



JOHN FENZ
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TOWN OF WEST SENECA

TOWN SUPERVISOR
SHEILA M. MEEGAN
TOWN COUNCIL
EUGENE P. HART
WILLIAM P. HANLEY, JR.

TO: The Honorable Town Board

FROM: John J. Fenz, Esq.
Town Attorney

DATE: November 9, 2017

RE: Tops Markets v. Town of West Seneca
Request for Authority to Execute Stipulation of Agreement
800 Harlem Road & 355 Orchard Park Road

Kindly approve and authorize counsel for the Town to execute the Stipulation of Agreement to resolve the real property tax assessment challenge of Tops Markets against the Town of West Seneca.

This is a matter involves an application of an owner of commercial property in the Town to have its assessment reduced. After deliberation with counsel, the Town's expert appraiser and the Town Assessor, it has been determined that it is in the best economic interest of the Town to resolve this litigation pursuant to the terms of the attached Stipulation of Agreement.

Please let me know if you have any questions.

STATE OF NEW YORK
SUPREME COURT: COUNTY OF ERIE

In the Matter of the Application of

TOPS MARKETS, INC.
as Agent for S&R Company of West Seneca Newco LLC

Petitioner

vs.

Board of Assessment Review for the Town of
West Seneca; The Assessor of the Town of
West Seneca; Erie County, New York
and the Town of West Seneca, New York

Respondents.

STIPULATION OF
AGREEMENT

Index No.: 2016-808126

Index No.: 2017-810028

The above entitled proceedings involving tax assessment review of the premises known as 355 Orchard Park Road, Town of West Seneca, New York and bearing SBL No. 143.05-1-27.12 for the assessment year 2016-2017 and 2017-2018 having progressed for trial, and negotiations for settlement having been conducted and said settlement having been approved and recommended by the Town Attorney for the Town of West Seneca, and the Attorney for the Petitioner, and the Attorney for West Seneca Central School District, and it further appearing that the assessment of the premises in the Town of West Seneca provides the basis for imposition of taxes assessed by the County of Erie, Town of West Seneca, and the West Seneca Central School District, it is hereby:

FIRST: **STIPULATED AND AGREED:** that the above-entitled proceedings for the tax assessment review of the tax year 2016-2017 and 2017-2018 be and hereby are settled, and it is further

SECOND: STIPULATED AND AGREED: that the real property tax assessment for the fiscal year 2016-2017 and the fiscal year 2017-2018 for the premises at 355 Orchard Park Road, Town of West Seneca, New York be reduced from Three Million Four Hundred Thousand Dollars (\$3,400,000.00) to Three Million Dollars (\$3,000,000.00) and it is further

THIRD: STIPULATED AND AGREED: that said assessed value shall remain in effect for 2018-2019, 2019-2020 and 2020-2021, and it is further

FOURTH: STIPULATED AND AGREED: that all provisions of Section 727 of the Real Property Tax Law shall apply through 2020-2021, and it is further

FIFTH: STIPULATED AND AGREED: that an Order may be entered directing the Treasurer of the Town of West Seneca, the Treasurer of the County of Erie and the Treasurer of the West Seneca Central School District to apply such adjusted assessment, and it is further

SIXTH: STIPULATED AND AGREED: that Petitioner hereby shall receive refunds from the County of Erie, Town of West Seneca for the 2017 tax year and from the West Seneca Central School District for the 2016-2017 tax year, and unless the 2017-2018 school tax bill is adjusted to encompass the reduction in assessment herein agreed upon, shall receive a tax refund for said 2017-2018 school tax reduction of assessment, which refunds shall be processed in accordance with RPTL 726 and all made payable and forwarded to Petitioner's attorney, William H. Mattrey, Esq., 17 Beresford Court, Williamsville, NY 14221, and it is further

SEVENTH: STIPULATED AND AGREED: that said Petitioner in any instrument or agreement transferring all of the subject property therein shall covenant with any grantee, transferee, and mortgagee and their respective distributees, successors and/or assigns that they shall be bound by the terms of this Stipulation and that such covenant shall be deemed to run with the land for the tax periods embraced by the terms thereof, and it is further

EIGHTH: STIPULATED AND AGREED: that the Court shall retain jurisdiction over this proceeding pending the expiration of the annexed Order, and that all applications to enforce any or all of the terms of this Stipulation shall be brought before this Court, and it is further

NINTH: STIPULATED AND AGREED: that these proceedings are discontinued with prejudice, without costs or disbursements against either party.

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FOR PETITIONER
TOPS MARKETS, INC.

By: _____
William H. Mattrey, Esq.
Attorney for Petitioner

Date: _____

FOR THE RESPONDENTS
TOWN OF WEST SENECA
ASSESSOR OF WEST SENECA,
BOARD OF ASSESSMENT REVIEW OF THE
TOWN OF WEST SENECA

BY: _____
Richard H. Cole, Esq.
Attorney for Respondents

Date: _____

FOR THE RESPONDENTS
TOWN OF WEST SENECA
ASSESSOR OF WEST SENECA,
BOARD OF ASSESSMENT REVIEW OF THE
TOWN OF WEST SENECA

BY: _____
John J. Fenz, Esq.
Town Attorney, Town of West Seneca

Date: _____

FOR INTERVENER
WEST SENECA
CENTRAL SCHOOL DISTRICT

By: _____
Meghann N. Roehl, Esq.
Attorney for the West Seneca School District

Date: _____

FOR INTERVENER
COUNTY OF ERIE

By: _____
Amanda Townsend, Esq.
Attorney for the County of Erie

Date: _____