



# City of Newark

City Hall  
920 Broad Street  
Newark, New Jersey 07102

## Legislation Text

File #: 12-0993, Version: 1

**Dept/Agency:** Law

**Action:** ( ) Ratifying (X) Authorizing ( ) Amending

**Type of Service:** Confirming Intent

**Purpose:** Confirming that by operation of law and based upon the merger doctrine two (2) properties were merged and therefore foreclosed under the In Rem Tax Foreclosure.

**List of Properties:**

**(Address/Block/Lot/Ward)**

28-82 Barclay Street/2556/62/Central Ward

84-140 Barclay Street/2563/1/Central Ward

**Additional Information:**

Based on errors in the water billing records, 28-82 Barclay Street was not treated as merged and property is part of redevelopment agreement entered into by Resolution 7R3A(S)112911 with Old Third Ward Redevelopment, LLC.

**WHEREAS**, by Resolution #7RA(S-2)071685, the City of Newark granted a tax abatement (the "Tax Abatement") and authorized the execution of a financial agreement providing for a payment in lieu of taxes with Douglas Harrison Housing Corporation (the "Prior Redeveloper") relating to the following real properties owned by the Prior Redeveloper located in the Central Ward (the "Properties"):

Street Address	Block/Lot
1-55 Somerset Street	Block 2556/Lot 1
84-140 Barclay Street	Block 2563/ Lot 1
57-117 ½ Somerset Street	Block 2564/ Lot 76
28-82 Barclay Street	Block 2556/ Lot 62

**WHEREAS**, because the properties are contiguous and were under common ownership, based on the common law merger doctrine and because the financial agreement treated the Properties as one for tax purposes, the Properties were merged as a matter of law, however, this fact was never properly reflected in the City's tax records (i.e. the Properties retained separate tax block and lot identifiers); and

**WHEREAS**, the Prior Redeveloper defaulted in the performance of its obligations under the Tax Abatement and as a result, the City initiated an In Rem Tax Foreclosure of the Properties, ultimately obtaining a Final Judgment of In Rem Foreclosure, which was recorded in the Essex

County Clerk's Office on January 16, 2008 in Book 12112, Page 4421 (the "In Rem Foreclosure"); and

**WHEREAS**, based upon errors in the City's water billing records Block 2556, Lot 62 did not receive separate water bills, but rather such bills were included in the billing for Lot 1 and as a result a lien was not specifically issued against Lot 62 and the property located at 28-82 Barclay Street, Block 2556, Lot 62 (the "Clouded Property") was not named in the In Rem Foreclosure, however, because the Tax Abatement was the sole tax levied against the Clouded Property and because by operation of law it was merged with the Properties for all intents and purposes it should be deemed to have been foreclosed; and

**WHEREAS**, pursuant to Resolution #7R3-A(S)112911, the Municipal Council authorized the entry into and execution of a Redevelopment Agreement with Old Third Ward Redevelopment, LLC (the "Redeveloper") for the construction of: (i) approximately one hundred sixteen (116) units of deed restricted rental housing affordable to households whose income does not exceed 60% of the Essex County median adjusted for family size to be contained in two (2) distinct developments, the first an approximately sixty (60) unit stacked townhouse development for families (the "First Phase"), and the second an approximately fifty-six (56) unit elderly mid-rise development (the "Second Phase"); (ii) construct two (2) parks with a size equal to or greater than the square footage of the existing parks on the Property in accordance with the plan for the diversion of recreation and open space that is ultimately approved by NJDEP; and (iii) construct a sufficient number of parking spaces to accommodate the housing units and the replacement parks (the "RDA") (collectively, and as more specifically defined herein, the "Project"); and

**WHEREAS**, the title agent for the Redeveloper has requested that the Municipal Council adopt this resolution to confirm that the City of Newark maintains that based upon the merger doctrine and the fact that the only taxes levied against the Property were pursuant to the Tax Abatement, which was breached, the Clouded Property was merged with the Properties and therefore foreclosed under the In Rem Tax Foreclosure.

**NOW, THEREFORE, BE IT RESOLVED BY THE MUNICIPAL COUNCIL OF THE CITY OF NEWARK, NEW JERSEY, THAT:**

1. From and after the time of entry into the Tax Abatement the property located at 28-82 Barclay Street, Block 2556, Lot 62 in the Central Ward was and shall be deemed to have been merged with 84-140 Barclay Street, Block 2563, Lot 1.

2. By virtue of such merger, the Clouded Property shall be deemed to have been foreclosed under the In Rem Foreclosure.

3. A subsequent resolution shall be filed thereby amending Resolution #7R5-B091907 that authorized the 2007 foreclosure to include a recognition of the merger of Block 2556, Lot 62 into Block 2563, Lot 1.

### **STATEMENT**

This resolution confirms that by operation of law the property located at 28-82 Barclay Street, Block 2556, Lot 62 in the Central Ward was merged with 84-140 Barclay Street, Block 2563, Lot 1 and therefore was foreclosed upon when such property was the subject of a final judgment of In Rem Tax Foreclosure by the City of Newark.