

29 January 2024

The Honorable Guy Guzzone
Chair of the Budget and Taxation Committee
3 West
Miller Senate Office Building
Annapolis, Maryland 21401

Re: Letter of Concern for SB0043
Maryland Historic Trust - Arbitration

Dear Chairman Guzzone and members of the Budget and Taxation Committee:

On behalf of AIA Maryland and the nearly 2,000 Architects we represent, we wish to express our concern with creating a path for shifting the resolution made by Maryland Historic Trust to arbitration. In experience of our members both in Maryland and in other states, when such concerns may arise, the appeals have moved to higher levels of state agencies or the executive branch for appeal within the state, and similarly in adjacent states. That process has resulted in successful resolution. In many cases average citizens and often, nonprofits who are working on properties with Historic Tax Credits cannot afford to pay for arbitration, and paths outside the state process may be subject to appeal.

In one case, one of our members successfully appealed state agency denials that were held up by SHA and MHT a few years ago. They appealed for support to override their agency stances to the Secretary of the Maryland Department of Transportation, who then put us in touch with the Lt. Governor. Boyd Rutherford then personally intervened and all approvals were quickly granted. Our members have successfully appealed state agency denials in at least four states including Maryland.

Maryland does have an agency appeal process that can be found here:
<https://www.courts.state.md.us/courthelp/administrativeappeals>

In New Jersey, State Historic Preservation Office opinions are regularly appealed to the Department of Environmental Protection (DEP) Commissioner, often the LT. Governor, who, in our members' experience, softens the stance of the SHPO or provides less approval conditions in a regulatory letter.

<https://www.nj.gov/dep/hpo/2protection/njrreview.htm>

Delaware's appeal process is spelled out in the language on the attached page following this note, and that process is more specific for tax credit process, but it follows the same premise as Maryland and New Jersey.

We understand that there is an interest in creating alternative paths to the appeal a MHT decision because sometimes those decisions do not necessarily seem to be in the interest of the structure or the community. Aside from cost concerns for entities that may be required to engage in arbitration, we believe arbitration would likely result is less regular and less predictable results than a process that tracks appeals through state agencies. We are not suggesting that the current process is perfect, but we do believe that it may yield

more predictable and consistent results than an independent arbitration party selected to resolve such issues.

Sincerely,

A handwritten signature in black ink, appearing to be "C. R." followed by a long horizontal line extending to the right.

Chris Parts, AIA
Director, Past President, AIA Maryland

cc:
Budget and Tax Committee

Delaware Appeal process spelled out below.

§1817. Appeals.

(a) Where any taxpayer or other person who has applied for State approval or certification that a property is a certified historic property, or that any repairs or improvements are certified rehabilitation, in accordance with this subchapter, objects to a non-certification decision by the Delaware State Historic Preservation Officer, such person shall be entitled to appeal such decision to the Delaware Secretary of State or the Secretary's designee. Such appeal shall be filed with the Delaware Secretary of State within 60 days from the issuance of such non-certification decision. Such appeal shall be conducted in accordance with the Administrative Procedures Act, 29 *Del. C. §10101 et seq.* Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act.

(b) Where a taxpayer or other person who is or was engaged in qualified repairs in accordance with this subchapter is aggrieved by a tax decision which directly affects such person, that person shall be entitled to pursue an appeal pursuant to the administrative procedures of the Department of Finance as set forth in Title 30 or regulations promulgated thereunder, or the State Bank Commissioner as set forth in Title 5 or regulations promulgated thereunder. Where an appellant has exhausted all administrative remedies, such appellant shall be entitled to judicial review in accordance with Subchapter V of the Administrative Procedures Act."

Section 4. Amend §1105, Chapter 11, Title 5 of the Delaware Code by adding thereto a new subsection, designated as subsection (g), which new subsection shall read as follows:

"(g) Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Subchapter II, Chapter 18, Title 30 of the Delaware Code), which credits shall be against taxes imposed under this Chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 5. Amend §1801, Chapter 18, Title 5 of the Delaware Code by adding thereto a new subsection, designated as subsection (d), which new section shall read as follows:

"(d) Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Subchapter II, Chapter 18, Title 30 of the Delaware Code), which credits shall be against any taxes imposed under this Chapter; provide however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 6. Amend Subchapter II, Chapter 11, Title 30 of the Delaware Code by adding thereto a new section, designated as §1112, which new section shall read as follows:

"§1112. Historic Rehabilitation.

A resident individual shall be allowed a credit against such individual's tax otherwise due under this Chapter in accordance with the provisions of the Historic Preservation Tax Credit Act (Chapter 18 of this Title), which credits shall be against any taxes imposed under this chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the Delaware State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 7. Amend Chapter 19, Title 30 of the Delaware Code by adding thereto a new section, designated as §1908, which new section shall read as follows:

"§1908. Historic Rehabilitation.

Any entity taxable under this section is eligible for tax credits in accordance with the Historic Preservation Tax Credit Act (Chapter 18, of this Title), which credits shall be against taxes imposed under this Chapter; provided however, that all claimed credits are accompanied by a Certificate of Completion issued by the State Historic Preservation Office certifying that such credits have been earned in compliance with that Act."

Section 8. This Act may be known and cited as the *Historic Preservation Tax Credit Act*.

Section 9. This Act shall be effective for Stage II approvals granted by the State Office in fiscal years commencing on or after July 1, 2000 but before June 30, 2010. The first claim for tax credits made pursuant to this Chapter shall not be effective until July 1, 2002.