

SPECIAL BOARD OF ALDERMEN

MAY 20, 2019

7:00 PM

Aldermanic Chamber

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PRESIDENT LORI WILSHIRE CALLS ASSEMBLY TO ORDER PRAYER

OFFERED BY CITY CLERK PATRICIA D. PIECUCH

PLEDGE TO THE FLAG LED BY ALDERMAN JAN SCHMIDT

ROLL CALL

**PUBLIC HEARING**

**R-19-136**

**AUTHORIZING THE FORMATION OF TWO VOLUNTARY NONPROFIT  
CORPORATIONS UNDER RSA 162-G FOR THE PERFORMING ARTS CENTER**

Testimony in Favor

Testimony in Opposition

Testimony in Favor

Testimony in Opposition

ADJOURNMENT



# THE CITY OF NASHUA

Office of Economic Development

*"The Gate City"*

To: Lori Wilshire, President of the Board of Aldermen  
From: Tim Cummings, Director of Economic Development  
Cc: Members of the Board of Aldermen  
Date: May 15, 2019

**Re: Operational Issues Surrounding New Market Tax Credit ("NMTC") Program**

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## **Purpose**

This communication is being presented to help organize and provide background information in an effort to help outline some of the more specific and nuanced details of the New Market Tax Credit ("NMTC") transaction.

## **Background**

If you recall, a communication was provided to the Board of Aldermen on December 11, 2018, which gave a high level overview of the deal structure. Since that meeting the City has procured an Attorney who specializes in structuring New Market Tax Credits transactions and he has further helped us refine our concept.

As the deal diagram shows the City of Nashua is creating two entities (and ultimately three). R-19-136 creates two of the three entities and in a follow on piece of legislation as outlined in the "Anticipated Approval Document" additional legislation will be forthcoming.

## **What Does R-19-136 Do**

Authorizes the City to form up to two (2) voluntary, nonprofit corporations under the provision of RSA 162-G and pursuant to RSA 162-G:15 ordains these two new entities as public corporations.

## **Why is this Important**

The City of Nashua cannot directly participate in the NMTC transaction as a QALICB. Furthermore, the industry prefers municipal corporations to not be the Senior Leverage Lender.

We are doing this now in an effort to be in a good position to act expediently. Community Development Entities ("CDEs") want to be able to move quickly and place their NMTC allocations. Project readiness is a key factor in being an attractive project.

## **What is a QALICB**

A QALICB is typically a single purpose entity (meaning it has 1 function) and is defined by the IRS as a Qualified Active Low Income Community Business where substantial portion (defined as at least 40%) of the services performed are within a Qualified Low Income Community ("QLIC").

## **What is the Sr. Leverage Lender**

In finance it is a way to describe debt that has a superior position than other forms of debt that may be issued or involved in a transaction. In this instance it is a single purpose entity with a sole purpose to

execute on providing the financing for the NMTC transaction. This debt will take priority over other debt and be in a superior position.

**What is RSA 162-G**

RSA 162-G allows the City acting directly or through a voluntary non-profit corporation to foster and encourage the development of business within its boundaries. RSA 162-G creates a vehicle allowing municipalities to participate in business activities such as real estate development and financing. The legislation before you names the specific incorporators who will petition the state to form the non-profit entities that are integral to the city's ability to get the NMTC. Lastly, by going through this process the entities will be afforded certain privileges such as being exempt from taxes.

**Additional Context**

These two entities are not permanent and are only being created to effectuate the transaction. They will cease to exist after the seven year NMTC compliance period concludes, which necessitates the need for entity number "C", which is not contemplated in R-19-136 and will be brought forward once a NMTC allocation has been secured. Essentially, entity C in working concept will be substantially similar to the Hunt Memorial Building Board of Trustees, which is the body empowered by the city to oversee the Hunt Building. In this case it will be the entity to oversee the building and the service contract of the operator. Lastly, entity D would not have any affiliation with the City of Nashua directly, but would be a separate 501 c.3 entity created to administer the endowment fund to support the Performing Arts Center and can be thought of as like a "friends" group similar to a "Friends of the Library" group or a "Friends of the Senior Center" group.

Thank you for your kind attention to this matter. Please do not hesitate to contact me if I can be of any assistance.

Attachments

Updated Deal Diagram

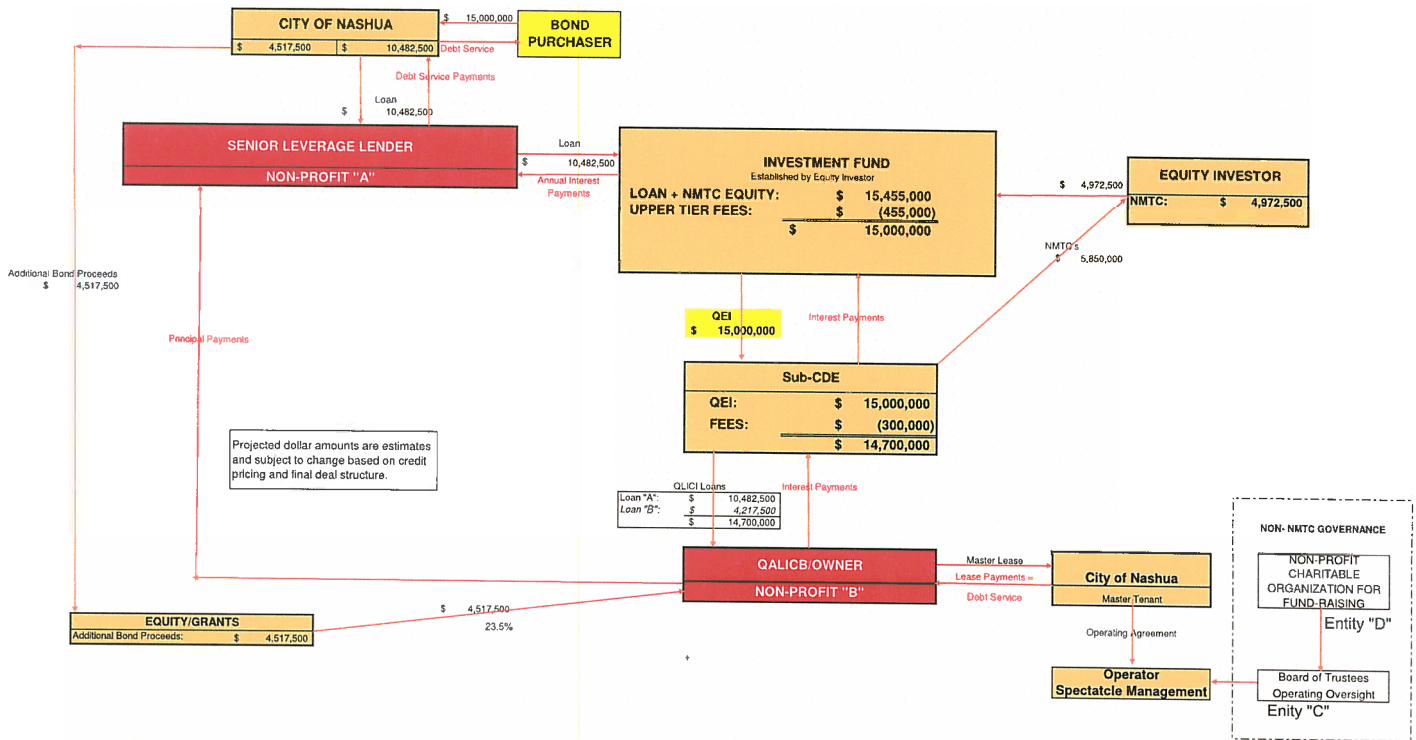
Letter from Attorney John Kaminski Dated April 17, 2019

Anticipated City Approval Document

NASHUA PERFORMING ARTS CENTER

TABLE 2: DEAL DIAGRAM/FLOW OF FUNDS

TOTAL PROJECT COST:	\$	19,217,500
"EQUITY":	\$	(4,517,500)
AMOUNT FINANCED VIA NMTC:	\$	14,700,000



PREPARED FOR THE CITY OF NASHUA  
FOR DISCUSSION ONLY  
melcarro16@gmail.com

\*These numbers are subject to change and are based on projected/modeled calculations

April 17, 2019

VIA EMAIL ONLY

Celia Leonard, Esq.  
Deputy Corporation Counsel  
City of Nashua  
229 Main Street  
Nashua, NH 03060

Re: Performing Arts Center

Dear Celia:

I am writing as special New Markets Tax Credit ("NMTC") legal counsel to the City for the Performing Arts Center project ("PAC") to recommend some initial actions to be taken by the City.

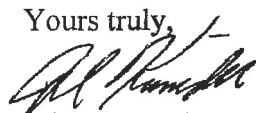
The financial structure of NMTC transactions requires that the sponsoring entity, the City in this case, form one or more affiliated single purpose legal entities. The specific roles that these entities will serve in the financing structure will be determined in coordination with the funders and their legal counsel.

As we have discussed, readiness to proceed is critical in receiving an allocation of NMTC. I also understand that the City wants to close the financing as soon as possible later this year and commence construction. For these reasons, we recommend that the City form two new voluntary corporations under New Hampshire law now so that these legal entities are available for the NMTC financial structure as soon as possible.

I understand that New Hampshire law requires that five individuals act to form each voluntary corporation. It would be very helpful if any municipal action required to name the five individuals for each of the corporations be taken as soon as possible so that the formation of the corporations can be completed.

Please let me know if you or others at the City have any questions.

Yours truly,

  
John S. Kaminski

**New Markets Tax Credit (NMTC)  
Nashua Performing Arts Center**

**Anticipated City Approvals**

- Approval 1: Create 2 RSA 162-G:15 Voluntary nonprofit Corporation, Nonprofit A & B R-19-136 (introduced and in process)
- Approval 2: A) Loan \$xxx to Sr. Leverage Lender Nonprofit A  
B) Grant \$xxxx to QALICB Nonprofit B  
C) Agreements among QALICB, City and Sr. Leverage Lender  
D) Authorize Mayor to execute all necessary documents related to City's participation in NMTC deal
- Approval 3: Authorizing Transfer of title to 201 Main Street to QALICB Nonprofit B Consideration \$2,000,000; closing to take place contemporaneously with NMTC closing.
- Approval 4: Authorizing the City to enter into a Lease with QALICB Nonprofit B for 201 Main Street as Master Tenant
- Approval 5: Authorizing the City as Master Tenant, to enter into an Operator Agreement with Spectacle Management
- Approval 6: Create Board of Trustees for the Performing Arts Center
- Approval 7: Creation of Trust Fund/Special Revenue Account

Note 1: \$15.5 million bond authorized by R-18-001, as amended by R-18-09.