

DOWNTOWN

NEW JERSEY

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March 16, 2017

Commissioner Charles A. Richman
Department of Community Affairs
PO Box 800
Trenton, New Jersey 08625-0803

Re: Objection to Proposed New Rule N.J.A.C. 5:35-2.1

Dear Commissioner Richman:

I am writing on behalf of Downtown New Jersey, an organization of individuals, businesses, government agencies, and local and regional organizations that are passionate about downtowns in our great state. As you know, downtowns reflect our communities' unique identities, provide a convenient local place of commerce, and offer a place of community gathering. Many of the downtowns throughout New Jersey are fortunate to be benefited by special improvement districts ("SIDs") established to help foster the growth of the area comprising the district (not always, necessarily, a traditional downtown).

It is with concern for these SIDs and for the health of our downtowns that we write to formally object to the inclusion of SID director(s) and members in the definition of "managerial executive employees" in the proposed new rule, N.J.A.C. 5:35-2.1 ("Proposed Rule"). Unlike many governmental endeavors, SIDs are true public-private partnerships governed by a board of volunteers from the local business community. The Supreme Court in New Jersey has made clear that special improvement districts are, at best, a "quasi-public solution" to issues facing languished communities. *2nd Roc Jersey Assocs. v. Town of Morristown*, 158 N.J. 581 (1999).

"SIDs are an attempt to **achieve privately** what municipal government has struggled unsuccessfully to do. SIDs are organized and financed by property owners and merchants, operate on the basis of state and local laws, and use revenues garnered from self-taxation to finance various services and capital improvements not provided by the municipality." *Id.* (internal citations omitted)(emphasis ours).

The inclusion of SID members and employees in the Proposed Rule not only ignores judicial precedent, but also the clear Legislative intent that SIDs be a partnership with the local business and downtown communities in New Jersey. SIDs are comprised primarily of the commercial properties located within the SID's geographic jurisdiction. They are self-financed by special assessments levied against these properties and governed by volunteer members of the business community. These members make up the District Management Corporation entity, a private corporation registered with the State, governed with By-Laws; and are usually not for profits established under IRS 501c regulations. Further, the SID

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enabling statutes explicitly permit municipalities to exempt residences from such assessments. Therefore, there is an extremely limited benefit to the public in requiring that these individuals file annual financial disclosure statements. Moreover, there is no evidence to suggest that the legislature intended that volunteer board members of a public-private partnership be required to submit financial disclosure statements when it adopted *N.J.S.A. 40A:9-22.3g*.

Should the Proposed Rule be adopted, it is conceivable that SIDs throughout the state would see a sudden decrease in participation from local business and commercial property leaders who would be opposed to submitting a public financial disclosure statement. Without the involvement and participation of such business leaders, the well-documented success of SIDs could become diminished. For example, in reviewing the Proposed Rule with numerous volunteer members of SIDs throughout New Jersey, we heard from many who expressed that the Proposed Rule would impact their decision to continue serving on the Board and/or to seek an additional term.

There is no mistaking the impact the Proposed Rule could have on public-private partnerships in New Jersey. If the Proposed Rule is adopted in its current form, SIDs in New Jersey will suffer, as will other public-private partnerships whose members could foresee the adoption of similar regulations impacting them. Downtown New Jersey therefore respectfully requests that the Division of Local Government Services consider the removal of special improvement district employees and members of the volunteer boards from the Proposed Rule.

Thank you for your attention. To contact me directly, please feel free to call me at (732) 476-2620 or email me at rgoldsmith@greenbaumlaw.com.

Sincerely,

A handwritten signature in black ink, appearing to read 'R. Goldsmith', with a long horizontal flourish extending to the right.

ROBERT S. GOLDSMITH
President, Downtown New Jersey
Partner, Greenbaum, Rowe, Smith & Davis LLP

cc: Jason R. Martucci, Esq. (*via email - dlgs@dca.nj.gov*)