muscatelli, Janesse <Jmuscatelli@providenceri.gov>; Costa, Gina <Gcosta@providenceri.gov>; Jones, Jacinta <Jjones@providenceri.gov>; Lombardi III, Jim <Jlombardi@providenceri.gov>; Mancini, Lawrence <Lmancini@providenceri.gov>

Subject: RE: expired or revoked TSA's final TAX year 2021

Nick,

That is extremely disconcerting to hear that the City would enter into a TSA without binding the property owner for the real estate in question. When it comes time to revisit the TSA ordinance it is imperative that the property owner is the only party eligible to enter into a TSA with the City and that all TSA's be recorded against the title to the subject property.

Based on your response, does this mean that lot 263 is no longer subject to the terms of the TSA and will therefore be taxed on its full assessed value moving forward?

As you have raised the issue of the Consent Judgment, which I believe is the same one that I was finally able to review a copy of this week, there are several questions that I have regarding this matter.

1. My understanding is that the Judgment is a departure from long standing city policy surrounding 8 law. Is there precedent for the City having ever applied 8 law to commercial property or commercial space within a mixed use development in the past? If so, could you please provide context and an explanation for how commercial space qualifies for a tax exemption that is clearly intended for residential property.
2. It appears that according to this Judgment, the City is willing to accept students as qualifying tenants for purposes of affordable housing. If that is in fact the case, does this mean that all landlords who rent to college students in the City are now eligible for 8 law treatment from the Assessors office? If not, what distinction is being drawn between the properties subject to the Consent Judgment and any other landlord in the City.
3. To expand further on item 2, is the City willing to categorize rental units for students as qualifying affordable housing units for access to use of funds from the Affordable Housing Trust Fund? I believe the City Council needs to be aware if that is in fact the case.
4. Was a fiscal note prepared to asses the financial impacts of entering into this Consent Judgment?

There are likely additional legal and policy questions I have regarding the Consent Judgment but I would ask for a response to the above questions for the time being. Although I believe I have reviewed the entirety of the Consent Judgment, I would also ask that the Solicitor's office provide a complete copy of the Consent Judgment along with the fiscal note.

Thank you and I look forward to your response,

Sean

From: Poulos, Nicholas
Sent: Wednesday, February 16, 2022 10:10 AM
To: Bouchard, Sean <Sbouchard@providenceri.gov>; Muscatelli, Janesse <Jmuscatelli@providenceri.gov>
Cc: Costa, Gina <Gcosta@providenceri.gov>; Jones, Jacinta <Jjones@providenceri.gov>
Subject: Re: expired or revoked TSA's final TAX year 2021

I will add that Lapham 290 voluntarily withdrew from their TSA as part of the Consent Judgment in the Harrisburg matter that I know you all are well-aware of.

From: Poulos, Nicholas
Sent: Wednesday, February 16, 2022 10:01:25 AM
To: Bouchard, Sean; Muscatelli, Janesse
Cc: Costa, Gina; Jones, Jacinta
Subject: Re: expired or revoked TSA's final TAX year 2021

Plat 4 Lot 263 was the subject of a lawsuit. Please note that I'm going to get into attorney-client discussions here.

For whatever reason, when the City processed the TSA for Lot 263, we never got the approval or sign-on from the fee owner of the property. Simply put, the TSA was with the lessee and the lessee alone. As a result, when the lease was terminated, we could not enforce the TSA against the fee-simple owner. While the TSA generally does run with the land, without the consent of the owner of the land, there's really nothing we could have done.

However, that TSA covered three lots—Lots 261, 262, and 263. The judgment in that case did not touch Lots 261 and 262. Only Lot 263 was removed from the TSA.

I do not know why the TSA was not signed with Capital Properties, the fee owner, on board. Capital Properties is an entity that has sued the City several times over tax matters to great success.

From: Bouchard, Sean
Sent: Wednesday, February 16, 2022 9:28:49 AM
To: Muscatelli, Janesse

Cc: Costa, Gina; Jones, Jacinta; Poulos, Nicholas
Subject: RE: expired or revoked TSA's final TAX year 2021

Good Morning Janesse,

It appears the Omni garage is coming off stabilization as 2022 is the last year of abatement. Could you or Nick provide background on why Lapham, Kinsley, Capital Cove, and Royal Oaks are no longer going to be subject to stabilization when they are still in the middle of their TSA terms?

Thank you,

Sean

From: Costa, Gina
Sent: Wednesday, February 16, 2022 9:23 AM
To: Bouchard, Sean <Sbouchard@providenceri.gov>
Subject: FW: expired or revoked TSA's final TAX year 2021

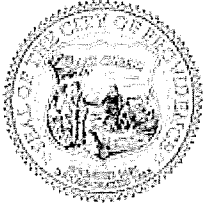
From: Muscatelli, Janesse <Jmuscatelli@providenceri.gov>
Sent: Tuesday, February 15, 2022 4:09 PM
To: Jones, Jacinta <Jjones@providenceri.gov>
Cc: Costa, Gina <Gcosta@providenceri.gov>; Poulos, Nicholas <Npoulos@providenceri.gov>
Subject: expired or revoked TSA's final TAX year 2021

Hi Jacinta,

Here is my list of TSA property that will no longer be subject to stabilized payments beginning with tax year 2022. I know you mentioned responding as a group.. did you create a Microsoft team project or a group email? Let me know, happy to reshare for all.

Plat	Lot	Parcel Size (SF)	Project Name	1st year abated	Last Year Abated
20	382	32,415	Peerless	2002	2021
20	154	4,617	Harrisbury/Lerner	2002	2021
25	170	10,934	Mercantile Block	1999	2021
9	610	19,453	City Kitty	2017	2021
32	234	9,614	Pilgrim Lofts	2017	2021
62	545	130,480	Grasso	2017	2021
84	162	9,962	Federal Hill Pizza	2017	2021
20	408		Lapham 290 LLC	2018	2032
20	407		Lapham 290 LLC	2018	2032
20	63		Lapham 290 LLC	2018	2032

20	63		Lapham 290 LLC	2018	2032
24	411	10,920	Kinsley	2017	2028
4	263	64,561	Capital Cove P1	2005	2024
26	391	6,944	Omni (1)	2017	2021
18	19	9,426	Royal Oaks	2016	2030
18	354	-	Royal Oaks	2016	2030
26	382	55,488	Omni garage	2018	2022



PROVIDENCE A CITY THAT WORKS

JANESSE MUSCATELLI
DEPUTY TAX ASSESSOR
TAX ASSESSOR'S OFFICE
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Providence, Rhode Island 02903
401 680-5229 Ext. 5643 OFFICE
401 680-5632 FAX
jmuscatelli@providenceri.gov
www.providenceri.com

Exhibit 4

Costa, Gina

From: Costa, Gina
Sent: Tuesday, November 29, 2022 11:12 AM
To: Dana, Jeff; Pollock, Nicole
Subject: RE: Response

Tracking:	Recipient	Read
	Dana, Jeff	Read: 11/29/2022 11:32 AM
	Pollock, Nicole	

Jeff,

I appreciate your response.

In response to 1., the law department should really provide more legal insight on Tax Stabilizations prior to passage. I am unaware that the first TSA was rescinded. I disagree that the city would not have received any benefit. There are other community benefits that the City did not get – construction jobs, apprenticeship programs – non-financial benefits. Yet, the TSA recipient was current on all fees and reports.

In response to 2. This was not an adjudicated case. It was an agreement between two parties without any fiscal note or public vetting by elected officials.

That concerns me.

From: Dana, Jeff <Jdana@providenceri.gov>
Sent: Tuesday, November 29, 2022 10:21 AM
To: Costa, Gina <Gcosta@providenceri.gov>; Pollock, Nicole <npollock@providenceri.gov>
Subject: RE: Response

Good morning Gina,

1. My understanding is that 203 Westminster has rescinded its TSA, as it did not move forward with the project for which the TSA was intended. Per discussion with the Assessor, they would not have received any real benefit from that TSA, as they did not commence work on the project. As I understand it, they are now seeking a TSA for a completely different project at that site, for which a 20 year TSA would be permissible (if the Council decides to approve it).
2. With respect to Consent Judgments which provide potential tax relief, according to Providence Code of Ordinances Chapter 2, Art. VI, Sec. 2-99(b)(4), Consent Judgements do not need Council approval for “matters concerning appeals for relief from tax assessment.” Generally, when a plaintiff has a claim for monetary damages against the City, they must present their claim to the City Council. RIGL § 45-15-5. “[I]n case just and due satisfaction is not made” to the complainant after forty days, the complainant “may commence his or her action against the treasurer for the recovery of the complaint.” *Id.* Naming the Treasurer in suits for monetary relief is consistent with Home Rule Charter, because the Treasurer is vested with the “custody of all public funds belonging to or under the control of the city.” Sec. 602(b)(4). Tax appeals, however, are different creatures. Tax appeals are requests for relief from property assessment. Initially, it was “the uniform practice” to “bring such actions against the town treasurer.” *Fish v. Higbee*, 22 R.I. 223, 225, 47 A. 212, 212 (1900). However, this changed with the passage of P.L. 1932, ch. 1945, now § 44-5-26. This statute specifies that, when petitioning to the Superior Court, “*the assessors of taxes* of the city or town in office at the time the petition is filed shall be

made parties respondent.” Sec. 44-5-26(b) (emphasis added). Ordinarily, “[o]fficial capacity suits naming officers or employees are generally treated as actions against the entity employing the officer or employee and not as actions against an individual.” 56 Am. Jur. 2d *Municipal Corporations, Etc.* § 746, Westlaw (database updated May 2018); see also *Kentucky v. Graham*, 473 U.S. 159, 165 (1985) (“[A]n official-capacity suit is, in all respects other than name, to be treated as a suit against the entity.”). Historically, this 1932 change from naming the Treasurer as respondent to the Tax Assessor has been interpreted by courts and municipalities as statutory authority for the Tax Assessor to settle tax assessment claims as needed.

Please let me know if you’d like to discuss either of these questions further.

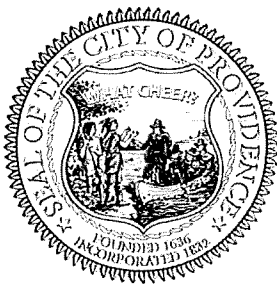
Thank you,
Jeff

From: Costa, Gina <Gcosta@providenceri.gov>
Sent: Monday, November 14, 2022 12:09 PM
To: Dana, Jeff <Jdana@providenceri.gov>; Pollock, Nicole <npollock@providenceri.gov>
Subject: Response
Importance: High

Good morning Jeff,

May I please receive a written response on the following?

1. Is the 20 year TSA for 203 Westminster in compliance with the State Law that limits the City’s capability to provide a maximum of 20 years? This property received a 20 Year TSA in 2019.
2. When will the consent judgements be brought to Council for the abatements on the various properties that provide for retroactive tax relief?



Gina Costa

INTERNAL AUDITOR | OFFICE OF THE INTERNAL AUDITOR
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CONFIDENTIALITY
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Exhibit 5



Office of the Internal Auditor

CONFIDENTIAL MEMORANDUM

To: Honorable City Council Members

CC: James J. Lombardi, III, Acting Chief of Staff
Sean Bouchard, Senior Deputy Chief of Staff

From: Gina M. Costa, Internal Auditor

Date: December 1, 2022

Subject: Commercial 8Law Properties

On June 9, 2021, a consent order (ATTACHMENT A) was entered in the Providence/Bristol County Superior Court that applies 8% tax law treatment pursuant to Rhode Island General Law 44-5-13.11 which is a special tax provision for low-income housing units. 8% tax law treatment allows the property owner to pay 8% of the previous year's rent collected as its property tax instead of the full commercial or residential rate depending on the property. The Consent Order applied this low-income housing tax treatment to several mixed-use properties in the City, which results in a significant reduction in the amount of taxes the City collects from these properties. The properties that benefit from this consent order are:

1. Harrisburg Associates, LLC – 89 Eddy Street
2. Lerner Associates, LLC – 90 Eddy Street
3. The Alice Building – 236 Westminster Street
4. Smith/Keen, LP – 1 Fulton Street
5. Lapham 290, LLC – 290 Westminster Street
6. Peerless Lofts, LLC – 150 Union Street
7. Clemence 91, LLC – 91 Clemence Street
8. RWB Associates, LLC – 270 Westminster Street
9. 276 Westminster, LLC – 276 Westminster Street
10. Downtown Revitalization Fund I, LLC – 326 Westminster Street

Some issues that should be made known:

1. This consent order was approved and implemented without the approval of the City Council, the Committee on Claims and Pending Suits or the Board of Tax Assessment and Review. The City Solicitor claims that his authority to enter into the Consent Order rests in Code of Ordinances Sec 2-99 (b) (4). (ATTACHMENT B) This section does allow the Solicitor to settle however that settlement authority requires the city Tax Assessor's consent. My research has been unable to identify any such consent from the Tax Assessor at the time the Consent Order was signed, but a response from the Solicitor is pending.
2. The Area Median Income (AMI) level used in this consent judgement to be deemed as an "affordable unit" is 100%. The Department of Housing and Urban Development (HUD) defines "low-income" as 80% AMI or below. The leases that are being used to justify restricted "low-income" units includes students with zero income level. Housing and Urban Development (HUD) does not include students as eligible for qualification in other HUD approved properties.
3. These properties are mixed-use and contain both commercial and residential space. Under this Consent Order the entire property, including commercial space such as restaurants and stores, is now being taxed the same as the residential – 8% of the previous year's gross income. The Tax Assessor is empowered to separate the commercial from the residential, however the Consent Order does not allow for that separation.
4. Per the consent order, the Tax Assessor's office is responsible for reviewing all lease agreements and leaser's income to determine the annual gross income. The standard practice in Providence is to have RI Housing certify compliance with HUD regulations prior to receiving 8Law treatment. It is questionable why the Consent Order breaks from standard practice and instead burdens the Tax Assessor with compliance responsibilities that are better suited to be run through RI Housing. One may ask if a conflict of interest could occur.
5. There is retroactivity to abate taxes to July 24, 2020, even though there was no restricted covenant in place at that time, as required. Approximately \$626,000 has been abated for six of the ten properties. The Assessor did ask for the HUD forms that would confirm the qualification of "affordability" after the Consent Order was entered with the Court but was instead simply provided with the leases themselves.

BACKGROUND

Please note that attachments C, D, and E may be protected by the attorney client privilege.

In 2016, an Assistant City Solicitor provided a response to the City Solicitor's inquiry of "how the city applies RIGL 44-5-13.11 to properties which are deed-restricted but not

comprised of 100% affordable units”. (ATTACHMENT C) The response provided the following criteria:

1. Be residential property.
2. Has be issued a certificate of occupancy after January 1, 1995.
3. Has been “substantially rehabilitated”.
4. Has a restricted covenant recorded restricting either the rents to be charged or the income of the tenants, or both.

The properties in question are not 100% residential. There are stores and restaurants occupying the first level of many of these buildings. The assessor has the discretion to provide the 8% Law rate to the residential portion of the property and the remainder would be at the commercial rate. Based on the review, there is no indication that the assessor agreed to providing this benefit to the property owner and states her disagreement in various emails. This consent order includes the entire property at the 8% rate, not just residential. All properties meet eligibility criteria 2 and 3. Eligibility Criteria 4 has been completed after the Consent Order was entered. It is interesting that the Consent Order provides for retroactive relief of taxes for a period in which the properties do not meet the eligibility criteria outlined above.

In March 2020, a different Assistant City Solicitor responded to a question “Can the City accommodate a developer who intends to rehab a multi-unit residential property in Providence by applying 8% tax law treatment to the property as a whole, when only 25% or less of the residential units will be restricted for affordable housing”. In short, the Assistant City Solicitor said that the “appropriate way to do this would be to enter into a Tax Stabilization Agreement (TSA) with the developer”. The problem with this approach is that most, or all, of the properties in question had already been granted tax stabilizations and would not qualify for additional relief. (ATTACHMENT D)

On June 24, 2020, a complaint with the Providence/Bristol Superior Court was initiated.

In January 2021, the third (and different) Assistant City Solicitor reviewed the draft consent order and the memorandums of the other attorneys and provided this comment: “Because this project is mixed use (not solely residential) and because the entirety of the property is not restricted, I agree with my colleagues that the project does not meet the criteria for 8 Law under 44-5-13.11. I share my colleague’s suggestion that it would be generous of the city to apportion 8 law treatment to those qualifying units within the project.” Once the agreement was signed by the City Solicitor, without any council approval, the property owner applied for a 30-year restricted covenant for each property. The restricted covenants were then signed by the mayor and recorded in the City’s land evidence records.

An email exists dated June 15, 2021, from the third Assistant City Solicitor to the Tax Assessor with the attached approved consent order stating “Sorry Elyse, I tried”. The assessor responds, “am I allowed to reach out to them [plaintiff’s counsel] directly”. Based on this email, one could

assume that the Tax Assessor had known about this consent order but did not agree with it. As previously stated, the City Solicitor's authority to enter into this Consent Order required the Tax Assessor's consent. Another presumption one could make from these emails is that there was no fiscal oversight of this agreement. The City Solicitor was asked to produce a fiscal note from my office on March 9, 2022. He has not provided one. I question the authority of the City Solicitor to bind the city with thirty years of restricted covenants. The city council, by state law can only relieve twenty years of taxes through a tax stabilization. Elected officials have more authority than an appointed employee. It is questionable as to why a consent agreement had to be created to do so. If the properties are HUD qualified, there would be no reason for the Consent Order to receive 8Law treatment, except that the properties would not have received such treatment for the commercial space.

It is my opinion that this Consent Order was created specifically to allow certain properties that have already exhausted twenty years of tax stabilization to obtain further preferential tax treatment that may not have been allowable without the Consent Order. If not challenged, these properties will receive fifty years of tax relief.

It is my recommendation to hire outside counsel to challenge consent order 2020—04757. If \$626,000 is abated from 2020 and the thirty-year life of the Consent Order's tax treatment is followed, then the city would be facing a potential loss in the amount of \$18,780,000, at a minimum since only six of the ten properties received retroactive abatements. The City Council was not provided with an opportunity to approve or deny this "generous" abatement. Additionally, since the City Solicitor has stated that his authority falls under the Code of Ordinance, Section 2-99 (b) (4), the consent of the assessor is required. This section is to settle complaints, not bind the city for the future. The assessor at the time of this consent order has since separated from the city.

The abatements are currently in the Finance Committee under tax certificate 62H. However, a new set of certificates were introduced to the council with the same numbers (not subbed) that did not include the consent judgement properties. That version was approved by the council. The original submission of Certificate 62H is still pending in Finance.

**STATE OF RHODE ISLAND
PROVIDENCE, SC**

SUPERIOR COURT

**HARRISBURG ASSOCIATES, LLC,
LERNER ASSOCIATES, LLC,
ALICE BUILDING, LLC,
PEERLESS LOFTS, LLC,
SMITH/KEEN, LP
LAPHAM 290, LLC
RWB ASSOCIATES, LLC
276 WESTMINSTER, LLC
CLEMENCE 91, LLC
DOWNCITY REVITALIZATION FUND I, LLC
PLAINTIFFS**

VS.

C.A.NO.: PC-2020-04757

**THE CITY OF PROVIDENCE,
ELYSE PARE, in her capacity as Tax Assessor
Of the City of Providence, and
JAMES LOMBARDI, III, in his capacity as
Treasurer of the City of Providence
DEFENDANTS**

CONSENT ORDER

The above captioned matter was filed by the Plaintiffs seeking declaratory judgment to resolve disputes between the parties related to the Plaintiffs' request for taxes to be assessed on their respective properties pursuant to R.I.Gen.Laws §44-5-13.11. After a series of settlement conferences between the parties, the parties have agreed upon the terms of this Consent Order. Therefore, by agreement of the parties, it is hereby:

ORDERED, ADJUDGED AND DECREED:

1. Plaintiffs Motion to Amend its Complaint to add additional plaintiffs is granted.
2. The Plaintiff and City of Providence shall enter into and record a 30-year restrictive covenant in favor of the City of Providence restricting twenty five percent (25%) of the

SUPERIOR COURT
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CLERK'S OFFICE
21 JUN -9 PM 12:05

total residential units at each Plaintiff's respective property for occupancy by tenants who have an income of no greater than one hundred percent (100%) of the area median income (AMI) for each respective property within forty-five (45) days of the entry of this Consent Order.¹ Each respective Plaintiff shall have the option to terminate the restrictive covenant in favor of the City of Providence upon providing ninety (90) days written notice to the Tax Assessor and City Solicitor's Office. In the event that any Plaintiff and the City wish to extend the restrictive covenant beyond thirty (30) years, nothing herein shall preclude the parties from doing so.

3. In exchange for restricting the units for occupancy by tenants making no more than one hundred percent (100%) AMI, the City agrees that each Plaintiffs' respective properties will be subject to a real property tax that is equal to eight percent (8%) of each properties' previous years' gross scheduled income pursuant to R.I.Gen.Laws §44-5-13.11 retroactive to tax year 2020's first quarterly payment of July 24, 2020.
4. The Plaintiffs shall have ninety (90) days from the date of the recording of the restrictive covenant to demonstrate compliance with the requirement that each of the Plaintiffs' respective properties has twenty five percent (25%) of its residential units restricted for occupancy by tenants making no more than one hundred percent (100%) of AMI.

¹ As pled in the Complaint, the Plaintiffs' respective properties are as follows:

1. Harrisburg Associates, LLC – 89 Eddy Street, Providence, RI
2. Lerner Associates, LLC – 90 Eddy Street, Providence, RI
3. The Alice Building, LLC – 236 Westminster Street, Providence, RI
4. Smith/Keen, LP – 1 Fulton Street, Providence, RI
5. Lapham 290, LLC – 290 Westminster Street, Providence, RI
6. Peerless Lofts, LLC – 150 Union Street, Providence, RI
7. Clemence 91, LLC – 91 Clemence Street, Providence, RI
8. RWB Associates, LLC – 270 Westminster Street, Providence, RI
9. 276 Westminster, LLC – 276 Westminster Street, Providence, RI
10. DOWNCITY REVITALIZATION FUND I, LLC – 326 Westminster Street, Providence, RI

5. Failure on the part of any Plaintiffs to demonstrate compliance with the requirements that Plaintiff's respective properties has twenty-five percent (25%) of its residential units restricted for occupancy by tenants making no more than one hundred percent (100%) of AMI will result in retroactive assessment such that full and fair taxation without the benefit of R.I.Gen.Laws §44-5-13.11 shall become immediately due and payable upon 10 days notice on the part of the City.
6. The 2021 tax bills for each Plaintiffs' property shall be adjusted to reflect an assessment pursuant to R.I.Gen.Laws §44-5-13.11 and the Plaintiffs shall receive a credit from the Defendants for any overpayment of taxes that has occurred since tax year 2020's first quarterly payment of July 24, 2020 provided that the Plaintiff must bring the Plaintiffs' properties into compliance with the terms of the restrictive covenant referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of said restrictive covenant.
7. In the event that one of the Plaintiffs is unable to bring its respective property into compliance with the terms of the restrictive covenant referenced in paragraph 1 of this Consent Order within ninety (90) days of the recording of the restrictive covenant, each respective property shall receive retroactive assessment such that full and fair taxation without the benefit of R.I.Gen.Laws §44-5-13.11 shall become immediately due and payable upon 10 days notice. . That particular Plaintiff shall be given until December 31, 2021 to bring the property into full compliance in order to begin being assessed taxes pursuant to §44-5-13.11 for tax year 2022.
8. Lapham 290, LLC ("Lapham Owner"), 276 Westminster, LLC, RWB Associates, LLC, Clemence 91, LLC agree to withdraw and forever forgo any right, entitlement, or benefit

provided under the existing TSA beginning with tax assessment as of December 31, 2020
for tax year 2021 and thereafter.

By agreement of the parties:

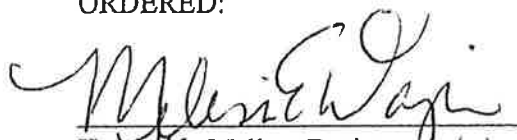
Plaintiffs,
By their attorney,

/s/ Nicholas J. Hemond, Esq.
Nicholas J. Hemond, Esq. #8782
DarrowEverett, LLP
One Turks Head Place, Suite 1200
Providence, Rhode Island
401-453-1200
nhemond@darroweverett.com

Defendants,
By their attorney,

/s/ Jeffrey Dana, Esq.
Jeffrey Dana, Esq.
City Solicitor
444 Westminster Street, Suite 220
Providence, Rhode Island
401-680-5333
jdana@providenceri.gov

ORDERED:


Honorable Melissa Darigan *6/8/21*

ENTERED:


Clerk

Dated: *6/8/21*

Case Number: PC-2020-04757
Filed in Providence/Bristol County Superior Court
Submitted: 8/8/2023 2:58 PM
Envelope: 4224550
Reviewer: Randie M.
Case Number: PC-2020-04757
Filed in Providence/Bristol County Superior Court
Submitted: 5/14/2021 3:23 PM
Envelope: 3102136
Reviewer: Jalden H.

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of May, 2021, I filed and served a true copy of the within document through the electronic filing system on the counsels of record for the opposing parties.

This document, electronically filed and served, is available for viewing and/or downloading from the Rhode Island Judiciary's Electronic Filing System.

/s/ Sean M. Rock

Sec. 2-99. - Authority delegated to city solicitor to settle small claims against the city.

- (a) The city solicitor shall have the authority and power delegated to him and his office to settle claims against the city for damages and injuries due to, or occasioned by, the negligence of the city or any officer, agent, or employee of the city without the necessity of the approval of the mayor or the chairman of the committee on claims and pending suits in claims not to exceed three thousand dollars (\$3,000.00). At any time when the city solicitor shall exercise the authority and power delegated to him under this ordinance he shall report the disposition to the committee on claims and pending suits.
- (b) For the settlement of claims, pending suits, arbitrations, mediations, consent decrees, consent judgments and/or any other legal matters of any kind that the city seeks to resolve by agreement, and whose resolution would have a fiscal impact of more than three thousand dollars (\$3,000.00), the city solicitor, or other attorney representing the city, shall not have the authority to settle the matter without approval of the committee on claims and pending suits and the mayor. This approval requirement shall not apply to the matters listed below; but when a settlement of one (1) of the matters listed below occurs, the settlement shall be reported, at least quarterly to the committee on claims and pending suits:
 - (1) Matters involving collective bargaining agreements that are subject to section 17-27;
 - (2) Labor disputes, including grievances, arbitrations, and separation agreements, where the settlement amount does not exceed ten thousand dollars (\$10,000.00), and where the director of human resources, or, in the case of public safety employees, the commissioner of public safety, consents to the settlement;
 - (3) Actions brought pursuant to the Rhode Island Workers' Compensation Act; and
 - (4) Matters concerning appeals for relief from tax assessment where the tax assessor consents to the settlement.

(Ord. 1926, ch. 501, § 1; Rev. Ords. 1946, ch. 2, § 59; Ords. 1974, ch. 74-25, § 1, 9-9-74; Ords. 1994, ch. 94-28, § 1, 9-9-94; Ord. No. 2018-39, § 1, 7-1-18)

JEFFREY T. DANA
City Solicitor



JORGE O. ELORZA
Mayor

Office of the City Solicitor

CONFIDENTIAL INTRAOFFICE MEMORANDUM

TO: Jeffrey T. Dana, Esq., *City Solicitor*
Lisa M. Fries, Esq., *Assistant City Solicitor*

FROM: Samuel A. Budway, Esq., *Assistant City Solicitor*

RE: Apportioned 8% Tax Law Treatment

DATE: June 15, 2016

Question Presented:

How does the City of Providence apply Rhode Island General Law §44-5-13.11 to properties which are deed-restricted but not comprised of 100% affordable units?

Answer:

The City of Providence treats differently each application for the preferential tax treatment under R.I. GEN. LAW §44-5-13.11 depending upon the nature of the residential structure under review. This memorandum explores the different scenarios for application of the law; additionally, it reaffirms the position that the City of Providence apportions the preferential treatment to any property not fully in compliance with the law (i.e. 100% affordable units) so that the underlying purpose of the law is still accomplished.

As you are aware, Rhode Island General Law Title 44 Chapter 5 Section 13.11 mandates an abatement of property assessment taxation to reflect a maximum tax to be levied in the amount of eight percent (8%). In order to obtain such abatement, the property in question must be "Qualifying low-income housing". R.I. GEN. LAW §44-5-13.11. To qualify as such, the property must: (1) be residential property; (2) have been issued an occupancy permit on or after January 1, 1995; (3) be property that has been "substantially rehabilitated" as defined by the United States Department of Housing and Urban Development(HUD); and (4) be encumbered by a covenant recorded in land records in favor of a government unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents to be charged or the income of the tenants occupying the units of the property. *Id.*

To understand these requirements as they apply to the question presented, the rest of this memorandum will explore the following applications of the law: (1) condominium units; (2) 100% restricted multi-unit structures; and (3) multi-unit structures not fully compliant.

Condominium Units

Pursuant to Section 34-36-27 of the Rhode Island General Laws, each declared dwelling unit and its portion of the condominium common elements shall constitute a separate plat and lot for the purposes of assessment and taxation. *See*, R.I. GEN. LAW §34-36-27. Therefore, for the City Tax Assessor's Office to determine and afforded the condominium units the preferential tax treatment, it must have evidence that each dwelling unit: (1) is residential; (2) has had an certificate of occupancy issued on or after January 1, 1995; (3) has been "substantially rehabilitated"; and (4) is encumbered as to rents and/or income. In this instance, it is clear that the entire condominium complex is not afforded the preferential tax treatment unless each and every separate taxable unit therein is also afforded said treatment.

100% Restricted Apartment-Style Structures

In this scenario one must imagine a parcel consisting of a single plat and lot with a structure built upon it which contains many dwelling units within; otherwise colloquially referred to as "apartment buildings". If the City Tax Assessor's Office is presented with evidence that: (1) the entire structure is residential; (2) that the entire structure has been issued a certificate of occupancy on or after January 1, 1995; (3) the entire structure has been "substantially rehabilitated"; and (4) the entire structure (i.e. inclusive of every dwelling unit in the structure) is encumbered as to rents and/or income, then the City Tax Assessor's Office is obligated to afford the preferential tax treatment to the entire structure on said plat and lot.

Multi-Unit Structures Not Fully Compliant

Here, the City Tax Assessor is presented with evidence that a single structure with many dwelling units is (1) residential; (2) has been issued a certificate of occupancy on or after January 1, 1995; (3) has been "substantially rehabilitated"; and (4) is partially encumbered as to the rents to be charged for the dwelling units and/or the income of the tenants occupying said units. The applicable law is clear and unambiguous on its face; it requires that the property "be encumbered by a covenant recorded in land records in favor of a government unit or Rhode Island housing and mortgage finance corporation restricting either or both the rents that may be charged to tenants of the property or the incomes of the occupants of the property." R.I. GEN. LAW §44-5-13.11. It does not state that some subset of units of the property may be restricted as to rent and/or income; instead the law requires the entire property's rents and/or incomes be restricted. If presented with information that the residential structure in question was less than 100% restricted, then the City Tax Assessor would be well within his authority under the law to consider the property ineligible and afford no preferential tax treatment.

As an administrative accommodation, the City of Providence Tax Assessor has afforded property owners the ability to obtain some of the preferential tax treatment without fully restricting each and every unit within the single structure. Where there is a parcel consisting of a single plat and lot, upon which a single structure has been built, and where said structure: (1) is residential; (2) has been issued a post January 1, 1995 certificate of occupancy; (3) has been "substantially rehabilitated"; and (4) has been partially encumbered as to rents and/or income, the Assessor will

apportion the preferential tax treatment so that those units restricted will reap the benefit of the intended purpose of the law. In an effort to bolster the creation and maintenance of low-income housing, the Assessor will liberally apply the preferential tax treatment to those units qualifying in any given single structure. For illustrative purposes, if 50% of the units in any given structure qualify, then the Assessor will apply the preferential tax treatment to those restricted units and the other 50% of the units will be assessed at full and fair cash value in accordance with R.I. GEN. LAW §44-5-12.

Conclusion:

In sum, an Assessor's authority to afford the preferential tax treatment mentioned above is found in R.I. GEN. LAW §44-5-13.11. The concern presented to this office is that the Assessor is not providing the preferential tax treatment to an entire structure when only a portion of it actually qualifies. Instead, it is the City's position that the Assessor is liberally interpreting the applicable law to afford structures not fully in compliance with the requirements under the law an opportunity to obtain some tax relief in an effort to protect the inventory of low-income housing in the City of Providence.

Confidential Interoffice Memorandum

To: Jeff Dana

From: Sharon Garner

Re: 8% tax law treatment for Residential Property with both qualifying low income and regular housing

Date: March 11, 2020

Question Presented:

Can the City accommodate a developer who intends to rehab a multi-unit residential property in Providence by applying 8% tax law treatment to the property as a whole, when only 25% or less of the residential units will be restricted for affordable housing?

Answer:

The City could accommodate the developer by applying 8% tax law treatment to the entire residential property, but the appropriate way to do this would be to enter into a Tax Stabilization Agreement (“TSA”) with the developer.

Under R.I. Gen. Laws § 44-5-13.11, the City has authority to apply an 8% tax on a particular residential property if it meets certain criteria: (1) the property must have been issued an occupancy permit on or after Jan. 1, 1995, (2) the property must have completed a “substantial rehabilitation” as defined by HUD¹, and (3) the property must be encumbered by a covenant recorded in the land records in favor of a governmental unit or RI housing and mortgage finance corporation that restricts either the rent and/or income of the tenants.

The plain reading of this statute limits the preferential tax treatment to properties/units that are, in fact, 100% restricted. To interpret the statute otherwise would defeat the purpose of the law, which is to encourage low income residential development by relieving developers of significant property tax when they accommodate low income tenants. If the 8% tax were applied to all developers who restricted as little as one residential unit on their property, an absurd result would ensue – the City would be giving significant tax breaks when none were needed and conversely limiting affordable housing.

In his memo dated June 15, 2016, Sam Budway addressed this particular issue. He also addressed the question of whether or not the assessor was allowed a liberal interpretation of the

¹ In 2013, Judge Rogers of the RI Superior Court addressed the issue of what particular HUD definition of “substantial rehabilitation” applied to R.I. Gen. Laws § 44-5-13.11. She determined that the appropriate definition was found in HUD Handbook 4506.1 and 4460.1. See Armoury v. Picard, 2013 WL 1943167 (2013).

statute so he/she could give some benefit of the law to multi-unit residential structures that were not 100% restricted through apportionment. The percentage of units that were restricted would receive the tax break, and the other units would be taxed at the regular residential rate. See Sam's memo attached hereto. Sam's memo validly outlines the law and the City's authority to extend tax benefits to developers within its constraints.

That being said, if the City were to roll the dice and exceed its authority under R.I. Gen. Laws § 44-5-13.11 by applying the 8% tax to an entire multi-unit residential property when only a small portion of units qualify as low income housing, it may be difficult to legally challenge this decision in court. Arguments from a non-benefitting taxpayer could include a violation of the fair and equal distribution of burdens clause under Article 1, Section 2 of the Rhode Island Constitution among others; however, the challenger would likely have a standing issue. A further analysis and memo would be required if the City were to take this route.

Also, if the City were to grant the 8% tax to the particular developer in this case, the developer would have no security that the next administration would agree to the same arrangement. Any subsequent administration could review § 44-5-13.11 and only apply it to multi-unit structures that are fully compliant with its requirements or agree to apportion, the two legally sound interpretations of the statute. In this particular fact scenario, the developer is not even substantially compliant with the law's limiting criteria, since he/she is contemplating restricting 25% or less of the residences as low income.

The remedy that would protect both the taxpayer in this situation and the City would be to allow the taxpayer to pay the 8% tax through a TSA. The City has the requisite authority under a TSA to "exempt from payment, in whole or in part, [taxes on] real...property" pursuant to R.I. Gen. Laws § 44-3-9. The development would likely qualify for a TSA since it will be "used for affordable housing" and/or "residential purposes" under (a)(1) of the statute.

Costa, Gina

From: Fries, Lisa <Lfries@providenceri.gov>
Sent: Friday, January 29, 2021 4:34 PM
To: Pare, Elyse
Subject: FW: Harrisburg Consent Order
Attachments: SGG Memo on 8%.docx; Memo on Apportioned 8 Law Treatment (Budway).docx; Harrisburg Associates - Consent Order - proposed (002).docx

Elyse,
Take a look at the Consent Order and call me when you have a minute. I want to make sure all of your concerns are addressed too!
~Lisa

From: Fries, Lisa
Sent: Friday, January 29, 2021 4:33 PM
To: Dana, Jeff <Jdana@providenceri.gov>
Subject: Harrisburg Consent Order

Jeff,

I have reviewed the two law department memos on this topic, all applicable TSA's and the proposed consent order. Because this project is mixed use (not solely residential) and because the entirety of the property is not restricted, I agree with my colleagues that the project does not meet the criteria for 8 law under 44-5-13.11. I share my colleagues suggestion that it would be generous of the City to apportion 8 law treatment to those qualifying residential units within the project.

Also, I note that there is an active TSA with atleast one of the properties identified in Plaintiff's Complaint (290 Westminster Street). This active TSA granted by City Council under Chapter 2018-7, Ordinance No. 233 approved March 26, 2018 is in effect through December 31, 2031 and is not addressed in the Consent Order. Also, pursuant to Section 8.4 of the Ordinance, the beneficiaries under the Ordinance "agreed to waive and forever forgo any and all rights and privileges under Title 44." Therefore, we could motion to dismiss the dec action altogether. Also, the Consent Order does not address one of the properties identified in the Complaint – 150 Union and a provision with respect to that property is needed. I believe the owner is/was Peerless.

It is my understanding that our client is well aware of the law departments advise and wishes to move forward. Please see my comments attached to the Consent Order attached. (I am attaching the law department's previous memos on the topic as well in order to have everything in one place).

The Consent Order is poorly drafted. Happy to jump on a call with Nick Hemond to finalize this, tonight or next week.

~Lisa

From: Dana, Jeff
Sent: Thursday, January 14, 2021 12:59 PM
To: Fries, Lisa <Lfries@providenceri.gov>
Subject:

Exhibit 6



RESOLUTION OF THE CITY COUNCIL

No. 138

EFFECTIVE March 26, 2023

WHEREAS, On December 15, 2022 the City's Internal Auditor submitted a report to the City Council outlining significant concerns raised in response to a Consent Order that was entered into on behalf of the City in case no. PC-2020-04757 without any consideration or notice provided to the City Council; and

WHEREAS, At the end of the report the Internal Auditor provided the recommendation to the City Council that outside legal counsel be hired with the express purpose of challenging the Consent Order; and



WHEREAS, The Auditor's report raises significant concerns for the City Council that cannot be adequately addressed without the hiring of outside legal counsel.

NOW, THEREFORE, BE IT RESOLVED, That pursuant to Section 401 (d) of the Providence Home Rule Charter, and upon recommendation of the Internal Auditor in her report dated December 15, 2022, the City Council of the City of Providence hereby authorizes the City Council President to retain outside legal counsel for the following purposes:

1. A full review of the Consent Order entered in case number PC-2020-04757 for compliance with the Providence Home Rule Charter and City Code of Ordinances;
2. Submission of a detailed report to the City Council outlining the findings of the review of the Consent Order including an outline of all legal remedies available to the City Council; and
3. Initiation of such court filings as may be necessitated based upon the findings of the review of the Consent Order as described above.

BE IT FURTHER RESOLVED, That, upon passage, a copy of this resolution be sent to the Mayor of Providence and the City Solicitor.

IN CITY COUNCIL
MAR 16 2023
READ AND PASSED


RACHEL M. MILLER, PRESIDENT

CLERK

Effective without the
Mayor's Signature


Tina L. Mastroianni
City Clerk