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
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

- Five Year Exemption and Abatement Law, N.J.S.A. 40A:21-1 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 cannot 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.)**

<table>
<thead>
<tr>
<th>Category of Exemption &amp; Abatement</th>
<th>Amount of Exemption or Abatement</th>
</tr>
</thead>
</table>
| Construction of New Single Dwelling or Conversion of Nonresidential Building to Single Dwelling or Both | - 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 | - 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 | - 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 | - Exempts full true value of improvements  
- Property assessment not less than assessment prior to improvements  
- Abatements are not permitted for commercial & industrial structures |

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

<table>
<thead>
<tr>
<th>Annual Gross Revenue Basis</th>
<th>15% of the annual gross revenues from the project</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Cost Basis</strong></td>
<td><strong>2% of the cost of the project</strong></td>
</tr>
<tr>
<td>Year 1</td>
<td>0% of taxes otherwise due</td>
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<tr>
<td>Year 2</td>
<td>Not less than 20% of taxes otherwise due</td>
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<tr>
<td>Year 3</td>
<td>Not less than 40% of taxes otherwise due</td>
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<tr>
<td>Year 4</td>
<td>Not less than 60% of taxes otherwise due</td>
</tr>
<tr>
<td>Year 5</td>
<td>Not less than 80% of taxes otherwise due</td>
</tr>
</tbody>
</table>
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

<table>
<thead>
<tr>
<th>Stage 1: 6 to 15 years</th>
<th>Low &amp; Moderate Income Housing</th>
<th>Not more than 15% of gross revenue</th>
</tr>
</thead>
<tbody>
<tr>
<td></td>
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<td>or 20% of taxes otherwise due, whichever is greater</td>
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<tr>
<td>Stage 2: 1 to 6 years</td>
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<td>Not more than 15% of gross revenue</td>
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<td>or 40% of taxes otherwise due, whichever is greater</td>
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<tr>
<td>Stage 3: 1 to 6 years</td>
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<td>Not more than 15% of gross revenue</td>
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<td>or 60% of taxes otherwise due, whichever is greater</td>
</tr>
<tr>
<td>Stage 4: 1 to 6 years</td>
<td></td>
<td>Not more than 15% of gross revenue</td>
</tr>
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<td></td>
<td>or 80% of taxes otherwise due, whichever is greater</td>
</tr>
<tr>
<td>Stage 5: 1 or more years</td>
<td></td>
<td>Not more than 15% of gross revenue</td>
</tr>
<tr>
<td></td>
<td></td>
<td>or 80% of taxes otherwise due, whichever is greater</td>
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<tr>
<td></td>
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<td>or 80% of taxes otherwise due, whichever is greater</td>
</tr>
</tbody>
</table>

### Total Project Cost Method or Tax Phase-In

| Stage 1: 6 to 15 years | Low & Moderate Income Housing | Not more than 2% of project cost |
| Stage 2: 1 to 6 years  |                               | 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 |
| Stage 4: 1 to 6 years  |                               | Not more 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 |
|                        | All Other Projects             | Not less than 2% of project cost |
|                        |                               | or 20% of taxes otherwise due, whichever is greater |
|                        |                               | or 40% of taxes otherwise due, whichever is greater |
|                        |                               | or 60% of taxes otherwise due, whichever is greater |
|                        |                               | 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
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
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 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
<table>
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<tr>
<th>Block:</th>
<th>14303</th>
<th>Prop Loc:</th>
<th>95 GREENE ST.</th>
<th>Owner:</th>
<th>74 GRAND ST. ASSOC. %SJP PROPERTIES</th>
<th>Square Ft:</th>
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<tbody>
<tr>
<td>Lot:</td>
<td>2</td>
<td>District:</td>
<td>0906 JERSEY CITY</td>
<td>Street:</td>
<td>379 INTERPACE PKWY.</td>
<td>Year Built:</td>
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<tr>
<td>Qual:</td>
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<td>Class:</td>
<td>1</td>
<td>City State:</td>
<td>PARSIPPANY, NJ 07054</td>
<td>Style:</td>
<td></td>
</tr>
</tbody>
</table>

**Additional Information**

| Prior Block: | 69 | Acct Num: | 00512707 | Addl Lots: |           | EPL Code: | 0 0 0 |
| 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 |

**TAX-LIST HISTORY**

<table>
<thead>
<tr>
<th>Year</th>
<th>Owner Information</th>
<th>Land/Imp/Tot</th>
<th>Exemption</th>
<th>Assessed</th>
<th>Property Class</th>
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<tr>
<td>2016</td>
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<tr>
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*Click on Underlined Year for Tax List Page

*Click Here for More History
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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

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.

- 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.

- 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

- 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.

- 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

- 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.

- 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

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