



JOHN FENZ
TOWN ATTORNEY
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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: Bueme Development Corp v. Town of West Seneca
Request for Authority to Execute Consent Order
(220 & 210 Center Rd, 61-83 Fisher Rd and 60-90 Oakridge Dr
& 1571 Center)

Kindly approve and authorize the Town Attorney to execute the Consent Orders to resolve the real property tax assessment challenges of Bueme Development Corp. against the Town of West Seneca.

This is a matter involves an application of an owner of commercial properties 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 consent order.

Please let me know if you have any questions.

At an IAS Term of the Supreme Court of the State of New York, held for the County of Erie, Buffalo, New York on the ___ day of _____, 2017.

PRESENT: HON. HENRY J. NOWAK, J.S.C.

SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE

IN THE MATTER OF THE APPLICATION FOR REVIEW UNDER ARTICLE 7 OF THE REAL PROPERTY TAX LAW OF A TAX ASSESSMENT BY BUEME DEVELOPMENT CORP.

Petitioner,

-vs.-

THE BOARD OF ASSESSMENT REVIEW FOR THE TOWN OF WEST SENECA; THE ASSESSOR OF THE TOWN OF WEST SENECA; and THE TOWN OF WEST SENECA, NEW YORK

Respondents.

For Review of the Assessment of Certain Real Properties known as 220 Center Rd and 210 Center Rd in the said Town of West Seneca for the 2014-15, 2015-16, 2016-17 and 2017-18 Tax Years.

**CONSENT ORDER
AND JUDGMENT**

Index Nos.:

809632/2017

807463/2016

808464/2015

807501/2014

WHEREAS Petitioner having heretofore commenced the within proceeding under Article 7 of the Real Property Tax Law to review the assessment of certain parcels of real property located at and known as 220 Center Rd (SBL #134.14-2-8.11) and 210 Center Rd (SBL #134.14-2-9), in the Town of West Seneca, County of Erie and State of New York for the tax years 2014-15, 2015-16, 2016-17 and 2017-18, and

WHEREAS these proceedings having duly come before an IAS Term of this Court, and Kavinoky Cook LLP, Wayne D. Wisbaum, Esq., of counsel, having appeared for the Petitioner, Cole, Sorrentino, Hurley, Hewner & Gambino, P.C., Richard H. Cole, Esq., of Counsel, having appeared for the Respondent, Harris Beach PLLC, Meghann N. Roehl, of Counsel, having appeared for the Intervenor-Respondent, West Seneca Central School District and Lippes, Mathias, Wexler, Friedman, LLP, Margaret A. Hurley, Esq., Intervenor-Respondent, County of Erie, and the parties having agreed to a settlement of these proceedings, it is hereby

STIPULATED, ORDERED and ADJUDGED, that the assessment on the property designated as SBL #134.14-2-8.11 on the tax assessment roll of the Town of West Seneca for the following tax years, has been as follows:

SBL #134.14-2-8.11

Assessment Year	Assessment
2014-15	\$874,000
2015-16	\$874,000
2016-17	\$874,000
2017-18	\$874,000

and it is further

STIPULATED, ORDERED and ADJUDGED, that the assessment on the property designated as SBL #134.14-2-8.11 on the tax assessment roll of the Town of West Seneca for the following tax years shall be adjusted as follows:

SBL #134.14-2-8.11

Assessment Year	Assessment
2014-15	\$775,000
2015-16	\$775,000
2016-17	\$775,000
2017-18	\$775,000

and it is further

STIPULATED, ORDERED and ADJUDGED, that the assessment on the properties designated as SBL #134.14-2-9 on the tax assessment roll of the Town of West Seneca for the 2014-15, 2015-16, 2016-17 and 2017-18 tax years has been and shall remain as follows:

Assessment Year	Assessment
2014-15	\$160,000
2015-16	\$160,000
2016-17	\$160,000
2017-18	\$160,000

and it is further

STIPULATED, ORDERED and ADJUDGED, that the assessments as reduced, corrected and adjusted herein are fair, equitable and proper for the purposed of this settlement, and it is further

STIPULATED, ORDERED and ADJUDGED, that the officer or officers having custody of the aforesaid assessment rolls and the tax rolls of the Town of West Seneca shall make or cause to be made upon the proper books and records of said Town the entries, changes and corrections necessary to conform said combined assessments to such corrected and reduced valuations that the appropriate financial officers are hereby directed and authorized to calculate and disburse any resulting refunds of taxes, and it is further

STIPULATED, ORDERED and ADJUDGED, that Petitioners are entitled to 50% of a refund of all taxes and ad valorem charges overpaid based on the reductions in assessment as set forth herein. Such refund shall include refunds of Town taxes, County taxes, School taxes and each and every Special District ad valorem charge that utilized the assessment of SBL #134.14-2-8.11 on the tax assessment roll of the Town of West Seneca for the levy and collection of taxes for the tax years under review in this proceeding. Such refund shall be made payable to Kavinoky Cook LLC as attorneys for Petitioners and shall be paid without interest so long as it is paid within 30 days after

service of a Court Order confirming this settlement. After such 30-day period expires, such refund shall be paid with statutory interest pursuant to Real Property Tax Law, such interest to be calculated from the date the taxes being refunded were paid through the date such refund is received, and it is further

STIPULATED, ORDERED and ADJUDGED, that the provisions of Section 727 of the Real Property Tax Law shall apply to this settlement, and it is further

STIPULATED, ORDERED and ADJUDGED, that in the event that the Assessor for the Town of West Seneca assesses SBL #134.14-2-8.11 and/or SBL #134.14-2-9 for any stated year at a level higher than provided for herein, Petitioner hereby reserves the right to reinstate and reinstitute its Article 7 proceedings herein settled, and the Respondents hereby agree to waive any objection based upon Statute of Limitations Grounds, and it is further

STIPULATED, ORDERED and ADJUDGED, that Petitioner shall have the right to seek specific enforcement of this Stipulation, Order and Judgment by whatever means provided by law, and it is further

STIPULATED, ORDERED and ADJUDGED, that this Stipulation, Order and Judgment hereby constitutes and represents the entire understanding and agreement among the parties and the full settlement of the assessment review proceeding herein, that there are no costs or disbursements awarded to, by, or against any party and that upon compliance with the terms of this Stipulation, Order and Judgment, the above proceeding shall be, and the same hereby is, settled and discontinued with prejudice, and it is further

STIPULATED, ORDERED and ADJUDGED, that this Stipulation, Order and Judgment may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Signing and Entry of the within Order and Judgment is hereby
Consented to:

KAVINOKY COOK LLP

Dated: _____

By: _____

Wayne D. Wisbaum, Esq.
Attorneys for Petitioners
726 Exchange Street, Suite 800
Buffalo, New York 14210

COLE, SORRENTINO, HURLEY
HEWNER & GAMBINO, P.C.

Dated: 08 7, 2017

By:  _____

Richard H. Cole, Esq.
*Attorneys for Respondent, Town of
West Seneca*
69 Delaware Avenue, Suite 900
Buffalo, New York 14202-3866

WEST SENECA TOWN ATTORNEY

Dated: _____

By: _____

John J. Fenz, Esq.

HARRIS BEACH PLLC

Dated: _____

By: _____

Meghann N. Roehl, Esq.
*Attorneys for Intervenor-Respondent,
West Seneca Central School District*
726 Exchange Street, Suite 1000
Buffalo, New York 14210

WEST SENECA SCHOOL DISTRICT

Dated: _____

By: _____
Janice Lewandoswki

LIPPES, MATHIAS, WEXLER, FRIEDMAN, LLP

Dated: _____

By: _____
Margaret A. Hurley, Esq.
Attorneys for Intervenor-Respondent,
County of Erie
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202

SO ORDERED:

HON. HENRY J. NOWAK, J.S.C.

ENTER:

07852/28182/512312.1

At an IAS Term of the Supreme Court of the State of New York, held for the County of Erie, Buffalo, New York on the ___ day of _____, 2017.

PRESENT: HON. HENRY J. NOWAK, J.S.C.

**SUPREME COURT OF THE STATE OF NEW YORK
COUNTY OF ERIE**

IN THE MATTER OF THE APPLICATION FOR REVIEW UNDER ARTICLE 7 OF THE REAL PROPERTY TAX LAW OF A TAX ASSESSMENT BY BUEME, BUEME and MICHALEK

Petitioners,

-vs.-

THE BOARD OF ASSESSMENT REVIEW FOR THE TOWN OF WEST SENECA; THE ASSESSOR OF THE TOWN OF WEST SENECA; and THE TOWN OF WEST SENECA, NEW YORK

Respondents.

For Review of the Assessment of Certain Real Property known as 61-83 S Fisher Rd in the said Town of West Seneca for the 2014-15, 2015-16, 2016-17 and 2017-18 Tax Years.

**CONSENT ORDER
AND JUDGMENT**

Index Nos.:

809661/2017

807464/2016

808449/2015

807278/2014

WHEREAS Petitioners having heretofore commenced the within proceedings under Article 7 of the Real Property Tax Law to review the assessment of a certain parcel of real property located at and known as 61-83 S Fisher Rd (SBL #142.20-6-4), in the Town of West Seneca, County of Erie and State of New York for the tax years 2014-15, 2015-16, 2016-17 and 2017-18, and

WHEREAS these proceedings having duly come before an IAS Term of this Court, and

Kavinoky Cook LLP, Wayne D. Wisbaum, Esq., of counsel, having appeared for the Petitioners, Cole, Sorrentino, Hurley, Hewner & Gambino, P.C., Richard H. Cole, Esq., of Counsel, having appeared for the Respondent, Harris Beach PLLC, Meghann N. Roehl, of Counsel, having appeared for the Intervenor-Respondent, West Seneca Central School District and Lippes, Mathias, Wexler, Friedman, LLP, Margaret A. Hurley, Esq., Intervenor-Respondent, County of Erie, and the parties having agreed to a settlement of these proceedings, it is hereby

STIPULATED, ORDERED and ADJUDGED, that the assessment on the property designated as SBL #142.20-6-4 on the tax assessment roll of the Town of West Seneca for the following tax years, has been as follows:

SBL #142.20-6-4

Assessment Year	Assessment
2014-15	\$660,000
2015-16	\$660,000
2016-17	\$660,000
2017-18	\$660,000

and it is further

STIPULATED, ORDERED and ADJUDGED, that the assessment on the property designated as SBL #142.20-6-4 on the tax assessment roll of the Town of West Seneca for the following tax years shall be adjusted as follows:

SBL #142.20-6-4

Assessment Year	Assessment
2014-15	\$557,700
2015-16	\$546,000
2016-17	\$520,000
2017-18	\$520,000

and it is further

STIPULATED, ORDERED and ADJUDGED, that the assessments as reduced, corrected and adjusted herein are fair, equitable and proper for the purposed of this settlement, and it is further

STIPULATED, ORDERED and ADJUDGED, that the officer or officers having custody of the aforesaid assessment rolls and the tax rolls of the Town of West Seneca shall make or cause to be made upon the proper books and records of said Town the entries, changes and corrections necessary to conform said combined assessments to such corrected and reduced valuations that the appropriate financial officers are hereby directed and authorized to calculate and disburse any resulting refunds of taxes, and it is further

STIPULATED, ORDERED and ADJUDGED, that Petitioners are entitled to a refund of all taxes and ad valorem charges overpaid based on the reductions in assessment as set forth herein. Such refund shall include refunds of Town taxes, County taxes, School taxes and each and every Special District ad valorem charge that utilized the assessment of SBL #142.20-6-4 on the tax assessment roll of the Town of West Seneca for the levy and collection of taxes for the tax years under review in this proceeding. Such refund shall be made payable to Kavinoky Cook LLC as attorneys for Petitioners and shall be paid without interest so long as it is paid within 30 days after service of a Court Order confirming this settlement. After such 30-day period expires, such refund shall be paid with statutory interest pursuant to Real Property Tax Law, such interest to be calculated from the date the taxes being refunded were paid through the date such refund is received, and it is further

STIPULATED, ORDERED and ADJUDGED, that the provisions of Section 727 of the Real Property Tax Law shall apply to this settlement, and it is further

STIPULATED, ORDERED and ADJUDGED, that in the event that the Assessor for the Town of West Seneca assesses SBL #142.20-6-4 for any stated year at a level higher than provided for herein, Petitioners hereby reserve the right to reinstate and reinstitute its Article 7 proceedings herein settled, and the Respondents hereby agree to waive any objection based upon Statute of

Limitations Grounds, and it is further

STIPULATED, ORDERED and ADJUDGED, that Petitioners shall have the right to seek specific enforcement of this Stipulation, Order and Judgment by whatever means provided by law, and it is further

STIPULATED, ORDERED and ADJUDGED, that this Stipulation, Order and Judgment hereby constitutes and represents the entire understanding and agreement among the parties and the full settlement of the assessment review proceeding herein, that there are no costs or disbursements awarded to, by, or against any party and that upon compliance with the terms of this Stipulation, Order and Judgment, the above proceeding shall be, and the same hereby is, settled and discontinued with prejudice, and it is further

STIPULATED, ORDERED and ADJUDGED, that this Stipulation, Order and Judgment may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute one and the same instrument.

Signing and Entry of the within Order and Judgment is hereby
Consented to:

KAVINOKY COOK LLP


Dated: _____

By: _____

Wayne D. Wisbaum, Esq.
Attorneys for Petitioners
726 Exchange Street, Suite 800
Buffalo, New York 14210

COLE, SORRENTINO, HURLEY
HEWNER & GAMBINO, P.C.

Dated: October 7, 2017

By: 
Richard H. Cole, Esq.
*Attorneys for Respondent, Town of
West Seneca*
69 Delaware Avenue, Suite 900
Buffalo, New York 14202-3866

WEST SENECA TOWN ATTORNEY

Dated: _____

By: _____
John J. Fenz, Esq.

HARRIS BEACH PLLC

Dated: _____

By: _____
Meghann N. Roehl, Esq.
*Attorneys for Intervenor-Respondent,
West Seneca Central School District*
726 Exchange Street, Suite 1000
Buffalo, New York 14210

WEST SENECA SCHOOL DISTRICT

Dated: _____

By: _____
Janice Lewandoswki

LIPPES, MATHIAS, WEXLER, FRIEDMAN, LLP

Dated: _____

By: _____
Margaret A. Hurley, Esq.
*Attorneys for Intervenor-Respondent,
County of Erie*
50 Fountain Plaza, Suite 1700
Buffalo, New York 14202

SO ORDERED:

HON. HENRY J. NOWAK, J.S.C.

ENTER: