

Office of the County Auditor
Auditor's Analysis

Council Resolution No. 29-2022

Introduced: March 7, 2022

Auditor: Lori Buchman

Purpose:

This resolution would authorize the County to enter into a PILOT agreement with Patuxent, LLC, ("Patuxent") relating to a proposed housing development. **This legislation also includes a request for a waiver of the APFO requirements based on the criteria of the Special Affordable Housing Opportunities provision.** Per the Administration, this development is expected to fail the school capacity testing.

This development will consist of 76 mixed-income, rental housing units to be known as "Patuxent Commons." These units will be located at 6333 Cedar Lane and 6367 Cedar Lane, Columbia (the Property).

The Administration has indicated that the PILOT is necessary to make the development economically feasible (by closing a financing gap of approximately \$570,000) and to meet the required Debt Coverage Ratio.

Fiscal Impact:

Payment in Lieu of Taxes Agreement

The terms of the PILOT agreement include the following:

- Minimum payment equal to Three Hundred Ten Dollars (\$310) for each unit of the development, and the amount of County fire tax, the ad valorem charges, and any other charges that may appear on the Property's real property tax bill.
- Additional payments from Patuxent's Surplus Cash and Residual Receipts to the extent funds are available.
- A term of 40 years, assuming the project is developed as agreed.
- Termination of the PILOT agreement will occur if Patuxent and all subsequent owners of the Property violate the agreement with the Maryland Department of Housing and Community Development to provide low-income housing.

Using projected financial statements from the developer, our Office estimates the fiscal impact of the Payment in Lieu of Taxes (PILOT) agreement's minimum payments to the County to be a

loss in County property tax revenue of \$1.2 million when compared to the development's projected full tax assessment for the first 20 years of the agreement.

The projected financial statements from the developer do indicate the County will receive surplus cash, beginning in year one of the project, totaling \$514,000 over the agreement's first 20 years. This amount conflicts with the Administration's testimony that surplus cash is unlikely to be received until after year 20 of the agreement.

Our Office did not include projected surplus cash revenues associated with this agreement in our calculation of reduced property tax revenues because surplus cash is only paid after certain other obligations are met, which are dependent on investor agreements that will not be finalized until just prior to closing on the project's financing in February 2023.

NOTE: If this agreement is not approved, or if any other financing source is not approved, the developer has stated it would need to value engineer to reduce project costs or fundraise to fill the gap.

APFO Waiver

Our Office has reviewed the potential fiscal impact of approving an Adequate Public Facilities Ordinance (APFO) waiver to include:

One-time revenues of:

- Estimated transfer tax and recordation tax revenues of \$52,500 and \$21,000, respectively, based on the projected \$4.2 million site acquisition.
- Estimated one-time revenues for the school facilities surcharge and building excise tax revenues of \$238,000 and \$170,000, respectively, which were provided by the Department of Inspection, Licenses and Permits.

Annual revenues and expenses of:

- Building permit, fire tax, and ad valorem revenues of \$96,400, \$15,700 and \$5,300, respectively, using projected financial statements from the developer.
- Local income tax revenues from the new housing units that our Office is unable to estimate due to the varying income levels of the development's future tenants.
- Watershed Protection and Restoration Fee revenues that we are unable to estimate at this stage of the project.
- Annual pupil costs of \$583,000 that are based on the most recent pupil cost projection and the Administration's estimated student yields.

Documentation for the above fiscal impact items can be provided to the Council upon request.

NOTE: This fiscal impact from the APFO waiver only includes pupil costs of the Howard County Public School System and does not include any possible capital costs or operating costs associated with the new development.

Other Comments:

Our Office noted an error in the PILOT agreement's stated minimum payment of \$408 per unit. The Administration has confirmed that Council Resolution 29-2022 will require an amendment to correct this amount, which is referenced on page 4 of the PILOT agreement (Exhibit 1). This amount will be changed from \$408 to \$310 for each Affordable Dwelling Unit and Market Rate Dwelling Unit of the development.

An alternative compliance request has been submitted to the Department of Planning and Zoning on February 15, 2022, for the site of this development. This request is currently deferred for more information. A copy can be provided upon request. The waiver addresses the following County Code provisions:

- 16.116(a)(1) – wetland buffer impacts
- 16.116(b)(1) – steep slopes impacts
- 16.1205(a)(3) – 9 specimen trees to be removed
- 16.1209(b)(2) – less than 75% on-site Forest Conservation

The Department of Housing and Community Development (DHCD) plans on granting this project \$2,000,000 (appropriated from MIHU fee-in lieu proceeds in Fiscal Year 2022) to finance its development. The DHCD is also proposing to provide gap financing of \$1,200,000, which is pending approval via Supplemental Budget & Appropriation Ordinance 3 - Fiscal Year 2022.

Patuxent, LLC, intends to acquire the site for this development by the sales contract closing deadline of July 31, 2022. An appraisal for the purchase of the site was provided to our Office. The Property was appraised for \$4,200,000 using a sales comparison approach with an assumed best use of holding for multifamily development. The Property is zoned as Planned Office Research (POR).

The Administration provided a letter of support from the County Executive for this project. However, our Office noted that it was from September 2020 and referenced project details that are no longer relevant. Per our request, the DHCD will submit an updated Letter of Support from the County Executive in accordance with Section 16.1103(e)4 of the same provision. Our Office has not yet received this updated letter of support.

Attachment A includes total sources and use of funds relating to this project.

Attachment A

Patuxent Commons - Financing Sources & Uses

Sources	Amount
LIHTC Equity - 4%	\$ 13,412,380
First Mortgage	6,770,000
MD DHCD RHW	2,500,000
HUD 811	2,472,543
MD DHCD Green/Partnership Funds	2,300,000
County MIHU FIL grant	2,000,000
MD Dept of Health	1,600,000
Weinberg	1,500,000
County Gap Financing	1,200,000
Deferred Developers Fee	1,192,149
MD State Bond Bill	1,000,000
MF Capital Magnet Funds	700,000
Federal Earmarks	500,000
Total Sources	\$ 37,147,072

Uses	Amount
Construction or Rehabilitation Costs	\$ 24,621,265
Acquisition Costs	4,200,000
Developer's Fee	2,800,000
Construction or Rehabilitation Fees	2,433,312
Financing Fees and Charges	2,254,943
Guarantees and Reserves	697,151
Syndication Related Costs	140,401
Total Uses	\$ 37,147,072

NOTE: This schedule was provided to the Department of Housing and Community Development from the developer of the proposed development. Our Office has indicated County financing in Bold Font.