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Grow NJ – The New Call To Action!

*The Editor interviews **Ted Zangari**, a Member of Sills Cummis & Gross. He is co-chair of the Firm's Real Estate Department, serves on the Firm's Management and Executive Committees, and leads the Firm's Redevelopment Law Practice Group as well as its Public Policy and Governmental Affairs Practice Group. He routinely assists businesses and developers in obtaining public financial assistance from state and local governments.*

Ted Zangari

Editor: Governor Chris Christie late last year signed into law the "Economic Opportunity Act of 2013," which is reported to have made sweeping changes to the state's public financial incentive programs. Tell us about this new law.

Zangari: The law collapsed four existing incentive programs aimed at attracting and retaining businesses into a single program. The new incentive, called "Grow NJ," reflects the best features of the previous programs and has already proved to be a powerful economic development tool for the state. The law also revised and expanded a relatively new incentive program for redevelopers, called "ERGG" (Economic Redevelopment Growth Grants), which essentially provides tax increment financing for shovel-ready projects that require a last dollop of funding to close a construction financing gap.

Editor: In September 2007 you convened the founding meeting of the Smart Growth Economic Development Coalition to develop a stimulus package of legislation – which ultimately included a working draft of a bill that became the starting point for the Economic Opportunity Act of 2013. Tell our readers about the work of the Coalition.

Zangari: Even before the recession hit, many of us in the business community felt we needed to attack two looming crises beyond our state debt and deficits – in the near-term, the alarming outmigration of businesses and people to lower-cost states and, in the longer term, assuming the state is able to reverse the outmigration trend, the lack of available land to house additional job and population growth. We set about to address the near-term crisis with a package of bills to make state government work better, faster and cheaper for its residents and businesses. The Grow NJ business incentive was part of that effort. At the same time, we began tackling an equally challenging longer-term crisis, the scarcity of available land. With national land planning groups predicting that New Jersey is on its way to becoming the first "built-out" state in the country – with fewer than a million developable acres remaining due to preservation areas and the like – we felt our state should be leading the national smart growth effort to rethink how we can more efficiently utilize, or redevelop, the land on which we've already built things through the centuries. The result was a series of bills to encourage compact, dense, vertical mixed-use projects in our suburban downtowns, in the central business districts of big cities, along waterways, on brownfields, and around commuter transit hubs. The ERGG redevelopment incentive was born out of that exercise. Nearly a dozen of our Coalition-drafted bills have become law, and we're working on a follow-up package of legislation right now, addressing maddening issues like the artificial constraints on the number of restaurant liquor licenses in each town and the frustrations of having 565 local governments.

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Editor: Why is Grow NJ proving to be such a powerful economic development tool?

Zangari: There are several reasons, but the most important is the program's use of a location-driven formula for calculating the incentive amount that's awarded to a business. First, the *region* within the state where a business is proposing to locate sets the base and maximum incentive amounts

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available – more in the case of sites in urban centers and distressed cities, less for sites in suburban towns, and even less in rural areas. Next, a business increases its incentive amount above the base amount by achieving any of the dozen or so available bonuses, several of which depend on a site's *specific* location. For example, bonus amounts are available if a business locates in a "deep poverty" census tract, or on a recently remediated brownfield, or near a mass transit station. Inherent in this flexible, location-driven formula is a recognition by the state that the business considering location options is "the customer" and should be given maximum freedom to choose the site that's right for its needs. This is an important mindset change, one that replaces sticks with carrots as a means to steer businesses towards various policy objectives – in fact, there's even a bonus for choosing a LEED Gold-rated facility or for using solar power to satisfy more than half of a business's electricity needs.

Editor: So how do the base amounts and applicable bonuses actually match up against competing states?

Zangari: Let me first make clear that public incentives only make a difference in the site selection decision-making process when all other factors between sites are roughly equal. A state can offer all the money in the world, but if its workforce is not adequately skilled and trained, or if its public infrastructure is subpar, or if its corporate tax structure is overreaching, then the business will simply not be interested in that jurisdiction.

Fortunately for New Jersey, the state is competitive in terms of many of the other factors that matter to businesses. But then we turn to the cost differential between states, and that's where New Jersey often comes up short *before* incentives are injected into the equation. There's no denying that land costs, property taxes, utility costs, etc. are often lower west and south of New Jersey. Under the former incentive programs, the state wasn't always able to overcome the cost differential, and occasionally went the other way and overcompensated some businesses. I see Grow NJ as the "Goldilocks" incentive program – not too stingy, not too generous. Indeed, during the first six months of its existence, the new program effectively closed the cost differential between states on nearly a dozen applications with which I've been involved – even in matters where the alternative site was located in the sunbelt. That's something that would not likely have happened before Grow NJ.

Editor: On the developer side, how does the ERGG program work?

Zangari: Economic Redevelopment Growth Grants provide construction gap financing when a project is shovel ready but doesn't sufficiently pencil out. The incentive can fund up to 20-40 percent of project costs, using 75 percent of the incremental new revenue streams, which may include any of nearly a dozen specified taxes such as hotel, sales and utility taxes. The developer must contribute at least 20 percent equity in the project, have an approved site plan and fully negotiated financial commitments, and demonstrate a modest rate of return, which the state determines based on the project's zip code. One of my clients just applied for an ERGG to move forward with a long-stalled proposed supermarket-anchored strip center in a distressed city that's considered an "urban food desert." Without an ERGG, the project would have returned a negative 2 percent and therefore would not have been built. With an ERGG, the strip center is projected to return a more reasonable rate of return, in the low teens.

Editor: **What else can a business, or a developer for that matter, obtain in the way of public incentives to make the numbers work on a proposed business relocation or expansion or a proposed development or redevelopment?**

Zangari: For projects being proposed on fallow land or in vacant, obsolete buildings – in other words, "areas in need of redevelopment" – we are often able to obtain a long-term property tax exemption or "PILOT" (payment-in-lieu-of-taxes) from the host municipality. And where the town is especially eager to gain a new or enhanced ratable, and the numbers justify an added incentive, a local public entity can issue bonds to fund construction and the town can allow all or a portion of the PILOT to pay off the bonds. A skeptic might question the necessity for a PILOT/RAB/Grow NJ or a PILOT/RAB/ERGG combination, but those of us who deal with sites that have unique added costs, such as environmental remediation or structured deck parking, know that the numbers simply don't work without a two- or three-layer cake of public financial assistance.

Editor: Speaking of skeptics, there are some who have criticized business incentives as a race to the bottom between states. Is this a valid criticism?

Zangari: As a taxpayer, I wish states didn't have to offer public incentives. But the reality is that there are not enough jobs to go around in this country and many states, including New Jersey, are suffering under the immense weight of debts and deficits and are therefore desperate to attract and retain businesses. This dynamic has unleashed a border war that will not soon go away, and it would be a huge mistake for a high-cost state like New Jersey to unilaterally disarm in the middle of this jobs war.