



Attorney-Client privileged
MEMORANDUM

TO: HON. GILBERT J. PIAQUADIO, SUPERVISOR
TOWN BOARD MEMBERS

FROM: MARK C. TAYLOR, ATTORNEY FOR THE TOWN

RE: SETTLEMENT OF TAX CERTIORARI (2017, 2018, 2019);
ORCHARD HILLS LANDINGS LLC (NS OAK STREET)
OUR FILE NO. 800.24

DATE: JULY 9, 2020

P: 845.562.9100
F: 845.562.9126
655 Little Britain Road
New Windsor, NY 12553
P.O. Box 2280
Newburgh, NY 12550

ATTORNEYS

David L. Rider
Charles E. Frankel
Michael J. Matsler
Mark C. Taylor
Deborah Weisman-Estis
M. Justin Rider
Donna M. Badura

M. J. Rider
(1906-1968)
Elliott M. Weiner
(1915-1990)

COUNSEL

Stephen P. Duggan, III
John K. McGuirk
(1942-2018)

OF COUNSEL

Craig F. Simon
Irene V. Villacci

Enclosed are copies of a letter from Cathy Drobny, Esq. of E. Stewart Jones, Hacker Murphy, the Town's special counsel for tax certiorari matters, regarding the above referenced proposed real property tax appeal settlement, a proposed Stipulation and Order of Settlement, which has been recently revised from the one which originally was enclosed by Ms. Drobny to incorporate refund repayment terms negotiated by and for the Marlboro School District and charts showing the claimed refund liability and the approximate refunds that will be due from the taxing jurisdictions under the proposed settlement. Also enclosed is a map showing the location of the tax parcel containing an apartment complex off NYS Route 9W and NS Oak Street which is the subject of the proceedings.

The settlement provides for a reduction in the assessed value for 2017 by \$2,385,300 from \$13,320,000 to \$10,934,700, a reduction in the assessed value for 2018 by \$2,525,000 from \$13,320,000 to \$10,795,000, a reduction in the 2019 assessed value by \$2,012,500 from \$12,236,000 (note the assessed value had been reduced that year from the previous year's) to \$10,223,500. Additionally, the 2020 assessed value will be reduced by either action of the BAR or pursuant to the Order by \$2,726,875 from \$12,236,000 to \$9,509,125. The 2020 reduction will not result in refund liability for the taxing jurisdictions. The Stipulation and Order specifies that the provisions of RPTL Section 727 apply, holding the Assessed Value at \$9,509,125 for the 2021, 2022 and 2023 assessment rolls, subject to the statutory exceptions.

The charts indicate that the refund liability for the Town (including Highway but not including special districts and the Fire District) for the reductions in 2017, 2018 and 2019 Assessed Value will be approximately \$103,589 under the settlement.

Also attached is a proposed resolution which would authorize the Settlement.

cc: Joseph P. Pedit, Town Clerk
Lori Coady, Assessor (via e-mail)
Deborah Smith, Receiver of Taxes (via e-mail)
Ronald Clum, Town Accountant (via e-mail)
Cathy L. Drobny, Esq. (via e-mail)

May 5, 2020

VIA E-MAIL - mtaylor@riderweiner.com

Mark C. Taylor, Esq.
Rider, Weiner & Frankel, P.C.
P.O. Box 2280
Newburgh, New York 12550

Re: Orchard Hills Landing LLC v. Town of Newburgh
Index Nos. 2017-EF005557, 2018-EF007884, 2019-EF005775
Our File No. 5018.082

Dear Mr. Taylor:

Attached please find the proposed Stipulation & Order of Settlement relative to the above-referenced proceedings. There are currently three (3) years pending.

The subject property is Orchard Hills Landings Apartment and Townhouse Complex, a 260-unit complex located at 1 Kayla Court, a/k/a 819 NS Oak Street (Tax Map No. 9-1-45.2). The FMV of the property is \$38,675,958 in 2017, \$39,176,471 in 2018, \$38,000,000 in 2019¹, and \$40,854,800 in 2020.² Trial-ready appraisals were exchanged, and a trial date was to be set by the Court at the next conference. Our appraisal came in at a FMV of \$34,000,000; petitioner's appraisal report came in at a FMV of \$29,500,000. The main differences between the two appraisals was the cap rate that each appraiser applied and the income and expenses. After reviewing the appraisal reports and the cost of a trial, the parties agreed to a proposed settlement of a FMV of \$31,750,000 which is the difference between the two appraised values. The 2020 assessed value will be reduced to \$9,509,125 and as reduced will be held for 2021, 2022 and 2023 pursuant to RPTL §727, subject to the usual exceptions. We feel that this is a good settlement.

I have attached for your review a copy of the refund liability charts, which show the potential liability versus the proposed settlement refund liability. We recommend that the Town Board authorize us to enter into this settlement as proposed. Please place this matter on the agenda for the next Town Board meeting for approval. Once the Resolution passes, please let me know and I will sign the Stipulation of Settlement.

Please do not hesitate to contact me if you have any questions.

Very truly yours,

E. STEWART JONES HACKER
MURPHY LLP

By: 

Cathy L. Drobny
cdrobny@joneshacker.com
Direct Dial: (518) 213-0116

CLD:kah

Attachments

cc: Lori Coady, Assessor
Gilbert Piaquadio, Supervisor

¹ We lowered the assessment slightly in 2019 to reduce some of the Town's exposure.

² Tentative assessment at 2020 eq. rate.

STATE OF NEW YORK
SUPREME COURT

ORANGE COUNTY

In the Matter of the Application of

ORCHARD HILLS LANDINGS LLC,

Petitioner,

-against-

BOARD OF ASSESSMENT REVIEW AND ASSESSOR OF
THE TOWN OF NEWBURGH AND THE TOWN OF
NEWBURGH,

Respondents.

For the review of the assessment for the years 2017, 2018 and 2019
of certain real property in the said TOWN OF NEWBURGH.

STIPULATION &
ORDER OF
SETTLEMENT

Index Nos.: EF005557-
2017, EF007129-2018,
EF005372-2019 &
EF003227-2020

Assigned Judge:
Hon. Catherine M. Bartlett,
J.S.C.

The above named Petitioner having duly brought these Real Property Tax Law ("RPTL") Article 7 proceedings to review the tax assessments made against property owned by the Orchard Hills Landings LLC located at 819 NS Oak Street (SBL No. 9-1-45.21) in the Town of Newburgh, Orange County, New York State (the "Property"), for the years 2017, 2018 and 2019 and being the real property mentioned and more fully described in the petitions made and filed herein, and issue having been duly joined herein, and the Petitioner having appeared by Goldman Attorneys PLLC, Paul J. Goldman, Esq., the Respondents having appeared by E. Stewart Jones Hacker Murphy LLP, Cathy L. Drobny, Esq. (collectively the "Parties");

WHEREAS, the Parties having entered into and consent to this Stipulation & Order of Settlement which resolves these proceedings in their entirety;

NOW, on motion of Goldman Attorneys PLLC, attorneys for Petitioner, it is hereby,

1. ORDERED, ADJUDGED and DECREED, that the 2017 assessments of the Property in the Town of Newburgh, County of Orange, State of New York on the assessment rolls of the

Town of Newburgh (the "Town") for the tax years 2017/2018 shall be reduced and corrected as follows:

<u>Property</u>	<u>Original Assessed Value</u>	<u>Corrected Assessed Value</u>	<u>Reduction in Assessed Value</u>
819 NS Oak Street (SBL No.: 9-1-45.21)	\$13,320,000	\$10,934,700	\$2,385,300

, and

2. ORDERED, ADJUDGED and DECREED, that the 2018 assessments of the Property in the Town of Newburgh, County of Orange, State of New York on the assessment rolls of the Town of Newburgh (the "Town") for the tax years 2018/2019 shall be reduced and corrected as follows:

<u>Property</u>	<u>Original Assessed Value</u>	<u>Corrected Assessed Value</u>	<u>Reduction in Assessed Value</u>
819 NS Oak Street (SBL No.: 9-1-45.21)	\$13,320,000	\$10,795,000	\$2,525,300

, and

3. ORDERED, ADJUDGED and DECREED, that the 2019 assessments of the Property in the Town of Newburgh, County of Orange, State of New York on the assessment rolls of the Town of Newburgh (the "Town") for the years 2019/2020 shall be reduced and corrected as follows:

<u>Property</u>	<u>Original Assessed Value</u>	<u>Corrected Assessed Value</u>	<u>Reduction in Assessed Value</u>
819 NS Oak Street (SBL No.: 9-1-45.21)	\$12,236,000	\$10,223,500	\$2,012,500

, and

4. ORDERED, ADJUDGED and DECREED, that the 2020 assessments of the Property in the Town of Newburgh, County of Orange, State of New York on the assessment rolls of the

Town of Newburgh (the "Town") for the tax years 2020/2021 shall be reduced and corrected as follows:

<u>Property</u>	<u>Original Assessed Value</u>	<u>Corrected Assessed Value</u>	<u>Reduction in Assessed Value</u>
819 NS Oak Street (SBL No.: 9-1-45.21)	\$12,236,000	\$9,509,125	\$3,810,875

Upon the full execution and delivery of this Stipulation & Order of Settlement (the "Order") by the Town and the Petitioner, the Town shall present this Order and the Form RP 524 Part VI signed by the Petitioner for the 2020 grievance application for the Property to the Board of Assessment and Review of the Town (the "BAR") to correct the 2020 assessment for the Property in accordance with this Fourth Decretal Paragraph of the Order. In the event that the BAR is not able to effect the change to the 2020 assessment roll for the Property as previously set forth, then upon the receipt of this Order duly signed by the Supreme Court, the School District shall cause to be issued a corrected 2020-2021 School tax bill for the Property utilizing the Corrected Assessed Value set forth in this Fourth Decretal Paragraph (the "Corrected 2020-21 Tax Bill"). The Petitioner shall have the later of: (a) thirty (30) days from the date of the issuance of the Corrected 2020-21 Tax Bill; or (b) September 30, 2020 to pay the Corrected 2020-21 Tax Bill without interest and/or penalty. The School District shall send a copy of the Correct 2020-21 Tax Bill to counsel to the Petitioner.

5. ORDERED, ADJUDGED and DECREED, subject to the terms, covenants and conditions set forth herein, the provisions of RPTL §727 shall be applicable to the corrected assessed value set forth in paragraph 4 for the 2021, 2022 and 2023 assessment rolls; and it is further,

6. ORDERED, ADJUDGED and DECREED, that the County of Orange (the "County") or the Town, if refundable by the Town, shall refund any excess Town, Town Highway, other Town taxes and special district charges paid on account of the reductions set forth above to the 2017, 2018

and 2019 assessments of the Property for the 2017, 2018 and 2019 assessment rolls used to generate 2018, 2019 and 2020 Town, Town Highway, other Town taxes and special district charges on the Property, without interest or costs, provided any such refunds are made within sixty (60) days of the service of this Order with notice of entry thereof; and it is further,

7. ORDERED, ADJUDGED and DECREED, that the County of Orange (the "County") shall refund any excess County, County Highway, water, sewer and all special district taxes paid on account of the reductions set forth above to the 2017, 2018 and 2019 assessments of the Property on account of the 2017, 2018 and 2019 assessment rolls used to generate the 2018, 2019 and 2020 County, County Highway, water, sewer and all special district taxes on the Property, without interest or costs, provided any such refunds are made within sixty (60) days of the service of this Order with notice of entry thereof; and it is further,

8. ORDERED, ADJUDGED and DECREED, that the Marlboro Central School District (the "School District") shall refund any excess School District taxes (including the library taxes) paid on account of the reductions set forth above to the 2017, 2018 and 2019 assessments of the Property on account of the 2017, 2018 and 2019 assessment rolls used to generate the 2017-2018, 2018-2019 and 2019-2020 School District taxes (including the library taxes) on the Property, which refund of School District excess taxes shall be payable in two installments as follows: (a) one-half on or before September 30, 2020 (the "First SD Payment Date"); and (b) the other remaining half on or before September 15, 2021 (the "Second SD Payment Date"). The refund of School District excess taxes due under this Eighth Decretal Paragraph of this Order shall be without interest or costs, provided that such refunds of excess taxes due under this Eighth Decretal Paragraph of this Order are made on or before the First SD Payment Date and Second SD Payment Date, and it is further,

ORDERED, ADJUDGED and DECREED, that the refunds, set forth above, shall be paid to Goldman Attorneys PLLC, attorneys for the Petitioner, 255 Washington Avenue Extension, Suite 108, Albany, New York 12205.

Dated: _____, 2020

Goshen, New York

Hon. Catherine M. Bartlett
Justice, Supreme Court

STIPULATION

The Attorneys for the respective Parties do hereby consent to this Stipulation & Order of Settlement.

Dated: July 9, 2020

GOLDMAN ATTORNEYS PLLC

By: 

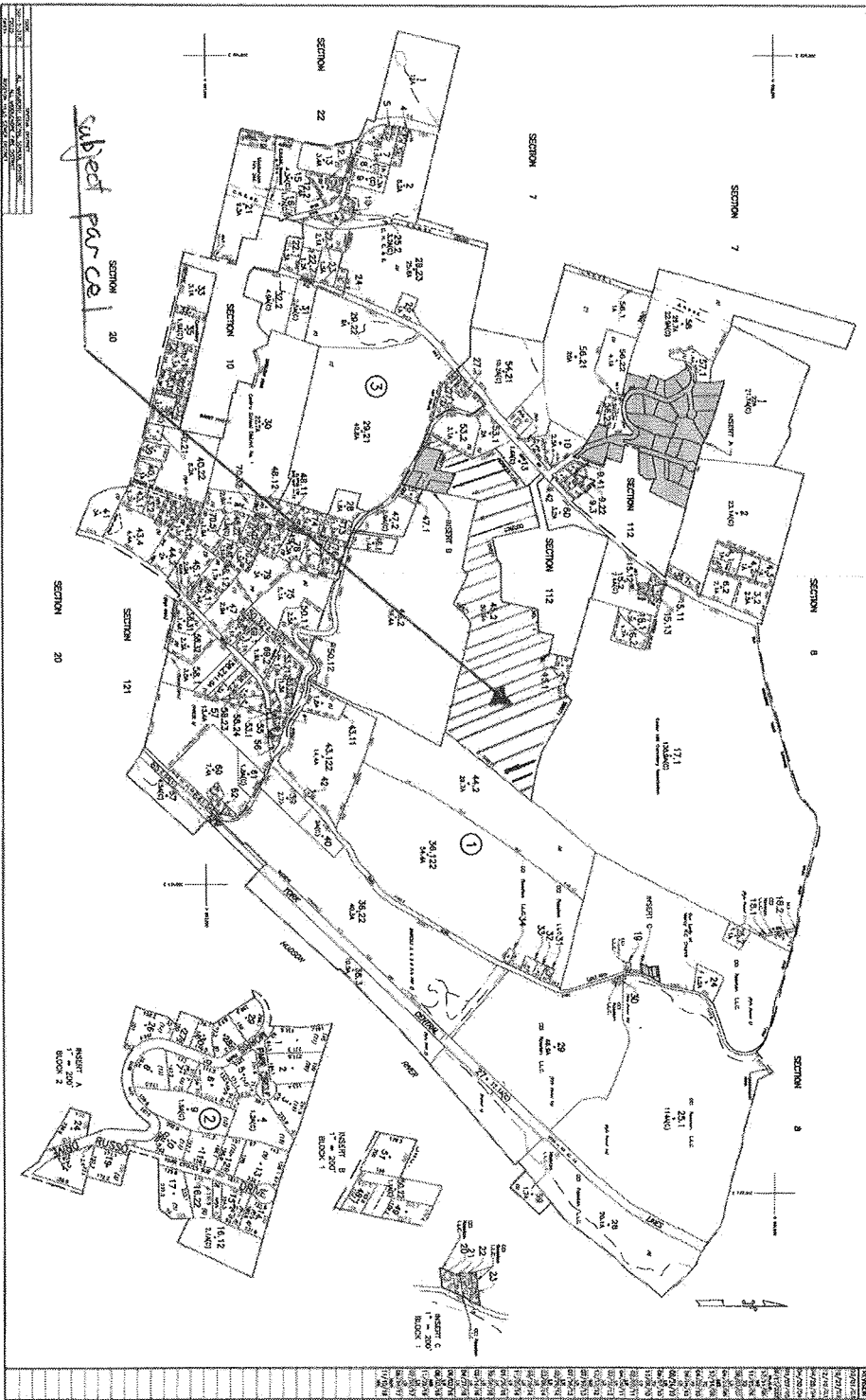
Paul J. Goldman, Esq.
Erika C. Browne, Esq.
Attorneys for Petitioner
Orchard Hills Landings LLC
255 Washington Avenue Extension, Suite 108
Albany, New York 12205
(518) 431-0941

Dated: July __, 2020

E. STEWART JONES HACKER MURPHY LLP

By: _____

Cathy L. Drobny, Esq.
Attorneys for Respondents
Town of Newburgh
7 Airport Park Boulevard
Latham, New York 12110
(518) 274-5820



LEGEND

1	2	3	4	5	6	7	8	9	10	11	12	13	14	15	16	17	18	19	20	21	22
...

ORANGE COUNTY-NEW YORK

TOWN OF NEWBURGH

Scale 1" = 200'

Section No. 8

34600

7/1/1911



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Commercial

- Property Info
- Owner/Sales
- Inventory
- Improvements
- Tax Info
- Report
- Comparables
- Download Grievance Application (NYS RP-524)

Com. Sites

< 1 >

Municipality of Newburgh

SWIS:	334600	Tax ID:	9-1-45.21
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Tax Map ID / Property Data

Status:	Active	Roll Section:	Taxable
Address:	819 Ns Oak St		
Property Class:	411 - Apartment	Site Property Class:	411 - Apartment
Ownership Code:			
Site:	Com 1	In Ag. District:	Yes (1)
Zoning Code:	-	Bldg. Style:	Not Applicable
Neighborhood:	00000 -	School District:	Marboro
Property Description:	Legal description not given for property		
Total Acreage/Size:	50.90	Equalization Rate:	---
Land Assessment:	2020 - \$834,000	Total Assessment:	2020 - \$12,236,000
Full Market Value:	2020 - \$40,854,800		
Deed Book:	13700	Deed Page:	1989
Grid East:	632083	Grid North:	995790
Bank Code:	0020328		

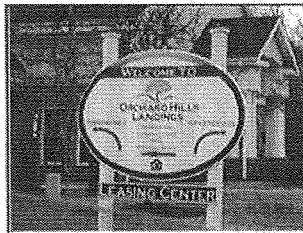
Special Districts for 2020

Description	Units	Percent	Type	Value
FD025-Middlehope fire	0	0%		0
SW871-Roseton Hills Swr	0	0%		0
WD001-Consol wtr 1	0	0%		0

Land Types

Photographs

(Click on photo to enlarge it.)



Photo

Photo 1 of 8

Pictometry Connect

Documents

No documents found for this parcel

Maps

- View Tax Map
- Pin Property on GIS Map
- View in Google Maps
- View in Bing Maps

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Commercial

- Property Info
- Owner/Sales
- Inventory
- Improvements
- Tax Info
- Report
- Comparables
- Download Grievance Application (NYS RP-524)
- Com. Sites

Municipality of Newburgh

SWIS:	334600	Tax ID:	9-1-45.21	
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Ownership Information

Name	Secondary Name	Address
Orchard Hills Landings LLC	c/o Orix Real estate Capital,	1717 Main St Ste 900 Dallas TX 75201

Sale Information


Sale Date	Price	Property Class	Sale Type	Prior Owner
9/25/2013	\$52,175,000	411 - Apartment	Land & Building	Orchard Hills of Newburgh LLC
	Value Usable	Arms Length	Deed Book	Deed Page
	No	Yes	13700	1989

Sale Date	Price	Property Class	Sale Type	Prior Owner
5/25/2010	\$1,560,000	151 - Fruit crop	Land Only	Cosman, Larry H
	Value Usable	Arms Length	Deed Book	Deed Page
	Yes	Yes	13008	1852

Historic Deed Information

Photographs

(Click on photo to enlarge it.)



Photo

Photo 1 of 8 →

Pictometry Connect

Documents

No documents found for this parcel

Maps

- [View Tax Map](#)
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Map Disclaimer

BE IT FURTHER RESOLVED that the aforesaid resolutions shall take effect immediately.

The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

<u>Elizabeth J. Greene, Councilwoman</u>	<u>voting</u>
<u>Paul I. Ruggiero, Councilman</u>	<u>voting</u>
<u>Scott M. Manley, Councilman</u>	<u>voting</u>
<u>, Councilman</u>	<u>voting</u>
<u>Gilbert J. Piaquadio, Supervisor</u>	<u>voting</u>

The resolution was thereupon declared duly adopted.