LOCAL CONTROL OF TAX INCENTIVES

For decades, New Jersey has experienced notable success with redeveloping many of its distressed areas by affording municipalities the ability to provide tax incentives (a.k.a. payments in lieu of taxes/PILOTs) to redevelopers. These incentives are the single-most powerful tool available to municipalities to encourage property owners and developers to make improvements or to locate a project in a distressed or blighted area. They are granted only where the municipality has determined that the project would not occur but for the tax incentive. Tax incentives encourage developers to accept the substantial risks and additional costs that come with most redevelopment projects, including the risk factor of unknown markets and costs associated with demolition, environmental abatement, construction of structured parking, and other community benefits. Without tax incentives, many redevelopment projects would not be economically feasible.

Municipalities also use tax incentives to obtain much needed infrastructure improvements and community benefits that would not otherwise be possible given budgetary constraints and/or political capacity to raise funds through the existing tax base. These projects run the gambit of size and scale, including water and sewer upgrades, bicycle and pedestrian safety improvements, streetscape beautification, improved or new parks and open space, community centers, fire stations, and the list goes on and on. Without tax incentives, a great many economic development driving improvements would likely not come to fruition.

Finally, tax incentives are instrumental in addressing New Jersey's affordable housing crisis. A tax incentive can fill the funding gap associated with renting or selling residential units below market rate. There are hundreds of affordable housing settlements coming through the courts, many of which use tax incentives to achieve economic feasibility. It is critical that New Jersey increase its affordable housing output both to stay economically competitive and to address long standing inequities in access to quality, affordable housing. Without tax incentives, the production of affordable housing in New Jersey will most certainly be stymied.

The general purpose of tax incentives is to provide an opportunity for developers to overcome the gap between what a project will cost and its projected income. By statute, such incentives should only be given to developers who prove that the cost of the construction are such that it makes the project incapable of being completed without the tax abatement/exemption. Even with such incentives, many successful redevelopment projects in New Jersey have operated at razor-thin margins.

Tax incentives are not one size fits all, as the current enabling legislation acknowledges by allowing municipalities to set a broad range of time and value terms that make the most sense to market and physical conditions of the development project. There is legislation (ACS A1571 & A1576) gaining traction in the New Jersey that would universally impose a 20 to 30 percent cost increase - through prevailing wage requirements - on all projects that receive tax incentives, regardless of the local context or economic feasibility.

While a laudable aspiration, the additional costs associated with prevailing wage will make many redevelopment projects economically infeasible. Large scale projects in high market value locations may be able to absorb the costs, especially those capable of coupling local incentives with more substantial state tax incentives (e.g. ERG & Grow, now Emerge and Aspire). For smaller scale projects using only local incentives, that 20 to 30 percent gap needs to be filled somehow for the project to move forward, if it can at all. It might mean that the municipality must increase the amount or extend the term of the incentive, increase the permitted density of the development, and/or eliminate or reduce infrastructure and community benefits expectations – all at the expense of property taxpayers. Even if a deal can be struck, the cost/benefit rational for the tax incentive may be politically untenable to the community's residents.

There is tremendous variability in market conditions and underlying costs that distinguish one development project from another, even within a single municipality. Towns are best suited to understand the physical barriers and financial dynamics of development within their own community; and have, thus far, used their redevelopment and tax incentive capacity to great social and economic benefit. The imposition of a staggering cost increase to the tune of 20 to 30 percent will have a significant detrimental impact on a municipality's ability to realize its economic development and revitalization goals. As a home rule state, New Jersey has already rested significant responsibility in its municipalities to shape their own economic destiny. Municipalities should, therefore, not be forced to absorb this additional cost burden that can only hamper their ability to grow and revitalize. If prevailing wage is a state priority, then the state should bear the cost burden by expanding the breadth and eligibility of its own tax incentive programs. In the meantime, the legislature should heed the old adage with regard to the existing tax incentive enabling legislation – if it ain't broke, don't fix it.

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