Circuit Court for Baltimore City
Case No. 24-C-18-000816

UNREPORTED

IN THE COURT OF SPECIAL APPEALS

OF MARYLAND

No. 3337

September Term, 2018

WHITEHALL MILL, LLC, *et al.*

v.

MAYOR & CITY COUNCIL OF BALTIMORE, *et al.*

Fader, C.J.,
Friedman,
Gould,

JJ.

Opinion by Gould, J.

Filed: October 23, 2020

To encourage the restoration and rehabilitation of historical properties, the General Assembly authorized counties and, as was the case here, the Mayor and City Council of Baltimore City (the "City"), to subsidize such projects with property tax credits. Md. Ann. Code (1986, 2019 Repl. Vol.) Tax-Property ("TP") § 9-204.1. In Baltimore, the credit applies only to those improvements that were preliminarily approved by the Commission for Historical and Architectural Preservation ("CHAP")[1] as "meeting local historic preservation standards." Baltimore City Code (the "Code") Art. 28 § 10-8(d).[2]

This case arises out of the business decision of a developer, Whitehall Mill, LLC ("Whitehall"), to start construction before receiving CHAP's preliminary approval. The City denied Whitehall's tax credit application solely on this basis. When Whitehall's attempts to persuade the City to change its mind proved futile, it filed a complaint in the Circuit Court for Baltimore City seeking both a declaratory judgment and a writ of

[1] CHAP "has the primary responsibility for administering the preservation ordinance [and] is empowered to designate 'proposed historical and architectural preservation districts.'" *Broadview Apartments Co. v. Commission for Historical and Architectural Preservation*, 49 Md. App. 538, 539-40 (1981) (quoting Baltimore City Code, Art. 1, § 40(j)). CHAP was established in 1964 and is currently governed by Article Six of the Baltimore City Code. *Historical and Architectural Preservation*, as stated in https://chap.baltimorecity.gov/about-chap.

[2] Throughout this opinion, we will be referring to various provisions within Article 28, section 10-8 of the Baltimore City Code, which has been the subject of a multiple amendments over the years. For simplicity, we will refer to this ordinance as "Section 10-8" and any of its subsections as "subsection __." The version applicable during the relevant time period was adopted as Ordinance 14-288, Council Bill 14-0399, which is included in the appendix to this opinion. In this version, the words and phrases that were deleted from the prior version are within square brackets, and newly added language is identified in all capital letters.

mandamus.[3] In both counts, Whitehall sought relief designed to enable it to reap the full benefits of the City's historical property tax credit program for its project, both retroactively and prospectively.

The circuit court granted summary judgment for the City and dismissed the case on both substantive and procedural grounds. The circuit court determined that Whitehall was properly denied the credit because it began construction before receiving CHAP's preliminary approval. The circuit court also dismissed the mandamus count because Whitehall—which had by then paid the property taxes for two years without the benefit of the credit—failed to exhaust its administrative remedies for seeking a tax refund.

Whitehall timely appealed, and presents the following two questions for our consideration, which we have rephrased slightly:

1. Did the circuit court err by granting the City's motion for summary judgment and by denying its motion for summary judgment?

2. Did the circuit court err by failing to declare the rights of the parties?

The answer to the first question is no, and the answer to the second is yes. For the reasons that follow, we will affirm in part, vacate in part, and remand for entry of a declaratory judgment that Whitehall's application for the tax credit was properly denied because it began construction before receiving preliminary approval from CHAP.

[3] In addition to Whitehall, and for reasons that are not clear, an entity named Terra Nova Ventures, LLC ("Terra Nova") and its managing member, David F. Tufaro are appellants. For the sake of simplicity, all references to Whitehall should, unless specified otherwise, be understood as including both Terra Nova and Mr. Tufaro.

BACKGROUND

The City's authority to impose property taxes and to issue property tax credits to encourage the preservation of historical properties derives from sections 6-202[4] and 9-204.1 of the Tax-Property Article of the Maryland Code, respectively. Pursuant to the TP § 9-204.1, the City adopted an ordinance providing for a ten-year tax credit "attributable to eligible improvements of historic properties." Section 10-8(c).

The Project

Whitehall owned a piece of property that included a 101,491 square foot historic textile mill built in the 1870s. Whitehall's principal owner, Mr. Tufaro, is a developer with significant experience in the restoration of historical properties. Whitehall planned to convert the mill into a mixed-use property consisting residential, office, and retail spaces (the "Project"). Mr. Tufaro had recently completed a similar project, known as "Mill No. 1," which had been awarded the tax credit for historical preservation projects pursuant to TP § 9-204.1.

[4] TP § 6-202 provides that "[t]he Mayor and City Council of Baltimore or the governing body of a county may impose property tax on the assessment of property that is subject to that county's property tax."

The Application[5]

In November 2014, Whitehall submitted its application for a tax credit for the Project. By email, CHAP acknowledged receipt of the application and advised Whitehall as follows:

> This email message confirms that your preliminary application has been submitted. This email is **NOT** any form of preliminary approval. **NO WORK**, including interior demolition, should begin until you have received email notification of preliminary approval from the CHAP program Administrator. Preliminary, conditional approval will be sent in a separate notification once the project review is complete and it has been determined that the project is eligible for the Historic Tax Credit.

This notice could not have expressed anything surprising because Mr. Tufaro had received the preliminary approval letter for Mill No. 1 prior to the start of construction.

In early January 2015, the City informed Whitehall that because the construction costs for the Project exceeded $3.5 million, Whitehall had to show that the property had been at least 75 percent vacant for the prior three years or, alternatively, "demonstrate to the Finance Director that the credit is necessary in order for the project to succeed." As supporting authority, the City cited subsections (f)(2)(ii)(A) and (B) of Section 10-8. The City provided a "Vacancy Affidavit" form for Whitehall to document the vacancy rates for the preceding three years, as well as a "Financial Data Request" form for Whitehall to complete and submit.

[5] We will pause to establish some working definitions of terms and phrases we use in referring to subsection (d). Unless the context indicates otherwise, our use of phrases such as "preliminarily approved" or "preliminary approval" shall refer to subsection (d)'s requirement that the proposed improvements be "preliminarily approved by CHAP as meeting the local historical preservation standards." In addition, we will refer to the "local historical preservation standards" as used in subsection (d) as the "local standards."

Whitehall provided some additional information at the end of January 2015. Whitehall explained that the feasibility of the Project depended on a "combination of federal, state and local programs," including the historical property tax credit, and that the Project would be an economic boon for the City. Whitehall's submission did not include the completed Vacancy Affidavit.

In early February 2015, the City notified Whitehall by email that it had not received the Vacancy Affidavit, that its prior submission was deficient, and that additional documentation was needed. The City also informed Whitehall that from its "cursory review" of Whitehall's submissions to date, it appeared that the tax credit was not necessary for the Project to proceed. Whitehall responded three weeks later, stating that it was reviewing its prior submission for deficiencies and would "be back in touch with" the City. Whitehall assured the City that the tax credit was necessary because its "lender relied on it in performing their due diligence on the project and in determining the amount of the loan and terms of the loan."

On April 10, 2015, Whitehall issued a "Notice to Proceed" to its general contractor to begin construction. By then, Whitehall had not provided any additional information to the City and had not received CHAP's preliminary approval. It forged ahead, nevertheless.

Almost two months later, on June 1, Whitehall acknowledged its delay in responding to the City's February request for more information, and submitted additional information, including a narrative about the Project. In the narrative, Whitehall reasserted the necessity for the tax credit and its lender's reliance on the credit in structuring its loan. Whitehall admitted that it had not provided the City with "all the information to enable [the

City] to perform a property analysis." In its attempt to fix that, Whitehall included additional information with its narrative which, it maintained, demonstrated the need for the tax credit.

Three days later, on June 4, the City responded that "[i]f you wish to proceed with this application, the Department of Finance's Review Committee will require more information and documentation from you." The City provided an Excel spreadsheet template identifying the specific information required from Whitehall.

In a June 5 email, the City summarized its prior requests for information and Whitehall's responses, and reminded Whitehall that if it wished to proceed with the tax credit application, more information was required. On June 12, Whitehall provided additional information and again emphasized that "the property tax abatement is critical to allowing the project to move forward and to get through the difficult first years of operations."

Construction Begins

Construction on the Project began in June 2015. At that time, Whitehall had still not received any communication—written or oral—that CHAP had preliminarily approved the Project. When later asked if he had had concerns about starting construction without the preliminary approval letter from CHAP, Mr. Tufaro responded: "I always have concerns. They're all relative to the risk associated with approval. As I said, I figured this was pretty straightforward. Plus we were submitting the information to the City that was required. So I expected us to get approval. And we did submit it."

The Application Process Continues

In late June, Whitehall asked the City if it had any questions about the information previously submitted and whether the City required any additional information. The City responded that the Finance Department's Review Committee would begin its review in July and that Whitehall would be notified if additional information was required. A few weeks later, Whitehall sent the City an email to "check in to see if the application analysis has begun" for the Project and requested an update.

Having heard nothing further from the City, Mr. Tufaro followed up in August 2015, noting that it had been over two months since Whitehall had submitted the additional information. Mr. Tufaro reiterated "that the historic tax credits are an essential element of the financial feasibility of the project."

The parties went silent until spring 2016, when their communications resumed. When asked to explain the lengthy silence, Mr. Tufaro stated that he thought they had provided everything the City had requested and that it would be a "quick review." He also explained that "the ball was clearly in the Department of Finance's court at that time. We have a lot of balls up in the air at any given time on a project. And I have to weigh things and this could have fallen out of our radar a bit . . . ."

The Application is Rejected

Whitehall reached out to the Finance Department in the spring of 2016, but by then Whitehall's point of contact had left the employ of the City. From that point until December 2016, Whitehall communicated with other City officials. The communications culminated with an email exchange on December 13, 2016 in which the City dropped the

bombshell news that the Project was not eligible to receive the tax credit because construction had begun before CHAP issued its preliminary approval. The Director of Revenue and Tax Analysis explained to Whitehall's counsel:

> After reviewing your letter, I find nothing that would indicate that a preliminary CHAP approval has been granted prior to beginning construction. As such, the City is bound by the City Code (Article 28, section 10-8(d)) which was cited below. We now consider this issue closed.

Mr. Tufaro acknowledged in his deposition testimony that at no time before December 2016 did anybody tell him that the Project had received CHAP's preliminary approval.

Efforts to Reverse Decision

On July 12, 2017, Whitehall met with a representative from the Mayor's office to request a reversal of the denial of its application and provide additional information about the Project. On July 30, the Finance Director denied the request, again because Whitehall began construction before receiving CHAP's preliminary approval.

About two months later, Whitehall persisted in its effort to get the denial reversed by seeking (and receiving) a face-to-face meeting with the Finance Director and submitting more information. In October 2017, the Finance Director explained to Whitehall that he had no ability to retroactively approve the tax credit after Whitehall had started construction.

Notwithstanding its belief that it was wrongly denied the tax credit, Whitehall paid the full amount of property taxes for 2016-17 and 2017-18.

The Circuit Court Action

In February 2018, Whitehall filed its complaint in the Circuit Court for Baltimore City, seeking a declaratory judgment and a writ of mandamus. In relevant part, Whitehall asked the court to:

- Declare that CHAP preliminarily approved the Project;
- Declare that the tax credit was necessary for the Project to proceed;
- Declare that Whitehall is entitled to the benefits of the historic tax credit as established by Section 10-8;
- Grant necessary supplementary relief to ensure that, consistent with the declaratory judgment, Whitehall obtain the benefits of the historic tax credit *nunc pro tunc*;
- Issue a writ of mandamus to compel the City to grant, *nunc pro tunc*, the benefits of the historic tax credit for the Project; and
- Enter judgment in its favor for compensatory damages in excess of $75,000.00.

After discovery and motions practice, the parties filed cross motions for summary judgment. The court granted the City's motion and dismissed the complaint without prejudice. The court ruled that Whitehall was not entitled to an order requiring the City to issue a tax credit *nunc pro tunc* because, as the City had argued, Whitehall began construction before receiving written preliminary approval from CHAP. The court also found that a writ of mandamus was not appropriate because: (1) Whitehall had failed to exhaust its administrative remedies in Maryland's Tax Court before bringing its action; and (2) the City had not abused its discretionary powers in denying the tax credit.

Regarding Whitehall's failure to exhaust its administrative remedies, the court explained:

> The Maryland General Assembly has created the Tax Court, an administrative unit of the Maryland State Government. *See* Md. Code Ann., Tax-Gen § 3-102 (2018). "[T]he Tax Court has jurisdiction to hear appeals from the final decision, final determination, or final order of a property tax assessment appeal board [. . .] or of a political subdivision of the State that is authorized to make the final decision or determination or issue the final order about any tax issue, including: the application for an abatement, reduction, or revision of any assessment or tax." Md. Code Ann., Tax-Gen § 3-103(a)(4) (2018). "[T]hus, as long as a party seeks review from a final decision about any tax issue made by a person or entity to make such a decision, the Tax Court is authorized to consider that appeal." *Frey v. Comptroller of Treasury*, 422 Md. 111, 184 (2011).
>
> Here, the Plaintiffs were notified via letter from DOF Director Raymond on July 30, 2017 that their application for a Historic Tax Credit pursuant to Section 10-8(d) of Article 28, Baltimore City Code had been denied. Since that date, no evidence has been presented to this Court that the Plaintiffs exhausted all remedies through the Tax Court prior to filing this civil action, nor is their evidence of an adverse decision from this same statutory agency. Since there is no quasi-judicial order or action of any statutory or administrative agency to review, granting writs of mandamus in the instant case is not an appropriate remedy for the Plaintiffs. The Plaintiffs provide no legal authority that this cause of action may be granted where administrative remedies have not been exhausted.

(Cleaned up). Whitehall timely appealed.

DISCUSSION

Setting aside for the moment the two distinct causes of action asserted by Whitehall, the common denominator of both the declaratory judgment and the writ of mandamus counts is Whitehall's insistence that the City erroneously interpreted subsection (d). Subsection (d) provides:

> The tax credit granted by this section applies only to eligible improvements that, before the improvements are begun, have been preliminarily approved by CHAP as meeting local historical preservation standards.

Whitehall argues that this provision requires only that CHAP determine that a project meets the local standards before construction begins; it doesn't say anything about communicating the preliminary approval to the applicant by a letter or otherwise. Whitehall maintains that, as a factual matter, before construction began, CHAP had completed its review of the Project and found it in compliance with the local standards. As nothing more was required, Whitehall argues that the denial of its application based on the lack of a letter granting preliminary approval was improper. And because Whitehall believes it satisfied every other requirement, Whitehall argues that it was entitled to relief from the circuit court to enforce its entitlement to the full amount of the credit.

The City counters that it properly interpreted and applied subsection (d), and that the circuit court's ruling was substantively correct. In any event, the City argues, the case never belonged in the circuit court because Whitehall's sole and exclusive remedy was through the administrative process for seeking tax refunds.

We will address the issues in the following sequence. First, we will analyze the City's contention that Whitehall's failure to exhaust its administrative remedies deprived the circuit court of jurisdiction over Whitehall's complaint. We conclude that except for Whitehall's request for a tax refund, the circuit court had jurisdiction.

Second, we will address Whitehall's request for a common law writ of mandamus. As we explain below, that relief is inappropriate under the facts of this case because of the inherently discretionary nature of the City's decision.

Third, we will address Whitehall's request for a declaratory judgment and its assertion that the City defied the plain language of subsection (d) when it denied the application. We conclude that the preliminary approval requirement in subsection (d) includes the requirement that the preliminary approval be documented and communicated in written form to the developer, and because Whitehall started construction before receiving preliminary approval, it is not entitled to the credit. We will therefore remand this case for the limited purpose of entering a declaratory judgment so stating.

I.

EXHAUSTION OF ADMINISTRATIVE REMEDIES

It is undisputed that Whitehall paid the taxes in question for the years 2016-2017 and 2017-2018. The parties disagree, however, over the significance of this fact. The City maintains that because Whitehall paid the taxes in full without the benefit of the tax credit, the circuit court lacked jurisdiction over the entire dispute because Whitehall's sole and exclusive remedy was through the tax refund administrative process. Whitehall counters that its complaint did not seek a tax refund, and therefore none of the claims raised in the complaint have an exclusive remedy in an administrative process.

Under the common law voluntary payment doctrine, "where money is voluntarily and fairly paid, with a full knowledge of the facts and circumstances under which it is demanded, it cannot be recovered back in a court of law," even if the party receiving the money was the government. *Brutus 630, LLC v. Town of Bel Air*, 448 Md. 355, 360-61 (2016) (quotation omitted). To mitigate the harshness of this rule, the General Assembly

provided a statutory basis for claiming a refund of taxes paid to local governments and municipalities. *Id.* at 362-63.

If the taxpayer's refund is denied, the taxpayer may take an appeal to the Maryland Tax Court. *See* Md. Ann. Code (2013) Local Government ("LG") § 20-117(a); TP § 14-512(c); *Brutus*, 448 Md. at 380 ("[t]here is no question that the Tax Court has jurisdiction of refund claims relating to taxes").[6] This statutory remedy is exclusive. *Holzheid v. Comptroller of Treasury of Maryland*, 240 Md. App. 371, 390 (2019) (citations omitted). Thus, the circuit court did not have jurisdiction to the extent that Whitehall's complaint sought a refund of taxes already paid.[7] *See Falls Rd. Cmty. Ass'n, Inc. v. Baltimore Cnty.*, 437 Md. 115, 136 (2014).

[6] LG § 20-117(a) provides: "Except as provided in subsection (b) of this section, a claimant may appeal to the Maryland Tax Court, within 30 days after the date on which a notice under § 20-116(c) of this subtitle is given, in the manner allowed in Title 13, Subtitle 5, Parts IV and V of the Tax-General Article."

TP § 14-512(c) provides: "Except as provided in subsection (d) of this section, the person who submitted a property tax refund claim under Subtitle 9 of this title, the Department, a county, or a municipal corporation may appeal a final determination of a property tax refund claim by a refunding authority to the Maryland Tax Court on or before 30 days from the date that the refunding authority mails the notice of its determination."

[7] In *Comptroller of Treasury v. Johns Hopkins University*, 186 Md. App. 169 (2009), we explained the process that Whitehall could have expected once it reached the Tax Court:

> Appeals to the Tax Court proceed *de novo*. Although the Tax Court is not actually a court, as it is an agency within the Executive Branch of State government, it acts in a quasi-judicial capacity, making factual findings and adjudicating disputes. Proceedings in the Tax Court are governed by T-G sections 13-514 to 13-529, which provide a party with the procedural rights to a prompt hearing, to appear before the Tax Court *pro se* or represented by counsel, to introduce evidence, subpoena witnesses, and conduct depositions,

The issue we must resolve is whether Whitehall's complaint requested a tax refund and if so, to what extent. Our analysis is driven by the substance of the relief requested, not the descriptions or titles of the causes of action alleged. *See Grisriel v. Ocean City Bd. of Supervisors of Elections*, 345 Md. 477, 496-97 (1997). Although not couched as such, at least part of the relief requested in Whitehall's complaint was, in substance, a refund of taxes previously paid. We draw this conclusion from the relief Whitehall requested in its complaint. In its declaratory judgment count, Whitehall requested, *inter alia*, that the court:

> Declare that the Plaintiff Whitehall Mill, LLC is entitled to the benefits of the historic tax credit as established by Section 10-8 of Article 28 of the Baltimore City Code; and
>
> Enter such other supplementary relief as may be necessary to enforce the declaration of rights so as to ensure that the Plaintiffs obtain the benefits of the historic tax credit as prayed herein *nunc pro tunc*[.]

Similarly, for its writ of mandamus count, Whitehall requested the court, *inter alia*, to:

> Issue writs of mandamus to the Defendants commanding them to perform immediately by according the Plaintiff Whitehall Mill, LLC the benefits of

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> and to submit certain fact issues for resolution by a jury. The Tax Court's functions thus resemble court proceedings, even though they are not.
>
> The Tax Court may reassess or reclassify, abate, modify, change or alter any valuation, assessment, classification, tax or final order appealed to it. However, absent affirmative evidence in support of the relief being sought or an error apparent on the face of the proceeding from which the appeal is taken, the decision, determination, or order from which the appeal to the Tax Court is taken shall be affirmed. The Tax Court must issue a written order that sets forth its decision. T-G section 13-532(a) makes a final decision of the Tax Court subject to judicial review in the circuit court pursuant to sections 10-222 and 10-223 of the State Government Article ("SG"); and that court's judgment is subject to appellate review in this Court.

Id. at 180-81 (cleaned up).

> the historic tax credit as established by Section 10-8 of Article 28 of the Baltimore City Code as they pertain to the Whitehall Mill project located at 3300 Clipper Mill Road in Baltimore City, *nunc pro tunc*;
>
> Enter judgment in favor of the Plaintiffs, and against the Defendants, for compensatory damages in excess of Seventy-Five Thousand Dollars ($75,000.00), as proven, in accordance with Maryland Rules 5-701(b) and 2-305, together with interest and costs[.]

We see no plausible way for Whitehall to be conferred the full benefit of the tax credit—retroactively no less—without being awarded damages equal to the amount that it overpaid in taxes, assuming the credit should have been granted. The broad scope of Whitehall's requests for relief, therefore, embraced the functional equivalent of a tax refund, and calling the relief "damages" instead of a tax refund does not allow Whitehall to circumvent the voluntary payment doctrine. We therefore hold that, to the limited extent that Whitehall's complaint sought to be made whole for the taxes previously paid without the benefit of the tax credit, the circuit court lacked subject matter jurisdiction due to Whitehall's failure to exhaust its administrative remedies.

We reach a different conclusion to the extent the complaint seeks relief that would benefit Whitehall prospectively, which the complaint unquestionably does. In contrast to a request for a refund of taxes previously paid, there is no administrative remedy available for the relief requested by Whitehall that could be applied prospectively to ensure the benefit of the tax credit going forward. Thus, the City's decisions are subject to judicial review.

We have previously observed that "[i]n the absence of a statutory basis for judicial review of administrative decisions by a local body, such decisions are reviewable, based

on a court's inherent power, in an action invoking the original jurisdiction of the circuit court, through the writ of mandamus, by injunction, declaratory action, or by certiorari." *Armstrong v. Mayor and City Council of Baltimore*, 169 Md. App. 655, 667 (2006). Here, Whitehall sought judicial review of the denial of the tax credit through a count for declaratory judgment and a count for a writ of mandamus. If, as Whitehall maintains, the City improperly denied it the tax credit, the relief he requests through these two counts would enable it to reap the benefits of the credit going forward. Thus, the circuit court had jurisdiction to resolve both counts as to the prospective relief requested.

We will address these two counts in reverse order.

II.

WRIT OF MANDAMUS

Claiming that the City had a non-discretionary duty to grant the tax credit, Whitehall argues that it is entitled to a writ of mandamus to compel the City to provide it the full benefits of the tax credit. "A common law mandamus action is appropriate where the relief sought involves the traditional enforcement of a ministerial act (a legal duty) by recalcitrant public officials, but not where there is any vestige of discretion in the agency action or decision."[8] *Washington Suburban Sanitary Comm'n v. Lafarge N. Am., Inc.*, 443 Md. 265, 282 n.17 (2015) (cleaned up). "Ministerial acts are duties in respect to which nothing is left to discretion and are distinguished from those allowing freedom and authority to make

[8] There are two types of writs of mandamus: administrative and common law. *Hughes v. Moyer*, 452 Md. 77, 90-91 (2017). Whitehall maintains that its complaint requested a common law writ and that an administrative writ would not be appropriate. We will confine our discussion, therefore, to the common law writ of mandamus. *Id.*

decisions and choices," *id.* (quotation omitted), or require the application of personal judgment. *Falls Rd. Cmty. Ass'n*, 437 Md. at 139-40. Moreover, "[a] writ of mandamus is an extraordinary remedy, and the power to issue this writ is one that is exercised with caution, treading carefully so as to avoid interfering with legislative prerogative and administrative discretion." *A.C. v. Maryland Comm'n on Civil Rights*, 232 Md. App. 558, 579-80 (2017) (cleaned up).

A common law writ of mandamus is not appropriate under the facts of this case because the decision-making process necessitated by the relevant Code provisions is far from nondiscretionary. The tax credit's purpose is "to help preserve Baltimore's neighborhoods by encouraging home and business owners to make special efforts to restore or rehabilitate historic buildings." Section 10-8(b). There are two main stages in the tax credit application process: before construction begins and after construction is completed. Although discretion and judgment must be exercised in both stages, we will focus on the pre-construction stage because that is where Whitehall's application was stymied.

The developer starts the process by submitting its application and the application fee to CHAP. Section 10-8(j). The application must be accompanied by a "a statement of projected economic impact and public benefits for the project." Section 10-8(f)(3). A developer is required to do several things to be eligible for the tax credit. For example, a developer must "submit all documents requested by the Finance Director." Section 10-8(f)(2)(i)(A). The developer must also submit certain documentation to support a preliminary estimate of the project's value based on construction costs and projected income. Section 10-8(f)(2)(i)(B). If the subject building was "at least 75% vacant for at

least 3 years," the developer has to "demonstrate to the Finance Director that the credit is necessary in order for the project to proceed."[9] Sections 10-8(f)(2)(ii)(A), (B). And, of course, under subsection (d), the credit only applies to "eligible improvements that, before improvements are begun, have been preliminarily approved by CHAP as meeting local historic preservation standards."

Thus, before construction even begins, the developer must convince CHAP that the improvements will conform to the local standards, and convince the Finance Director that the economic viability of the project hinges on the credit. CHAP obviously can't do its part without first reviewing the developer's plans—which by their nature are unique for each such project—against the local standards that CHAP had previously established. Similarly, the Finance Director must review the information initially submitted by the developer, determine whether additional information is necessary, review any additional information requested of and provided by the developer, and analyze the feasibility of the project to determine if the credit is necessary "to proceed." Discretion and judgment by City officials are, therefore, baked into the pre-construction application process.

In arguing that the implementation of the tax credit is not discretionary, Whitehall does not address these Code provisions. Instead, Whitehall argues that the "City conceded the non-discretionary predicate" to a common law writ of mandamus. For that, Whitehall relies on the following deposition testimony from the City's Director of Finance:

> [DEFENSE COUNSEL]: . . . On the third page of Exhibit 37, the assertion is made in paragraph No. 30 that "the director of finance is

[9] This requirement makes sense: the purpose of the credit program is to encourage projects that would not otherwise be economically feasible.

statutorily granted authority to make discretionary determinations regarding applications for the historic tax credit." Do you see that?

[DIRECTOR OF FINANCE]: I do.

[DEFENSE COUNSEL]: Is that your understanding?

[DIRECTOR OF FINANCE]: Yes.

[DEFENSE COUNSEL]: And what's your understanding as to the statute that grants that authority?

[DIRECTOR OF FINANCE]: That the director of finance has the authority to make final decisions regarding the award of historic tax credits.

[DEFENSE COUNSEL]: And where is that in the ordinance?

[DIRECTOR OF FINANCE]: Yes.

[DEFENSE COUNSEL]: Well, with respect to -- maybe I'm caught up on the word "discretionary," or is that the word? Yeah, discretionary determination. Do you believe that the -- with respect to the Whitehall Mill matter, do you believe that any of the decisions that you made were discretionary as opposed to required by the law regulations?

[DIRECTOR OF FINANCE]: As it relates to Whitehall, the decision was required.

[DEFENSE COUNSEL]: Okay. For the reasons that you've already told us about and identified in your letters?

[DIRECTOR OF FINANCE]: Yes.

In our view, Whitehall reads too much into this testimony. When the Finance Director responded that the "decision was required," as opposed to "discretionary," he was merely asserting that the City was "required" to *deny* the application because Whitehall

began construction before receiving preliminary approval from CHAP.[10] But that doesn't mean the converse is true. That is, starting construction before receiving preliminary approval disqualifies the developer for the credit, but starting construction after preliminary approval in and of itself doesn't entitle the developer to the credit. That's just one of multiple requirements. For example, Whitehall still would have had to convince the Finance Director that the credit was necessary for the Project to proceed.[11] For these reasons, we hold that the discretionary nature of the Finance Director's and CHAP's approval functions precludes the issuance of common law writ of mandamus.

III.

DECLARATORY JUDGMENT

Whitehall argues that it's entitled to a declaration that: (1) the CHAP preliminary approval requirement was satisfied; (2) the "credit was necessary in order for the Whitehall Mill project to proceed"; and (3) Whitehall is entitled to the full benefit of the tax credit

[10] In one of the Finance Director's letters, he specifically cited Whitehall's failure to obtain CHAP's preliminary approval before beginning construction as the reason for the denial of the tax credit.

[11] The Finance Director never decided whether the credit was necessary to proceed because Whitehall disqualified itself right out of the gate when it started construction prematurely. Moreover, under subsection (g)(2), the credit does not kick in until both CHAP and the Finance Director give their final approvals, which would have necessitated the exercise of their discretion after the completion of construction to determine whether the Project was built as planned and produced the intended economic benefits. So, clearing the preliminary hurdles to allow construction to begin would not have ensured Whitehall's entitlement to the credit even if we were to agree with Whitehall's contention that subsection (d) did not require any official communication. Further, the scope of our authority is confined to judicial functions, which does not include discretionary decisions entrusted in the first instance to the City's executive branch. *Shell Oil. Co. v. Supervisor of Assessments of Prince George's Cty.*, 276 Md. 36, 44-46 (1975).

"*nunc pro tunc*." Whitehall predicates its position on testimony that, in fact, CHAP had completed its review of the Project and preliminarily determined that the improvements complied with local standards. Whitehall insists that, as a matter of pure statutory interpretation, nothing more was required—not even the communication of the preliminary approval to the developer.

A.

CONSTRUING "PRELIMINARILY APPROVED" AS USED IN SUBSECTION (D)

Whitehall's argument requires us to construe the phrase "preliminarily approved" as used in subsection (d). This is a pure question of law, which we review without deference. *Singley v. Cnty. Comm'rs of Frederick Cnty.*, 178 Md. App. 658, 675 (2008).

Analytically, interpreting a city ordinance is no different than interpreting a statute:

> When interpreting the meaning of part of a county or local zoning code, we attempt to ascertain the intention of the drafters from the plain meaning of the words of the ordinance and we apply the canons of statutory construction when necessary to elucidate the meaning of the language. The Court of Appeals made clear in *Marzullo* that, "with regard to some legal issues, a degree of deference should often be accorded the position of the administrative agency. Thus, an administrative agency's interpretation and application of the statute which the agency administers should ordinarily be given considerable weight by reviewing courts." Thus, "the expertise of [an] agency in its own field should be respected."

Id. (internal citations omitted).

In addition, we strive to avoid interpretations that lead to "an illogical or unreasonable result[.]" *Kaczorowski v. Mayor and City Council of Baltimore*, 309 Md. 505, 513 (1987) (quotation omitted). If the same word is used more than once in a statute, we generally ascribe the same meaning to the word each time it is used. *See Whack v.*

State, 338 Md. 665, 673 (1995) (citation omitted) ("[w]hen a word susceptible of more than one meaning is repeated in the same statute or sections of a statute, it is presumed that it is used in the same sense").

1.

Plain Meaning

With these principles in mind, we turn to the provision at issue, subsection (d), which we will re-state for convenience:

> The tax credit granted by this section applies only to eligible improvements that, before the improvements are begun, have been preliminarily approved by CHAP as meeting local historical preservation standards.

A reasonable starting point of our analysis is the dictionary definition of "approved." *See 75-80 Properties, LLC v. Rale, Inc.*, ___ Md. ___, No. 59, Sept. Term, 2019, slip op. at 15 (filed Aug. 24, 2020) (using dictionary definition as starting point in construing the meaning of "reconsider"). The word "approve" has been defined as "to have or express a favorable opinion" as well as "to give formal or official sanction." *Approve*, Merriam-Webster, https://www.merriam-webster.com/dictionary/ approve (last visited October 14, 2020). The definition that makes the most sense in this context is the second one: "to give formal or official sanction." We explain.

The preliminary approval marks a critical juncture in the tax credit process. First, the developer needs to know when it can start construction. Subsection (d) tells the developer that it can't begin construction until CHAP preliminarily approves the project.

Second, both the developer and the City need to know how to calculate the tax credit. Under subsection (e), credits initially granted before October 1, 2014 are

determined by one method, and credits granted on or after October 1, 2014 are subject to a slightly different method. Sections 10-8(e)(2), (3). There is an exception, however, if CHAP's preliminary approval was granted before October 1, 2014, but the credit itself was granted after that date. Under subsection (e)(4), such credits are calculated under the pre-October 1, 2014 methodology. For both purposes, therefore, both the fact that preliminary approval was granted and the date of the preliminary approval are critically important to the tax credit program.

Under Whitehall's theory, the preliminary approval requirement is satisfied even if CHAP makes a favorable determination but doesn't document it or tell anybody outside of CHAP. Given the significance of CHAP's preliminary approval, that would be a nonsensical result. Employees in both business and government entities come and go. Even when employees stay, people forget things. Institutional knowledge, particularly concerning a tax credit with a ten-year duration, is therefore important. An internal private determination kept solely within CHAP is of little use either to the developer, who needs to know when to start construction, or to the City official who need to know how to calculate the credit. A preliminarily approval that does not entail some form of documentation and notification would be inadequate for its intended purposes. The definition we adopt—to "give formal or official sanction" that the improvements comply with the local standards—accomplishes both.

Our interpretation has the added benefit of commercial reasonableness, which is demonstrated by the facts of this case. As noted above, Whitehall knew that CHAP's preliminary approval was required before commencing construction, because the first

communication from CHAP upon the submission Whitehall's application explicitly told it so. Whitehall nonetheless chose to begin construction without preliminary approval. As noted above, Whitehall's principal understood the business risk he was taking:

> [DEFENSE COUNSEL]: In the month of June of 2015, you began construction. Did you have concerns beginning construction, absent the preliminary approval letter of CHAP?
>
> [PLAINTIFFS' COUNSEL]: Objection
>
> [MR. TUFARO] : I always have concerns. They're all relative to the risk associated with the approval. As I said, I figured this was pretty straightforward. Plus we were submitting the information to the City that was required. So I expected us to get approval. And we did submit it.

That Mr. Tufaro knew he was taking a risk when he started construction before preliminary approval means that, from a purely practical standpoint, he understood CHAP's earlier warning not to do so.[12] Thus, Mr. Tufaro had expected an email notification of CHAP's preliminary approval and knew he didn't receive it. Our interpretation, therefore, neatly aligns with Mr. Tufaro's reasonable expectations as a sophisticated developer. That he proceeded without the approval notification speaks to his tolerance of risk, not to what he reasonably understood "preliminary approved" to mean.

[12] This was not Mr. Tufaro's first rodeo, as he had received a preliminary approval notice before beginning construction of Mill No. 1.

2.

**Construing Subsection (d)
with Subsection (e)(4)**

Our interpretation is further supported by the reference to and significance of CHAP's preliminary approval elsewhere in the Code. Specifically, subsection (e)(4) provides:

> Notwithstanding paragraph (3) of this subsection, if a property *received preliminary approval under subsection (d)* of this section before October 1, 2014, the credit shall be calculated in accordance with paragraph (2) of this subsection.

(Emphasis added).

Common sense dictates that the preliminary approval mentioned in subsection (d) and the preliminary approval contemplated in subsection (e)(4) refer to the same thing. Further, the latter's use of the word "received" implicitly assumes that CHAP's preliminary approval entails some form of official communication. Statutory provisions that refer to the same subject should, as noted above, be construed consistently where possible. *See Whack*, 338 Md. at 673. Here, the definition we adopt for "approve" does just that.

B.

**THE FINANCE DIRECTOR'S ROLE
IN CHAP'S APPROVAL PROCESS**

We have yet to discuss Whitehall's argument concerning the role of the Finance Director in the preliminary approval process under subsection (d). Whitehall correctly points out that CHAP, and CHAP alone, is responsible for determining whether the proposed improvements comply with the local standards, without any participation by the

Department of Finance. The superficial appeal of this argument notwithstanding, we reject it for two reasons.

First, the deposition testimony of various City officials established that:

- CHAP would review the plans to determine that they conformed to local standards.
- For projects over $3.5 million, CHAP would then contact the Department of Finance to let it know that CHAP had completed its review.
- The Department of Finance would determine whether the tax credits were necessary for the project to be completed.
- The Department of Finance would then contact CHAP to inform it if the preliminary approval letter could be issued.
- An employee from CHAP would press a button in CHAP's internal system that would generate an email notifying the taxpayer that its project was preliminarily approved.

These processes do not strike us as contrary to the dictates of subsection (d). Whitehall does not contend, and the record provides no indication, that the Finance Director or any other person outside of CHAP was involved in determining *whether* the Project complied with the local standards. That review was performed and completed solely by CHAP. So, it's simply not the case that the Finance Director played any role in evaluating whether the proposed improvements complied with the local standards.

Second, there is nothing in Section 10-8 that prohibits the Finance Director from having the say in *when* CHAP issues the notice of preliminary approval to the developer. In fact, subsection (k)(1) authorized the Finance Director to "adopt rules and regulations to carry out" the provisions of Section 10-8. Moreover, subsection (l)(1) required "CHAP, in coordination with the Department of Finance, [to] establish review procedures for the

credit program established by [Section 10-8]." Thus, CHAP and the Finance Director were permitted to establish a process whereby the preliminary approval notification would be given, in writing, only after the Finance Director completed its review and gave its approval. This policy makes sense because, without the Finance Director's determination that the tax credit was necessary "to proceed," the credit would not have been available to the developer even if the proposed improvements had complied with the local standards. Thus, no purpose would have been served, and confusion could have very well resulted, if CHAP had issued its preliminary approval notice before that determination was made.[13] And, Whitehall can't claim ignorance of the policy because, as noted above, it was explicitly disclosed in the first communication Whitehall received upon submission of its application.

CONCLUSION

For the above reasons, we hold that the Project was not "preliminarily approved" prior to the start of construction as required under subsection (d), and therefore, the Project is not eligible for the tax credit under Section 10-8. We will remand this case to the circuit

[13] Whitehall argues that, to the extent CHAP and the Finance Director implemented such a policy, it was superseded by the amendment to the ordinance that went into effect on October 1, 2014. In that regard, Whitehall characterizes subsection (d) as a new provision that, under Maryland law, signaled the City Council's disagreement with the City's prior practice of requiring the Finance Director's approval before CHAP issued its preliminary approval. This argument misses the mark. Although it is true that subsection (d) was newly added language, it was not a newly added substantive requirement. Specifically, subsection (e)(3)(ii) of the prior version of the ordinance provided that the tax credit applied to the "eligible improvements" that "have been determined by the Commission for Historical and Architectural Preservation to be compatible with local historic preservation standards, and have been approved by the Commission prior to work beginning."

court for the limited purpose of entering a declaratory judgment so stating. *Jackson v. Millstone*, 369 Md. 575, 595 (2002) (when a request for a declaratory judgment is properly made, the circuit court should enter a separate document declaring the rights of the parties).

JUDGMENT OF THE CIRCUIT COURT FOR BALTIMORE CITY AFFIRMED IN PART AND VACATED IN PART. CASE REMANDED TO THE CIRCUIT COURT FOR BALTIMORE CITY FOR ENTRY OF A DECLARATORY JUDGMENT CONSISTENT WITH THIS OPINION. COSTS TO BE PAID BY APPELLANTS.

CITY OF BALTIMORE
ORDINANCE 14 · 288
Council Bill 14-0399

Introduced by: The Council President
At the request of: The Administration (Department of Finance)
Introduced and read first time: June 16, 2014
Assigned to: Taxation, Finance and Economic Development Committee
Committee Report: Favorable
Council action: Adopted
Read second time: September 15, 2014

AN ORDINANCE CONCERNING

Tax Credits – Historic Properties – Calculations

FOR the purpose of amending the City Code provisions that govern the tax credit for historic improvements, restorations, and rehabilitations to incorporate new requirements enacted by Chapters 193 and 194, 2014 Acts of the General Assembly; requiring a certain calculation and value to be determined by the State Department of Assessments and Taxation and a certain calculation and value to be determined by certain professional appraisers; defining certain additional terms; correcting, clarifying, conforming, and reorganizing related language and provisions; and generally relating to a property tax credit for historic properties.

BY repealing and reordaining, with amendments
Article 28 - Taxes
Section(s) 10-8
Baltimore City Code
(Edition 2000)

SECTION 1. BE IT ORDAINED BY THE MAYOR AND CITY COUNCIL OF BALTIMORE, That the Laws of Baltimore City read as follows:

Baltimore City Code

Article 28. Taxes

Subtitle 10. Credits

§ 10-8. Historic IMPROVEMENTS, restorations, and rehabilitations.

(a) *Definitions.*

(1) *IN GENERAL.*

In this section, the following words have the meanings indicated.

EXPLANATION: CAPITALS indicate matter added to existing law.
[Brackets] indicate matter deleted from existing law.
Underlining indicates matter added to the bill by amendment.
~~Strike out~~ indicates matter stricken from the bill by amendment or deleted from existing law by amendment.

dlr14-0882(6)-3rd/15Sep14
an2#/cb14-0399-3rd/aa:nbr

(2) *CHAP.*

"CHAP" MEANS THE COMMISSION FOR HISTORICAL AND ARCHITECTURAL PRESERVATION OR THE COMMISSION'S DESIGNEE.

(3) *ELIGIBLE IMPROVEMENTS.*

[(2)] "Eligible improvements" means significant improvements to[, or restoration or rehabilitation of, historic properties] AN HISTORIC PROPERTY.

(4) *HISTORIC PROPERTY.*

"HISTORIC PROPERTY" MEANS A PROPERTY:

(I) INDIVIDUALLY LISTED ON THE NATIONAL REGISTER OF HISTORIC PLACES;

(II) INDIVIDUALLY LISTED ON THE CITY LANDMARK LIST;

(III) LOCATED WITHIN A NATIONAL REGISTER HISTORIC OR LANDMARK DISTRICT AND CERTIFIED BY CHAP AS CONTRIBUTING TO THE HISTORIC SIGNIFICANCE OF THAT DISTRICT; OR

(IV) LOCATED WITHIN A CITY HISTORICAL AND ARCHITECTURAL PRESERVATION DISTRICT AND CERTIFIED BY CHAP AS CONTRIBUTING TO THE HISTORIC SIGNIFICANCE OF THAT DISTRICT.

(5) *SIGNIFICANT IMPROVEMENTS.*

[(3)] "Significant improvements" means [a] IMPROVEMENTS, RESTORATION, OR rehabilitation FOR WHICH the total DOCUMENTED CONSTRUCTION cost [of which] equals or exceeds 25% of a property's full cash value [prior to] BEFORE COMMENCEMENT OF THE IMPROVEMENTS, RESTORATION, OR rehabilitation [as reflected in the assessment records].

(b) *Program goal.*

The goal of this program is to help preserve Baltimore's neighborhoods by encouraging home and business owners to make special efforts to restore or rehabilitate historic buildings.

(c) *Credit granted.*

In accordance with [the provisions of] State Tax-Property Article § 9-204.1, [there is hereby granted] a 10-YEAR tax credit IS GRANTED against the [Baltimore] City real property tax [imposed on] ATTRIBUTABLE TO eligible improvements [to] OF historic properties.

(D) *CHAP APPROVAL REQUIRED.*

THE TAX CREDIT GRANTED BY THIS SECTION APPLIES ONLY TO ELIGIBLE IMPROVEMENTS THAT, BEFORE THE IMPROVEMENTS ARE BEGUN, HAVE BEEN PRELIMINARILY APPROVED BY CHAP AS MEETING LOCAL HISTORIC PRESERVATION STANDARDS.

(E) [(d)] *Amount of credit – IN GENERAL.*

(1) *CALCULATION ADJUSTMENTS.*

[Subject] THE CALCULATIONS SPECIFIED IN PARAGRAPHS (2) AND (3) OF THIS SUBSECTION ARE subject to:

(I) the [limitations imposed] REDUCTION REQUIRED by paragraph [(2)] (5) of this subsection; and

(II) THE LIMITATIONS IMPOSED by:

(A) PARAGRAPH (6) OF THIS SUBSECTION; AND

(B) subsection [(g)] (F) of this section[, the property tax credit granted under this section shall equal the difference between:].

[(i) the property tax that, but for the tax credit, would be payable after the completion of the eligible improvements; and]

[(ii) the property tax that would be payable if the eligible improvements were not made.]

(2) *CREDITS INITIALLY GRANTED BEFORE OCTOBER 1, 2014.*

(I) FOR CREDITS INITIALLY GRANTED UNDER THIS SECTION BEFORE OCTOBER 1, 2014, AND FOR THE DURATION OF THE CREDIT, THE CREDIT IS EQUAL TO THE DIFFERENCE BETWEEN:

(A) THE REAL PROPERTY TAX ON THE MOST RECENT FULL CASH VALUE OF THE PROPERTY BEFORE THE COMMENCEMENT OF ELIGIBLE IMPROVEMENTS; AND

(B) THE REAL PROPERTY TAX ON THE MOST RECENT FULL CASH VALUE OF THE PROPERTY AFTER COMPLETION OF THE ELIGIBLE IMPROVEMENTS.

(II) FOR PURPOSES OF THIS CALCULATION, THE FULL CASH VALUE OF THE PROPERTY IS THE FULL CASH VALUE BEFORE PHASE IN, AS DETERMINED BY THE STATE DEPARTMENT OF ASSESSMENTS AND TAXATION THROUGH THE ASSESSMENT PROCEDURES ESTABLISHED UNDER TAX-PROPERTY ARTICLE, TITLE 8, OF THE MARYLAND CODE.

(3) *CREDITS INITIALLY GRANTED ON OR AFTER OCTOBER 1, 2014.*

(I) FOR CREDITS INITIALLY GRANTED UNDER THIS SECTION ON OR AFTER OCTOBER 1, 2014, AND FOR THE DURATION OF THE CREDIT, THE CREDIT IS EQUAL TO THE DIFFERENCE BETWEEN:

(A) THE REAL PROPERTY TAX ON THE FULL CASH VALUE OF THE PROPERTY BEFORE THE COMMENCEMENT OF ELIGIBLE IMPROVEMENTS; AND

(B) THE REAL PROPERTY TAX ON THE FULL CASH VALUE OF THE PROPERTY AFTER COMPLETION OF THE ELIGIBLE IMPROVEMENTS.

(II) FOR PURPOSES OF THIS CALCULATION, THE FULL CASH VALUE OF THE PROPERTY SHALL BE DETERMINED BY AN APPRAISAL OF THE PROPERTY BEFORE COMMENCEMENT AND AFTER COMPLETION OF ELIGIBLE IMPROVEMENTS BY A PROFESSIONAL APPRAISER SELECTED BY THE CITY AND LICENSED UNDER BUSINESS OCCUPATIONS AND PROFESSIONS ARTICLE, TITLE 16, SUBTITLE 3, OF THE MARYLAND CODE.

(4) NOTWITHSTANDING PARAGRAPH (3) OF THIS SUBSECTION, IF A PROPERTY RECEIVED PRELIMINARY APPROVAL UNDER SUBSECTION (D) OF THIS SECTION BEFORE OCTOBER 1, 2014, THE CREDIT SHALL BE CALCULATED IN ACCORDANCE WITH PARAGRAPH (2) OF THIS SUBSECTION.

(5) [(2)] The credit calculated under [paragraph (1) of] this subsection shall be reduced by the amount of the credit, if any, for which the property is eligible under the Maryland Enterprise Zone Tax Credit Program.

(6) NO PART OF THE CREDIT CALCULATED UNDER THIS SUBSECTION MAY BE APPLIED IN ANY TAX YEAR:

(I) TO REDUCE THE PROPERTY'S TAX LIABILITY FOR THAT TAX YEAR, AFTER APPLICATION OF ANY OTHER APPLICABLE CREDIT, TO LESS THAN THE TAX LIABILITY TO WHICH THE PROPERTY WAS SUBJECT, AFTER APPLICATION OF ANY OTHER APPLICABLE TAX CREDIT, BEFORE COMMENCEMENT OF THE ELIGIBLE IMPROVEMENTS; OR

(II) IN ANY CASE IN WHICH THE PROPERTY'S TAX LIABILITY FOR THAT TAX YEAR, AFTER APPLICATION OF ANY OTHER APPLICABLE CREDIT, IS LESS THAN THE TAX LIABILITY TO WHICH THE PROPERTY WAS SUBJECT, AFTER APPLICATION OF ANY OTHER APPLICABLE TAX CREDIT, BEFORE COMMENCEMENT OF THE ELIGIBLE IMPROVEMENTS.

(F) [(g)] *AMOUNT OF CREDIT – [Projects exceeding] LIMITATION ON PROJECTS OF MORE THAN $3.5 million [in development] DOCUMENTED CONSTRUCTION costs.*

(1) For development projects exceeding $3.5 million in DOCUMENTED construction costs, the tax credit [shall be] IS limited to the following percentages of the amount computed under subsection [(d)] (E) of this section:

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(i) in years 1 through 5 - 80%

(ii) in year 6 - 70%

(iii) in year 7 - 60%

(iv) in year 8 - 50%

(v) in year 9 - 40%

(vi) in year 10 - 30%.

(2) To be eligible for this limited tax credit:

(i) the developer must:

(A) submit all documents requested by the FINANCE Director; and

(B) submit documentation reviewed by the developer with the State Department of Assessments and Taxation to support a preliminary estimate of value for tax purposes based on construction costs and projected income; and

(ii) either:

(A) the existing building in question must have been at least 75% vacant for at least 3 years; or

(B) the developer must otherwise demonstrate to the FINANCE Director [of Finance] that the credit is necessary in order for the project to proceed.

(3) At the time of application for the credit, the developer must submit a statement of projected economic impact and public benefits for the project. 3 years from the date an application is accepted, the developer must submit statements of actual economic impact and public benefits for the project. Public benefit measures include neighborhood revitalization impact; job creation, tax generation, and minority business development.

(4) If the property is located in a Maryland Enterprise Zone, the credit under this section may be taken only for those parts of the property that have been rejected as ineligible for the enterprise zone tax credit.

(5) NO PART OF THE CREDIT CALCULATED UNDER THIS SUBSECTION MAY BE APPLIED IN ANY TAX YEAR:

(I) TO REDUCE THE PROPERTY'S TAX LIABILITY FOR THAT TAX YEAR, AFTER APPLICATION OF ANY OTHER APPLICABLE CREDIT, TO LESS THAN THE TAX LIABILITY TO WHICH THE PROPERTY WAS SUBJECT, AFTER APPLICATION OF ANY OTHER APPLICABLE TAX CREDIT, BEFORE COMMENCEMENT OF THE ELIGIBLE IMPROVEMENTS; OR

(II) IN ANY CASE IN WHICH THE PROPERTY'S TAX LIABILITY FOR THAT TAX YEAR, AFTER APPLICATION OF ANY OTHER APPLICABLE CREDIT, IS LESS THAN THE TAX LIABILITY TO WHICH THE PROPERTY WAS SUBJECT, AFTER APPLICATION OF ANY OTHER APPLICABLE TAX CREDIT, BEFORE COMMENCEMENT OF THE ELIGIBLE IMPROVEMENTS.

(G) [(e)] *Additional requirements.*

A [property tax] credit [granted] under this section [shall]:

(1) [be] IS subject to eligibility requirements no less stringent than those applicable to credits authorized under [State] Tax-Property Article § 9-204, OF THE MARYLAND CODE;

(2) [be for] IS LIMITED TO a period of 10 CONSECUTIVE TAX years (OR PORTION OF A TAX YEAR) [for each property, starting with the next assessment beginning after restoration is completed], BEGINNING WITH THE FIRST BILLING PERIOD THAT OCCURS AFTER CHAP AND THE FINANCE DIRECTOR HAVE ISSUED THEIR FINAL APPROVALS;

[(3) apply to eligible improvements which:]

[(i) are located within the boundaries of:]

[(A) a property listed individually on the National Register of Historic Places, or a National Register Historic or Landmark District; or]

[(B) a property or district designated as an historic property or district under City law; and]

[(ii) have been determined by the Commission for Historical and Architectural Preservation to be compatible with local historic preservation standards, and have been approved by the Commission prior to work beginning;]

[(iii) may include documented costs for interior rehabilitation;]

(3) [(4) be] IS fully transferrable to a new owner for the remaining life of the credit; and

(4) [terminate] TERMINATES if the property is converted so as [not] to NO LONGER meet established historic preservation standards [during the credit period].

(H) [(f)] *Continuing eligibility.*

[The] DURING THE CREDIT PERIOD, THE property owner shall:

(1) maintain the major historic features of the property;

(2) ensure that the property for which the credit was granted is in full compliance with the Building, Fire, and Related Codes of Baltimore City; and

(3) submit all statements required by subsection [(g)(3)] (F)(3) of this section.

[(h) *Eligible areas.*]

[Eligible areas include Baltimore City Historic Districts, Baltimore City Historic Landmarks, National Register Historic Districts, and National Register Historic Landmarks.]

(i) *No tax subsidy duplication allowed.*

Except for the Maryland State Enterprise Zone Tax Credit Program, the [historic property tax] credit AUTHORIZED BY THIS SECTION does not apply to any property for which any other tax subsidy from the City, whether in the form of a tax credit, payment in lieu of taxes, or otherwise, is being received or has been applied for.

(j) *Application.*

(1) [The] A PROPERTY owner SEEKING THIS CREDIT shall:

(I) file an application [for this tax credit] with [the Commission for Historical and Architectural Preservation] CHAP; and

(II) pay the application fee [as] set by the Board of Estimates.

[If the property is transferred, the new owner shall file an application in order to continue the credit.]

(2) The application [for the tax credit] shall contain THE information, including identification of major historic features, that [the Commission for Historical and Architectural Preservation] CHAP considers necessary for determining the eligibility of the applicant.

[(3) The application shall include evidence of use and occupancy in the case of previously vacant properties.]

(k) *Administration.*

The FINANCE Director [of Finance] may:

(1) adopt rules and regulations to [implement the provisions of] CARRY OUT this section;

(2) settle ANY disputed claims that may arise in connection with the credit authorized by this section; and

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(3) delegate HIS OR HER powers[,] AND duties [or functions in connection with the administration of the credit authorized by] TO ADMINISTER this section to [the City Collector or] any [other] employee OR AGENCY of the City.

(l) *Review.*

(1) [The Commission for Historical and Architectural Preservation] CHAP, in coordination with the Department of Finance, shall establish review procedures for the CREDIT program ESTABLISHED BY THIS SECTION.

(2) The Department of Finance shall analyze THE data submitted [by developers in the statements required by] UNDER subsection [(g)(3)] (F)(3) of this section.

(m) *Termination of program.*

Applications for [the] A credit UNDER THIS SECTION may not be accepted after February 29, 2016.

SECTION 2. AND BE IT FURTHER ORDAINED, That the catchlines contained in this Ordinance are not law and may not be considered to have been enacted as a part of this or any prior Ordinance.

SECTION 3. AND BE IT FURTHER ORDAINED, That this Ordinance takes effect on October 1, 2014.

Certified as duly passed this SEP 22 2014 day of _____, 20___

President, Baltimore City Council

Certified as duly delivered to Her Honor, the Mayor,

this SEP 22 2014 day of _____, 20___

Chief Clerk

SEP 30 2014

Approved this _____ day of _____, 20___

Mayor, Baltimore City

Approved For Form and Legal Sufficiency
This 25th Day of September 2014
Elena DiPietro
Chief Solicitor

A TRUE COPY
Henry Raymond
Director of Finance