

PILOT & TAX ABATEMENT PROGRAMS

New Jersey Association of
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Michael Cacavelli, Esq.,
*Zipp Tannebaum &
Cacavelli, LLP*

Thomas S. Dolan, Esq.
Skoloff & Wolfe, P.C.

Michael Donnelly, Esq.,
Lasser Hochman, LLC



Lasser Hochman, L.L.C.

PAYMENTS IN LIEU OF TAXES (PILOTS)

- Why have PILOTS?
- One of the incentives and tools for redevelopment
- Necessary for projects to be built/succeed
- City and Developer/Property owner benefit - mutual goals

DEVELOPER BENEFITS

- Financial assistance to make project work – otherwise can't develop
- Stability: Attractive to lenders, tenants, purchasers.
- Engage and work with the City to make the project successful

MUNICIPAL BENEFITS

- Revitalization/Eliminate blight/New Business
- Ratable upon expiration
- Bring jobs (PLA's/Employment Agreement)/Affordable Housing Fund
- Municipality has greater input
- Target certain areas
- Payment discretion/ 95%

CONSTITUTIONAL BASIS

- New Jersey Constitution
 - *Uniformity: “Property shall be assessed for taxation under general laws and by uniform rules” Article VIII, para 2”*
 - *Article VIII, Section 3, para 1*
 - Area in Need of Redevelopment/Long Term PILOT
 - *Article VIII, Section 3, para 6*
 - Area in Need of Rehabilitation/5 Year

HISTORY

- 1961 Urban Renewal Association Law (Fox Lance) authorized abatement program for redevelopment
- 1991 – Consolidated/clarified all the old programs
 - *Local Redevelopment and Housing Law*
 - *Long Term Tax Exemption Law*
 - *Five Year Tax Exemption Law*

STATUTORY BASIS

- Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.
- Five Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 et seq.
- New Jersey and Mortgage Financing Act, N.J.S.A. 55:14K-37.
- Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64, et seq.
- Other
 - *Environmental Opportunity Zone*
 - *Urban Enterprise Zone*
 - *Health Enterprise Zone*
 - *Garden State Growth Zones*

MUNICIPAL ORDINANCE

- Municipalities have discretion to tailor the program to fit its needs, or not adopt at all
- BUT Ordinance can not exceed what the statute allows – e.g., 30 year limit; can't allow a 50 year abatement.
- LTTE PILOTS adopted per project by ordinance
- Five-Year – Municipality typically has adopted a 5-year program

FIVE YEAR EXEMPTION

- Area in need of rehabilitation
- 5 Year limit
- Application filed within 30 days of completion of project
- Application form provided by Division of Taxation
- Enabling Ordinance establishes criteria
- Assessor approves

FIVE YEAR EXEMPTION

- Under Statute – PILOT Agreement (Commercial/Industrial/Multiple Dwelling):
 - *15% of gross revenue; or*
 - *2% of project costs; or*
 - *1st year exempt and years 2-5 tax phase-in (20,40,60,80)*

Five-Year Tax Exemption & Abatement

Pursuant to Chapter 441, Laws of 1991, as amended (N.J.S.A. 40A:21-1 et seq.)

Category of Exemption & Abatement	Amount of Exemption or Abatement
Construction of New Single Dwelling or Conversion of Nonresidential Building to Single Dwelling or Both	<ul style="list-style-type: none"> • Exempts no more than 30% of full true assessed value annually • Abates portion of pre-existing assessed value not to exceed 30% of total cost of construction or conversion annually • Total amount of abatements to any single property may not exceed total cost of construction or conversion
Improvement to Existing Single Dwelling More than 20 Years Old	<ul style="list-style-type: none"> • Exempts \$5,000, \$15,000, or \$25,000 of full true value of improvement • Property assessment not less than assessment prior to improvements, unless also abated • Abates portion of pre-existing assessed value not to exceed 30% of annual exemption
Improvement to Multiple Dwellings or Conversion of Nonresidential Buildings to Multiple Dwellings or Both	<ul style="list-style-type: none"> • Exempts full true value of the improvements or conversions • Property assessment not less than assessment prior to improvements, unless also abated • Abates portion of pre-existing assessed value not to exceed 30% of the improvement or conversion annually • Total amount of abatements to any single property may not exceed total cost of improvement or conversion
Improvement or Expansion of Commercial & Industrial Structures	<ul style="list-style-type: none"> • Exempts full true value of improvements • Property assessment not less than assessment prior to improvements • Abatements are <u>not</u> permitted for commercial & industrial structures

PILOT Payments under Tax Agreements for Exemption & Abatement of Construction of Multiple Dwellings and Construction of Commercial & Industrial Structures

Annual Gross Revenue Basis	15% of the annual gross revenues from the project	
Cost Basis	2% of the cost of the project	
Tax Phase-In Basis	Year 1	0% of taxes otherwise due
	Year 2	Not less than 20% of taxes otherwise due
	Year 3	Not less than 40% of taxes otherwise due
	Year 4	Not less than 60% of taxes otherwise due
	Year 5	Not less than 80% of taxes otherwise due

FIVE YEAR EXEMPTION REASONS FOR DENIAL

- Not area in need of rehab
- No municipal ordinance
- Dwelling not at least 20 years old
- Property taxes are delinquent
- Untimely application
- Ineligible improvements – ordinary painting/repairs/replacement of maintenance items

LONG TERM EXEMPTION

- Redevelopment Area/Urban Enterprise Zone
- Urban Renewal Entity
- Also permitted for relocation housing projects and low and moderate housing
- Improvements are exempt/credit for taxes paid on land
- For residential land may be exempt under LTTE (2003 Amendment)

URBAN RENEWAL ENTITY

- Approved by the Department of Community Affairs
 - Formed using the specific language set forth in the statute
 - “Urban Renewal”
 - No business other than ownership, operation and management of project

URBAN RENEWAL ENTITY

- Limited dividend entity or non-profit
- Subject to profit restrictions (12% of project costs)
- Required to pay an additional ASC for any profits that exceed the allowable profits
- Annual Audit (Submit 90 days prior to end of fiscal year)

APPLICATION

- When to Apply?
- Apply to Chief Officer/Business Admin/Planner
- Description of Project/Benefits to City
- Site and Architectural Plans
- Project Cost Statement
- Fiscal Plan
- Financial Agreement

FINANCIAL AGREEMENT

- Executed by both Urban Renewal Entity and Municipality
- Adopted by Governing Body (Ordinance)
- Sets forth the PILOT Payment Method (ASC)
- Maximum 30 year term (from date of completion) OR
- 35 years (from date of financial agreement)

FINANCIAL AGREEMENT

- Other terms
 - Minimum Payment
 - All profits and dividends are limited
 - Scope of Project/Exemption
 - Audit Reports/ Rights of Inspection
 - Basis for PILOT
 - Sale/Transfer
 - Dispute Resolution/Arbitration
 - Termination Rights

ANNUAL SERVICE CHARGE

- For Low and Moderate Housing
 - Not more than 2% of project costs
 - Not more than 15% of annual gross revenue.
- All other projects
 - Not less than 2% of project costs OR
 - Not less than 10% of gross annual revenue
- 5 Stages to Exemption Period

Annual Gross Revenue Method or Tax Phase-In

	Low & Moderate Income Housing	All Other Projects
Stage 1: 6 to 15 years	Not more than 15% of gross revenue	Not less than 10% of gross revenue
Stage 2: 1 to 6 years	Not more than 15% of gross revenue or 20% of taxes otherwise due, whichever is greater	Not less than 10% of gross revenue or 20% of taxes otherwise due, whichever is greater
Stage 3: 1 to 6 years	Not more than 15% of gross revenue or 40% of taxes otherwise due, whichever is greater	Not less than 10% of gross revenue or 40% of taxes otherwise due, whichever is greater
Stage 4: 1 to 6 years	Not more than 15% of gross revenue or 60% of taxes otherwise due, whichever is greater	Not less than 10% of gross revenue or 60% of taxes otherwise due, whichever is greater
Stage 5: 1 or more years	Not more than 15% of gross revenue or 80% of taxes otherwise due, whichever is greater	Not less than 10% of gross revenue or 80% of taxes otherwise due, whichever is greater

Total Project Cost Method or Tax Phase-In

	Low & Moderate Income Housing	All Other Projects
Stage 1: 6 to 15 years	Not more than 2% of project cost	Not less than 2% of project cost
Stage 2: 1 to 6 years	Not more than 2% of project cost or 20% of taxes otherwise due, whichever is greater	Not less than 2% of project cost or 20% of taxes otherwise due, whichever is greater
Stage 3: 1 to 6 years	Not more than 2% of project cost or 40% of taxes otherwise due, whichever is greater	Not less than 2% of project cost or 40% of taxes otherwise due, whichever is greater
Stage 4: 1 to 6 years	Not more than 2% of project cost or 60% of taxes otherwise due, whichever is greater	Not less than 2% of project cost or 60% of taxes otherwise due, whichever is greater
Stage 5: 1 or more years	Not more than 2% of project cost or 80% of taxes otherwise due, whichever is greater	Not less than 2% of project cost or 80% of taxes otherwise due, whichever is greater

ANNUAL GROSS REVENUE

- What's Included?
- Best practice: FA should be specific in these matters.
- "Gross revenue" means annual gross revenue or gross shelter rent or annual gross rents, as appropriate, and other income."
- "insurance, operating and maintenance expenses paid by a tenant which are ordinarily paid by a landlord, shall be included in the gross revenue"
- Federal funds to non-profit subsidies housing not included
- Gain realized from sale not included

PROJECT COSTS

- Hard and Soft Costs
- Cost of Land and improvements
- Architect, Engineer, Attorney Fees for Planning Construction of Project
- Surveying and Testing Charges
- Actual Construction Costs Certified by Architect
- Costs of obtaining Financing
- Commissions and other expenses paid or payable in connection with initial leasing
- Real estate taxes during construction period
developers overhead

OTHER CHARGES

- Entity pays tax on the land and receives a credit against the PILOT payment (ASC)
- Municipality can charge an administrative fee not to exceed 2% of ASC
- Municipality pays 5% of ASC to County (2003 Amendment)

APPROVAL PROCESS

- Submit Application to City
- 60 Days Review by Tax Committee to Governing body
- First Reading/Second Reading
- Once approved – Challenges only in 20 days prerogative writ action (2003 Amendment)

ISSUES

- FA disputes governed by contract law
- Jurisdiction (Tax Court/Superior Court/Arbitration)
- Transfer/Assignments
- Local Workforce/PLA
- Affordable Housing
- Payments to School District (Bayonne/JC/Bill A4607)
- Redevelopment Area Bonds

REDEVELOPMENT AREA BONDS

- Redevelopment Area Bond Financing Law, N.J.S.A. 40A:12A-64 et seq., allows for pledge of PILOTs to bondholders
- RAB PILOT do not use traditional Long Term Tax Exemption Law formulas
- ASC can be less than 10%
- Set amounts to pay off bond
- No credit for taxes on land

RAB Case Study: American Dream Project



EARLY TERMINATION

- Property is over assessed/agreement no longer works
- N.J.S.A. 54:3-21(b): You can't appeal under the statutory tax appeal process if assessment subject to a financial agreement under Long Term Exemption Law
- Entity can voluntarily terminate after one year
- Municipality typically not entitled to terminate absent cause

Case Study: Jersey City

- August 2013 - Exemption Policy
 - Strategy to combat unequal growth
 - Replaced “unfair” and unbalanced ad-hoc process
- Created Tiers
 - Less development (Journal Square; inner cities) were given better tax incentives
 - Overdeveloped Areas already developed (Waterfront) were given less tax incentives

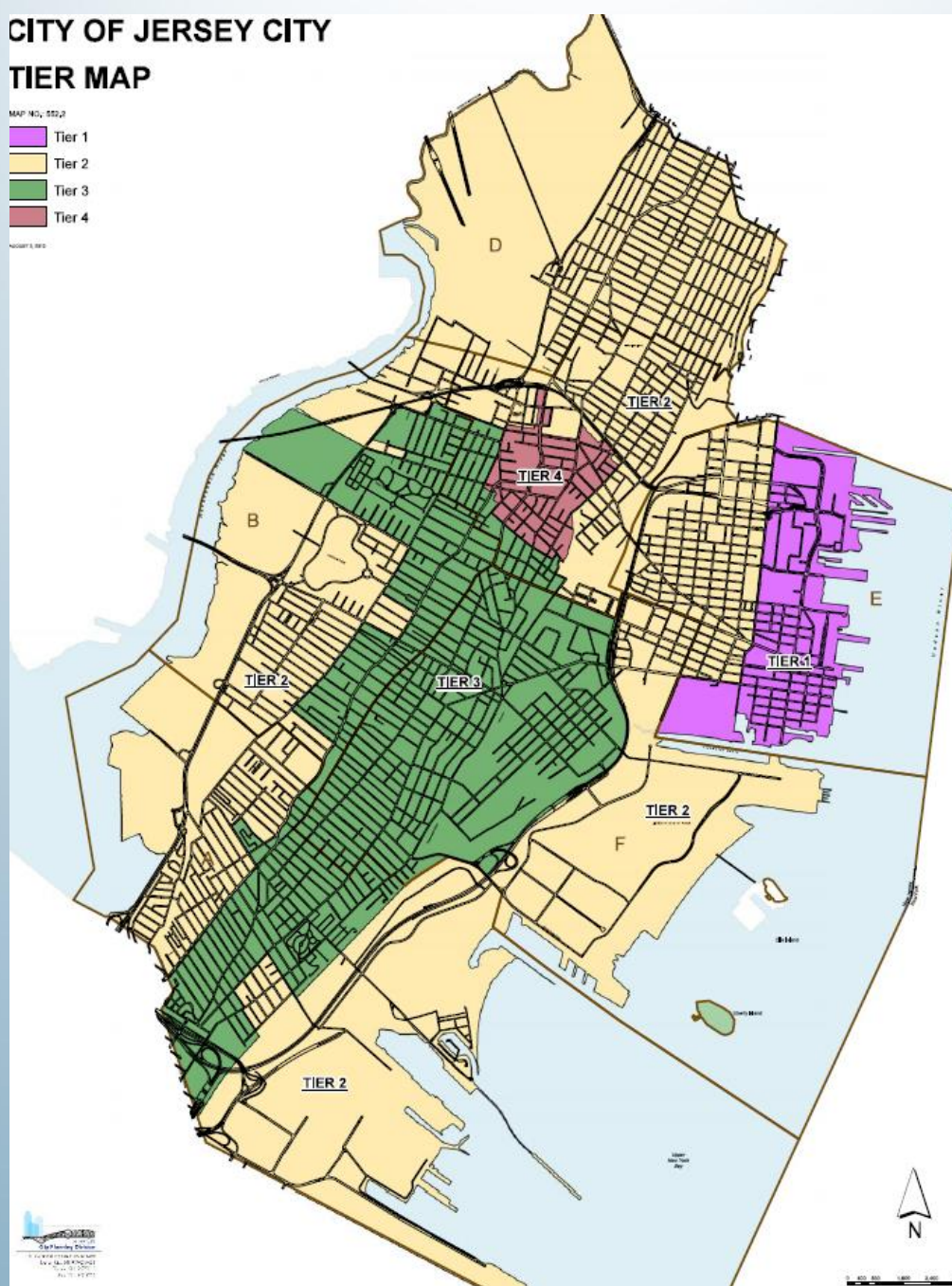
CITY OF JERSEY CITY

TIER MAP

MAP NO. 552

- Tier 1
- Tier 2
- Tier 3
- Tier 4

NOV 13, 2013



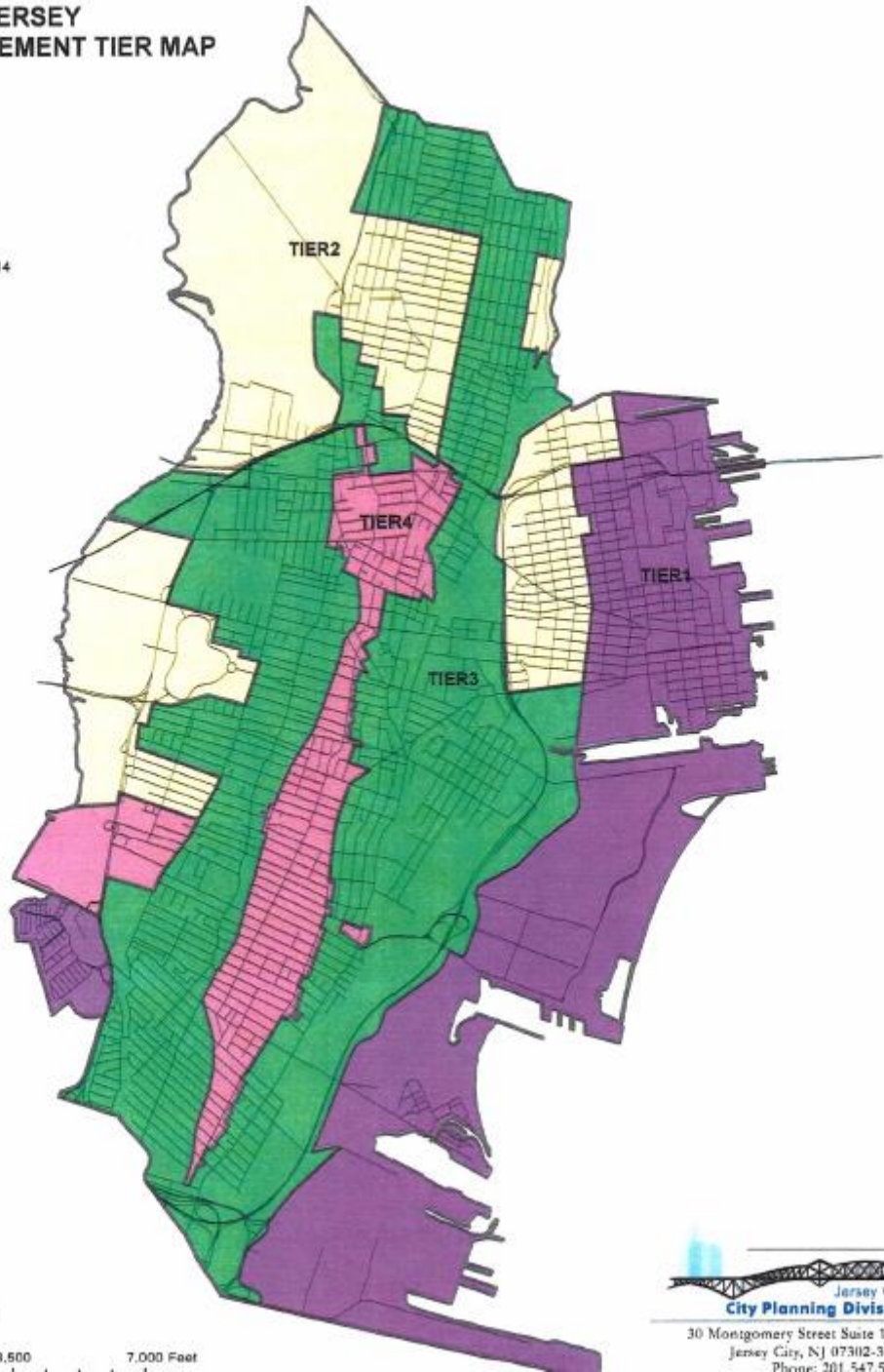
Case Study: Jersey City

- September 2015 - Revised Policy
- Geographic Scope of Tiers changed slightly. Expanded Tiers 1 and 4.
- Changed to provide for more affordable housing construction and greater contributions to trust fund.
- More affordable housing = more potential years on PILOT

CITY OF JERSEY TAX ABATEMENT TIER MAP

- Tier 1
- Tier 2
- Tier 3
- Tier 4

August 4, 2015
Numbered Map: 614



1 inch = 3,500 feet

0 1,750 3,500 7,000 Feet

Jersey City
City Planning Division
30 Montgomery Street Suite 1400
Jersey City, NJ 07302-3821
Phone: 201.547.5010

Case Study: Jersey City

- Tier 1

- Term: 10 years
- ASC: 13%
- 10% of Units Moderate Income; OR
- \$5,000 to AHTF for every market unit

- Tier 4

- Term: 30 years
- ASC: 11%
- No Moderate Income Requirement
- No additional AHTF payment

Case Study: Jersey City

■ Other Key Aspects

- Project and Employment Contracting Agreement (PECA) (25k+ savings)
- Project Labor Agreement (PLA) (25M+)
- Living Wage (25M+)
- For Commercial and Industrial employing more than 25 full-time employees
 - Max 30 years/ 10%/ Anywhere in City
- *Still have existing AHTF requirements*
(*\$1,500 per market rate, \$1.50 psf commercial, .10 psf industrial*)

Case Study: Jersey City

- Recent Developments
 - Executive Order – 10% of PILOT payments to go to school district
 - More affordability requirements for downtown development (20% set aside proposed Tier 1)
 - PLA requirement challenged in Court
 - Associated Builders and Contractors, Inc. v. Jersey City (2017)

Associated Builders v. Jersey City, (U.S.D.C. June 2017)

- Challenge to PLA Ordinance
- Ordinance requires PLA for tax abated projects 25M or more.
- Court ruled that federal law (NLRA) preempted PLA ordinance
 - *JC acted as regulator not market participant (not purchaser, owner, funder)*
 - *Ordinance guaranteed absence of strikes, lockouts or similar actions*
- JC has proposed a revised PLA ordinance in light of decision.

ASSESSOR'S ROLE

- Keep Records/Financial Agreement
- Track taxable and exempt assessment
- Difference between what tax payments would be if not exempt and compare with the anticipated PILOT payments.
- The annual PILOT payment CANNOT be less than the previous year's taxes.
- LAND credit

WHEN IS ASSESSMENT SET?

- Even though improvements are exempt an assessment is put on the improvements and land based on the actual value (at ratio) of the property after completion as of October 1 of the pre-tax year.
- Assessment typically remains the same during the duration of the PILOT.

REVALUATIONS

- Exception - During a district-wide reassessment or revaluation a new assessment will be set. Land value/taxes may increase.
- May require an amendment to the financial agreement?

How is PILOT Documented?

- Two line items are created (same block/lot):
 - Exempt portion (improvements only) – Gets Qual. X – Class 15F
 - Separate item for the land (and improvement value prior to change)
 - Exemption for improvements only
 - Taxpayer pays taxes on the land and gets a credit for land taxers off of PILOT

Block: 14303 Prop Loc: 95 GREENE ST. Owner: 74 GRAND ST. ASSOC. %SJP PROPERTIES Square Ft: 0
 Lot: 2 District: 0906 JERSEY CITY Street: 379 INTERPACE PKWY. Year Built:
 Qual: Class: 1 City State: PARSIPPANY, NJ 07054 Style:

Additional Information

Prior Block: 69 Acct Num: 00512707 Addl Lots: EPL Code: 0 0 0
 Prior Lot: C.1 Mtg Acct: Land Desc: 200.8X150 I0.864 Statute: 4A:20-1
 Prior Qual: Bank Code: 597 Bldg Desc: 8S-RC-O-HE-G Initial: 060701 Further: 060721
 Updated: 03/23/09 Tax Codes: Class4Cd: 560 Desc: \$3457
 Zone: Map Page: 143 Acreage: 0.6915 Taxes: 56294.57 / 0.00

Sale Information

Sale Date: 06/30/99 Book: 5461 Page: 72 Price: 7000000 NU#: 0

Sr1a	Date	Book	Page	Price	NU#	Ratio	Grantee
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TAX-LIST-HISTORY

Year	Owner Information	Land/Imp/Tot	Exemption	Assessed	Property Class
<u>2016</u>	74 GRAND ST. ASSOC. %SJP PROPERTIES 379 INTERPACE PKWY. PARSIPPANY, NJ 07054	752400 0 752400	0	752400	1
2015	74 GRAND ST. ASSOC. %SJP PROPERTIES 379 INTERPACE PKWY. PARSIPPANY, NJ 07054	752400 0 752400	0	752400	1
2014	74 GRAND ST. ASSOC. %SJP PROPERTIES 379 INTERPACE PKWY. PARSIPPANY, NJ 07054	752400 0 752400	0	752400	1
2013	74 GRAND ST. ASSOC. %SJP PROPERTIES 379 INTERPACE PKWY. PARSIPPANY, NJ 07054	752400 0 752400	0	752400	1

*Click on Underlined Year for Tax List Page

[*Click Here for More History](#)

Block:	14303	Prop Loc:	95 GREENE ST.	Owner:	74 GRAND ST. ASSOC. %SJP PROPERTIES	Square Ft:	0
Lot:	2	District:	0906 JERSEY CITY	Street:	ONE UPPER POND ROAD	Year Built:	
Qual:	X	Class:	15F	City State:	PARSIPPANY, NJ 07054	Style:	

Additional Information

Prior Block:	69	Acct Num:	00523068	Addl Lots:		EPL Code:	24 4 998
Prior Lot:	C.1	Mtg Acct:		Land Desc:	200.8X150 I0.864	Statute:	4A:20-1
Prior Qual:	X	Bank Code:	0	Bldg Desc:	8S-RC-O-HE-G	Initial:	060701 Further: 060721
Updated:	10/06/05	Tax Codes:		Class4Cd:	0	Desc:	URBAN RENEWAL
Zone:		Map Page:	143	Acreage:	0.6915	Taxes:	0.00 / 0.00

Sale Information

Sale Date:	06/30/99	Book:	5461 Page: 72	Price:	7000000 NU#: 0
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Sr1a	Date	Book	Page	Price	NU#	Ratio	Grantee
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TAX-LIST-HISTORY

Year	Owner Information	Land/Imp/Tot	Exemption	Assessed	Property Class
2016	74 GRAND ST. ASSOC. %SJP PROPERTIES ONE UPPER POND ROAD PARSIPPANY, NJ 07054	0 25311800 25311800	0	25311800	15F
2015	74 GRAND ST. ASSOC. %SJP PROPERTIES ONE UPPER POND ROAD PARSIPPANY, NJ 07054	0 25311800 25311800	0	25311800	15F
2014	74 GRAND ST. ASSOC. %SJP PROPERTIES ONE UPPER POND ROAD PARSIPPANY, NJ 07054	0 25311800 25311800	0	25311800	15F
2013	74 GRAND ST. ASSOC. %SJP PROPERTIES ONE UPPER POND ROAD PARSIPPANY, NJ 07054	0 25311800 25311800	0	25311800	15F

PILOT PAYMENTS

- Entity submits annual financial audits to determine ASC and to ensure compliance with limitation of profit
- PILOT payments are made pursuant to the financial agreement in quarterly installments according to property tax schedule.

NJHMFA PILOT

- No URE Requirement
- NO Redevelopment Area
- Qualified Housing sponsor – entity with loan from NJHMFA for housing project
- ASC capped at 20% of annual gross revenue from each project on the property (6.28%)
- Exemption can not be later than the date the NJHMA loan is paid in full.
- No minimum payment
- Typically 30 years

GSGZ PILOT

- Garden State Growth Zone (EOA 2013)
 - *Lowest median family income from 2009*
 - *Trenton, Atlantic City, Camden, Passaic, Paterson*
- Exemption available for new improvements after passage of Act (2013)
- For 20 year program must be a GSGZ Entity and City must have adopted (“opt-in”)
 - *First 10 years exempt, remaining 10 years increase by 10% of taxes due per year)*
- Even if not a GSGZ Entity, exempt new improvements for 5 years

CASELAW

595 New Brunswick, LLC v. Perth Amboy (Tax Court June 2017)

- Denial of 5 Year Abatement
- Conversion of medical office to multiple dwelling
- Court ruled it did not have jurisdiction
 - *Not filed with CB/ Direct Appeals*
 - *Not denied by a “county or municipal official”*
 - *Denied by City Council by resolution*
 - *Transferred to Superior Court Law Division*
- Other issue: 10 year limit. Ordinance expire in 2003. Never readopted. N.J.S.A. 40A:21-4.

Kenneth Ruskowski v. Div. of Taxation (NJ Tax 2016)

- Condo owner under abatement (Fox Lance)
- Pays land taxes and PILOT payment/ Improvements exempt.
- Applied for Senior Freeze reimbursement
- Denied because he did not pay “property taxes” on the improvements
- Court agreed with the denial. Fund that for the purposes of the Senior Freeze reimbursement, PILOT payments are not reimbursable as taxes.

- Morris Township v. LF Associates, 10 NJ Tax 240 (1988)
 - Parking garage received abatement
 - After completion tried to include upper floors of hotel/office building
 - No mention of upper floors in agreement
 - Court: “The statute requires that application for a tax abatement be made before proceeding with a project.”
 - No specific legislative authority for amending the financial agreement to exempt additional property after construction.

- BPUM Development and Urban Renewal v. City of Camden, 9 N.J. 490, (1988)
 - Urban Renewal Corporation and Association Law
 - Project was substantially complete in 1982
 - No approval or agreement was executed
 - Agreement executed in March 1985
 - August 1985 Assessor filed an appeal for improvements at \$0 and leave land.
 - Strict compliance required – no equitable relief
 - Application filing, approval and execution required.

■ Tru Urban Renewal Corp. v. City of Newark, 11 NJ Tax 63 (1990)

- 1984 financial agreement approved for building containing 330,000 sf.
- In 1986, addition to the improvements -144,862 sf.
- Plaintiff claimed exemption. City denied –it was not contemplated by the financial agreement
- Added Assessment for 1986.
- Court: Addition was not part of the application.
- You can allocate and keep the remaining exempt

- Ballantyne House Associates v. City of Newark, 269 NJ Super 322 (App. Div. 1993)
 - City stopped garbage service to Limited Dividend Companies with long term tax abatement agreements
 - The ASC payment was for “municipal services”
 - Court ruled that “municipal services” under agreement meant the same services provided to similar tax paying facilities
 - Newark violated abatement agreement by terminating garbage services to limited dividend corps but continuing to provide to other multi-family housing facilities.

- New Jersey Metromall Urban Renewal v. City of Elizabeth, 22 NJ Tax 276 (2003)
 - Long Term PILOT - Exact payment amounts set forth in agreement - Secure RAB
 - Land assessment increased (no credit for land tax in agreement)
 - Taxpayer argued that land assessment should be frozen at time of execution of agreement
 - HELD: Freezing Land Assessment would violate Uniformity Clause of Constitution

- K Hovnanian at 77 Hudson Street v. Jersey City, 2011 WL 2898953 (App. Div. 2011)
 - Entered into financial agreement on 2006 under LTTE – 420 condo development downtown JC
 - Construction nearly complete by 2008
 - Real estate market crashed
 - Asked for amendment/ JC approved amendment for a similar project but denied for K Hovnanian
 - Court: discretionary but question was whether the municipality abused its discretion – must be exercised reasonably and not arbitrarily.

- Crusader Servicing Corp. v. Godwin Avenue Urban Renewal (App. Div. 2009)
 - Agreement/abatement approved/never signed
 - Financials for audit sent by Taxpayer
 - No payments made / never calculated
 - Taxpayer followed up requesting amount
 - Assessor sent tax bills (not PILOT) that went unpaid/Tax Sale/ holder sued for foreclosure
 - HELD: PILOT agreement was considered effective and tax sale void

■ North Oranton Urban Renewal (Chancery 2014)

- Never paid ASC -- 10 years
- City never made any attempt to collect
- Both land improvements listed as regular exempted property
- In 2005 removed from exempt list
- Tax Bill sent but Not paid - Tax sale
- Court restored tax abatement/voided tax sale
- Taxpayer ordered to pay all back PILOT

FURTHER INFORMATION

Michael J. Caccavelli, Esq.

*Zipp Tannenbaum
& Caccavelli, LLC*

280 Raritan Center Parkway

Edison, NJ 08837

973.902.4173

mcaccavelli@zipplaw.com

Thomas S. Dolan, Esq.

Skoloff & Wolfe, P.C.

293 Eisenhower Parkway

Livingston, NJ 07039

973.803.9758

973.232.2966

tdolan@skoloffwolfe.com

Michael J. Donnelly, Esq.

Lasser Hochman, LLC

75 Eisenhower Parkway

Roseland, NJ 07068

973.226.2700

mdonnelly@lasserhochman.com