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COURT OF APPEALS

STATE OF NEW YORK

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MATTER OF GREATER JAMAICA DEVELOPMENT  
CORP., et al.,

Respondents,

-against-

No. 108

NEW YORK CITY TAX COMMISSION, et al.,

Appellants.

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20 Eagle Street  
Albany, New York 12207  
June 02, 2015

Before:

CHIEF JUDGE JONATHAN LIPPMAN  
ASSOCIATE JUDGE SUSAN PHILLIPS READ  
ASSOCIATE JUDGE EUGENE F. PIGOTT, JR.  
ASSOCIATE JUDGE JENNY RIVERA  
ASSOCIATE JUDGE SHEILA ABDUS-SALAAM  
ASSOCIATE JUDGE LESLIE E. STEIN  
ASSOCIATE JUDGE EUGENE M. FAHEY

Appearances:

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Official Court Transcriber

1 CHIEF JUDGE LIPPMAN: Number 108.

2 (Pause)

3 CHIEF JUDGE LIPPMAN: Okay, counselor, you  
4 want any rebuttal time?

5 MR. D'ORAZIO: Two minutes, Your Honor.

6 CHIEF JUDGE LIPPMAN: Two minutes. You're  
7 on. Go ahead.

8 MR. D'ORAZIO: Thank you. May it please  
9 the court. My name is Vincent D'Orazio. I am an  
10 assistant corporation counsel in the Office of  
11 Zachary W. Carter, Corporation Counsel of the City of  
12 New York, attorney for respondents-appellants here.

13 CHIEF JUDGE LIPPMAN: Counsel, what's the  
14 significance of the IRS designation of this as  
15 charitable?

16 MR. D'ORAZIO: Pursuant to the rulings of  
17 this court, it has no significance in this matter.

18 CHIEF JUDGE LIPPMAN: Even a presumptive  
19 one?

20 MR. D'ORAZIO: It - - - first of all, the  
21 IRS designation, you're talking about 501(c)(3)  
22 status by the Internal Revenue Service; that's for  
23 income tax purposes, and it's pursuant to a federal  
24 statute that is much more expansive than 420-a.

25 CHIEF JUDGE LIPPMAN: The difference is

1 different definitions of charitable, or what is it?

2 MR. D'ORAZIO: Yes, 501(c)(3) has ten  
3 categories of what it considers charitable. 420-a  
4 has five categories that it considers to be mandatory  
5 as - - -

6 JUDGE STEIN: So a court can't even  
7 consider that?

8 MR. D'ORAZIO: You - - - what you - - -  
9 what you have is you can - - - under 501(c)(3), there  
10 were two to three categories that overlap with the  
11 420-a categories. But the notion of presumptive  
12 entitlement is much too far and much too extreme  
13 because you have categories in 501(c)(3) that are not  
14 covered in 420-a.

15 JUDGE READ: What made you change your mind  
16 about this? Why did you rescind it?

17 MR. D'ORAZIO: The decision to grant the  
18 exemption was made in error, much as in the same  
19 posture that the Lackawanna case came to this court.  
20 There were three circumstances in which a revocation  
21 may occur: change in usage, change in law, or - - -  
22 or error.

23 CHIEF JUDGE LIPPMAN: Once you rescind it,  
24 then it's your burden, right - - -

25 MR. D'ORAZIO: It is - - -

1 CHIEF JUDGE LIPPMAN: - - - to show that -  
2 - -

3 MR. D'ORAZIO: That's correct, Your Honor.

4 CHIEF JUDGE LIPPMAN: - - - it should be  
5 taxed?

6 MR. D'ORAZIO: It's the burden of the  
7 municipality to show why - - -

8 CHIEF JUDGE LIPPMAN: But why should it be  
9 taxed in this situation? What's the crux of your  
10 argument?

11 MR. D'ORAZIO: Because - - - because it is  
12 - - - the parking lots and - - - serve neither a  
13 charitable purpose nor a charitable use, under the  
14 case law in - - - in New York State.

15 CHIEF JUDGE LIPPMAN: You would acknowledge  
16 it serves a general positive public - - -

17 MR. D'ORAZIO: Absolutely, Your Honor, and  
18 there - - -

19 CHIEF JUDGE LIPPMAN: - - - public benefit?

20 MR. D'ORAZIO: And therein lies the  
21 problem. As the Department of Finance stated in its  
22 revocation notice, the - - - the parking facilities  
23 serve a valuable public purpose. It's quite another  
24 thing to say that it qualifies for a mandatory tax  
25 exemption. That - - -

1                   JUDGE STEIN: Is there any significance to  
2 the fact that the City encouraged them to buy this  
3 property and - - - and - - - and contributed a lot of  
4 money to - - - to the development of this property,  
5 as to what - - - as to what the City believed - - -

6                   MR. D'ORAZIO: Not really, Your Honor,  
7 because whatever incentives the City provided - - -  
8 for example, one of the lots, the City and Greater  
9 Jamaica worked together to get a federal grant to  
10 construct the parking lot. Another parking lot, it  
11 was funded through EDC and IDA tax-exempt bonds.

12                   JUDGE STEIN: Well, it certainly would  
13 establish that there's a public benefit to it, or  
14 that at least - - -

15                   MR. D'ORAZIO: That - - -

16                   JUDGE STEIN: - - - that the City thought  
17 that there was a public benefit.

18                   MR. D'ORAZIO: But this gets to the point  
19 that it may serve a public purpose, but certainly not  
20 every time the City cooperates, something is going to  
21 ripen into a real property tax exemption.

22                   JUDGE ABDUS-SALAAM: Counsel, how is this  
23 different from a hospital running a parking lot and  
24 perhaps giving a discount to some people who park  
25 there, but that's considered a charitable - - - the

1 parking lot is considered a charitable purpose of the  
2 hospital, as opposed to this economic development  
3 corporation?

4 MR. D'ORAZIO: It's - - - the uses in the  
5 cases where you have hospital parking lots, the  
6 hospital parking lot is found incidental to the  
7 functioning of the hospital. In other words, in  
8 Matter of Ellis v. Schenectady, you had a parking lot  
9 that was not open to the public. It was limited to  
10 the patients, the staff at the hospital, but there  
11 was a very nominal charge of twenty-five cents, and  
12 if you couldn't afford it, it was free; the parking  
13 was free.

14 There were two other cases, Vassar Bros.  
15 and Matter of St. Francis v. Taber, in which the  
16 parking - - - part of the parking was found  
17 incidental to the hospital's purpose. But in both  
18 those cases, interestingly enough, in the parking  
19 lots there were spaces reserved for a medical  
20 building that had a private medical practice. And  
21 what the courts did in those cases is that those  
22 spaces that were dedicated to the private medical  
23 practice were taxed.

24 JUDGE STEIN: But here, there's no question  
25 that Greater Jamaica Development Corporation is a

1 charitable organization that does charitable things.  
2 Do - - - do you agree with that?

3 MR. D'ORAZIO: In the abstract, but what -  
4 - - what the court has to focus on, and what the  
5 court has to look at - - -

6 JUDGE STEIN: But isn't the question then  
7 whether this was incidental to those purposes,  
8 because there's also no question that whatever profit  
9 is made off the parking goes to Greater Jamaica; it's  
10 not going into somebody's pocket.

11 MR. D'ORAZIO: There - - - there were two -  
12 - - there were two an - - -

13 JUDGE FAHEY: That's an important point  
14 that Judge Stein brought up, because I think that  
15 distinguishes it from the Lackawanna case where they  
16 had a for-profit tenant.

17 MR. D'ORAZIO: Right.

18 JUDGE FAHEY: So go ahead; answer the  
19 question.

20 MR. D'ORAZIO: But Judge Fahey, to take  
21 that point, I - - - I think it - - - it does  
22 distinguish it, but ultimately, if the distinction  
23 that's being argued is that Greater Jamaica could do  
24 directly what Lackawanna could not do indirectly,  
25 that is, lease and have a for-profit operation - - -

1 JUDGE FAHEY: Well, if they leased it to  
2 somebody else who was running it at a market-rate  
3 parking lot, you might have an argument. But it - -  
4 - it seems to me much more in line with - - - with  
5 what Judge Abdus-Salaam said, that it's similar to  
6 hospital rent.

7 MR. D'ORAZIO: Right, and I think the two  
8 other considerations that you have to look at is that  
9 this court has continually held that it's the actual  
10 and physical use of property that you look at when  
11 you exempt property from taxation for one or more  
12 charitable purposes. And if - - - continuing the  
13 theme of what was argued earlier, if it looks like -  
14 - - like a commercial operation and it smells like a  
15 commercial operation - - -

16 JUDGE FAHEY: I think your - - -

17 MR. D'ORAZIO: - - - it's a commercial  
18 operation.

19 JUDGE FAHEY: You know, your cases talk  
20 about the Swedenborg Foundation and the - - -

21 MR. D'ORAZIO: That's correct.

22 JUDGE FAHEY: - - - Association of the City  
23 Bar of New York (sic), and those, I think you can go  
24 to the purpose there and talk about whether or not  
25 there's a charitable purpose. I think you're on a

1 much tougher road here to argue that there's not a  
2 charitable purpose here and a public benefit.

3 MR. D'ORAZIO: There - - - the only way - -  
4 - you cannot say there was a charitable purpose, and  
5 if you look at the decision of the Second Department,  
6 how you get to that point is that it's a two-step  
7 process. One, they introduce the Internal Revenue  
8 Code, 501(c)(3) status, and there they say it's - - -  
9 it's presumed to be entitled - - -

10 JUDGE FAHEY: So - - -

11 MR. D'ORAZIO: - - - to a mandatory  
12 exemption.

13 JUDGE FAHEY: - - - you're relying on the  
14 Third Department case, Plattsburgh?

15 MR. D'ORAZIO: Yeah.

16 JUDGE FAHEY: Is that - - -

17 MR. D'ORAZIO: And if you look at what the  
18 Third Department did, with the Doctrine of  
19 Presumptive Entitlement - - -

20 JUDGE FAHEY: Um-hum.

21 MR. D'ORAZIO: - - - which had its genesis  
22 in a default case and no consideration of tax  
23 consequences - - -

24 JUDGE FAHEY: So the thing is - - - not to  
25 cut you off, but I don't read that case as

1           dispositive; I think it's just one of the factors  
2           that should be considered. That's the way I read  
3           Plattsburgh.

4                   MR. D'ORAZIO: The Plattsburgh case, Your  
5           Honor?

6                   JUDGE FAHEY: Yeah.

7                   MR. D'ORAZIO: Our contention is that  
8           Plattsburgh was incorrectly decided as well.

9                   CHIEF JUDGE LIPPMAN: Let me ask you a  
10          question.

11                   MR. D'ORAZIO: Yes.

12                   CHIEF JUDGE LIPPMAN: If you had the  
13          parking lot, and it said on it, all over the place,  
14          the monies that come in for this parking are - - -  
15          will go to help children and widows and - - - and all  
16          kinds of charitable purposes, and it says it on the  
17          parking lot, that's - - - that - - - that would be  
18          okay, right?

19                   MR. D'ORAZIO: No, it would not. Pursuant  
20          to - - -

21                   CHIEF JUDGE LIPPMAN: Not? Why wouldn't  
22          it?

23                   MR. D'ORAZIO: No, in the matter of  
24          Stuyvesant Thrift Shop, this court held that a thrift  
25          shop that was operated, and it was held by eight - -

1 - that the members were eight charitable  
2 organizations, and these charitable organizations  
3 received the proceeds from the thrift shop, this  
4 court held that that would not be a charitable use of  
5 the property.

6 JUDGE RIVERA: So is your distinction that  
7 if a charity runs a business to raise money, and that  
8 business is located on real property, they've got to  
9 pay that real property tax?

10 MR. D'ORAZIO: Yes, Your Honor. The - - -

11 JUDGE RIVERA: That's where you're drawing  
12 the line?

13 MR. D'ORAZIO: Yeah.

14 JUDGE RIVERA: That that's the difference  
15 between the hospital cases too; they sort of have  
16 these parking spaces to facilitate people going to  
17 the hospital.

18 MR. D'ORAZIO: And - - - and it's - - - and  
19 it's also consistent with the matter of Adult Home v.  
20 Erie (sic) and the companion case in that litigation,  
21 where Judge Smith noted that you would have to look  
22 at what exactly is going on on the property itself.  
23 And this was in the context of the recap - - -

24 CHIEF JUDGE LIPPMAN: So even though the  
25 parking lot is just operated incidental to the

1 charity - - - in other words, the only purpose for  
2 the parking lot is to help the children, or whatever  
3 the cause is, doesn't matter; it's - - - you look at  
4 - - - at the parking their cars rather than where the  
5 money goes to?

6 MR. D'ORAZIO: But - - - but Your Honor,  
7 the key is incidental - - - incidental to what - - -

8 CHIEF JUDGE LIPPMAN: Why is - - -

9 MR. D'ORAZIO: There is no other incidental  
10 main charitable purpose here. The parking lots are -  
11 - - are basically the use that the property is used  
12 for.

13 CHIEF JUDGE LIPPMAN: Yeah, but - - -

14 MR. D'ORAZIO: If, in fact, the argument -  
15 - -

16 CHIEF JUDGE LIPPMAN: - - - but the only  
17 purpose, let's say, for the parking lot is to feed  
18 hungry children; that's the only reason for the  
19 parking lot. They're not helping, let's say, for the  
20 sake here, the commercial viability of the  
21 neighborhood. It doesn't matter?

22 MR. D'ORAZIO: No, Your Honor. It - - -  
23 you would have to look - - - and as I say, in matter  
24 of Adult Homes v. Erie (sic), the issue was that the  
25 municipality contended that the particular housing

1           that homeless and drug addicted and alcohol addicted  
2           were getting was at market rates. And what Judge  
3           Smith said, it doesn't matter that they're getting  
4           market rates; you have to look at what they're doing,  
5           what's going on on the property. And that was the -  
6           - - the dividing line, as was the Stuyvesant Thrift  
7           Shop case. You can't have - - - Salvation Army v.  
8           Ellicott is another example of that, where the Fourth  
9           Department said that what distinguishes the Salvation  
10          Army is not that they're running a thrift shop. The  
11          main purpose is not the commercial operation of the  
12          thrift shop; it's the help in terms of work and rehab  
13          for the population they serve.

14                         JUDGE STEIN: So if this - - -

15                         MR. D'ORAZIO: That's the purp - - -

16                         JUDGE STEIN: - - - parking lot was owned  
17          by Greater Jamaica rather than by Jamaica First  
18          Parking, we wouldn't be here?

19                         MR. D'ORAZIO: Yes, we would.

20                         JUDGE STEIN: Well - - -

21                         MR. D'ORAZIO: The use - - - there is no  
22          charitable purpose - - - incidental charitable  
23          purpose here. The - - - the purpose of the parking  
24          lot is to improve the business district in Jamaica  
25          and the develop - - -

1 JUDGE RIVERA: Because you run a business  
2 to make money, and it's to run a business so that the  
3 other businesses make money, is it not?

4 MR. D'ORAZIO: But that would not - - -

5 JUDGE RIVERA: What are they doing with  
6 this money that they get from this parking lot?

7 MR. D'ORAZIO: Right, but that would not -  
8 - -

9 JUDGE RIVERA: Because they're making a  
10 profit; they're not just paying for the parking lot  
11 space.

12 MR. D'ORAZIO: Right, but that would not be  
13 a charitable purpose, and - - -

14 JUDGE RIVERA: Yes, I understand that's  
15 your point, but I'm trying to just clarify what your  
16 distinction is. Your distinction is if you're  
17 running a business to raise money, which you may use  
18 for other purposes, that's where you draw the line.

19 MR. D'ORAZIO: Yeah, and that - - - and  
20 that's where the - - -

21 JUDGE RIVERA: That gets taxed, or the  
22 property that it's located on gets taxed.

23 MR. D'ORAZIO: Right, and that's - - - and  
24 that's where the cases of - - - of this court - - -

25 CHIEF JUDGE LIPPMAN: Okay, counsel. Let -

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- -

MR. D'ORAZIO: Thank you, Your Honor.

CHIEF JUDGE LIPPMAN: You'll have your rebuttal. Let's hear from your adversary.

MR. BLUM: Chief Judge Lippman, may it please the court.

CHIEF JUDGE LIPPMAN: Counselor, do you agree that where you run the parking lot, and the monies were to go directly to - - - to feed little children, that would - - - that that's the test is - - - that that can't be charitable?

MR. BLUM: That that can't be - - -

CHIEF JUDGE LIPPMAN: Do you agree with your adversary that - - - that it should be taxed even in that situation?

MR. BLUM: No.

CHIEF JUDGE LIPPMAN: If you ran the parking lot just to feed hungry children.

MR. BLUM: So - - - well, if - - - if the purpose of the charity - - - so if the parking had nothing to do with feeding the hungry children, and it was just taking revenue in and paying for meals, that's a different case. I agree with - - - I agree that that is not our case, and then it would be taxed. But that's not our case. And - - - and what

1 - - - what - - - as Judge Stein said, the - - -

2 CHIEF JUDGE LIPPMAN: What distinguishes  
3 your case? Are you saying that improving the  
4 business environment in - - - in Jamaica makes it  
5 charitable?

6 MR. BLUM: A number of things distinguish  
7 our case. First, as Judge Stein said in the  
8 beginning, the history of these lots, of these  
9 facilities, and how the City worked with Greater  
10 Jamaica for many years, and - - - and we did this at  
11 the - - - in effect, at the behest of the City.

12 CHIEF JUDGE LIPPMAN: Yeah, but that didn't  
13 make it charitable, in and of itself, did it?

14 MR. BLUM: No, no, but that shows that  
15 there was a public benefit and a - - - and that the -  
16 - -

17 CHIEF JUDGE LIPPMAN: But is public benefit  
18 enough?

19 MR. BLUM: Public benefit alone is not  
20 enough, but it shows that the - - - the parking  
21 facilities were reasonably incidental to our - - - to  
22 Greater Jamaica's public - - - the good - - - the  
23 public good of - - -

24 JUDGE RIVERA: They're reasonably  
25 incidental to that area of Jamaica where you've got a

1 business - - - it's a commercial enterprise. I mean,  
2 this is a commercial enterprise, and you've got  
3 parking lots to - - - to make sure that people come  
4 to that commercial enterprise. You may be doing good  
5 things with the money, and with having a vital  
6 commercial enterprise in the neighborhood, but isn't  
7 that the point of these area - - -

8 MR. BLUM: Then - - -

9 JUDGE RIVERA: - - - and the City might be  
10 interested in that kind of economic development?

11 MR. BLUM: The point is that without those  
12 parking facilities, we cannot - - - Greater Jamaica  
13 cannot do what it is char - - -

14 JUDGE PIGOTT: Why don't you open a couple  
15 of grocery - - -

16 MR. BLUM: - - - what its charities - - -

17 JUDGE RIVERA: Well, what's to do?

18 JUDGE PIGOTT: Can you open a couple of  
19 grocery stores then?

20 MR. BLUM: Excuse me?

21 JUDGE PIGOTT: Can you do a couple of  
22 grocery stores?

23 MR. BLUM: No, we could - - -

24 JUDGE PIGOTT: How about a sports bar?

25 MR. BLUM: We could not do what they did in

1 Lackawanna. That is a - - -

2 JUDGE PIGOTT: Well, my point is, I mean,  
3 you're saying - - - you know, this probably isn't  
4 true, but you've got some guy across the street who's  
5 got an open parking lot, and he's charging ten  
6 dollars a day, and you guys say we're going to be  
7 something, we're going to be charitable, we're going  
8 to run him out of business, because we're going to  
9 open a parking lot and we're going to make it twenty-  
10 five cents a day.

11 MR. BLUM: If those were the facts, that  
12 might be a different situation. The facts here were  
13 that, historically, the City could not maintain  
14 these. The Department of Transportation tried to run  
15 these facilities; they couldn't do it. They  
16 understood that they needed those - - -

17 JUDGE RIVERA: Yeah, but then - - -

18 MR. BLUM: - - - in this community.

19 JUDGE RIVERA: Okay, but that's the public  
20 benefit aspect of it. Where is the charitable part?  
21 Let me - - - let me try to define it. What - - -  
22 what is done with the money that comes in?

23 MR. BLUM: Okay. So - - -

24 JUDGE RIVERA: Because if you really wanted  
25 people to come in, you'd just make it free. But so



1 creating parking for the Jamaica Arts Center, that we  
2 also - - -

3 JUDGE PIGOTT: Is that important?

4 MR. BLUM: That's extremely important. We  
5 cannot - - - the record - - -

6 JUDGE PIGOTT: So it depends on who's  
7 parking there as to whether or not this is taxable?

8 MR. BLUM: No, the undisputed facts show  
9 that we could not revitalize this area. And this is  
10 in - - -

11 JUDGE ABDUS-SALAAM: How is that incidental  
12 - - - assuming this is - - - you're trying to - - -  
13 it seems to me you're trying to fit this into the  
14 hospital situation, where it's charitable, so how is  
15 it incidental to the charitable purpose of Jamaica -  
16 - - Greater Jamaica Development?

17 MR. BLUM: Because when we - - - years ago,  
18 when Greater Jamaica was even being formed and  
19 working with the City on what to do in that area,  
20 there was a decision, and it wasn't - - - it wasn't a  
21 profit-driven decision, to - - - that parking was one  
22 of the things that was lacking in that area. And  
23 that's what the record shows, and that's - - -

24 JUDGE PIGOTT: If the City had kept - - -

25 MR. BLUM: - - - what's undisputed when



1 public bonds, correct, which - - - which shows from -  
2 - - shows us that there really was a public benefit  
3 to this.

4 JUDGE RIVERA: Right, and now you've got a  
5 business that's quite profitable. And I understand  
6 your point; you want to take the revenue from the  
7 profitable business to use for the charitable  
8 purposes. And they say, okay, but you've got to pay  
9 the tax on the property which this wonderfully  
10 profitable business is located, and we're happy we  
11 helped you get it to that place.

12 MR. BLUM: Well, let me just say one thing  
13 about that. Their reference to the 990, to our tax  
14 return, was not before the Department of Finance. It  
15 was not before Justice Siegal in the Supreme Court.  
16 It was not before the Second Department. That's new  
17 in this court. If they had put at issue, and they  
18 never did, the finances of Greater Jamaica or of  
19 Jamaica First, you would have heard a very different  
20 story - - -

21 JUDGE RIVERA: But you said you - - -

22 MR. BLUM: - - - in the record, because the  
23 - - -

24 JUDGE RIVERA: But you said you make  
25 revenues that get distributed, that otherwise those

1 other entities, the cultural entity you referred to,  
2 would not exist but for running this parking lot. So  
3 you - - - you're saying, everything above cost goes  
4 to make that all possible. Otherwise, what's the  
5 point of the parking lot?

6 MR. BLUM: So I agree with that, but my  
7 point is that if we were to look at the total  
8 financial picture, which was not - - - never put at  
9 issue, and the Department of Finance never even made  
10 a mention of, and by doing so, what they're trying to  
11 do is show that this is really a pretense, and there  
12 is no evidence of that, that the commercial patina -  
13 - -

14 CHIEF JUDGE LIPPMAN: But you agree, in the  
15 broadest strokes, that public benefit is different  
16 than it being tax exempt, right?

17 MR. BLUM: I would agree that - - - that  
18 public benefit alone is not enough for tax exemption.  
19 I think that is a factor. I think, you know, the - -  
20 - relieving government burden is a factor.

21 JUDGE ABDUS-SALAAM: Well, that's what  
22 happened in Lackawanna. So why is this different  
23 than Lackawanna? In Lackawanna, the organization,  
24 through its leasing the property, was attempting to  
25 help the very economically depressed community. So

1 why isn't this the same, or what makes it different?

2 MR. BLUM: So, one is clearly the history  
3 of these properties, and the City's - - - the City's  
4 involvement there. But also, in Lackawanna, it was  
5 very clear that Lackawa - - - the Lackawanna  
6 Community Development Corporation was not using the  
7 property. That was the - - - that's the term - - -  
8 that's the - - -

9 JUDGE PIGOTT: Well, you've got an LLC now  
10 that's using this property, and if you've got - - - I  
11 mean, does it make a difference if you've got people  
12 with Mercedes Benzes and rich cars going into the art  
13 center and, you know, you're subsidizing their  
14 ability to go to the art center. And that would be a  
15 silly argument, it seems to me. But what we said in  
16 Lackawanna is, you put somebody in there that  
17 benefits from the fact that you're tax exempt, and  
18 we're not going to allow it.

19 MR. BLUM: Were this a function of the  
20 affluence of people going there, we wouldn't be here,  
21 Your Honor. This is a - - - this a neighborhood - -  
22 - and the - - - and the record is undisputed on this  
23 - - - that has never had that kind of clientele or -  
24 - - or patrons in - - - going to these areas.

25 CHIEF JUDGE LIPPMAN: Yeah, but, counsel, I

1 get it, and we get it, I think, that this is a good  
2 thing that's being done. But what allows you - - -  
3 what allows you to have the tax exemption? It's a  
4 public benefit, it's great, you're terrific, we all  
5 agree; where's the tax exemption?

6 MR. BLUM: So - - - so the tax exemption is  
7 because this is an integral, intimate part of what  
8 our whole charity does and - - -

9 JUDGE PIGOTT: So you're taking - - -  
10 you're taking - - - essentially taking tax money away  
11 from the City and saying we - - - we can use it  
12 better.

13 MR. BLUM: Any - - - any tax exemption - -  
14 -

15 JUDGE PIGOTT: Right.

16 MR. BLUM: - - - does that.

17 JUDGE PIGOTT: Right.

18 MR. BLUM: And just like the Merry-Go-Round  
19 case did that and - - - and just every case does - -  
20 - any tax exemption does that. This way, the - - -  
21 the money is being kept in the neighborhood.

22 JUDGE PIGOTT: Well, parking ramps seem so  
23 odd. I mean, you know, every city needs more parking  
24 ramps. And - - - and if Albany could say, you know,  
25 we're going to give all our parking ramps to somebody

1 and they'll get them off us, and - - - and they could  
2 make money on them, somebody would get upset.

3 MR. BLUM: But this is a - - - the fact  
4 pattern here is unique. This is a unique area with a  
5 unique history, and these parking facilities have a  
6 unique development history that you're not - - -

7 JUDGE RIVERA: And is it your position that  
8 without this - - - without the tax exemption, that  
9 you can't have these parking lots?

10 MR. BLUM: Well - - -

11 JUDGE RIVERA: They will go into disrepair,  
12 someone else will pick them, you won't be able to run  
13 them. What - - -

14 MR. BLUM: Well - - -

15 JUDGE RIVERA: I'm a little confused.

16 MR. BLUM: Our position is that we're not  
17 running these to maximize revenue. We've had - - -  
18 the records - - - this is in the record. We could  
19 sell these properties and get in revenue, and more  
20 than we do from parking, but we don't do that because  
21 we believe that this is vital to keeping this  
22 neighborhood or - - - or trying to rebuild this  
23 neighborhood.

24 JUDGE STEIN: Can I ask you a quick burden  
25 question? So we know that the City has the burden

1 because they - - - they're trying to take away this  
2 exemption, but is it necessary to show that the  
3 City's decision is arbitrary and capricious?

4 MR. BLUM: I think they haven't met their  
5 burden by showing the - - - by showing that the  
6 exemption was improperly granted. Now, by - - - I  
7 take that to mean that that - - - that the ruling is  
8 therefore arbitrary and capricious. But they - - -  
9 they have to - - - they have a burden - - -

10 CHIEF JUDGE LIPPMAN: Okay, counselor.  
11 Thanks a lot.

12 MR. BLUM: Thank you.

13 CHIEF JUDGE LIPPMAN: Counselor, rebuttal?

14 MR. D'ORAZIO: Your Honor, if there are no  
15 further questions, I would rest on the record.

16 JUDGE PIGOTT: Well, doesn't he make a  
17 point? I mean, they all were - - - five parking lot  
18 - - - you know, at first blush, this seems really  
19 something, but you said they're tax exempt, and now  
20 you've changed your mind. And the burden's on you,  
21 right, to show - - -

22 MR. D'ORAZIO: Right, and - - - and I think  
23 - - -

24 JUDGE PIGOTT: - - - what happened - - -  
25 what was going on here now either has changed or

1           there's some reason why it's no longer tax exempt.

2                   MR. D'ORAZIO: It was error, Your Honor,  
3           that the - - - the properties were carried as  
4           charitable for four years. They note in the  
5           Lackawanna case that the particular error there went  
6           on for twelve years. So errors do occur, and I think  
7           the suggestion, in some ways, that petition is a  
8           positive in terms of what changed analysis. It's  
9           almost a backdoor estoppel argument; if you caught  
10          the mistake - - -

11                   JUDGE RIVERA: You made this - - -

12                   MR. D'ORAZIO: - - - but you really can't  
13          change it.

14                   JUDGE RIVERA: You made this decision post-  
15          Lackawanna?

16                   MR. D'ORAZIO: The - - - I'm sorry, which  
17          decision?

18                   JUDGE RIVERA: I'm sorry, the decision to  
19          no longer allow them to claim tax exemption - - -

20                   MR. D'ORAZIO: Yes, it was post - - -

21                   JUDGE RIVERA: - - - post Lackawanna?

22                   MR. D'ORAZIO: It was post-Lackawanna.

23                   JUDGE RIVERA: Did that have - - -

24                   MR. D'ORAZIO: And I would also note that  
25          the decision by the Department of Finance, in the

1 record at page 75 and 76, basically went through four  
2 grounds as to why the exemption was improperly  
3 granted and was in error. And many of those grounds  
4 rely on Court of Appeals precedent.

5 CHIEF JUDGE LIPPMAN: Okay, counselor.

6 Thanks.

7 MR. D'ORAZIO: Thank you, very much.

8 CHIEF JUDGE LIPPMAN: Thank you. Thank you  
9 both.

10 (Court is adjourned)

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C E R T I F I C A T I O N

I, Sharona Shapiro, certify that the foregoing transcript of proceedings in the Court of Appeals of Matter Of Greater Jamaica Development Corp., et al. v. New York City Tax Commission, et al., No. 108, was prepared using the required transcription equipment and is a true and accurate record of the proceedings.

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