



**CHASAN LAMPARELLO  
MALLON & CAPPUZZO**

300 LIGHTING WAY  
SUITE 200  
SECAUCUS, NJ 07094  
201 348 6000  
CHASANLAW.COM

May 29, 2020

RALPH J. LAMPARELLO▲\*  
ROBERT A. KAYE▲  
CINDY NAN VOBELMAN  
JOHN V. MALLON♦♦  
STEVEN L. MENAKER††  
THOMAS R. KOBIN▲  
ROBERT A. CAPPUZZO▲  
JOHN P. BEIRNE  
THOMAS A. MORRONE\*  
NICOLE R. CASSATA  
MITCHELL L. PASCUAL▲  
JAMES F. DRONZEK  
PETER L. MACISAAC▲\*  
KENNETH A. PORRO  
PHILIP W. LAMPARELLO▲  
JOHN M. TUNTEVSKI▲  
RICHARD W. FOGARTY▲  
MARIA P. VALLEJO▲  
RAYMOND J. SEIGLER  
REGINALD JENKINS, JR.

THOMAS B. HIGHT  
TEJAL FORRAR  
DAVID B. ANGELUZZI  
MICHAEL S. FLEMING  
THOMAS H. ZUPPA, JR.▲  
RYAN J. GAFFNEY▲  
ELLEN L. CAMBURN♦  
LEONARD V. JONES▲  
QING H. GUO▲  
KELLY A. WEBER  
JAMES B. SHOVLIN▲  
ASHLEY L. MATIAS▲  
CORY S. BENAVIDES  
RACHEL N. PARADA▲  
COUNSEL  
ARTHUR N. D'ITALIA  
THOMAS P. OLIVIERI  
ROBERT M. CZECH

OF COUNSEL  
HERBERT KLITZNER  
NEIL B. FINK  
EDNA J. JORDAN  
DREW D. KRAUSE♦  
THOMAS M. BROGAN  
KIRSTIN BOHN▲  
MOLLIE H. LUSTIG  
CHEYNE R. SCOTT  
RONALD P. BOTELHO▲  
RAYMOND CHASAN  
(1904-1988)  
JOEL A. LEYNER▲  
(1931-2020)

KENNETH A. PORRO  
201 809 6011 DIRECT  
KPORRO@CHASANLAW.COM

**ATTORNEY/CLIENT WORK PRODUCT  
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Borough of Dumont  
c/o Christopher Tully, Administrator  
80 W. Madison Avenue  
Dumont, NJ 07628  
Attn: Mayor Andrew LaBruno & Council

**PQ:** LANDMARK DUMONT I URBAN RENEWAL CORPORATION  
511 Washington Avenue  
Formerly D'Angelo Farm  
Block 212, Lot 20 / Block 215, Lot 1  
Dumont, New Jersey  
CLMC File No. 14146-0006

Dear Mayor & Council:

**TASK:**

I have been requested to render an opinion as to the required real estate property taxes due and owing to the Borough of Dumont (hereinafter "Borough") under the Financial Agreement between LANDMARK DUMONT I URBAN RENEWAL

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CORPORATION (hereinafter "LANDMARK") and THE BOROUGH OF DUMONT, dated January 17, 2017.

The purpose of this memorandum/opinion is to explain the process for the collection of the payments required under the above LANDMARK PILOT and to further cause a process for the orderly and organized request for information from the Borough to the owner, so that the maximum permissible real estate tax payment to the Borough will be collected.

**DOCUMENT REVIEWED:**

1. The January 12, 2017 correspondence from developer's attorney, enclosing the revised Application for approval of PILOT Agreement;
2. The Borough of Dumont approval resolution dated January 17, 2017;
3. FINANCIAL AGREEMENT BETWEEN LANDMARK DUMONT I URBAN RENEWAL CORPORATION AND THE BOROUGH OF DUMONT dated January 17, 2017.

**ISSUES AT HAND:**

1. What is the proper amount of real estate property taxes due & owing under the parties' Financial Agreement for the tax years during the project construction and lease up period?
2. What is the impact of the project PILOT upon the Dumont School Board budget?

**QUESTION #1**

**ANALYSIS:**

The LANDMARK payment in lieu of taxes is permissible under the New Jersey, Long Term Tax Exemption Laws (N.J.S.A. 40A:20-1 et seq.). New Jersey case law also

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supports real estate tax exemption programs, but those abatements must be on the improvement(s). The underlying land assessment remains subject to New Jersey Constitution's, Uniformity Clause.

**PROPERTY AT HAND:**

Based upon my review of the application documents, it is my professional opinion that the LANDMARK DUMONT I URBAN RENEWAL CORPORATION long term tax exemption is proper and a binding agreement of the parties.

It is further my professional opinion that the Section IV of the Final Agreement sets forth the global mechanism to calculate the property's annual real estate taxes.

The relevant section is as follows:

**Article IV  
Annual Service Charge**

**"Pursuant to N.J.S.A. 40A:20-9, for the Market Rate Project, the Annual Service Charge shall be in the amount equal to the greater of two percent (2%) of gross construction costs; ten percent (10%) of Gross Annual Revenue for the Market Rate Project; or for the years 1 through 15 of the Agreement, \$3,500 per Market Unit per year and for the years 16 through 25 of the Agreement, \$3,750 per Market unit per year. It is estimated that the total Annual Service Charge for the Market Rate project will equal \$434,000 per year for years 1 through 15 of the Agreement, increasing to \$465,000 per year for years 16 through 25 of the Agreement, totaling \$11,160,000 over the twenty-five (25) year term of the Agreement for the Market Rate Project.**

**Pursuant to N.J.S.A. 40A:20-9, for the Affordable Project, the Annual Service Charge shall be in the amount equal to the greater of two percent (2%) of Gross annual Revenue of the Affordable Project; or for the years I through 15 of the Agreement, \$350 per Affordable Unit per year and for years 16 through 25 of the Agreement, \$375 per Affordable**

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**Unit per year for the Affordable Project. It is estimated that the total Annual Service Charge for the Affordable Project will equal \$7,700 per year for years 1 through 15 of the Agreement, increasing to \$8,250 per year for years 16 through 25 of the Agreement, totaling \$198,000 over the twenty-five (25) year term of the Agreement for the Affordable Project,**

**The Annual Service Charge shall be billed initially based upon the Entity's estimates of Annual Gross Revenue as set forth in its Fiscal Plan, attached hereto as Exhibit 6. Thereafter, the Annual Service Charge shall be adjusted in accordance with this Agreement,**

**The Minimum Annual Service Charge as defined in Article 1, Section 1.2 xiv. (1) or (2) or the Annual Service Charge, as the agreement trigger dates reflect, shall first begin to accrue on the first day of the month following the Completion of the Project. In the event the Entity fails to timely pay the Minimum Annual Service Charge or Annual Service Charge, the amount unpaid shall bear the highest rate of interest permitted in the case of unpaid taxes or tax liens on the land until paid."**

Some ambiguity has caused confusion as to the Annual Service Charge trigger dates. For example, in Section 1.2 (General Definitions), Section 3.1 (Term), Section 4.1 (Min. Annual Service shall start as of first day of the month following completion of the Project) & Section 4.6 Exempt notes as of the date of Entity receives the Final Certificate of Occupancy (C/O) for the project.

**DEVELOPER'S POSITION:**

Section 4.6 Developer is relying upon Section 4.6 as to its staggered, pro-rata payments obligation. Section 4.6 states:

**Pursuant to the Long Term Tax Exemption Law, the Property Project shall be exempt from all real estate taxation effective as of the date the Entity receives the final certification of occupancy (C/O) for the Project. Regular taxation shall remain in effect on a pro-rata basis for the percentage of the Property that has not had c/o's issued**

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as a function of the total number of units to be built. The exemption hereunder shall continue for a term of twenty five (25) years after completion unless extended pursuant to N.J.S.A. 40A:20-13.1. Completion is defined as the date on which the Borough issues the final Certificate of Occupancy to the Entity. During the period between the issuance of the initial round of Certificates of Occupancy and Completion the payment to the Borough shall be an amount equal to the same rate of taxation paid on the Property for the prior year as a percentage of the number issued C/O's relative to the number (146). Payments in lieu of taxes shall commence upon initial issuance of certificates of occupancy of the facility on a pro-rate basis, as set forth herein.

Other Sections, such as Annual Reports Section 6.1 and 6.2 recited herein are informative.

The Article Annual Reports Section states:

**Article VI  
Annual Reports**

**Section 6.1 Accounting System**

“The Entity agrees to maintain a system of accounting and internal controls established and administered in accordance with Generally Accepted Accounting Principles ("GAAP"),

**Section 6.2 Periodic Reports**

Total Project Cost Audit: Upon the Borough's request, within ninety (90) days after the Substantial Completion of the Project, the Entity shall submit to the Borough Mayor and Council, an audit of Total Project Cost, certified as to actual construction costs by an independent and qualified architect, utilizing the form attached hereto as Exhibit "8", All other costs shall be certified in conformance with GAAP, by a certified public accountant who is licensed to practice that profession in the State of New Jersey.”

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**CHECKS & BALANCE:**

As noted above, the Financial Agreement does provide for certain checks and balances by way of the use of Generally Accepted Accounting Principles (GAAP) (Section 6.1) and an annual audit (Section 6.2).

The Annual report provides a practical mechanism for payment reconciliation.

This means that the Borough, through the Tax Collector or its assign, must annually request information from the owner in order to determine the gross income of the property. If for example, 10% of this income exceeds the minimum payment, then the Tax Collector or Borough Agent must send a bill for the unpaid portion as per the required Annual Service Charge (Section 4.1).

Additionally, within the ninety (90) days of "Substantial Completion" which we opine to be the issuance of the final certificate of occupancy the Tax Collector must request from the owner the audited construction costs of the project. This audit shall then be forwarded to the Borough Auditor or its assign for review, confirmation or rejection. If 2% of this figure for example exceeds the minimum annual service charge then the difference as per the agreement must likewise be billed to the owner and paid accordingly. Failure to pay when due subjects the owner to penalties.

We recommend that the Tax Collector or its assign implement a process for an annual reminder to request the annual income statement from the owner.

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**TAX ASSESSOR'S ADDED ASSESSMENT:**

The Dumont tax assessor in 2019 did compose an Added Assessment upon the property to reflect the projects partial completion.

The Dumont tax assessor's use of a 2018 & 2019 Added Assessment is a further PILOT checks and balance. The Borough tax assessor's use of an Added Assessment upon the development merely reflects a trigger date of substantial completion, whether developer obtained a formal Certificate of Occupancy or not. The Added Assessment payment shall fold into the projects Annual Service Charge formula.

**QUESTION #2**

What is the impact of the project PILOT upon the Dumont School Board Budget?

Despite, a philosophical discussion, there is no negative impact of this PILOT upon the Dumont school system.

The Board of Education sets forth its budget and the Mayor & Council are charged with raising the funds to satisfy that statutorily approved academic year budget.

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**CONCLUSION:**

It is my professional opinion that the above PILOT agreements require additional financial data from the Developer to prove compliance with the financial agreements of the parties. At that time, a Borough agent shall verify the project's Annual Service Charge based upon these three (3) valuation methods established in Section 4.1 of the Financial Agreement. The Certificate of Occupancy (C of O) trigger dates, within Section 4.6 of the Agreement must also be respected. Unfortunately, reasonable minds could formulate different payment obligations during 2018, 2019 and 2020 construction years. Once the project is complete, the PILOT language is clear.

Please note, I would like to discuss this matter further during a closed session at the convenience of the Mayor & Council.

Very truly yours,



Kenneth A. Porro  
For the Firm  
KAP/ml

cc: Marc Leibman, Esq.