

RESOLUTION NO. 55-2021
Authorizing Special Tax Appeal Attorney
To Enter Into a Stipulation of Settlement
For the Tax Appeals Captioned Surfrider Beach Club, LLC v. Sea Bright Borough
Docket Nos. 001296-2016, 000020-2017, 001685-2018, 002460-2019 and
002431-2020

Councilmember Booker introduced and offered the following resolution for its adoption; seconded by Councilmember Birdsall:

WHEREAS, Surfrider Beach Club, LLC ("Taxpayer"), the owner and taxpayer of the property commonly known as Surfrider Beach Club and designated as Block 23, Lot 12 and Block 23, Lot 12.01 on the Sea Bright Borough Tax Map (the "Property"), filed appeals of their 2016, 2017, 2018, 2019 and 2020 tax assessments in the Tax Court of New Jersey, Docket Nos 001296-2016, 000020-2017, 001685-2018, 002460-2019 and 002431-2020; and

WHEREAS, the Borough Council met and considered the aforesaid tax appeals and the recommendations of its Tax Assessor and Special Tax Appeal Attorney, Martin Allen; and

WHEREAS, the Property was assessed at total tax assessments of \$8,450,000 on Block 23, Lot 12 for all of the years under appeal; and \$852,300 on Block 23, Lot 12.01 in 2016, \$852,700 in 2017, \$853,000 2018 and 2019, and \$853,100 in 2020; and

WHEREAS, the Taxpayer supplied an appraisal of the Property with an opinion that the market value of the Property should only be \$5,800,000 as of the 2016 tax year valuation date, October 1, 2015; and

WHEREAS, an acceptable settlement of the aforesaid tax appeals has been negotiated which results in the dismissal of the 2016, 2017, 2018, 2019 and 2020 tax appeals and an agreement to reduce the assessment in 2021 and 2022 to a total cumulative assessment in each of said years on the Property not to exceed \$7,907,600.00 subject to there being no sale of the Property for more than said sum, nor any change in the improvements at said Property prior to the Assessor setting those assessments, all as more particularly set forth in the Stipulation of Settlement which has been reviewed by the Borough Council; and

WHEREAS, the Freeze Act shall not apply with respect to the adjustments made to the assessments for tax year 2023 and 2024, as more particularly set forth in the Stipulation of Settlement which has been reviewed by the Borough Council; and

WHEREAS, the 2021 and 2022 adjustments to the assessments of the Property will not result in any refunds being paid, nor any credits being made to the Taxpayer's account by reason of these adjustments being prospective, and as to the 2021 adjustment, it being made by the Assessor filing a correction with the County Tax Board prior to the final assessment books being closed; and

WHEREAS, the aforesaid adjustments to assessments and settlement have no general application to other properties within the Borough because of the aforesaid specific fact situation; and

WHEREAS, the Borough will make this settlement with Surfrider Beach Club, LLC. without prejudice to its dealings with any other Borough taxpayer's request for tax assessment reduction; and

WHEREAS, the Borough Council have reviewed a copy of the proposed Stipulation of Settlement in these matters; and

WHEREAS, the Borough Council has considered the foregoing.

NOW, THEREFORE, BE IT RESOLVED by the Borough Council of the Borough of Sea Bright in the County of Monmouth, State of New Jersey, as follows:

1. The Borough's Special Tax Appeal Attorney, Martin Allen, is hereby authorized to execute a Stipulation of Settlement relative to the tax appeals of Surfrider Beach Club, LLC, Docket Nos. 001296-2016, 000020-2017, 001685-2018, 002460-2019 and 002431-2020; which settlements are more particularly described in the annexed Stipulation of Settlement and hold that Stipulation of Settlement in escrow until the Monmouth County Board of Taxation enters Judgment in accordance with that Stipulation and then he shall file the Stipulation with the Tax Court.
2. The settlements, as outlined above in the recitals to this Resolution and as further described in the annexed Stipulation of Settlement, shall be without prejudice to the Borough of Sea Bright's dealings with any other Borough taxpayers' requests for tax assessment reductions.
3. The Borough Tax Assessor is directed to allocate the settled amounts of the assessments between land and improvements in a manner which is in the best interest of the Borough of Sea Bright.


BE IT FURTHER RESOLVED that a copy of this Resolution be forwarded to the Borough of Sea Bright Tax Assessor and the Special Tax Appeal Attorney, Martin Allen.

Roll Call:	Birdsall,	Booker,	Catalano,	Keeler,	Lamia,	Leckstein
	Yes	Yes	Yes	Yes	Yes	Abstain

February 16, 2021

CERTIFICATION

I, Christine Pfeiffer, do hereby certify that the foregoing is a Resolution adopted by the Borough Council of the Borough of Sea Bright, County of Monmouth, State of New Jersey, at a Council meeting held on February 16, 2021.


Christine Pfeiffer, Borough Clerk

ZIPP & TANNENBAUM, LLC

PETER J. ZIPP*
pzipp@zipplaw.com

PAUL TANNENBAUM*
ptannenbaum@zipplaw.com

CHARLES APPLEBAUM
OF COUNSEL
capplebaum@zipplaw.com

MARC A. RASO
OF COUNSEL
mraso@zipplaw.com

ATTORNEYS AT LAW
280 RARITAN CENTER PARKWAY
EDISON, NEW JERSEY 08837

PHONE: 732-605-1000
FAX: 732-605-0700
generalmail@zipplaw.com

JOSEPH G. BURO*
jburo@zipplaw.com

CHERYL TENNANT HUMES*
chumes@zipplaw.com

MEGAN E. SASSAMAN**
msassaman@zipplaw.com

MICHAEL KURPIEWSKI
mkurpiewski@zipplaw.com

* MEMBERS NJ & PA BARS
** MEMBER NJ & NY BARS

January 26, 2021

Mr. Martin Allen, Esq.
DiFrancesco, Bateman, Kunzman, Davis, Lehrer & Flaum, P.C.
15 Mountain Boulevard
Warren, New Jersey 07059

Re: Surfrider Beach Club, LLC v. Sea Bright Borough
Block: 23, Lot 12.01; Ocean Avenue
Block: 23, Lot 12; 931 Ocean Avenue
Docket No.: 001296-2016; 000020-2017, 001685-2018; 002460-2019
002431-2020, Tax Year 2021 & 2022

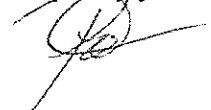
Dear Mr. Allen:

In accordance with the settlement reached between the parties, I have prepared and enclose herewith a Stipulation of Settlement covering tax years 2016, 2017, 2018, 2019, 2020, 2021 and 2022.

If same meets with your approval, kindly file through ecourts for the issuance of a judgment.

Should you have any questions, please do not hesitate to contact me.

Very truly yours,



PETER J. ZIPP
PJZ/sfq
Encl.

cc: Honorable Mala Sundar, P.J.T.C. (w/o encl.)(via ecourts)

following Paragraphs shall be considered an integral part of the Agreement, the consideration for which this Agreement, has, in part, been entered into by the parties.

6. The parties agree that the total cumulative Tax Assessments on the property known and designated as Block 23, Lot 12 and Block 23, Lot 12.01 on the Sea Bright Borough Tax Map and commonly known as the Surfider Beach Club (the "Property") shall not exceed \$7,907,600 for the 2021 tax year. The parties waive their rights to appeal these agreed upon total assessments in 2021, except to enforce the settlement agreed upon herein. Specifically, the parties agree that either the Taxing District and /or the Taxpayer will file an appeal to the Monmouth County Board of Taxation or the Tax Court of New Jersey on which Plaintiff and Defendant will agree to file a 2021 Stipulation of Settlement, or file a "Correction of Errors" with the Monmouth County Board of Taxation, for the assessments agreed upon herein. The agreements in this paragraph 6 are specifically contingent upon the following conditions which are integral terms of this agreement:

A) Plaintiff's representation by the signature of its attorney hereto that, as of the date the attorney signs the stipulation of settlement, there is no sale, and/or execution of a contract of sale for the Property for more than the agreed upon assessments; and

B) Prior to setting the 2021 final assessments, there has been "no change in value" of the Property (as that phrase has been defined and interpreted by the Courts pursuant to the Freeze Act, such as, by way of example, assessable additions or improvements to, substantial damage to, demolition of, and/or casualty to the Property); and

C) The Defendant's Tax Assessor will be authorized, pursuant to his independent Constitutional obligations, to impose any required omitted and/or added assessments, if warranted by other improvements made to the Property prior to the deadline for filing same in the tax year 2021, and if the Assessor does so, that the Plaintiff may, only in that event, appeal those omitted and/or added assessments.

The 2021 tax year agreed upon assessments shall NOT be the basis for application of the Freeze Act for tax year 2023, and the parties agree to waive the application of the Freeze Act for tax year 2023 to any judgment entered to enforce the agreed upon assessments pursuant to this Stipulation of Settlement.

7. The parties waive their rights to appeal the 2021 assessments except to enforce the assessments agreed upon herein. Provided the exceptions set forth in Paragraph 6 above are not applicable, in the event Plaintiff files an appeal in 2021 to enforce and/or implement the assessments agreed to in paragraph 6 above, and the Borough Tax Assessor continues to implement annual reassessments or revaluations of the Borough, the Plaintiff waives the Freeze Act for tax year 2023 as to any such judgment obtained in such appeal(s),

and therefore the Freeze Act shall not be applicable to tax year 2023 for any such judgment(s) issued by reason of any such appeal(s). Plaintiff acknowledges that Defendant has entered into this Stipulation of Settlement in part in consideration for this waiver of right to tax appeals, except as provided for herein, and this waiver of the Freeze Act for tax year 2023.

8. The parties agree that the total cumulative Tax Assessments on the property known and designated as Block 23, Lot 12 and Block 23, Lot 12.01 on the Sea Bright Borough Tax Map and commonly known as the Surfider Beach Club (the "Property") shall not exceed \$7,907,600 for the 2022 tax year. The parties waive their rights to appeal these agreed upon total assessments in 2022, except to enforce the settlement agreed upon herein. Specifically, the parties agree that either the Taxing District and /or the Taxpayer will file an appeal to the Monmouth County Board of Taxation or the Tax Court of New Jersey on which Plaintiff and Defendant will agree to file a 2022 Stipulation of Settlement at the assessments agreed upon herein. The agreements in this paragraph 6 are specifically contingent upon the following conditions which are integral terms of this agreement:

A) Prior to setting the 2022 final assessments, there is no sale, and/or execution of a contract of sale for the Property for more than the agreed upon assessments; and

B) Prior to setting the 2022 final assessments, there has been "no change in value" of the Property (as that phrase has been defined and interpreted by the Courts pursuant to the Freeze Act, such as, by way of example, assessable additions or improvements to, substantial damage to, demolition of, and/or casualty to the Property); and

C) The Defendant's Tax Assessor will be authorized, pursuant to his independent Constitutional obligations, to impose any required omitted and/or added assessments, if warranted by other improvements made to the Property prior to the deadline for filing same in the tax year 2022, and if the Assessor does so, that the Plaintiff may, only in that event, appeal those omitted and/or added assessments.

The 2022 tax year agreed upon assessments shall NOT be the basis for application of the Freeze Act for tax year 2023 and /or tax year 2024, and the parties agree to waive the application of the Freeze Act for tax year 2023 and tax year 2024 to any judgment entered to enforce the agreed upon assessments pursuant to this Stipulation of Settlement.

9. The parties waive their rights to appeal the 2022 assessments except to enforce the assessments agreed upon herein. Provided the exceptions set forth in Paragraph 8 above are not applicable, in the event Plaintiff files an appeal in 2022 to enforce and/or implement the assessments agreed to in paragraph 8 above, and the Borough Tax Assessor continues to implement annual reassessments or revaluations of the Borough, the Plaintiff

waives the Freeze Act for tax year 2023 and 2024 as to any such judgment obtained in such appeal(s), and therefore the Freeze Act shall not be applicable to tax year 2023 and 2024 for any such judgment(s) issued by reason of any such appeal(s). Plaintiff acknowledges that Defendant has entered into this Stipulation of Settlement in part in consideration for this waiver of right to tax appeals, except as provided for herein, and this waiver of the Freeze Act for tax year 2023 and 2024.

ZIPP & TANNENBAUM, LLC

BY:



1/26/2021

PETER J. ZIPP, ESQ.
Attorney for Plaintiff

Dated:

**DiFRANCESCO, BATEMAN, COLEY, YOSPIN,
KUNZMAN, DAVIS, LEHRER & FLAUM, P.C.**

BY:

MARTIN ALLEN, ESQ.
Attorney for Defendant

Dated: