

ORIGINAL

ORANGE COUNTY INDUSTRIAL AGENCY
STATE OF NEW YORK

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IN THE MATTER OF

NOWAK PROPERTIES, INC.

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Town of Wawayanda Town Hall
80 Ridgebury Hill Road
Slate Hill, New York
July 17, 2015
11:00 a.m.

B E F O R E: James Petro, Chairman
Orange County IDA

FRANCES ROTH
COURT STENOGRAPHER
168 North Drury Lane
Newburgh, New York 12550
(845) 566-1641

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4 A P P E A R A N C E S:

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6 LAW OFFICES OF KEVIN T. DOWD
7 Attorney for ORANGE COUNTY IDA
8 46 Daisy Lane
9 Montgomery, New York 12549

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Laurie Villasuso, Associate Executive Director, OCIDA

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1 NOWAK PROPERTIES, INC.

2 MR. PETRO: I'd like to call the public
3 hearing for Nowak Properties to order. Would
4 everyone please stand for the Pledge of
5 Allegiance?

6 (Whereupon, the Pledge of Allegiance was
7 recited.)

8 MR. PETRO: I'm Jim Petro, Executive
9 Director of the Orange County IDA. With me is
10 Laurie Villasuso, Associate Executive Director of
11 the Orange County IDA, Kevin Dowd, the attorney
12 for the Orange County IDA and Franny here is
13 going to be taking down the notes and
14 transcribing so we have something to fall back
15 on. This application today again is for Nowak
16 Properties, Inc. And if the attorney would
17 please read in the Notice of Public Hearing?

18 MR. DOWD: Thank you, Mr. Chairman. Notice
19 of Public Hearing. Notice is hereby given that a
20 public hearing pursuant to Article 18-A of the
21 New York General Municipal Law will be held by
22 the Orange County Industrial Development Agency
23 on Friday, July 17, 2015 at 11:00 a.m. local time
24 at the Wawayanda Town Hall, 80 Ridgebury Hill
25 Road, Slate Hill, New York 10973 in connection

NOWAK PROPERTIES, INC.

with the following matter. NOWAK PROPERTIES, INC., a New York corporation for itself or on behalf of an entity formed or to be formed has submitted an application to the Agency requesting the Agency's assistance with respect to a certain project consisting of (i) the acquisition by the Agency of a leasehold interest in an approximately 2.30 plus minus acre parcel of land located at 3491 Route 6 in the Town of Wawayanda, Orange County, New York, (ii) the construction on the Land of an approximately 50,000 square foot four story hotel containing 108 units and (iii) the acquisition and installation in, on and around the Improvements of certain items of equipment and other tangible personal property, including but not limited to, furniture. The Agency will appoint the Company as its agent to undertake the Project and, if necessary, acquire a leasehold interest in the Facility and lease the Facility back to the Company. The Company will operate the Facility during the term of the agency appointment and/or lease agreement. At the end of the Project, the Company's agency status will be terminated together with any

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2 leasehold interest of the Agency. The Agency
3 contemplates that it will provide financial
4 assistance to the Company in the form of sales
5 and use tax exemptions, a real property tax
6 abatement and, if necessary, a mortgage recording
7 tax exemption for financing related to the
8 Project; all consistent with the policies of the
9 Agency unless procedures for deviation are
10 complied with. A representative of the Agency
11 will be at the above-stated time and place to
12 present a copy of the Company's application and
13 hear and accept written and oral comments from
14 all persons with views in favor of or opposed to
15 or otherwise relevant to the proposed Financial
16 Assistance. Dated July 6, 2015 by Orange County
17 Industrial Development Agency.

18 MR. PETRO: Thank you, Kevin. Also, it
19 should be known there won't be any action taken
20 today. This is for information to be processed
21 and brought back to the board, Orange County
22 board members to digest, and we'll move forward
23 at that time. So with that, obviously, we have
24 three people here so I'll open it up to the
25 public, if there are any comments and/or anything

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you want to talk about? I'll read into the minutes just first that the estimated sales tax exemption is \$300,000, there is no mortgage tax exemption being sought and the property tax abatement over 10 years would be 1,125,000. We also, just for the minutes, it should be noted that the applicant will not be going backwards, in other words, we're not taking anything off the tax rolls, the land value would continue going forward and any special district charges they cannot be abated by state law so you'd be moving forward. Although in this particular case, I believe a building will be coming down, an unsightly building, correct, and then the new one would be going up. So with that being stated, I'll open it up to the public. I see the Supervisor is here, the principle, and I believe the young lady from the school board of Middletown. So if you, do you want to speak?

MS. MC KEAN: Sure.

MR. PETRO: Your name for the record?

MS. MC KEAN: Elizabeth McKean, Assistant Superintendent of Administration for the Middletown City School District. Did you want me

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2 to sign in?

3 MR. PETRO: Please. New jobs created is 19,
4 if you want to put that in also.

5 MS. MC KEAN: I'd like the board to have a
6 copy of the Resolution that the Board of
7 Education had made regarding Payments In Lieu Of
8 Taxes, PILOTS, back in November. This has risen
9 to a new level for us because of the change in
10 our computation per tax caps. And PILOTS are a
11 portion of that computation as well as the fact
12 that when they PILOTS end, the rateables are not
13 included, the additional structure's not included
14 in our growth percentage. These are not things
15 that this board would be able to address but they
16 do affect the tax cap calculation for our school
17 district and make it--for example, if this were a
18 large enough PILOT, we may end up with no ability
19 to increase school taxes for a year just because
20 of a new Payment In Lieu Of Taxes and that's a
21 calculation that no one here had anything to do
22 with but it has a direct affect on our ability to
23 raise taxes as a school district. The board
24 supports new businesses in the school, supports
25 new rateables. What we're asking the IDA is if

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there is a different way to do it because what we're, because of these mechanisms, it creates a hardship for us. And on the other end of that conversation, when the PILOT is over then we have the ability to raise taxes above what the community would normally support. For example, we have a part of our, part of our taxing jurisdiction, a portion of the Galleria Mall, a small portion of the Galleria, their PILOT is scheduled to end this year. If you look online, you'll see I made a presentation to the Board of Ed during the budget season saying next year here's what's going to happen if nothing else changes, we'll have the ability to raise our school taxes by I think it was six percent. Now the taxing, you know, we have, our budget is voted on by taxpayers and taxpayers are not going to support a six percent tax increase so this mechanism that's now required of all of us is putting the PILOT in a different light for us. We can no longer, so I don't know how, that if there's another opportunity or another way to leave the actual tax values in there and give relief. I don't know those laws of assessment,

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2 but the Payment In Lieu Of Taxes because of the
3 special way it's treated in our calculations now
4 and in the calculations I'm sure for the town
5 creates a hardship for the district. So I just
6 wanted to make you aware.

7 MR. PETRO: The hardship being that you
8 can't raise it during the 10 years of the PILOT
9 is what you're saying?

10 MS. MC KEAN: Yes, it affects the
11 calculation. For example, if I had the ability
12 to raise my taxes \$10,000 based on the growth of
13 the communities and the percentage calculation
14 that I'm allowed to use CPI for the year and I
15 have a new PILOT worth \$10,000, I can no longer
16 raise my taxes at all because PILOTS directly
17 affect how much tax I can raise.

18 MR. PETRO: Well, that's interesting.

19 MS. MC KEAN: I'd be happy to send that
20 calculation on to you. I'll give you the
21 presentation that I did for the board because
22 again it's nothing that's been done here and it's
23 not that we don't want to support growth, it
24 directly affects our ability to raise revenue.

25 MR. PETRO: Over and above the stated PILOT?

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2 MS. MC KEAN: Ah-huh.

3 MR. PETRO: Once the PILOT is over, you
4 don't have the problem, just the one year.

5 MS. MC KEAN: So the PILOT stays in effect
6 every year, it's a part of our calculation. When
7 the PILOT leaves or is complete then we have the
8 ability to raise the taxes by that amount. But
9 now you're in a situation where you're saying to
10 the taxpayers oh, okay, trust me if we raise your
11 taxes five percent because this piece of property
12 is now coming on as a ratable item, it really
13 won't be five percent, just vote on the
14 five percent, trust me, it won't.

15 MR. PETRO: You're saying you'd have to do
16 it all too much at one time to bring it to where
17 it probably would have been?

18 MS. MC KEAN: Right.

19 MR. PETRO: Over the 10 year period,
20 nobody's going to go for that because it's too
21 much at one time.

22 MS. MC KEAN: To explain to the tax paying
23 public that yes indeed, the tax rate is going to
24 go up five percent but your actual tax bill will
25 not, that's a tough stretch for people to

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2 understand.

3 MR. PETRO: Well, I guess--

4 MS. MC KEAN: I just wanted to make--you'll
5 be seeing more and more business officials I'm
6 sure at your meetings because this is going to
7 be, this is a problem for us we can't raise
8 taxes.

9 MR. DOWD: I think this is an issue at the
10 Albany level and I know that they've been trying
11 to get the Legislature and Governor to change
12 that calculation, albeit unsuccessfully for the
13 last couple years. And there's not much that we
14 as an IDA can do, other than maybe even support
15 that kind of legislation with the district, with
16 the other taxing jurisdictions to allow them to
17 exclude it from the tax cap.

18 MS. MC KEAN: It would be a wonderful thing
19 if we could but at the moment that's the laws by
20 which we have to live. I'm here because I don't
21 know enough about the assessing, that's not my
22 side of the world and I don't know if there's
23 another way to do it, I don't know, and that's
24 why I'm here. If there's another way to do it,
25 it's not that we don't support having additional

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2 businesses in the community, that's not what the
3 school board is here to say. We're here to say
4 isn't there a better way to do it now that it's
5 creating a hardship on behalf of the districts?
6 So it's not that we're against it, it's that
7 we're against what happens to us after.

8 MR. PETRO: Talk to Russ about it.

9 MR. DOWD: I think we're sort of between a
10 rock and a hard place, there's only what the
11 State Legislation allows us to do as an IDA and
12 how we give that relief to the applicants here is
13 a commercial operation that needs it or they
14 won't do it. And it's no impact to the school in
15 the sense of more school-aged children because
16 it's a commercial property as opposed to
17 residential, but now with the PILOT with the tax
18 cap that's a whole complicated mess and it's
19 really up to Albany to fix it.

20 MR. PETRO: We're an administrative board,
21 not a legislative board so we're just following
22 the laws that we have to follow and do what we
23 can do but that doesn't mean we can't keep an
24 open ear to the problem.

25 MS. MC KEAN: As I said, I know that this

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2 body did not create the rule or the laws that
3 have created the hardship for all of the school
4 districts. And my only plea is that that's taken
5 into consideration that we don't have the ability
6 to do anything different and it's going to hurt,
7 you know, all the strings and pieces that are
8 attached to that. So if we try to override a tax
9 cap then the new language about everybody gets
10 their little check in the mail, if all the
11 municipalities have maintained the tax cap, then
12 that becomes a problem. So now we have public
13 relations and unfortunately, the way it's going
14 to be discussed is that we have a new PILOT and
15 this is causing this to happen where we can't
16 raise our taxes and then we're going to be saying
17 if we go through this and we get above the tax
18 cap which takes 60 percent of our voters, not
19 just 50, there's a new law there too, so we get
20 them to do that. Now they no longer get the
21 little check in the mail saying, that they have
22 from the finance department, so then they don't
23 get the check in the mail from the finance
24 department because we have a PILOT. And that's
25 not what anybody wants to see happen because I do

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2 believe that PILOTS are good for bringing
3 business into a community. I'm a business person
4 at heart but I, and maybe it's more a plea that
5 all of the people here use whatever political
6 powers they have to try to get Albany to change
7 that. And, you know, one of the Governor's big
8 pushes, he wants to grow business in New York
9 State. Well, he's essentially creating a
10 situation where no one wants him to grow
11 businesses in New York State because it's
12 affecting the way we educate or finance our
13 education. So that's my plea.

14 MR. PETRO: Alright, thank you.

15 MS. MC KEAN: You're welcome, long winded
16 but--

17 MR. PETRO: Thank you. John, would you like
18 to say something, Supervisor of Wawayanda?

19 SUPERVISOR RAZZANO: Let me sign in here. I
20 just want to go on the record that the Town of
21 Wawayanda is fully supportive of Nowak
22 Properties' proposed 108 room hotel. We look
23 forward to seeing the ramshackled building taken
24 down and a beautiful new hotel there. And we
25 have passed a resolution recently supporting his

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2 application to the IDA with the PILOT so we're
3 fully supportive of this project. Thank you.

4 MR. PETRO: Thank you, John. And I guess we
5 have the principle, Martin, you want to sign in?

6 MR. NOWAK: I hope there's a lot more PILOTS
7 in Middletown since I'm a Middletown School
8 District taxpayer, if there's a lot of PILOTS
9 that will hold my taxes down. Okay, thank you
10 for giving me this opportunity for this tax
11 break. It's pretty much really needed, I mean,
12 as a new business starting up in the beginning
13 and that business, it's not well-known the Sleep
14 Inn name isn't well known in the northeast, so
15 these tax breaks will help me survive those
16 hopefully few years to get through that where I
17 can start turning a profit and hiring more
18 people. And that's pretty much what this whole
19 IDA application is about so I can employ these
20 people, actually stay in business before, you
21 know, till it gets turned around and I start
22 getting good cash flow which I hope will happen.

23 MR. PETRO: Just for the minutes as the
24 applicant says tax break, it's really a partial
25 tax abatement, it's not no taxes, it's not, you

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2 know, it's an easy way to get up to full par of
3 10 years. Sometimes people think so oh, he's not
4 paying any taxes for 10 years, that's not the
5 case, it's a partial tax abatement.

6 MR. NOWAK: That's correct.

7 MR. PETRO: Still paying on the land full
8 value and still paying all your special district
9 charges full value no matter what. Thank you.

10 MR. NOWAK: Okay.

11 MR. DOWD: Mr. Petro, this resolution and a
12 memo from the school board should be part of the
13 record and should probably be attached to the
14 minutes.

15 MR. PETRO: Let it be so. We're not going
16 to read it in but we'll mark it part of the file,
17 okay.

18 MS. MC KEAN: That's fine.

19 MR. PETRO: We'll receive and file it as of
20 today. Obviously, there's no one else to speak
21 so I would close the public hearing. Kevin Dowd,
22 anything else you want to add?

23 MR. DOWD: I will discuss with our bond
24 counsel the school district's position. Again, I
25 think we're in a position, just as your request,

1 NOWAK PROPERTIES, INC.

2 the State Legislation, perhaps Laurie we can talk
3 to Economic Development Counsel, see if they
4 would be on board in trying to perhaps push with
5 the local representatives to get the Legislature
6 to change that formula as far as PILOTS. But
7 we're an agency that does what we can do by state
8 law and the only way we can give that relief is
9 by state law so I'm not too sure we can say
10 anything other than that.

11 MR. PETRO: Laurie, anything else you want
12 to add?

13 MS. VILLASUSO: No.

14 MR. PETRO: Myself, no. I do want to thank
15 you for coming, stating your position and being
16 polite, we appreciate that. So I say thank you,
17 John, thank you for having us here and good luck
18 to you, sir, with your endeavor. And at this
19 time, I close the public hearing. Thank you.

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22 (Proceedings concluded at 11:20 a.m.)

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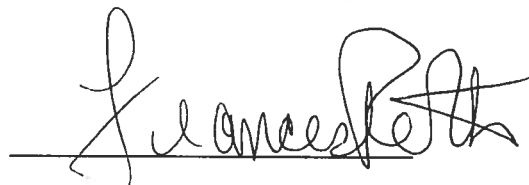
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C-E-R-T-I-F-I-C-A-T-I-O-N

I, FRANCES ROTH, a Stenographic Reporter and Notary Public
of the State of New York, do hereby certify:

That the foregoing is an accurate record of the testimony,
as given, to the best of my knowledge and belief, the same
having been stenographically recorded by me and transcribed
under my supervision.

That I am not related to any of the parties involved in
this matter, and that I have no personal interest
whatsoever in the outcome thereof.

A handwritten signature in cursive script, appearing to read "Frances Roth", written over a horizontal line.

FRANCES ROTH

BOARD OF EDUCATION

SHARLEEN DEPEW

District Clerk

District.Clerk@ecsdm.org

Our people making the difference.

A National Race to the Top District.

Member of "League of Innovative Schools"



223 Wisner Avenue
Middletown, NY 10940-3298
Phone (845) 326-1196
Fax (845) 326-1222
www.middletowncityschools.org

CERTIFICATION

I, Sharleen Depew, hereby certify that I am the District Clerk and custodian of the official records of the Board of Education of the Enlarged City School District of Middletown; that I am authorized by the Board of Education to execute this Certification; that I have caused a diligent search to be made of the District's records pertaining to the Official School Board Minutes; that the documents attached herewith constitute the true, accurate and complete copy of all such records; that such records were made, and are maintained, in the regular course of business; and that such records were made at or about the time of occurrence of the event recorded, or within a reasonable time thereafter.

Sharleen Depew
District Clerk

07/14/15
Date

District Seal

**MIDDLETOWN CITY SCHOOL DISTRICT BOARD OF EDUCATION
RESOLUTION ON PAYMENT IN LIEU OF TAX (PILOT) AGREEMENTS**

(Approved by the Board of Education on November 6, 2014)

Recommendation – that the Board of Education does hereby approve the following:

**THE MIDDLETOWN CITY SCHOOL DISTRICT BOARD OF EDUCATION RESOLUTION ON
PAYMENT IN LIEU OF TAX (PILOT) AGREEMENTS**

WHEREAS, the Middletown City School District’s Board of Education (“The Board”) is committed to maintaining the fiscal health of the Middletown City School District (“The District”) and recognizes excellent fiscal planning as a key factor in attaining the District’s educational goals and priorities; and

WHEREAS, the Board’s budget development shall be carefully organized and planned to ensure thorough understanding of the District’s financial needs within the context of the community’s fiscal resources; and

WHEREAS, the District has seen a decline in State and Federal Aid over the last several years that has shifted the burden of education funding to the local taxpayer; and

WHEREAS, The New York State Gap Elimination Adjustment (GEA) has significantly reduced the total amount of state aid the District has received with an average loss of \$4.6 million dollars per year since the 2009-2010 school year; and

WHEREAS, New York State has implemented an unprecedented number of new unfunded mandates that have placed significant financial pressure on the District; and

WHEREAS, in 2011 the New York State Legislature and the Governor enacted "Chapter 97" legislation that establishes a “property tax cap” on the amount that a local government’s or school district’s property tax levy can increase each year, limiting the District’s ability to raise local revenue; and

WHEREAS, the Middletown City School District’s Board of Education has been forced to make difficult choices to balance the budget with reduced revenue including making programmatic cuts and depleting reserve funds; and

WHEREAS, while payment-in-lieu-of-tax (“PILOT”) agreements may supply some revenue to the Middletown City School District, they also have the negative effect of lowering the District’s tax levy limit; and

WHEREAS, the New York State Education Department (“NYSED”) provides [Tax Cap Guidance](#) on the NYSED website that states that “Districts with increasing or new PILOTs could have a tax levy limit that represents a change from the prior year that is less than zero. They would have to successfully seek an override from the voters to increase the levy above that limit”; and

WHEREAS The Board cannot overlook the adverse financial implications that the District must endure as a result of New York State property tax cap legislation when coupled with PILOT arrangements granted by Industrial Development Agencies (“IDAs”) as exemplified in the following presentations:

- [Camoin Associates’ 2012 presentation](#) to the New York State Economic Development Corporation’s Board of Directors: “NYS Tax Cap Legislation - Impact of IDA PILOTs”
- Thomas, Drohan, Waxman, Petigrow & Mayle, LLP’s 2013 presentation at the New York State School Boards Association’s Convention: “Navigating the PILOT Maze in the Tax Cap Age;” and

WHEREAS, according to the aforementioned presentations property value increases brought on by investments under IDA programs are excluded from the Tax Base Growth Factor (“TBGF”), which partially determines the allowed tax levy increase; and

WHEREAS, according to the aforementioned presentations PILOT arrangements exempt the real property improvements and therefore suppress the TBGF; and

WHEREAS, according to the aforementioned presentations harm is perpetual, since the TBGF does not get adjusted at the end of the PILOT when the property becomes taxable; and

**MIDDLETOWN CITY SCHOOL DISTRICT BOARD OF EDUCATION
RESOLUTION ON PAYMENT IN LIEU OF TAX (PILOT) AGREEMENTS**

(Approved by the Board of Education on November 6, 2014)

WHEREAS, Michael N'dolo, Camoin Associates, stated the following in his 2012 memo to the Saratoga County Industrial Development Agency and the Saratoga Economic Development Corporation:

With a suppressed Tax Base Growth Factor, the municipality or school district has a lower maximum local revenue level (which includes both the maximum tax levy plus any PILOT payments) than if the PILOT did not exist... In effect, the way the legislation is currently formulated, school districts and municipalities are materially adversely affected by PILOT arrangements. As such, it is natural to assume that school districts and municipalities may strongly oppose any PILOT agreements; and

WHEREAS, the Board is not opposed to the original intention of New York State legislation enabling PILOT agreements, envisioned to facilitate economic development and improve local economic conditions, which created IDAs, the City of Middletown Industrial Development Agency, the Town of Wallkill Industrial Development Agency, and the Orange County Industrial Development Agency; and

WHEREAS, the District is the only interested taxing authority that needs referendum approval to leverage taxes, and needs a 60% supermajority vote of the voting public to exceed the tax cap;

BE IT RESOLVED that the Middletown City School District Board of Education declares its opposition to any PILOT agreements that result in a reduction of real property taxes versus full taxation based on a full market value assessment determined by the City of Middletown, Town of Wawayanda, Town of Goshen, and the Town of Wallkill assessors' offices; and

BE IT FURTHER RESOLVED that that Middletown City School District Board of Education calls on the City of Middletown, the Town of Wallkill Industrial Development Agency, and the Orange County Industrial Development Agency, to recognize the District's position that PILOT agreements have an adverse impact on school districts due to the Tax Levy Limit formula.