

David A. Plymyer  
Attorney at Law  
717 Maiden Choice Lane #207  
Catonsville, MD 21228-6114  
dplymyer@comcast.net

April 12, 2018

Members, Baltimore County Council  
400 Washington Avenue  
Towson, Maryland 21204

SUBJ: Revised contract of sale, 800 York Road, Towson

Dear Council Members:

The above-referenced item is on your legislative agenda for final approval on Monday. The purpose of this letter is to bring to your attention the fact that the amount of the consideration to be paid by the contract purchaser for the property under the revised contract of sale has been grossly overstated.

**In my opinion, the amount of the revitalization property tax credits to which the contract purchaser would be entitled under the revised contract of sale was calculated under an absurd, jury-rigged formula inconsistent with both State and County law. It is my further opinion that the likely purpose for doing so was to give the false impression to the County Council and the public that the proposed sale price for the property is \$6,912,685, when the actual sale price is \$5,996,600, a difference of \$916,085.**

The revised deal struck by the County administration and the contract purchaser, Caves Valley Partners, includes as consideration for the purchase of the property the present value of the revitalization tax credits to which Caves Valley presumably would be entitled for a period of ten years after it constructed the proposed physical improvements to the property. **The County administration describes the present value of the projected tax credits as \$1,928,617. The present value of the projected tax credits is only \$1,012,532, however, when calculated in accordance with a proper interpretation of the law.**

The key fact is that the County's appraisers, apparently on instructions from an unnamed County official, used \$0 for the "base value" of the property rather than the full assessed value of the property before completion of the improvements to calculate the amount of the tax credits to which Caves Valley would be entitled. Using \$0 as the base value is so inconsistent with the governing law that I can only guess at the rationale used by the County administration to come up with it, assuming the County had any rationale at all. I will explain:

The governing law.

- The County's revitalization tax credit, authorized by § 9-236 of the Tax-Property Article of the State Code, is intended to be an incentive for owners to rehabilitate their properties by giving them a tax credit based on the increase in the value of the property attributable to physical improvements (buildings and other structures) that the owners make to their properties. As applied to the subject property and its proposed development, the revitalization tax credit must be calculated in accordance with § 11-2-202(h)(2) of the County Code. Under § 11-2-202(h)(2), the amount of the credit equals 100% of the property tax imposed on the "eligible assessment" of the property.
- "Eligible assessment" is defined at § 11-2-202(a)(4) as "the difference between the base value and the actual full cash [assessed] value as determined by the State Department of Assessments and Taxation for the applicable taxable period in which the tax credit under this section is granted." "Base value" is defined at § 11-2-202(a)(2) as "the full cash value of the property used to determine the assessment on which the county property tax was imposed before the substantial completion and first assessment of the improvements."
- In other words, the basic formula set forth in County law is straightforward: You take the assessed value of the property before the improvements and subtract it from the assessed value of the property after the improvements. The amount of the tax credit is the amount of the county property tax imposed on the difference.

The calculation of the tax credits by the County's appraisers.

- The calculation by the County's appraisers upon which the current value of ten years' worth of revitalization tax credits was based uses \$0 as the base value. One of the appraisers hired by the County, Colliers International, gave the following explanation for the use of \$0 as the base value:

*"The table on the following page provides our estimated calculation of the tax credit. Additionally, it is our understanding that the base value for the credit would be based on the taxable assessment of \$0, and not the full assessed value of \$17,810,000."*  
[Emphasis added.]

- Unless stated otherwise, the qualification "it is our understanding" refers to information that came from the client, which in this case is identified by Colliers as the "Baltimore County Government." **Which County official told Colliers to use \$0 as the "base value," and why?**<sup>1</sup>
- The only rationale for the use of \$0 as the base value that I can think of is this: "Base value" is defined at § 11-2-202(a)(2) as "the full cash value of the property used to determine the assessment *on which the county property tax was imposed* before the substantial completion and first assessment of the improvements." [Emphasis added.] Is the County

---

<sup>1</sup> The appraisers did nothing wrong by taking this instruction from the County, because it is the County's Director of Budget and Finance who is charged with interpreting and administering the provisions of § 11-2-202 of the County Code. I have no reason to believe, however, that it was the Director of Budget and Finance who instructed the appraisers.

taking the position that because no property tax has been imposed on the property while under County ownership there was no “full cash value used to determine the assessment on which the county property tax was imposed”?

The ludicrousness of the County’s apparent position.

- Under the County’s apparent construction of the law, any buyer who happens to buy property from a seller who was exempt from county property taxes gets the benefit of a \$0 base value when calculating revitalization property tax credits regardless of the assessed value of the unimproved property at the time of the purchase. It is a tortured interpretation that could lead to enormous windfalls inconsistent with the intent of the law.
- Even assuming for the sake of argument that the County’s position is consistent with a literal interpretation of the ordinance, a literal interpretation is not the end of the analysis when it comes to tax exemptions or credits. The Maryland Court of Appeals has held that both tax credits and tax exemptions are subject to strict rules of construction. **A claim by a taxpayer for a tax credit “cannot be sustained unless it is shown to be within the spirit as well as the letter” of the law conferring the credit. *State Dept. of Assessments and Taxation v. Belcher*, 315 Md. 111, 118 (1987).**
- The purpose of a revitalization tax credit is *not* to give an owner a large windfall attributable to the fact that the owner purchased the property from an entity exempt from county property taxes. A claim for a revitalization tax credit based on anything other than the increase in assessment and taxation attributable to physical improvements to the property is *not* within the spirit of the law.

A questionable assumption.

- The County was under no obligation to accept a waiver of revitalization property tax credits as part of the consideration for the purchase of County property; in fact, there is no provision of County law that expressly authorizes the County to do so. Having decided to do so, however, the County was bound to calculate the amount of the tax credits as if the contract purchaser had applied for them in the normal course of events as required by § 11-2-202(c) of the County Code.
- In the normal course of events, the owner of property must apply for a revitalization property tax credit within 120 days after the issuance of a notice of assessment by the State Department of Assessments and Taxation for “qualified improvements.” In other words, the application is submitted *after* the improvements have been completed by the owner and then assessed by SDAT.
- Once the property acquired by Caves Valley is recognized as a separate legal parcel, it will be revalued by SDAT.<sup>2</sup> It will take Caves Valley a certain amount of time to construct the

---

<sup>2</sup> Only about 4.65 acres of the 9.4-acre parcel at 800 York Road will be carved out into a separate legal parcel and sold to Caves Valley. That subdivision will trigger an “out-of-cycle” revaluation of the new parcel by SDAT as required by § 8-104(c) of the Tax-Property Article of the State Code.

planned improvements. **Why did the County administration assume that there would no initial assessment of the new parcel done by SDAT before the improvements were completed and instruct its appraisers to use a \$0 base value to calculate the projected amount of the revitalization tax credits? In my opinion, there is reason to believe that the administration did so to inflate the calculation of the projected tax credits and therefore place a misleading value on the consideration to be paid by Caves Valley for the property.**

The County's calculation of the tax credit violates State law.

The use of \$0 as a base value for the calculation of the revitalization property tax credits would lead to a violation of the State enabling act upon which § 11-2-202 of the County Code is based. **Under § 9-236(b)(2) of the Tax-Property Article, "the amount of a tax credit granted under this section may not exceed the property tax increase attributable to the increase in the assessment of the real property over the assessment before the real property is rehabilitated."** There may have been no county property tax imposed on the assessment as described in County law, but there *is* a current assessment of the property performed by SDAT for purposes of applying the limit on the amount of the credit imposed by State law.

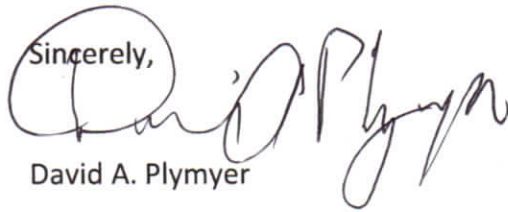
- The appraisals list the current assessment as \$17,810,000, and the projected assessment after the proposed improvements as \$19,120,000. Sticking to the plain language of the law, it would appear the maximum credit allowed under state law would be the property tax increase attributable to the projected \$1,310,000 increase in assessed value. That would mean that, under § 11-2-202(l) of the County Code, Caves Valley would be eligible for only five years of tax credits, and the present value of those credits would be a mere \$126,806.
- In fairness to Caves Valley, however, the current \$17,810,000 assessment is based on the overall parcel size of 9.4 acres, when only about 4.65 acres of the parcel will be sold to Caves Valley. That arguably requires an adjustment in the assessment to establish a reasonable base value for purposes of the projected revitalization tax credit calculation.<sup>3</sup>
- A reasonable method for adjusting the \$17,810,000 is to do so on a pro rata basis by acreage. That yields a base value of about \$8,800,000 for the 4.65-acre lot. Using the same assumptions as the County's appraisers, that works out to a present value of \$1,012,532 for ten years' worth of revitalization tax credits – not \$1,928,617 as claimed by the administration.

In conclusion, it is my opinion that the amount of the revitalization property tax credits to which the contract purchaser would be entitled was calculated under an absurd formula inconsistent with both State and County law. It is my further opinion that the likely reason for

---

<sup>3</sup> It is worth repeating that we are trying to predict the outcome of a process that, if done in usual course of business, would use assessments that already have been made, and we wouldn't be dealing with projections and predicted values. If done in the way that the law provides, Caves Valley would apply for a revitalization tax credit *after* completing the improvements, and there would be a base value already established by the initial assessment by SDAT of the newly-created 4.65-acre lot before those improvements were made.

doing so was to give the false impression to the County Council and the public that the proposed sale price for the property is \$6,912,685, when the actual sale price is \$5,996,600.

Sincerely,  
  
David A. Plymyer