

County Council of Howard County, Maryland

2022 Legislative Session

Legislative Day No. 5

Resolution No. 29 -2022

Introduced by: The Chairperson at the request of the County Executive

A RESOLUTION approving the terms and conditions of a Payment in Lieu of Taxes Agreement by and between Howard County, Maryland and Patuxent LLC for property located at 6441 Freetown Road, 6333 Cedar Lane, and 6367 Cedar Lane in Columbia, Maryland, for purposes of Section 16.1103(e) of the Howard County Code.

Introduced and read first time _____, 2022.

By order _____
Michelle Harrod, Administrator

Read for a second time at a public hearing on _____, 2022.

By order _____
Michelle Harrod, Administrator

This Resolution was read the third time and was Adopted __, Adopted with amendments __, Failed __, Withdrawn __, by the County Council on _____, 2022.

Certified By _____
Michelle Harrod, Administrator

Approved by the County Executive _____, 2022

Calvin Ball, County Executive

NOTE: [[text in brackets]] indicates deletions from existing law; TEXT IN SMALL CAPITALS indicates additions to existing law; ~~Strike-out~~ indicates material deleted by amendment; Underlining indicates material added by amendment

1 **WHEREAS**, Patuxent, LLC (“Patuxent”) has contracted to develop certain real property
2 located at 6441 Freetown Road, 6333 Cedar Lane, and 6367 Cedar Lane in Columbia, Maryland
3 (the “Property”); and
4

5 **WHEREAS**, Patuxent proposes to construct and operate on the Property a 76-unit mixed-
6 income, rental housing development to be known as “Patuxent Commons” (the “Development”);
7 and
8

9 **WHEREAS**, within the Development:

10 (1) Sixty-nine (69) units (the “Affordable Dwelling Units”) will be rented to
11 households that earn at or below 60 percent of Area Median Income of the
12 Baltimore Metropolitan Statistical Area, of which nineteen (19) units will be rented
13 to residents with disabilities who earn at or below 30 percent of AMI; and

14 (2) Seven (7) units will be rented at market rates (the “Property”); and
15

16 **WHEREAS**, in order to fund a portion of the costs of the Development, Patuxent has
17 applied to the Maryland Department of Housing and Community Development, either directly or
18 through its Community Development Administration for (i) equity financing derived from 4%
19 Low Income Housing Tax Credits in the approximate amount of \$13,400,000, (ii) a Rental
20 Housing Works Fund loan in the approximate amount of \$2,500,000, and (iii) a Partnership
21 Rental Housing Fund loan in the approximate amount of \$2,300,000 (collectively, the “State
22 Financing Programs”); and
23

24 **WHEREAS**, in order to fund the acquisition of the land for the Development, Patuxent
25 applied to the County for a grant of \$3,200,000 from MIHU fee-in-lieu funds. These funds will
26 be used to acquire the land on or before the sales contract closing deadline of July 31, 2022; and
27

28 **WHEREAS**, pursuant to the State Financing Programs, the Development will provide
29 housing for lower income persons; and
30

1 **WHEREAS**, Patuxent has submitted a request to the Department of Housing and
2 Community Development that the County permit Patuxent to make payments in lieu of County
3 real property taxes (the “PILOT”) pursuant to Section 7-506.1 of the Tax-Property Article of the
4 Annotated Code of Maryland and in accordance with the Payment in Lieu of Taxes Agreement,
5 substantially in the form attached as Exhibit 1, and for purposes of Section 16.1103(e) of the
6 Adequate Public Facilities Act of Howard County (the “Act”); and

7
8 **WHEREAS**, Patuxent has demonstrated to the County that an agreement for a PILOT is
9 necessary to make the Development economically feasible; and

10
11 **WHEREAS**, in order to provide sufficient time for the Howard County Board of Education
12 to prepare for the Development and for Patuxent to meet its financing, acquisition, and
13 construction schedule, and in conjunction with the approval of the PILOT, Patuxent seeks to have
14 the County Council consider the necessary criteria outlined in Section 16.1103(e)(5) of the Act;
15 and

16
17 **WHEREAS**, pursuant to Section 16.1103(e) of the Act, if an affordable housing project
18 or phase of a project is located in the attendance area of a school that is closed for development
19 due to projected enrollment in the school capacity chart, the Director of the Department of Planning
20 and Zoning shall authorize the affordable housing project to proceed subject to all other provisions
21 of the Act if:

- 22 1. At least 40 percent of the units shall be affordable to households earning 60 percent or
23 less of the metropolitan statistical area median income;
- 24 2. The project or phase of a project is led by or in partnership with a local nonprofit or the
25 Housing Commission;
- 26 3. The project or phase of a project is seeking or has received an allocation of Low-Income
27 Housing Tax Credits or other state or federal financial assistance for affordable
28 housing;
- 29 4. The project or phase of a project has obtained a letter of support from the County
30 Executive; and

1 5. The County Council and County Executive have approved either a Payment in Lieu of
2 Taxes agreement for the project or a resolution authorizing the project to proceed; and
3

4 **WHEREAS**, pursuant to Section 16.1103(e)(5) of the Act, as part of the approval of the
5 PILOT, the County Council shall hold a public hearing and consider:

- 6 1. The capacity utilization at the school or schools impacted by the project and at adjacent
7 schools, including limiting the potential impact on any elementary or middle school
8 with a capacity utilization rate greater than 115 percent unless an adjacent school with
9 the same grade levels has a capacity utilization rate of 100 percent or less;
- 10 2. Estimated student generation from the project;
- 11 3. Any potential for the Board of Education to add capacity to the impacted school or
12 schools through redistricting, facility expansion, or other programs; and
- 13 4. The need for affordable housing in the County, including factors such as the housing
14 cost burden on families, the availability of housing for individuals with disabilities, and
15 the extent of homelessness among families and school children; and
16

17 **WHEREAS**, the County Council has held a public hearing and considered the criteria in
18 Section 16.1103(e)(5) of the Act.
19

20 **NOW, THEREFORE, BE IT RESOLVED** by the County Council of Howard County,
21 Maryland this ____ day of _____, 2022, that:

- 22 (1) In accordance with Section 7-506.1 of the Tax-Property Article of the Annotated
23 Code of Maryland, the County shall abate all County real property taxes for the
24 Development subject to the terms and conditions of the Payment in Lieu of Taxes
25 Agreement (the “Agreement”) attached to this Resolution as “Exhibit 1”.
- 26 (2) The County Executive is hereby authorized to execute and deliver the Agreement
27 in the name and on behalf of the County in substantially the forms attached.
- 28 (3) The County Executive, prior to execution and delivery of the Agreement, may make
29 such changes or modifications to the Agreement as he deems appropriate in order
30 to accomplish the purpose of the transactions authorized by this Resolution,
31 provided that such changes or modifications shall be within the scope of the

1 transactions authorized by this Resolution; and the execution of the Agreement by
2 the County Executive shall be conclusive evidence of the approval by the County
3 Executive of all changes or modifications to the Agreement, and the Agreement
4 shall thereupon become binding upon the County in accordance with its terms.

EXHIBIT 1

Development: Patuxent Commons

PAYMENT IN LIEU OF TAXES AGREEMENT

THIS AGREEMENT (this “Agreement”) is made as of this _____ day of _____, 20____, by and between Patuxent LLC a limited liability company organized and existing under the laws of the State of Maryland (the “LLC”) and HOWARD COUNTY, MARYLAND, a body corporate and politic of the State of Maryland (the “County”).

RECITALS

A. The LLC has contracted to acquire certain real property located on 6441 Freetown Road, 6333 Cedar Lane, and 6367 Cedar Lane in Columbia, Maryland, which real property is more particularly described on Exhibit “A” attached hereto (the “Property”). The LLC proposes to construct and operate on the Property a 76-unit mixed-income, rental housing development to be known as “Patuxent Commons” (the “Development”). Sixty-nine (69) units (the “Affordable Dwelling Units”) will be rented to households that earn at or below 60 percent of Area Median Income of the Baltimore Metropolitan Statistical Area (“AMI”), of which nineteen (19) units will be rented to residents with disabilities who earn at or below 30 percent of AMI. An additional seven (7) units will be rented at market rates.

B. In order to fund a portion of the costs of the Development, the LLC has applied to the Maryland Department of Housing and Community Development, either directly or through its Community Development Administration for (i) equity financing derived from 4% Low Income Housing Tax Credits in the approximate amount of Thirteen Million Four Hundred Thousand Dollars (\$13,400,000), (ii) a Rental Housing Works Fund loan in the approximate amount of Two Million Five Hundred Five Thousand Dollars (\$2,500,000), and (iii) a Partnership Rental Housing Fund loan in the approximate amount of Two Million Three Hundred Thousand Dollars (\$2,300,000) (collectively, the “State Financing Programs”). Pursuant to the requirements of the State Financing Programs, the Development will provide housing for lower income persons.

C. WHEREAS, in order to fund the acquisition of the land for the Development, Patuxent applied to the County for a grant of \$3,200,000 from MIHU fee-in-lieu funds. These funds will be used to acquire the land on or before the sales contract closing deadline of July 31, 2022;

D. The LLC has requested that the County permit the LLC to make payments in lieu of County real property taxes pursuant to Section 7-506.1 of the Tax-Property Article of the Annotated Code of Maryland (the “Act”). The Act provides, among other things, that real property may be exempt from County property tax if:

(1) the real property is owned by a person engaged in constructing or operating housing structures or projects;

(2) the real property is used for a housing structure or project that is constructed or substantially rehabilitated under a federal, State, or local government program that funds construction, or insures its financing in whole or in part, or provides interest subsidy, rent subsidy or rent supplements;

(3) the owner of the real property agrees to continue to maintain the real property as rental housing for lower income persons under the requirements of the governmental programs described in item (2) of this paragraph and agrees to renew any annual contributions or other agreements for rental subsidy or supplement; and

(4) the owner and the governing body of the county where the real property is located agree that the owner shall pay a negotiated amount in lieu of the applicable county property tax.

E. In order to induce the LLC to provide housing for lower income persons, the County agrees to accept payments in lieu of County real property taxes, subject to the terms and conditions of this Agreement.

F. The County Council of Howard County, Maryland has approved this Agreement by resolution, a copy of which is attached hereto as Exhibit "B".

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the LLC and the County agree as follows:

1. Definitions. In this Agreement, the term:

(a) "Affordable Dwelling Unit" means a rental dwelling unit reserved for households that earn at or below 60 percent of AMI.

(b) "Distribution" means any withdrawal or taking of Surplus Cash or any assets of the Development, excluding payment for reasonable expenses incident to the operation and maintenance of the Development. Such expenses shall include a reasonable property management fee and a reasonable guaranteed distribution to the limited partner as an investor services fee.

(c) "Gross Rental Income" means the total of all charges paid by all tenants of the Property, less the cost of all utilities paid by the LLC.

(d) "Initial Closing" means the date of the initial closing of the financing under the State Financing Programs.

(e) "Market Rate Dwelling Unit" means a rental dwelling unit which is not an Affordable Dwelling Unit.

(f) "Residual Receipts" means any cash remaining at the end of a calendar year after deducting from Surplus Cash:

- (i) the Payment required by Section 5(b) of this Agreement; and
 - (ii) any Distributions to the General Partner, the aggregate of which do not exceed 10% of the General Partner's initial equity investment in the Development, as determined by the County.
- (g) "Surplus Cash" means any cash remaining at the end of a calendar year after the payment of:
- (i) the Payment required by Section 5(a) of this Agreement;
 - (ii) all reasonable and actual operating costs and expenses of the Development (whether paid as operating expenses or from available cash flow) including reasonable property management fees, reasonable asset management fees to the managing member, any payments of deferred developer fee, amounts owed to the limited partner pursuant to the LLC's operating agreement, and a reasonable guaranteed distribution to the limited member as an investor services fee, as well as other taxes owed to the State of Maryland; and
 - (iii) all payments required under any mortgage on the Property approved by the Maryland Department of Housing and Community Development, either directly or through its Community Development Administration or the County, including payments under the State Financing Programs.
 - (iv) all payments required against any secondary debt or notes on the Property approved by the Maryland Department of Housing and Community Development.

2. Acceptance of Payments. For the term of this Agreement, the LLC shall make, and the County shall accept, annual payments in lieu of all County real property taxes due on the Property (the "Payments"). The Property shall be exempt from County real property taxes in accordance with the Act so long as this Agreement is in effect.

3. Conditions Precedent. This Agreement shall not take effect unless and until each of the following conditions precedent have been fulfilled:

- (a) Title. The LLC shall have taken fee simple title to the Property;
- (b) Financing. The LLC shall have received financing under the State Financing Programs for construction of the Development; and
- (c) PILOT Covenants. The LLC shall have executed and recorded covenants on the Property, in a form acceptable to the County, that require the LLC and all subsequent owners of the Property to offer for rent sixty-nine (69) units to households that earn at or below 60 percent of AMI, of which nineteen (19) units will be rented to residents with disabilities who earn at or below 30 percent of AMI, for a period of not fewer than forty (40) years from the date of Initial Closing (the "PILOT Covenants").

4. Effective Date. This Agreement shall take effect when each of the conditions

precedent set forth in Section 3 are fulfilled (the “Effective Date”); provided, however, that if all the precedent conditions are not fulfilled by March 1, 2023, this Agreement shall be null and void.

5. Amount of Payments. Each Payment made under this Agreement shall be in an amount calculated as follows:

(a) Minimum Payment. The LLC shall pay to the County an amount equal to (i) Four Hundred Eight Dollars (\$408) for each Affordable Dwelling Unit and Market Rate Dwelling Unit of the Development, and (ii) the amount of County fire tax, front-foot benefit assessment charge, the ad valorem charges, and any other charges that may appear on the Property’s real property tax bill (the “County Assessments”) paid by the LLC for the Development for the current taxable year.

(b) Payment from Surplus Cash. To the extent funds are available from Surplus Cash, the LLC shall pay to the County an additional two percent (2%) of the Development’s Gross Rental Income.

(c) Payment from Residual Receipts. To the extent funds are available from Residual Receipts, the LLC shall pay to the County an amount which, when added to the Payments made under (a) and (b), equals (i) the County real property taxes which would have been paid for the current taxable year if the Development were not exempt from taxation, and (ii) the County Assessments paid by the LLC for the Development for the current taxable year.

(d) Total Payment. The intention of this Agreement is that each annual Payment shall at no time exceed the aggregate of (i) County real property taxes which would have been paid for the current taxable year if the Development were not exempt from taxation, and (ii) the County Assessments paid by the LLC for the Development for the current taxable year.

6. Time and Place Payments Due. Each Payment shall be made by May 1 of each year for the prior calendar year. Payments shall be made to the Director of Finance, 3430 Courthouse Drive, Ellicott City, Maryland 21043. Payments of the County Assessments shall be made at the time and in the manner provided by law.

7. Penalties for Late Payment. The LLC shall be subject to the following penalties for late payments, which penalties shall not be imposed unless such payments remain outstanding after five (5) days’ written notice:

(a) 1% per month or part of a month during the period May 2 to June 30 following the due date; and

(b) 1 1/2% per month or part of a month on or after July 1 following the due date.

8. Penalties for Failure to Pay. At the option of the County, if any Payment is due and unpaid on or after July 1 following the due date, this Agreement may be terminated by the County upon ninety (90) days’ prior notice, which termination will be void if the LLC pays the outstanding Payment within such ninety (90) day period. If the LLC fails to pay the outstanding Payment within

such ninety (90) day period, then this Agreement will terminate, and all County real property taxes for the preceding taxable year shall be immediately due and payable.

9. Reports and Records.

(a) By no later than March 31 of each year, the LLC shall submit to the County's Director of Finance, in a form acceptable to the County, a report of the Development's income and expenses for the preceding calendar year, including an itemized breakdown of Gross Rental Income, Surplus Cash, and Residual Receipts.

(b) The LLC shall submit such other reports as the County may reasonably require in order to verify the LLC's compliance with this Agreement.

(c) The LLC shall permit the County or any of its authorized agents to inspect the records of the Development in order to verify the LLC's compliance with this Agreement.

10. Representation and Warranties.

(a) The LLC represents and warrants to the County that it is eligible in all respects to enter in this Agreement to make payments in lieu of taxes under the Act.

(b) The LLC covenants and agrees that it will do all things necessary to remain eligible to make payments in lieu of taxes in accordance with the Act.

(c) The LLC agrees that it shall remain in good standing with the State Department of Assessments and Taxation.

11. Term of Agreement. This Agreement shall remain in effect until the earlier to occur of:

(a) the termination of the PILOT Covenants;

(b) the foreclosure, or the making of a deed in lieu of foreclosure, of any portion of the Property, unless the party acquiring the Property agrees to continue the PILOT Covenants under terms and conditions acceptable to the County;

(c) any default under the PILOT Covenants which is not cured within a reasonable period after notice, which period shall in all events be at least thirty (30) days; or

(d) any default under this Agreement which is not cured within a reasonable period after notice, which period shall in all events be at least thirty (30) days.

12. Sale; Liens; LLC Interests. During the term of this Agreement, the LLC shall not, without the prior written consent of the County, make any transfer, exchange, encumber or otherwise convey its interest in the Property except as permitted by the State Financing Programs' documents. If the LLC transfers the Property to a new owner (other than a holder of a mortgage or deed of trust in the event of foreclosure or deed in lieu of foreclosure), then the LLC shall be permitted to assign this Agreement to the new owner,

provided that (i) the transfer to the assignee was permitted by the State Financing Programs' documents and (ii) the assignee shall be subject to the terms and conditions of this Agreement.

13. State Taxes. The LLC acknowledges and agrees that it shall pay all State real property taxes.

14. Successors and Assigns. This Agreement shall be binding upon, and shall inure to the benefit of, all successors and assigns of the LLC.

15. Entire Agreement. This Agreement represents the entire understanding and agreement of the parties.

[SIGNATURES BEGIN ON NEXT PAGE]

IN WITNESS WHEREOF, the LLC and the County, by their duly authorized representatives have signed this Agreement as of the date first written above.

WITNESS/ATTEST:

PATUXENT LLC

By:

Name: _____
Title: _____

Name: _____ (SEAL)
Title: _____

[COUNTY SIGNATURES ON FOLLOWING PAGE]

WITNESS/ATTEST:

HOWARD COUNTY, MARYLAND

Lonnie Robbins
Chief Administrative Officer

By: _____(SEAL)
Calvin Ball
County Executive

APPROVED for Form and Legal
Sufficiency this _____ day of
_____, 20__.

APPROVED by Department of Finance

Gary Kuc
County Solicitor

Rafiu Ighile
Director

Reviewing Attorney:

Kristen Bowen Perry

Exhibit A: Legal Description of Property

Exhibit B: Council Resolution No. _____

EXHIBIT A

LEGAL DESCRIPTION OF PROPERTY

THE LAND REFERRED TO HEREIN BELOW IS SITUATED IN THE COUNTY OF HOWARD, STATE OF MARYLAND AND IS DESCRIBED AS FOLLOWS:

6333 Cedar Lane:

BEGINNING FOR THE SAME, at an iron pipe now set at 328.60 feet in the North 20 degrees West 710.60 feet line of that parcel of land which by Deed dated June 30, 1944 and recorded among the Land Records of said Howard County, in Liber BM Jr. 182, Folio 89, etc., was granted and conveyed by Walter E. Day and Alta R. Day, his wife, unto the said Harry Kennard Day and Katherine Elizabeth Day, his wife (of which said land the land now being described is a part), and running thence with and binding on said line to the end thereof (1) North 20 degrees West 382 feet, passing over an iron pipe now set 20 feet from the end thereof to a point in the center line of said County Road known as Cedar Lane, thence running with the center line of said Road and with the second line of said Deed (2) South 25 degrees 50 minutes West 220 feet, thence leaving said Road and running for a line of division and passing over an iron pipe now set at 15 feet from the beginning thereof, on the margin of said Road (3) South 54 degrees 35 minutes East 278.33 feet to the place of beginning.

SAVING AND EXCEPTING all that land more particularly described in a Deed dated May 17, 1983 and recorded among the Land Records of Howard County at Liber 1160, Folio 366. The improvements thereon being known as 6333 Cedar Lane.

Improvements thereon being now or formerly known as No. 6333 Cedar Lane.
6367 Cedar Lane:

BEGINNING FOR THE SAME at a point on the Northerly right-of-way line of Freetown Road and at the beginning of a junction curve connecting said Northerly right-of-way line of Freetown Road with the Easterly side of Cedar Lane as shown on the Howard County Department of Public Works Plat No. J-9-4062-32, dated January 16, 1981 and also described in the Deed from Kathrine E. Day to Howard County, Maryland dated June 8, 1983 and recorded among the Land Records of Howard County in Liber 1164, Folio 723; thence running from said point of beginning and binding along said curve to the right, having a radius of 50.00 feet for an arc length of 80.36 feet and a chord of North 05 degrees 58 minutes 17 seconds West 71.99 feet to a point on the Easterly right-of-way line of Cedar Lane as now widened to a width of 80.00 feet; thence running along said right-of-way line by a curve to the left having a radius of 921.47 feet for an arc length of 317.00 feet and a chord of North 30 degrees 14 minutes 48 seconds East 315.44 feet to intersect the Southwesterly outline of a parcel of land which by Deed dated December 6, 1952 and recorded in Liber 238, page 535 was conveyed by Harry Kennard Day and Kathrine E. Day, his wife, to Thomas J. O'Neill and wife, and then by a subsequent Deed dated May 11, 1988 and recorded in Liber 827, Folio 636 conveyed by Robert J. Hilton and Mary M. Hilton, his wife, to Peter M. Mangione, Joseph M. Juras and Rosemary M. Juras; thence leaving Cedar Lane and binding along the division line between the lands of the Grantors and the land of Peter M. Mangione et al, as now surveyed, South 59 degrees 22 minutes 58 seconds East 239.85 feet to intersect the first or North 20 degrees West 710.6 foot line of land which by Deed dated June 30, 1944 and recorded in Liber B.M. Jr. No. 182, Folio 89, was conveyed by Walter E. Day, and wife, to Harry Kennard Day and Kathrine Day, his wife; thence binding reversely along a part of said line, as now surveyed, South 18 degrees 31 minutes 44 seconds East 328.60 feet to the beginning of said line; thence binding reversely along a part of the last line of said last mentioned Deed South 89 degrees 57 minutes 44 seconds West 265.55 feet to intersect the beforementioned Northerly right-of-way line of Freeland Road as now widened; thence binding thereon by a curve to the right having a radius of 465.00 feet for an arc length of 218.21 feet and a chord of North 65 degrees 27 minutes 35 seconds West 216.21 feet to the point of beginning; containing 2.9953 acres more or less.

SUBJECT, however, to a Drainage Easement along the Northerly right-of-way line of Freetown Road, as conveyed by Harry Kennard and Kathrine Day.

Improvements thereon being now or formerly known as No. 6367 Cedar Lane.

6441 Freetown Road

BEGINNING FOR THE SAME at a large stone found at the end of the North 09 degrees 53 minutes 54 seconds East 190.48 feet line as shown on "Revision Plat, Hickory Ridge Elderly Center, Lots 1 and 2" dated March 2001, and recorded among the Land Records of Howard County, Maryland as Plat MDR No. 14704, thence leaving said point of beginning and running reversely along plat line, and referring to the Maryland State Grid, NAD '83:

South 09 degrees 53 minutes 54 seconds West 180.34 feet to a point on the north right of way line of Freetown Road, variable width right of way, thence leaving said point and running with the north right of way line, as now surveyed, the following three (3) courses and distances, . viz;

North 79 degrees 47 minutes 39 seconds West 52.10 feet to a point. Thence

North 80 degrees 19 minutes 13 seconds West 326.59 feet to a point, thence

North 63 degrees 13 minutes 03 seconds West 96.0 feet to a point, thence leaving the right of way line of Freetown Road and running

North 89 degrees 27 minutes 53 seconds East 243.30 feet to a point, thence

North 72 degrees 09 minutes 19 seconds East 227.75 feet to a stone found, thence

North 76 degrees 39 minutes 36 seconds East 22.55 feet to the point of beginning, containing 0.85 acres of land, more or less.

The improvements thereon being known as 6441 Freetown Road.

EXHIBIT B

Council Resolution No. _____