

PILOTS

(Payments in Lieu of Taxes)

Friday, July 27, 2018

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PILOTS

- PILOTS: Not the same as a tax abatement.
 - *Five Year Exemption and Abatement Law, N.J.S.A. 40A: 21-1 et seq.*
 1. *New Jersey Long Term Tax Exemption Law, N.J.S.A. 40A:20-1 et seq.* (the “**LTTE**”)
 2. *New Jersey Housing and Mortgage Financing Act, N.J.S.A. 55:14K-1 et seq., Section 37* (the “**HMFA**”)
- “**PILOT**” means “payments in lieu of taxes”. Under the LTTE the technical term is “**annual service charge**”.
- The LTTE is to be “construed in conjunction with” the *Local Redevelopment and Housing Law, N.J.S.A. 40A:12A-1 et seq.* (the “**LRHL**”).

PILOTs Constitutional Background

- **Article VIII, Section 3, Paragraph 1** of the New Jersey Constitution provides the legal basis for exemption from taxation, in whole or in part, for a limited period of time during which profits of and dividends payable by any private corporation enjoying such tax exemption shall be limited by law. This exemption may be granted for **improvements** constructed within **blighted areas**.

Eligibility for a Long Term Tax Exemption

- Projects may be eligible for a long term tax exemption:
 - If it is a “project” in a “**redevelopment area**” and “set forth in a redevelopment plan adopted by the governing body pursuant to the ‘Local Redevelopment and Housing Law’” LTTE, §4.
 - If it is within an “urban enterprise zone”, or “**UEZ**”. LRHL § 5(g).
 - If it is a “**low and moderate income housing project**”*, or if it is a project “necessary, useful or convenient for the relocation of residents displaced or to be displaced by” a redevelopment project. LTTE §4.

*“low and moderate income housing project” means a housing project which is occupied, or is to be occupied, exclusively by households whose incomes do not exceed income limitations established pursuant to any State or federal housing program.

PILOTS *(cont'd)*

- The LTTE permits a municipality, under specific circumstances required by statute, to enter into a **financial agreement** with an **URE**, pursuant to which the URE, in lieu of paying real property taxes in respect of the **improvements** on the subject property, pays an annual service charge, or PILOT.
- Taxes on the value of the **land** continue to be paid, but in the typical financial agreement, and as permitted by statute, the URE gets a credit against the annual service charge for land taxes timely paid in the prior 4 quarters.

Urban Renewal Entity, or “URE”

- An URE is a limited profit/dividend, single purpose entity.
 - Name must include the words “Urban Renewal”
 - DCA approval required
 - Restrictions on transfer
 - Subject to limitation on net profits, payment of dividends.
- See LTTE §§ 5 -7, 15 for specific details relating to the formation, powers and obligations of an URE.

Amount of a PILOT

- Calculation of the amount of a PILOT, and of increases in the PILOT over time, ordinarily are based on statutory formulas in the LTTE.
 - Under the LTTE, the “annual service charge” would be equal to (1) not less than 10% of “**annual gross revenue**” of the project (not more than 15% for a low and moderate income housing project); or, (2) at the option of the municipality or where annual gross revenue cannot be reasonably ascertained, not less than 2% of the “**total project cost**” (not more than 2% for a low and moderate income housing project). LTTE §12(b)(1).
 - The method by which the PILOT is calculated is determined in the **financial agreement**.
 - Periodic “step ups” of annual service charge required by statute. LTTE § 12(b)(2)(a)-(e).
- Where “**Redevelopment Area Bonds**” are involved, annual service charge and increases over time can be negotiated.

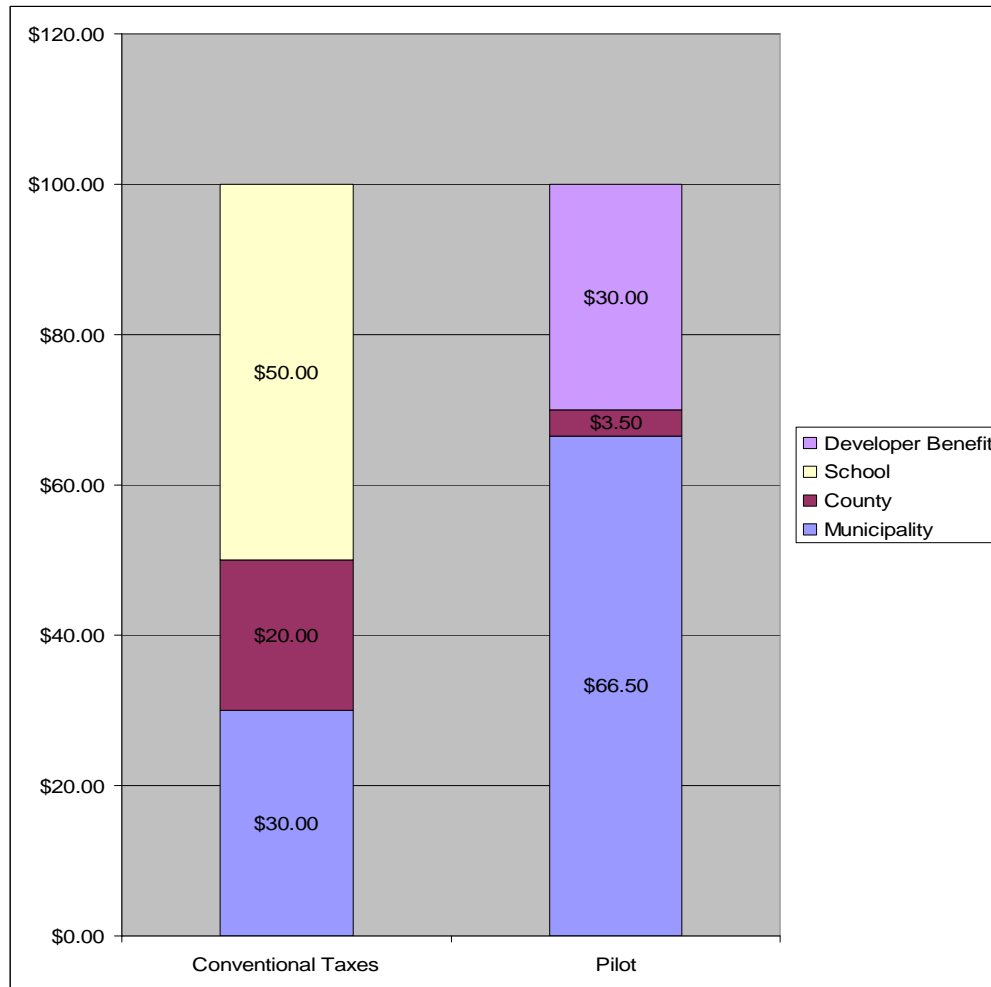
PILOTS *(cont'd)*

- Duration of exemption:
 - “ ... a term of not more than **30 years from the completion of the entire project**, or unit of the project if the project is undertaken in units, or not more than **35 years from the execution of the financial agreement** between the municipality and the urban renewal entity.” LTTE §12(a).
 - “... only so long as the urban renewal entity and its project remain subject to the provision of ... [the LTTE], but in no event more than 35 years from the date of the execution of the financial agreement.” LTTE §13.

Advantages of PILOTs

- From developer's perspective, PILOTs offer predictability, and usually (but not always) a reduction in operating expenses.
- PILOTs can be very advantageous to municipality, even where the amount of the PILOT appears to be substantially less than the amount of otherwise applicable taxes.
 - Municipality gets to retain 95% of the annual service charge. (The other 5% goes to the County in which the property is located.)
 - Under generally applicable taxes, a typical municipality might retain \$.30 of each tax dollar it collects, the balance going to the school district (\$.50) and the county (\$.20).

PILOTs: An Example



- Municipality receives 122% more in revenues under PILOT than under conventional taxes (\$66.50 vs. \$30.).
- Developer pays 30% less under PILOT than under conventional taxes (\$70 vs. \$100.).