

RESOLUTION 5247

**2020 (2020-2021) LAKEWOOD HOUSING AUTHORITY
BUDGET RESOLUTION**

FISCAL YEAR: FROM: 1-1-2020 TO: 12-31-2020

WHEREAS, the Annual Budget and Capital Budget for the Lakewood Housing Authority for the fiscal year beginning JANUARY 1, 2020 and ending DECEMBER 31, 2020 have been presented before the governing body of the Lakewood Housing Authority at its open public meeting of NOVEMBER 13, 2019 ; and

WHEREAS, the Annual Budget as introduced reflects Total Revenues of \$ 15,994,920, Total Appropriations, including any Accumulated Deficit if any, of \$ 16,096,270 and Total Unrestricted Net Position utilized of \$ 101,350 ; and

WHEREAS, the Capital Budget as introduced reflects Total Capital Appropriations of \$ 510,688 and Total Unrestricted Net Position planned to be utilized as funding thereof, of \$ 0 ; and

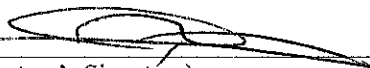
WHEREAS, the schedule of rents, fees and other user charges in effect will produce sufficient revenues, together with all other anticipated revenues to satisfy all obligations to the holders of bonds of the Authority, to meet operating expenses, capital outlays, debt service requirements, and to provide for such reserves, all as may be required by law, regulation or terms of contracts and agreements; and

WHEREAS, the Capital Budget/Program, pursuant to N.J.A.C. 5:31-2, does not confer any authorization to raise or expend funds; rather it is a document to be used as part of the said Authority's planning and management objectives. Specific authorization to expend funds for the purposes described in this section of the budget, must be granted elsewhere; by bond resolution, by a project financing agreement, by resolution appropriating funds from the Renewal and Replacement Reserve or other means provided by law.

NOW, THEREFORE BE IT RESOLVED, by the governing body of the Lakewood Housing Authority, at an open public meeting held on NOVEMBER 13, 2019, that the Annual Budget, including all related schedules, and the Capital Budget/Program of the Lakewood Housing Authority for the fiscal year period beginning JANUARY 1, 2020 and ending DECEMBER 31, 2020 is hereby approved; and

BE IT FURTHER RESOLVED, that the anticipated revenues as reflected in the Annual Budget are of sufficient amount to meet all proposed expenditures/expenses and all covenants, terms and provisions as stipulated in the said Housing Authority's outstanding debt obligations, capital lease arrangements, service contracts and other pledged agreements; and

BE IT FURTHER RESOLVED, that the governing body of the Lakewood Housing Authority will consider the Annual Budget and Capital Budget/Program for adoption on DECEMBER 17, 2019.


(Secretary's Signature)

11/13/19
(Date)

Governing Body Member	Recorded Vote			
	Aye	Nay	Abstain	Absent
Miriam Medina	X			
Gregory Stafford Smith	X			
Shabsi Ganzweig	X			
Angela R. Caldwell	X			
Denise Douglas	X			
Eli Rennert	X			
Joseph Weingarten				X

RESOLUTION NO. 5253

**RESOLUTION ACCEPTING THE LEGAL OPINION REGARDING HOW THE
LAKEWOOD HOUSING AUTHORITY WILL HANDLE PROGRAM PARTICIPANT
CHILD CARE PROVIDERS**

WHEREAS, the Lakewood Housing Authority (hereinafter referred to as LHA) has a need to obtain a legal opinion to determine how to handle program participant child care providers that appear to be operating in violation of the NJ Child Care Laws (providers caring for more than 5 children below 13 years of age within the subsidized/contract unit); and

WHEREAS, the LHA contracted with the firm of Bathgate, Wegener & Wolf of Lakewood, NJ to provide such opinion; and

WHEREAS, Jan Wouters, an attorney with Bathgate, Wegener & Wolf, provided an opinion in a letter dated October 21, 2019 (herein attached) that provides the following conclusion:

“There are no statutes or regulations which require Public Housing Agencies to either make inquiries into or report the presence of child care facilities, even if those child care facilities house more than 5 children in violation of the “Child Care Center Act”, N.J.S.A. 30:5B-1 et seq. In fact, the rules and regulations expressly permit business operations in Section 8 housing, proving the business is legal and ancillary to the primary use of the dwelling as a resident, 24 C.F.R. 982.551 (h)(5). Even though N.J.S.A. 30:5B-13 provides that anyone who operates a Child Care Center without a license or assists in the operation is guilty of a crime of the fourth degree, the HUD and HAP regulations only require PHA intervention with respect to violent crimes, drug related offenses, and alcohol abuse that threatens the safety and welfare of others. Otherwise, any action taken by the PHA in withholding assistance or terminating a HAP contract is permission, rather than mandatory. The regulations govern the PHA’s behavior with respect to providing assistance; however, the regulation do not require reporting violations.

In fact, Federal Regulations expressly place the burden on the owner of the property to ensure the tenants are in compliance with the lease, whereas the PHA is responsible for ensuring the owner’s compliance with the HAP contract. For example, where an owner fails to maintain the dwelling unit in accordance with the housing quality standards, then “the PHA must take prompt and vigorous action to enforce the owner obligations.” 24 C.F.R. 982.404 (a)(2). No such regulation exists with respect to Day Care Centers.

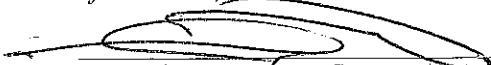
Moreover, Lakewood Township expressly allows the presence of child care facilities and child care centers, as long as they comply with applicable State rules and regulations. Therefore, it is the responsibility of the user of the property to ascertain whether the child care facility or child care center is in compliance with municipal or state regulations. The PHA does not have an affirmative responsibility to ensure proper licensure.”; and

WHEREAS, there was a motion by commissioner Ganzweig and a second by commissioner Rennert to put into policy, as indicated in the conclusion of the legal opinion of Bathgate, Wegener & Wolf, that the LHA does not have an obligation to, and will not make any reports of, childcare providers that may appear to be in violation of the law; and

NOW THEREFORE BE IT RESOLVED by the members of the Board of Commissioners of the LHA that the LHA will not report any Section 8 program participant child care providers that may appear to be in violation of the Child Care Center Act, and that such policy will be implemented into the Section 8 Housing Choice Voucher Administrative Plan.

Governing Body Member	Recorded Vote			
	Aye	Nay	Abstain	Absent
Miriam Medina	X			
Gregory Stafford-Smith	X			
Shabsi Ganzweig	X			
Angela R. Caldwell	X			
Denise Douglas	X			
Eli Rennert	X			
Joseph Weingarten				X

I hereby certify that the above is a true copy of a Resolution duly adopted by the Board of Commissioners of the Housing Authority of the Township of Lakewood in the County of Ocean, at its Regular Board Meeting held on the 13th day of November, 2019.


 Scott E. Parsons, Secretary/Acting Executive Director

BATHGATE, WEGENER & WOLF

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October 21, 2019

Lakewood Housing Authority
Attn: Scott Parsons
317 Sampson Avenue
Lakewood, NJ 08701

Re: Lakewood Housing Authority's obligations with respect to reporting day care operations conducted in Section 8 housing.

I. Question Presented

The Lakewood Housing Authority ("LHA") has asked Bathgate, Wegener & Wolf, as special local counsel, to provide an opinion regarding the proper course of action the LHA should take upon discovering the presence of day care operations in residences in which the LHA offers rental assistance pursuant to Section 8 of the U.S. Housing Act of 1937. See 42 U.S.C. § 1437f(8).

In connection with this opinion letter, we have reviewed the Housing Assistance Payment Contract ("HAP Contract"), Title 24 of the Code of Federal Regulations, a sample Landlord Tenant Lease Agreement ("Lease"), LHA's Section 8 Administrative Plan, LHA's Admissions and Occupancy Policy, the Child Care Center Licensing Act codified as N.J.S.A. 30:5B-1 et seq., ("Child Care Center Act"), the Manual of Requirements for Child Care Centers codified as N.J.A.C. 3A:52 et seq., ("Child Care Center Regulations"), the Family Day Care Provider Registration Act, codified as N.J.S.A. C.30:5B-16 et seq., (the "Day Care Registration Act"), the Manual of Requirements For Child Care Registration codified as N.J.A.C. 3A:54 et seq., ("Child Care Registration Regulations"), Section 8 of the U.S. Housing Act of 1937 codified as 42

BATHGATE, WEGENER & WOLF
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October 21, 2019
Page 2

U.S.C. 1437f (“Section 8”), Lakewood Township Municipal Ordinances (“Ordinances”), HUD guidance for PHAs, and relevant New Jersey case law.

II. Analysis

N.J.S.A. 30:5B-1 et seq., known as the "Child Care Center Licensing Act", governs the permissibility, regulation, and licensure of Child Care Centers in the State of New Jersey. A Child Care Center is defined as “any facility which is maintained for the care, development or supervision of six or more children who attend the facility for less than 24 hours in a day.” N.J.S.A. 30:5B-3(b). Pursuant to the Child Care Center Act, no one is permitted to operate a child care center unless a license has been obtained from the Department of Children and Families. See N.J.S.A. 30:5B-4. Anyone who operates a Child Care Center without a license, or assists in the operation of a Child Care Center without a license, is guilty of a crime of the fourth degree. N.J.S.A. 30:5B-13.

However, the Child Care Center Act does not place an affirmative obligation on third parties inquire into or to report a violation to the Department of Children and Families. See N.J.S.A. 30:5B-1 et seq. A review of the Manual of Requirements for Child Care Centers codified as N.J.A.C. 3A:52 et seq., (“Child Care Center Regulations”), likewise does not place an affirmative obligation on third parties to report a violation to the Department of Children and Families, absent evidence of abuse or neglect. See N.J.A.C. 3A:52 et seq. However, whenever the Office of Licensing receives a report questioning the licensing status of a program, the Office of Licensing “shall ensure that the allegation is promptly investigated to determine whether the

BATHGATE, WEGENER & WOLF

A PROFESSIONAL CORPORATION

October 21, 2019

Page 3

complaint is substantiated. N.J.A.C. 3A:52-2.6. Furthermore, although the regulations provide that Department of Children and Families may request the local fire, health and building officials to conduct examinations and inspections to determine a center's compliance with local ordinances, codes and regulations, the regulations don't require Public Housing Agencies ("PHAs") to inform HUD of the existence of a Child Care Center. N.J.A.C. 3A:52-1.1.

N.J.S.A. C.30:5B-16 et seq., known as the Family Day Care Provider Registration Act, governs the registration of day providers in the State of New Jersey. Under the act, registration is voluntary and applies where day care providers assume the care, maintenance, and supervision of five or fewer children. N.J.S.A. C.30:5B-17. The intended purpose of the Act is to encourage family day care providers to assume for the care of children. While the Act encourages registration, registration is not mandatory, and licensure is not required. Ibid. Once more, nothing in the Act or Department of Children and Family regulations places an affirmative duty on third parties to report non-compliance with the Act. See N.J.S.A. C.30:5B-16 et seq; see also N.J.A.C. 3A:54 et seq.

The firm also reviewed the U.S. Housing Act, Section 8, and the corresponding Code of Federal Regulations in determining the responsibilities of Public Housing Agencies ("PHAs") to report the presence of child care facilities, regardless of whether they need to be licensed or not. 42 U.S. Code 1437f; see also 24 C.F.R. 982. Once more, there are no provisions providing affirmative responsibilities on PHAs to report to the State the presence of child care facilities. Pursuant to the regulations, PHAs are required enter into a lease with each tenant. See 24 C.F.R.

BATHGATE, WEGENER & WOLF

A PROFESSIONAL CORPORATION

October 21, 2019

Page 4

966.4. However, the express terms of the regulations do not prohibit day care operations. To the extent the regulations place any restrictions on the PHA with respect to potential business conducted on the affordable housing property, the regulations only require a provision in the lease which states the tenant is required to “use the dwelling unit solely as a private dwelling for the tenant and the tenant's household as identified in the lease, and not to use or permit its use for any other purpose.” 24 C.F.R. 966.4 (f); see also 42 U.S.C. 1437f (d) (1); 42 U.S.C. 1437f (o) (7); 42 U.S.C. 1437f (o) (8). Therefore, there is no authority suggesting the PHA must inform HUD, the State, of the Department of Children and Families of the existence of a day care facility in affordable housing under Section 8.

To the contrary, 24 C.F.R. 982.551 (h) (5) provides “members of the household may engage in ‘legal’ profitmaking activities in the unit, but only if such activities are incidental to the primary use of the unit for residence by members of the family.” Despite the inclusion of the word “legal” into the regulation, PHAs are not required to deny admission or terminate assistance for illegal activity unless that activity involves violent crime, illegal drug use, or alcohol abuse that would threaten other residents. 24 C.F.R. 982.552. Otherwise, the prohibitions are *permissive, not mandatory*, and those determinations would need to be made by the PHA. See 24 C.F.R. 982.552(c); 24 C.F.R. 982.553 (a)(2)(ii).¹ However, those restrictions do not require HUD involvement. Moreover, the regulations state that an owner can only evict a tenant for repeated violation of the lease, and therefore the onerous is placed upon the owner of

¹ Pursuant to 24 C.F.R. 982.153, the “PHA must comply with the consolidated ACC, the application, HUD regulations and other requirements, and the PHA administrative plan”. Pursuant to 24 C.F.R. 982.452, the owner is responsible for enforcing the tenant's obligations under the lease.

BATHGATE, WEGENER & WOLF
A PROFESSIONAL CORPORATION

October 21, 2019
Page 5

the unit to insure compliances with the HAP contract, leases, and regulations, 24 C.F.R. 982.310 (a).

The local municipality, subject to its own rules and regulations, has broader responsibilities. The housing quality standards and the permissibility of child day care facilities housing less 5 or less children or 6 or more children is governed by local housing codes. Chapter 18 of the Lakewood Municipal Code, also known as the Unified Development Ordinance, governs land use and nature and extent of the use of land and buildings and structures as set forth in the Municipal Land Use Law, N.J.S.A. 40:55D et seq. Chapter 18 also regulates zoning and land development in Lakewood Township.

Chapter 18, Article IX establishes zoning districts. Each zoning district provides for allowable and permitted uses within those zoning districts. Pursuant to the zoning ordinance, only uses which are specifically provided for by the regulations are permitted in that district unless authorized by the Zoning Board of Adjustment. See Chapter, Article IX, 18-900.

Pursuant to the Lakewood Township Municipal Code, Family Day Care Homes are permitted in all residential districts. "Family Day Care Home" means the private residence of a family day care provider which is registered as a family day care home pursuant to the "Family Day Care Provider Registration Act" codified as N.J.S.A. C.30:5B-16 et seq. See N.J.S.A. 40:55D-66.5b. However, the Day Care must be "licensed or registered to the extent required by the laws and regulations of the State of New Jersey." See Chapter XVIII, Article IX, 18-900 (E)(1)(a). The standards for the homes are the same as for single-family dwelling units located in

BATHGATE, WEGENER & WOLF
A PROFESSIONAL CORPORATION

October 21, 2019
Page 6

the same District. Furthermore, family day care homes are considered home occupations, and are therefore not subject to more stringent restrictions than any other home occupation in the residential district in which the family day care home is located. See Chapter XVIII, Article IX, 18-900 (E)(1)(b, c). Home occupation is defined by the Ordinances as a business, "including child care, profession, occupation, or trade, conducted for gain or support and located entirely within a residential building, which use is accessory, incidental, and secondary to the use of the building for a dwelling and does not change the essential residential character or appearance of such building." See Chapter XVIII, Article II.

Lakewood Township's Municipal Ordinances also provide that Child Care Centers, as defined by N.J.S.A. 30:5B-1 et seq., are also permitted in all zoning districts. See Chapter XVIII, Article IX, 18-900 (F). The Ordinance provides the following:

1. Centers for which a license is required from the New Jersey Department of Human Services pursuant to P.L. 1983, c. 492 (C:30:5B-1 et seq.) shall be a permitted use in all zoning districts.
 - a. The floor area in any building or structure used for child care purposes shall be excluded in calculating any parking requirement.
 - b. The floor area in any building or structure used for child care purposes shall be excluded in calculating the permitted density allowable for that building.
 - c. Notwithstanding the above statements, the development of a child care facility in an existing structure or in a standalone facility, shall require site plan review and will be subject to the standards of the district in which it is located. Parking requirements shall be based on evaluating the following factors: the maximum number of children for which the site is licensed; the number of employees present during the maximum shift; and

BATHGATE, WEGENER & WOLF
A PROFESSIONAL CORPORATION

October 21, 2019
Page 7

the operational plan for the drop-off and pick-up of children during the school day.

2. Child care centers and the provision of child care services which do not require licensure by the State of New Jersey shall be permitted in all zoning districts subject to paragraph F1a. and paragraph F1b. and are exempt from the requirements of paragraph F1c. above.

Ibid.

Therefore, in order for a Child Care Center to be permissible under the current zoning laws of Lakewood Township, the Child Care Center must be licensed pursuant to the terms and conditions of N.J.S.A. 30:5B-1 et seq.

The municipal ordinances also created the Division of Construction Code Enforcement, necessary for ensuring compliance with the Uniform Construction Code, codified as N.J.S.A. 5:23-1 et seq; see also Chapter XII. The Construction Official is designated as Chief Administrator of the Division of Construction Code Enforcement. In nonresident dwellings, Chapter XVI, Paragraph 3.11 provides that a new Certificate of Occupancy is necessary for any change of use of the property.

Chapter XV, Paragraph 3 provides that a Certificate of Occupancy, in compliance with Lakewood ordinances and State Housing code is necessary, and that no dwelling may be leased, subleased, rented or let or sold to any tenant, lessee or purchaser unless the owner of the premises shall first have obtained a Certificate of Occupancy from the Department of Code Enforcement and Zoning. See Chapter XV, Paragraph 3.3. However, there is no provision in the ordinance which provides that a new Certificate of Occupancy is necessary in residential

BATHGATE, WEGENER & WOLF
A PROFESSIONAL CORPORATION

October 21, 2019
Page 8

properties based upon a change of use. See Chapter XV, Paragraph 3. Nonetheless, it would be the Construction Official's responsibility to make the determination as to whether or not the presence of a Child Care Center would bring the municipality out of compliance with the Uniform Construction Code.

A review of relevant case law reveals that this issue at bar has not previously been a subject of first impression before the judiciary.

III. Conclusion

There are no statutes or regulations which require Public Housing Agencies to either make inquiries into or report the presence of child care facilities, even if those child care facilities house more than 5 children in violation of the "Child Care Center Act". N.J.S.A. 30:5B-1 et seq. In fact, the rules and regulations expressly permit business operations in Section 8 housing, providing the business is legal and ancillary to the primary use of the dwelling as a resident. 24 C.F.R. 982.551 (h) (5). Even though N.J.S.A. 30:5B-13 provides that anyone who operates a Child Care Center without a license or assists in the operation is guilty of a crime of the fourth degree, the HUD and HAP regulations only require PHA intervention with respect to violent crimes, drug related offenses, and alcohol abuse that threatens the safety and welfare of others. Otherwise, any action taken by the PHA in withholding assistance or terminating a HAP contract is permission, rather than mandatory. The regulations govern the PHA's behavior with respect to providing assistance; however, the regulations do not require reporting violations.

BATHGATE, WEGENER & WOLF

A PROFESSIONAL CORPORATION

October 21, 2019

Page 9

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Moreover, Lakewood Township expressly allows the presence of child care facilities and child care centers, as long as they comply with applicable State rules and regulations. Therefore, it is the responsibility of the user of the property to ascertain whether the child care facility or child care center is in compliance with municipal or state regulations. The PHA does not have an affirmative responsibility to ensure proper licensure.

BATHGATE, WEGENER & WOLF, P.C.

By:


JAN L. WOUTERS