COMMON COUNCIL MEETING
CITY OF MIDDLETOWN
September 3, 2024 Minutes
City Hall
16 James Street
Middletown, New York 10940

J. Miguel Rodrigues, President
Ald. Jude Jean-Francois (Absent)
Ald. Andrew Green
Ald. Paul Johnson
Ald. Gerald Kleiner
Ald. Sparrow Tobin
Ald. Kevin Witt
Ald. Kate Wray
Ald. Joseph Masi
ALSO PRESENT:
Richard McCormack, City Clerk
Joseph M. DeStefano, Mayor

COMMON COUNCIL: -- The Pledge of Allegiance.

PRESIDENT J. MIGUEL RODRIGUES: All right, roll.

CITY CLERK RICHARD MCCORMACK: Alderman Tobin.

ALDERMAN SPARROW TOBIN: Here.

CITY CLERK RICHARD MCCORMACK: Alderman Jean-Francois.

MAN: Oh sorry.

MAN: He's not here.

CITY CLERK RICHARD MCCORMACK: Alderman Johnson.

ALDERMAN PAUL JOHNSON: Here.

CITY CLERK RICHARD MCCORMACK: Alderwoman Wray.

ALDERWOMAN KATE WRAY: Here.

CITY CLERK RICHARD MCCORMACK: Alderman Kleiner.

ALDERMAN GERALD P. KLEINER: Here.

CITY CLERK RICHARD MCCORMACK: Alderman Green.

ALDERMAN ANDREW GREEN: Here.

CITY CLERK RICHARD MCCORMACK: Alderman Witt.

ALDERMAN KEVIN WITT: Here.

CITY CLERK RICHARD MCCORMACK: Alderman Masi.

ALDERMAN JOSEPH G. MASI: Here.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Here.

CITY CLERK RICHARD MCCORMACK: Quorum is present, sir.

PRESIDENT J. MIGUEL RODRIGUES: Approval of minutes.

CITY CLERK RICHARD MCCORMACK: August 20th, 2024, please.

PRESIDENT J. MIGUEL RODRIGUES: So moved. Motion by Mr. Masi, do I have a second --

ALDERMAN KEVIN WITT: Second.

PRESIDENT J. MIGUEL RODRIGUES: -- by Alderman Witt. All in favor?

BOARD: Aye.

PRESIDENT J. MIGUEL RODRIGUES: Aye. Correspondence.

CITY CLERK RICHARD MCCORMACK: We have a Town of Wawayanda Public Hearing Notice on a Zoning and Subdivision for a proposed local law.

PRESIDENT J. MIGUEL RODRIGUES: Received and filed. Okay, for the good of the City, if anyone would like to address the Council, please step forward. You have three minutes. We have a new time clock, so that's -- it beeps at three minutes. Please stop, say thank you and move onto the next person. Anyone who would like to address the Council, please step forward.

JASON Nietzchmann: Good evening. This is Jason Nietzchmann. I live in the City of Middletown. I am back tonight because there are a few things that were said about the ethnic cleansing in occupied Palestine that need to be addressed.

Firstly, for the folks who shared during the last meeting that as a small city, we shouldn't be concerned with international affairs, I must say that I find it astonishingly hypocritical that as I'm walking out of the meeting, I find a giant Ukrainian flag hanging from the center of the City Hall.

So, I have to ask, which is it? Is it really the case that we don't get involved with international affairs? Or are we just picking and choosing what issues we care about? When the bodies of dead children in Gaza topple over 10 times that of Ukraine, I can't help but wonder why the international issue takes precedent.

Meanwhile, the genocide of an entire people is being glossed over. Perhaps the Mayor can speak on the reasoning as to why our City will take a stance on Ukraine and not Palestine.

Also, I'd love for anyone speaking against the resolution. I've noticed that like, several Zionists that showed up to the last meeting aren't here tonight. I'm curious about that.

But I would like them to identify the literal verbiage within the resolution that we, you know, sent out that they take issue with, because last meeting someone got up and they said that the resolution is one-sided and that it calls for the release of Palestinians and not Israelis, and that is straight up false.

So, let's talk some facts. According to UNICEF, Gaza has the highest number of pediatric amputees in history. Fact. In the past 10 months, Israel has killed at least 169 journalists in Gaza, deliberately targeting them and their families.

That's one journalist every two days over 10 months as "Middle East Eye" reports. Fact. A new report by the Human Rights Watch details the detainment and torture of Palestinian health workers from Gaza, including testimonies describing torture, including rape and sexual abuse by Israeli forces, humiliation, beatings, forced stress positions, prolonged coughing and denial of medical care.

Fact. Israel murdered hundreds of children in Gaza with precise sniper shots to the hearts and temple. Fact. EuroMed Human Rights Monitor reports that Israel has killed, injured, kidnapped or disappeared 10 percent of Gaza's population.

Fact. Global Education Cluster reports that Israel has bombed over 500 schools in Gaza since October 7th. And while Gaza is 60 percent smaller than Hiroshima, according to EuroMed Rights Monitor, the fact of the matter is that Israel has dropped six times more bombs on it compared with that of the atomic bomb dropped by the U.S. in World War II. So, just real quick --

ALDERMAN JOSEPH G. MASI: Your time is up.

JASON Nietzchmann.: -- I was just going to say, please don't tell me --

PRESIDENT J. MIGUEL RODRIGUES: No, your time is up. Your time is up.

JASON Nietzchmann: -- this issue is --

PRESIDENT J. MIGUEL RODRIGUES: Again. We're going to be respectful to everybody. We're going to give you a time of three minutes, and that's all I ask for. When that buzzer goes off, time is up. Does anyone else want to speak?

AMANDA KRUMP: Hi, good evening, Council Members. My name is Amanda Krump, and I live in Middletown's Fourth Ward. I would like to again urge the Council to please pass a ceasefire resolution.

There are a few things that I would like to address from the last meeting, regarding the things that were said mainly by the Mayor. First of all, we are not introducing this through any sort of organization. It is simply myself and my partner, Jason, as well as everyone else from our community, who has organized and protested for an end to the violence.

Like I said two weeks ago, through our ongoing protests on 211, we have built a community that I'm proud of, and we all worked together with the collective goal of liberation.

In my last speech, I found it important to bring up the heckling that we have experienced. And the reason I did that was because I wanted to show an example of the viewpoints held by people who support Israel's war crimes by the obscenities that they constantly scream at us and the way that they attempt to sabotage our movement.

However, I made a mistake because I did not mention the hundreds of people who drive by our protests and show their support. The Mayor mentioned that the heckling I brought up is a representation of Middletown residents.

However, I specifically said we protested on 211, which is the Town of Wallkill. I think we all know that many people from Orange County and even outside the County come to Wallkill for many reasons, and the heckling I mentioned is not a fair representation of the residents of Middletown.

I hope you all have had the chance to see the businesses that have put up our Middletown for Cease Fire posters in their window, because that is a representation of Middletown. A week ago we held our protests at Thrall Park instead of 211, and we had immense support from people driving by.

I would also like to address the Council Members and the Mayor because it was said that this issue is not for your form of government, and we should go to our Congressmen in federal government.

Many of us here, including myself, have played a part in speaking out in Washington D.C., as well as outreaching and speaking to Pat Ryan about this issue. Our government will not listen to us, and it is very difficult to speak directly with them. And that is why we are also coming to you, because you are our local government.

And you do hold the power to be able to make a statement surrounding this issue. Just as you have made a statement by hanging the Ukrainian flag from the City Hall ceiling. You don't have to be an expert in foreign policy to tell our government to stop supplying weapons that kill children.

During our last meeting, Zionists said that we are calling for the destruction of Israel. However, if they had actually read out resolution, they would see there was nothing about that.

The Mayor also mentioned that he had an issue with quite a bit of the resolution because we are not just asking for a ceasefire. Yes, of course we are not just asking for a ceasefire. Because if there was only a ceasefire, the people in Gaza would be still suffering from multiple diseases, starvation and thirst and homelessness.

In our resolution, we ask that humanitarian aid be sent to Gaza. If the Mayor or anyone else has an issue with humanitarian aid going into Gaza, please say so, because we will be interested to hear why.

MAN: Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Time's up.

AMANDA CRUMP: Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Anyone else would like to address the Council?

NIA: Hello, my name is Nia (indiscernible). And my partner Abdullah (indiscernible) is a Palestinian business owner in Middletown, and a member of the Middletown mosque.

Abdullah has owned -- owns two businesses here in Middletown -- Affordable Medical Transportation, and SDS Transportation LLC, and he's owned them for the past four years. He couldn't be here tonight because he had to work, but he asked me to speak on his behalf.

Abdullah came here to the U.S. to work so that he could support his family in Palestine. It's been very hard to watch him work long days while knowing that the taxes that he pays to the City of Middletown are being used in part to kill the very people who he is here working to support.

This is not beyond the scope of your responsibility as a municipal government, because Middletown tax dollars are funding this ongoing genocide. According to NotMyTaxDollars.org, the City of Middletown spends $387,961 per year to -- sends that much money per year to Israel to pay for weapons.

This is why hundreds of cities -- over 100 cities in more than two dozen states across the country have already passed ceasefire resolutions. Municipal governments don't control our foreign policy, but it is one way that we can show our federal elected officials and the rest of the world where the American people stand on violence and genocide.

We stand for peace, safety and humanity. Abdullah is one of many Muslim and Arab and Palestinian Middletown community members who is directly impacted by the ongoing genocide. As the City Council, we ask you to fulfill your responsibility to speak up for these members of the community, and to make sure that they know that you value their lives as much as anyone else's.

Please join the hundreds of American cities who have passed ceasefire resolutions to show the world where the people of Middletown and the American people stand. Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Thank you. Anyone else?

BRAHVAN RANGA: Good evening. Thank you for your time. My name is Brahvan Ranga. I'm the Political Director at For the Many. Our office is at 5 East Main Street, and I'm here in Middletown. And we represent hundreds of folks in this city.

I know you're all familiar with my colleague Vanessa. I really appreciate your time to provide a public comment and wanted to mention a piece of local housing legislation that we've been advocating around, which is Good Cause Eviction.

Municipalities such as Middletown have been empowered by state legislation earlier this year to enact Good Cause Eviction, which is a necessary step to address our housing crisis that's affecting Middletown residents.

It would protect certain tenants against unfair evictions and unreasonable rent increases and would empower them to ask for necessary repairs without the fear of reprisal. It would greatly benefit homeowners in Middletown as well by stabilizing our communities and preventing neighbors from being forced from their homes.

Specifically, Good Cause Eviction would give tenants the power to challenge evictions that they believe are unfair in court, including lease nonrenewal. And it would also require landlords to justify a rent increase greater than 8.5 -- 0.45 percent in a calendar year and be prepared to justify that rent increase to a judge.

Good Cause Eviction does give landlords the power to evict tenants, if that eviction's justified. Under the law of reasonable reason for an eviction would be nonpayment of rent, violating the lease, the landlord wishing to recover the unit for personal use, the tenant causing a nuisance or violating the law, or if the owner is selling the building.

The law also excludes certain types of units from being covered by Good Cause. So, units built after 2009, owner-occupied buildings, and units with rents above a certain threshold, as well as units belonging to landlords who have a certain number of units in their entire rental portfolio across the state, as determined by the municipality.

The bill also gives municipalities the ability to adjust two of those exemptions. And it's imperative that Middletown pass the strongest possible version by setting the portfolio size exemption to one unit, which would establish -- which would cover as many tenants as possible, and eliminate a potential LLC loophole that corporate landlords could exploit, and setting the high rent exemption at 345 percent of fair market rent to ensure that only truly luxury units are excluded from the law.

So, it's obviously a little bit complicated, but we really believe that this piece of legislation is one tool that municipalities will have to address the housing crisis. It won't solve all of our problems, but it's an important step you can take to protect tenants.

It does not punish good landlords. It only codifies what good landlords already do into the law. And I urge you to move forward and pass the strongest version possible. Thank you so much.

PRESIDENT J. MIGUEL RODRIGUES: Thank you. Anyone else would like to address Council? Okay, moving over to the Mayor.

MAYOR JOSEPH M. DESTEFANO: Good evening. I'm really not going to respond too much to the comments. I -- as to the last meeting, I did mention to this group that this is the appropriate body for them, if they'd like to come back and express their opinions on international matters.

But the -- especially in light of the recent killing of the six hostages, that I don't think it's an appropriate time to have a debate about whether Hamas is a victim or a perpetrator here in the Middle East.

Also, they need to understand that they're making a request to the Common Council, not of myself. The decision to hang the Ukrainian flag in the outside of my office door was made by me under my authority.

They're requesting a resolution from you as a body to reflect the whole City's authority. So, there is the answer for why the Ukrainian flag is hanging. And the concerns about whether we should be getting into international affairs, especially one as high tension as what's going on right now in the world.

So, I'll leave that at that and continue to stay with my remarks. But to add that I think over the past two weeks, we have probably received in excess of 500 emails.

CITY CLERK RICHARD MCCORMACK: 5,000.

MAYOR JOSEPH M. DESTEFANO: Oh, 5,000?

CITY CLERK RICHARD MCCORMACK: 5,000.

MAYOR JOSEPH M. DESTEFANO: 5,000 emails. I forgot -- I lost the zero. In support of Israel on this. And that's the reason for us to -- really not to stick our faces or sticking our noses into this matter at this time.

So, but you do what you like. You know my position. It's been made very clear. But they are welcome to come back here each and every meeting, take up their three minutes and use the time to their -- to try to convince people of something differently.

In regards to Good Cause Eviction, as we stated, the, you know, other communities have been at this a lot longer than us, and I think Newburgh, or some of the local communities that have been at this for years and involved in litigation have just recently passed it.

So, we are continuing to examine it. We're not opposed to it. We have looked at -- there's still a lot of questions out there. I understand that there was a group -- I don't know if it's the same group that was going door to door, in some of the apartment complexes over this past week or so, telling tenants that their rent's going to be raised 10 percent or can be raised at 10 percent or more.

But there are also other units that are -- my understanding is, that are exempt from this type of legislation. And this is the information and data that we're trying to gather. For example, people going door to door in David Moore Heights in Summitfield, those are already affordable income restricted units.

So, my understanding is, those units are not covered under the Good Cause Eviction legislation. Going into a condo project, where the people rent out a condo unit. My understanding is they are not subject to Good Cause Eviction.

There's also legislation, and the gentleman that just spoke regarding that, regarding landlords that hold multiple -- own multiple properties or multiple LLCs and trying to group them in together to whatever restriction that the City may place its 10 units as other communities have done.

The litigation that it's focusing on or may -- and this is just my understanding and we're trying to verify this, is that that is some -- an issue that's being litigated in the courts on whether the 10 units is Andrew Green owning five units here and five units here, does that count as 10 units? Or is it two separate five-unit buildings, and neither one qualifies under the 10-unit threshold?

So, the idea that a city or a community would just jump into this, I've spoken to our Corporation Council. He's advised us to move very slowly on this, to -- I think we've done that from the beginning, and that we were proven right.

This same group or some of these representatives of this group have been here a year and a half, two years ago, when we said we're treading slowly on this because of the litigation that's pending.

Other communities passed things. They were sued.

They were overturned. So, I think we'll get there in some form, but the -- we need to go through a process. We need to get all the accurate information. We know -- we need to know what the impacts are on the community.

We know -- we need to know what the taxpayers' obligations are moving forward. Or, do we have to have a local board to determine maximum increases on like, ETPA? Is ETPA better than going into the Tenant Protection, the Good Cause Eviction Tenant Protection Act?

So, we have a lot of work to do. We're doing it. Dr. Johnson and I have spoken. I've shared emails with him of information, and we'll continue to do so at a -- as rapid pace as we possibly can.

I know some communities have also, out of concern that landlords may anticipate that this may be happening, at some point have then jacked up rent at a unreasonable rate. My understanding is, you can go retroactive back to prior -- a year or two years or whatever. I think Kingston itself did that.

So, but these are all things that are subject to litigation. We have to protect our taxpayers, at the same time, protect as many tenants as we possibly can. So, we're working in that direction, and I expect to be there within the next couple of months. So, I think that's all I have for tonight. Do you have any questions?

PRESIDENT J. MIGUEL RODRIGUES: Any questions for the Mayor? Alderman Johnson.

ALDERMAN PAUL JOHNSON: (indiscernible) I wanted to --

MAYOR JOSEPH M. DESTEFANO: Yes.

ALDERMAN PAUL JOHNSON: -- (indiscernible) here. Now I'm here. I wanted to reinforce because we've had comments both in the Council and from the community. We're not ignoring this. Apparently I'm told that legislator will be the gatekeeper. And you've now reiterated from the Mayor that it's under consideration.

And as soon as they are ready to present a concept, we will meet. So, please don't say that because legislative is not meeting, that we're not paying attention to it.

Mr. Mayor, I had a question for you. It was really perhaps for the speaker, but we're not really allowed to do that under this protocol. He mentioned that a landlord could reclaim the unit for personal use. Do you know -- does that mean if I'm their landlord, I can live in it now? Or does that mean I could put you out and put somebody in at a higher rent?

MAYOR JOSEPH M. DESTEFANO: My understanding of it was that you can reclaim it for a family member, say a son or a daughter or yourself.

ALDERMAN PAUL JOHNSON: Okay.

MAYOR JOSEPH M. DESTEFANO: But those are all things that need to be clarified.

ALDERMAN PAUL JOHNSON: Right.

MAYOR JOSEPH M. DESTEFANO: As we pass our -- and modify our local law. Some of it is not -- you're required to be a part of the general law. Others, and I think you heard the example of going down to one unit --

ALDERMAN PAUL JOHNSON: Right.

MAYOR JOSEPH M. DESTEFANO: -- versus 10 units. That is a subjective to you, the Common Council, and I think at the last meeting, a lot of people in your room were in agreement that forcing a owner-occupied two-family home to be under those guidelines would be a little bit unreasonable.

But whatever the threshold is, whether ETPA I think is either six or eight units, built prior to 1974. This has a threshold of 2009 for units built after 2009 are not covered under this.

So, and then, we're going to do a housing inventory to determine how many units are impacted, because a lot of units in Middletown right now fall under the income subsidize category, Tall Oaks, Summitfield, David Moore, College Hill, the old College Hill apartments.

So, there are a lot of units in this city that would not qualify to my understanding of the law, as I read it now, under the Good Cause Eviction.

ALDERMAN PAUL JOHNSON: Okay.

MAYOR JOSEPH M. DESTEFANO: So, another one would be the senior housing projects. So, all of those units would be disqualified under this -- from protection under this plan as I read it at this point.

ALDERMAN PAUL JOHNSON: Thank you very much.

PRESIDENT J. MIGUEL RODRIGUES: All right. Thank you, Mayor. Remarks of Department Heads, Economic Development.

MARIA: Good evening, everyone. This evening, we had a Community Development Agency meeting and reported that 84 Linden Avenue is just about completed, and hopefully will have a new homeowner through our housing program.

And we're going to be moving onto another property on Linden Avenue. As you know, this is a housing program that we do through the Community Development Agency. And we offer grants and incentives for folks.

We work with (indiscernible). We restore the house to -- from soup to nuts. Basically, the houses are -- were either abandoned or taken back for the taxes. And then, we restored them and rehabbed them. And there's new homeowners in our community.

I think this is going to be our 15th or 16th home that we've done through the program. So, we're looking forward to our next home and getting new homeowners in the 84 properties soon.

Friday, there's a ribbon cutting at 102 North Street, the former Lounsbury's, Nana's Colombian Bakery. So, that's at four o'clock this Friday. Come help us cut the ribbon and welcome another business to our downtown.

We have two more concerts left, this Friday and next Friday, and that wraps up our outdoor series. Farmer market is going strong, especially with this year, now that we have the SNAP program. And it's been going really strong.

And tonight, there's also a resolution before you regarding Rail Trail Commons with a new tenant coming in, Confluence Running. They're looking -- it's a specialized shoe and running store. And they're excited to come to downtown and want to move into our city and be part of our community.

And I look forward to supporting your -- the resolution tonight, so we could get them in and they'll be ready for the holidays to open. And that's all I have.

PRESIDENT J. MIGUEL RODRIGUES: Any questions for Maria? Alderman Johnson.

ALDERMAN PAUL JOHNSON: It came to my attention recently that you're putting together a Steering Committee for Community Campus. Could you just explain what the goal and/or mission of that Committee would be?

MARIA: Sure. As you know, we received the BOA grant Brownfield opportunity grant for the Middletown Community Campus, plus, an additional funds for planning grant.

So, with this BOA grant, we need to put together a

Steering Committee. And what the Committee is there for is to look at how we are going to spend these funds, and what the needs of that particular area, the campus.

So, you know, you're going to have representatives, obviously of the school, (indiscernible), the City School District community members. And so, we look forward to bringing them all to the table and getting this project going. It's almost like the Committee, the one we had for the DRI --

ALDERMAN PAUL JOHNSON: Okay.

MARIA: -- to see how we are going to, you know, what the vision and goal -- vision for that campus is going to be.

PRESIDENT J. MIGUEL RODRIGUES: And one other briefly, could you define what Brownfields are?

MARIA: Brownfields are from environmental issues on the grounds. So for instance, at the campus is the old power plant. So, that -- so, if -- once this plan goes in, the Brownfield Opportunity Grant plan and the State approves it, this is going to open the doors for us to apply for grants to remediate these properties that have any kind of environmental issues.

PRESIDENT J. MIGUEL RODRIGUES: Thank you.

MAYOR JOSEPH M. DESTEFANO: (indiscernible) --

MARIA: Correct, Mayor. We expanded the target area.

MAYOR JOSEPH M. DESTEFANO: Yeah, we expanded the target area of the BOA to include Summitfield and Tall Oaks.

PRESIDENT J. MIGUEL RODRIGUES: Oh okay.

MAYOR JOSEPH M. DESTEFANO: To -- (indiscernible) that whole area to the city line, with the possibility of adding -- and we've already spoken to the Middletown Housing Authority about the possibility of adding some units within the Middletown Housing Authority property, and possibly on some property that the City owns that's adjacent to it.

So, that'll be part of the study group. They will have representation. (indiscernible) will have representation on the Board, along with other Community Campus tenants.

ALDERMAN PAUL JOHNSON: Thank you very much.

MAYOR JOSEPH M. DESTEFANO: Okay.

PRESIDENT J. MIGUEL RODRIGUES: And Police Chief.

POLICE CHIEF JOHN EWANICIW: Good evening, once again. Just a few items this evening. Our Night Out Festival was canceled due to the weather. We have it rescheduled for September 28th from two p.m. to five p.m. at Davidge Park.

Notices went out to all of our vendors, all of our supporters, and hopefully we'll have them join us that day as well. Additionally, we've been working with the school district and some local businesses on a back-to-school community barbeque event.

It is tentatively scheduled for this Saturday. However, the weather is not looking fantastic right now. We are discussing a rain day possibility of the following weekend, but as of right now, it is this Saturday at Davidge Park, one to five.

For our Second Ward Alderman, the speed sign has been finally installed and operational. I'm sorry for the delay, but between vendors, it took us a little bit. But it is up and running. Hopefully it's positive for your constituents there.

And then, with school starting this week, please, I remind the public to pay attention. We do have some traffic pattern delays or concerns with some of the construction. I know the school's worked with the Department of Public Works in putting out some notifications on that.

But parents, please, please plan accordingly. Take extra time. Anticipate some delays. Pay attention to the youth that are walking. We will have extra police officers out, but we definitely do not want any issues.

And as with the beginning of school every year, expect some chaos, some delays. Just take some time to get back into the rhythm. So, I do ask the patience of the parents and cooperation of those. Other than that, I have nothing, unless you have for me.

PRESIDENT J. MIGUEL RODRIGUES: Any questions for the Police Chief? Thank you, Chief. DPW Commissioner.

JACOB TAWIL: Good evening. We have a few comment -- a few resolutions before you tonight for your consideration. I will address them if you have any questions about them, otherwise, I have no comments. If you have any questions for me?

PRESIDENT J. MIGUEL RODRIGUES: Any questions for -- all right. Superintendent of Recreation.

RAELYNN BERTHOLF: Good evening, everyone. Just an update on all of our fall programming is up and registration is up. So, I'll just update you on our current fall programs.

These are following paid programming, we have our boxing, youth martial arts, youth art classes, adult pickle ball, adult open play pickle ball, youth soccer, youth cheer clinics, adult volleyball, youth music classes, crochet clinic, adult tennis clinics, stroller work walks, and a brand-new brain power program that's tutoring and homework assistance.

That's a new program we're starting. And our free programming is archery, cooking, story time with Ms. Sharon, teen open gym, youth open gym, and music for the littles.

And also, a reminder that we are once again doing a bus trip down to the city to -- for the Radio City Rockettes. It's on Sunday December 1st, and it's $125 a person. The bus leaves at 11 a.m. The show begins at five p.m., and we leave right after the show.

The bus picks us up right in front, and we get back into Middletown approximately nine p.m. Any questions?

PRESIDENT J. MIGUEL RODRIGUES: Any questions for Raelynn? All right, thank you. City Clerk?

CITY CLERK RICHARD MCCORMACK: Good evening. Just a reminder, we have our third annual or our third community yard sale coming up on September 14th. There are still openings at Erie Way Park. For those of you who don't know, we are trying piloting a program this year.

If you do not have a house and you're living in a multi-unit dwelling or in a condo or an apartment, you can contact our yard sale sign-up team through our website, and we'll be able to provide you with a spot of Erie Way Park so you can take part in the yard sale, the community yard sale as well.

So, we hope you take -- some takers for that, and we're looking forward to -- and hopefully the weather will stay -- be positive that weekend. And that's it.

PRESIDENT J. MIGUEL RODRIGUES: Any questions for the City Clerk? All right. Petitions and Complaints. There is none. All right, Remarks of Alderman. Alderman Tobin.

ALDERMAN SPARROW TOBIN: Just maybe like a point of order. I just -- I know we have a lot of speakers recently. I just -- I'd ask that you keep it polite and they don't make it personal.

I know in the past sometimes we had, you know, with the power plant and other things, it starts to get real personal, even have people been asked to leave. And I think -- I tell my students not to be condescending.

But if you're insulting or yelling at someone, they're not listening to you, so just -- I would just try to keep -- make sure to keep it respectful.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Johnson?

ALDERMAN PAUL JOHNSON: Community yard sale, your brainchild. Thank you very much.

CITY CLERK RICHARD MCCORMACK: Oh thank you. (indiscernible) --

ALDERMAN PAUL JOHNSON: And Park and Recs -- yes sir.

CITY CLERK RICHARD MCCORMACK: And Eileen's.

ALDERMAN PAUL JOHNSON: And Eileen. I'm sorry, Eileen. I meant to say you as well. Park and Rec's, is that all you got?

WOMAN: (indiscernible) --

ALDERMAN PAUL JOHNSON: Bravo. And I am -- gather that a belated happy birthday is in order for the Chief of Police. That's all I have. Thank you very much.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Wray?

ALDERWOMAN KATE WRAY: Good evening. I want to welcome all the kids back to school tomorrow. On behalf of the community, your child is not getting off the bus until about five p.m.

And we all need to accept it, because I have graduated a child, and I have three more to go, and there has not been a year where those buses aren't coming in late. We are getting a lot of children home safely.

The logistics are monumental. Give them time. It's a rough couple of weeks. We're going to get through it and everything's going to be great, but I hope the kids are ready to go back, because I actually am.

My personal feelings aside on the issue you brought forth, today, I have my own, we all have our own. I am not a foreign policy expert, nor am I a Middle East expert. The thing that I'm upset about this evening is the continued approach to our microphone to spread misinformation.

This is the problem. This is the equivalent of clickbait, and this is everything that's kind of wrong with a lot of our political discussion these days. To come here and make the claim that Middletown is sending money to Israel is so far off the mark.

You know, you walk in here and everyone watches this meeting and goes, oh, Middletown's writing checks to Israel, it's crazy. You come in with a sign that we could be buying something else with that money.

That's not Middletown's money. You know, your numbers are obviously based off, you know, the people who reside in Middletown who pay an income tax, which is a federal tax. It is not a city tax. That is not Middletown's money. It does not pass through our accounts. We never see it.

Okay? So to come and make that giant

misrepresentation is dangerous and reckless, frankly. It shouldn't be done. I don't approve of it. So, you know, you want to come here and share your opinions, you want to speak on the good of the City, Good Cause Eviction, I am 100 percent in support of us doing this and doing it right.

I don't want to waste taxpayer money by getting ourselves sued. And that's just a waste of money. We'll do it right the first time. We'll do it in a way that protects our tenants. And I'm all on board for that.

You want to come here and talk about that? That affects the residents of my City. But to come to that microphone and spread, you know, reckless misinformation and to accuse Middletown of things that are just patently false, it's concerning for me.

And I don't think that that -- that this is your forum to do that. Okay? So, that's just my feelings on that. After -- beyond that, I just -- I want to wrap it up. We've been speaking a lot this evening, so that's really all I have. Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Kleiner?

ALDERMAN GERALD P. KLEINER: Thank you. We have our constituents meeting. It'll be next Monday September 9th. And Raelynn Bertholf, our Parks and Rec Commissioner has graciously consented to come to our meeting.

You know, a lot of questions often deal with Davidge

Park and events going on, and the trails and such. So, she'll be able to answer them directly. So, if you have concerns, please come out to our meeting.

I definitely support Good Cause Eviction and I hope we don't take too long to get coordinated with what we can do with the state and make it good for Middletown.

It's hard to talk about the Middle East. I understand what they're saying when they say this percentage of the federal budget that Middletown pays goes to basically send weapons to Israel.

We are the major weapons supplier, and there is such a thing as human rights, war crimes, and we need to be aware of that. And we need to understand what is going on. It's not beyond our purview to actually be concerned about something so horrendous happening in the world.

One last thing. I've thought about this a lot, but I think Elon Musk is the biggest coward in this country, and he could do so much to alleviate so much suffering around the world. But no. It's just complaints. So, that's another beyond Middletown, but I had to say it. Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Green.

ALDERMAN ANDREW GREEN: Thank you. I do look forward to our constituents meeting on Monday. Thank you, (indiscernible) for agreeing to come. I know there's going to be some good discussion there, so I hope to see everyone here at seven p.m. on Monday the 9th.

Also, just again, happy back to school. I've got an anxious, hopefully by now sleeping kindergartener starting tomorrow. So, I don't know who's more nervous, me or him, but looking forward to it. And happy back to school.

Please be patient with everyone. Some schools started today. I got stuck behind a bus, and about 16 cars were honking as a little boy was crying saying goodbye to his mother for the first time on a bus. So, be compassionate, all right? You got to. Thank you.

JC: Okay, Alderman Witt?

ALDERMAN KEVIN WITT: Thank you very much. I just wanted to acknowledge the work at the OMW station. It was great to see the photos on social media, and speaking with the Mayor a little bit earlier, it was the -- it's been universally positive and universally praised.

And I go by that area several times a day, and it just -- it looks better already just to see things happening, and people are excited about it. So, that's a good thing to me.

People are talking about the first day of school tomorrow, sort of piggybacking on everything and the buses. I can tell you that on the Middletown City School District website, there will be on the front page and on the Facebook page, there will be each route, when they leave, it will say whether they are on time, whether they are five minutes late.

And what happens is, is so people know, and thank you, Kate, for bringing it up, is that a lot of Middletown, the buses, they travel three routes. So, you have the first group goes to the high school and both middle schools. They drop their kids off.

And then, they go back and pickup kids who are going to Carter and Maple Hill. And then, they get done with that route, and then they go back and pick up their kids who are going to Presidential Park and Truman Moon, Maple Hill Annex at Truman Moon.

So, if there is a delay at the high school or the middle school levels, chances are very good, especially on the first day or the first week that it's going to affect everybody.

So, for at least the end of this week and into next week, if necessary, we will share this information on our website. It'll be -- hop on the website. It'll be right there and it'll be on Facebook to share. So, thank you very much.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Masi?

ALDERMAN JOSEPH G. MASI: Nothing this evening.

PRESIDENT J. MIGUEL RODRIGUES: New business.

CITY CLERK RICHARD MCCORMACK: Good evening. We have a resolution sponsor by Alderman Masi authorizing a proposal from B&L for Amendment Number 5 for additional construction administration and observation services for the Water System Improvement Project.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Masi. Seconded by Alderman Johnson. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. Resolution sponsored by Alderman Witt declaring a Parks and Recreation Department equipment at surplus.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Wit, seconded by Alderman Green. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: And President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. Resolution sponsored by Alderman Green, authorizing an easement and licensing agreement with Orange and Rockland Utilities for an 89-99 Dolson Avenue.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Green. Seconded by Alderman Johnson. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. Resolution sponsored by Alderman Tobin authorizing the transfer of $10,000 in the Police Department budget.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Tobin, seconded by Alderman Witt. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. Resolution sponsored by Alderman Kleiner, authorizing a $26,652.87 budget transfer from the Water Fund.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Kleiner, seconded by Alderman Johnson. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: And President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: Resolution sponsored by Alderman Wray, authorizing a proposal from Ackerly and Hubbel Appraisal Corporation for Watershed Property Phase I appraisals.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Wray, seconded by Alderman Johnson. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: And President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. Resolution sponsored by Alderman Johnson, authorizing a $12,467.95 budget transfer for repairs at the Sewer Treatment Plant.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Johnson. Seconded by Alderman Kleiner. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi?

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodriguez.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. Resolution sponsored by Alderman Tobin, appointing Jonathan Scarpati, Jayden Arocho, and Ricardo Parchment as City of Middletown Volunteer Firefighters.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Tobin, seconded by Alderman Kleiner. Any discussion?

ALDERMAN ANDREW GREEN: I'm just going to abstain as it came from the Fire Department, from my desk, so thank you.

PRESIDENT J. MIGUEL RODRIGUES: Okay. Anyone else? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERMAN KATE WRAY: Thank you for your service, and aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Abstain.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: Resolution sponsored by Alderman Masi authorizing side letter agreements to extend the probationary period for three employees.

M4: Resolution sponsored by Alderman Masi, seconded by Alderman Johnson. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. Resolution sponsored by Alderman Witt, authorizing a lease agreement with Binghamton Health Campaign Inc.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Witt, seconded by Alderman Wray. Any discussion?

ALDERMAN ANDREW GREEN: Real quick.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Green.

ALDERMAN ANDREW GREEN: Yeah, I just want to make a note on this that the CEO of the company is actually a Middletown graduate, and I went to school with him and wish him all the best.

PRESIDENT J. MIGUEL RODRIGUES: Anyone else? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: Resolution sponsored by Alderman Witt, authorizing amendment to City Code to designate a handicapped parking spot in front of 9 Sunnyside Avenue.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Witt, seconded by Alderman Masi. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. Resolution sponsored by Alderman Green, authorizing a public hearing on a four-lot subdivision on Orange Terrace.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Green, seconded by Alderman Kleiner. Any discussion? Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: And President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries. That's it for new business, sir.

PRESIDENT J. MIGUEL RODRIGUES: Audit.

ALDERMAN JOSEPH G. MASI: Mr. President, I move the accounts be audited and the claims be adjusted and the City Treasurer be authorized to issue warrants for the payment.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by Alderman Masi, seconded by Alderman Johnson. Roll.

CITY CLERK RICHARD MCCORMACK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK RICHARD MCCORMACK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK RICHARD MCCORMACK: Wray.

ALDERWOMAN KATE WRAY: Aye.

CITY CLERK RICHARD MCCORMACK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK RICHARD MCCORMACK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK RICHARD MCCORMACK: Witt.

ALDERMAN KEVIN WITT: Aye.

CITY CLERK RICHARD MCCORMACK: Masi.

ALDERMAN JOSEPH G. MASI: Aye.

CITY CLERK RICHARD MCCORMACK: President Rodrigues.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK RICHARD MCCORMACK: It carries.

PRESIDENT J. MIGUEL RODRIGUES: More for adjourn --

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

I, Sonya Ledanski Hyde, certify that the foregoing transcript is a true and accurate record of the proceedings.

Sonya M. Ledanski Hyde

Veritext Legal Solutions

330 Old Country Road

Suite 300

Mineola, NY 11501

Date: September 25, 2024

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Masi
Seconded by: Alderman Johnson
Date of Adoption: September 3, 2024
Index No: 166-24

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Authorizes a Proposal from Barton & Loguidice for Amendment #5 for Additional Construction Administration & Observation Services for the Water System Improvements Project

BE IT RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes a proposal from Barton & Loguidice for Amendment #5 for additional construction administration and construction observation services for the Water System Improvements project for $35,000.

BE IT FURTHER RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the Mayor to sign the proposal.

No funding is needed at this time, as it will be paid with the funds from the project line, H.0947.900. We would advise if additional funding is required at the project closing.

Prepared by:
Jacob Tawil

Attachments:

1.	B AND L PROPOSAL AMENDMENT 5 WATER SYSTEM IMPROVEMENTS

Barton & Loguidice

February 28, 2024

Jacob S. Tawil, P.E., Commissioner
Department of Public Works
City of Middletown
16 James Street
Middletown, New York 10940

Re: Amendment 5 - Middletown Community Campus Redevelopment
Water System Improvements
Subj: Additional Construction Administration and Construction Observation Services
File: 1753.003.007

Dear Commissioner Tawil:

Barton & Loguidice, D.P.C. (B&L), is pleased to continue working with the City on this vital project. As you are aware, the construction of the new 24-inch diameter pipeline has lasted much longer than expected. As you will recall, our original contract was for 26 weeks of CA/CO services, followed by our supplement to add 12 weeks for the addition of the 12-inch main to the construction work. The active construction has now surpassed 3 years in duration. The Contractor has yet to provide final costs for the final connection and we understand that they will be back in the spring to complete the final work. These items have caused additional CA/CO services to be required.

The following are the additional services:

Scope of Services

Construction Administration / Construction Observation Services

These services include the additional hours of in-field construction observation services plus office staff time to complete the closeout documentation. We have already completed the record plans, pending the changes that are necessary for the work associated with the final connection plan. As previously noted, the construction period has extended from the originally planned 38 weeks to now over 3 years in duration. There has been significant additional time spent dealing with the contractor both in the field (CO services) and in the office (CA services) to bring this project to a close.

These additional services include:

- Multiple field meetings and correspondence with the DOT regarding paving issues, signal loop issues, and general punch list items. This includes extra effort to coordinate closeout with the DOT after the contractor completed work without notifying anyone, resulting in extra effort to secure DOT approvals.
- Engaging our design team to re-work the final connection due to the contractor not completing the original designed pipeline length. This involved requested modeling to ensure that the pressure in the new main would be sufficient for residents without the originally designed connections.

The experience to listen
The power to solve

- We have spent extensive time dealing with contractor payment application issues, stored material issues, and prevailing wage rate issues. As they continue to push to closeout the project, their lack of accurate paperwork has caused the additional services.
- Finally, the entire construction duration has expanded approximately three times longer than originally planned, requiring our general construction phase services to also extend. In addition to the additional construction administration services, we will need additional construction observation services for the final connection and punch list.

With the increased duration and additional services necessary, we are requesting a supplement for the additional services required on our end to complete the construction.

Fee for Services

B&L proposes to provide the above described Scope of Services on a time & expense basis not to exceed fee of $35,000 as follows:

- Construction Administration Services $28,000
- Construction Observation Services $ 7,000

We have not spent approximately $14,000 in our current agreement that was included for engineering assistance to the City and legal team as we complete this project. We will reallocate this fee to the construction administration phase.

If supplement #5 meets with your approval, please countersign below, return one copy to B&L, and retain one copy for your files. If you have any questions, please contact Roy Richardson or me. We appreciate the opportunity to provide continued services to the City.

Sincerely,

BARTON & LOGUIDICE, D.P.C.

Donald H. Fletcher
Executive Vice President
RAR/

Authorization

Barton & Loguidice, D.P.C. is hereby authorized by the City of Middletown ("Owner") to proceed with the services noted herein and in accordance with the original agreement terms and conditions.

Joseph DeStefano, Mayor
City of Middletown

Date

1753.003.007 Amendment 5 (ID 3023170).docx

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Witt
Seconded by: Alderman Green
Date of Adoption: September 3, 2024
Index No: 167-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Resolution Declaring Parks Department Equipment as Surplus.

BE IT RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment to declare the following equipment as surplus and authorizes its sale auction through Auctions International:

2006 Ford F550 Vin: 1FDAF57Y46EB56108, Plate # L97471. It will no longer pass inspection, no longer runs, and has a lot of rot.

Prepared by:
Raelynn Bertholf, Supt of Recreation and Parks

Attachments:
None

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Green
Seconded by: Alderman Johnson
Date of Adoption: September 3, 2024
Index No: 168-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Authorizes An Easement and Licensing Agreement with Orange and Rockland Utilities for 89-99 Dolson Avenue

BE IT RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes an Easement and Licensing agreement with Orange and Rockland Utilities for 88-99 Dolson Avenue in the City of Middletown, Orange County, New York, which is designated on the Orange County New York Tax Map as Section 46, Block 1, Lot 1 (the "Property"); for the construction of a sidewalk for public use along the edge of the Property adjacent to Dolson Avenue, that will encumber approximately 1,206 square feet of the Property.

BE IT FURTHER RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the Mayor to sign the agreement.

BE IT FURTHER RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the payment of $8,000 for an appraisal associated with this project.

Prepared by:
Jacob Tawil

Attachments:

1.	Sidewalk Easement Appraisal
2.	LAW1-#1161372-v1-OR_Middletown_Sidewalk_Easement__FINAL_-_CLEAN_8_30_24
3.	LAW1-#1162060-v1-ORU_City_of_Middletown_License_Agreement-_CLEAN

Goodman-Marks Associates, Inc.
REAL ESTATE APPRAISERS AND CONSULTANTS

APPRAISAL REPORT

PERMANENT EASEMENT AT 89-99 DOLSON AVENUE
CITY OF MIDDLETOWN
ORANGE COUNTY, STATE OF NEW YORK

PREPARED FOR:

MR. OSEI BOATENG
PROCUREMENT SPECIALIST – SUPPLY CHAIN
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
4 IRVING PLACE, 17TH FLOOR
NEW YORK, NY 10003

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Goodman-Marks Associates, Inc.
REAL ESTATE APPRAISERS AND CONSULTANTS

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NEW JERSEY OFFICE
55 MADISON AVENUE, SUITE 400, MORRISTOWN, NEW JERSEY 07960
PHONE: (973) 285-3195
www.goodmanmarks.com

February 9, 2024

Mr. Osei Boateng
Procurement Specialist – Supply Chain
Consolidated Edison Company of New York, Inc.
4 Irving Place, 17th Floor
New York, NY 10003

Re: Permanent Easement at 89-99 Dolson Avenue
City of Middletown
Orange County, State of New York
Our File No. 23-1423

Dear Mr. Boateng:

At your request, we have inspected and appraised the subject property of this appraisal, which is representative of a non-exclusive permanent surface easement. This easement is reportedly being sought by the City of Middletown for the purpose of installing a sidewalk and shall encumber a portion of a tax lot, that is reputedly owned Orange & Rockland Utilities, Inc., a subsidiary of our client. Given the foregoing, the purpose of this appraisal report is to provide a market value opinion of the subject property Permanent Easement. In order to meet this stated purpose, we have developed our opinion of value by utilizing Before-&-After Methodology. Therein, the lands delineating the Permanent Easement are part of a defined Larger Parcel, and following the acquisition of the subject, a Remainder Parcel is created. The difference between the market value of the fee simple estate of the Larger Parcel (before) and the Remainder Parcel (after) represents the overall damage value that can be attributed to the Permanent Easement as a result of its divestment from the greater whole. Then, with its underlying land value established, subsequent considerations were made for the subject's impact to property rights and an allocation factor was applied to its indicated fee simple value so as to approximate its ultimate value as divided between the dominant and servient estates.

The encumbrance presented by the subject property Permanent Easement shall affect the tax lot identified on the Orange County Tax Maps as Section 46, Block 1, Lot 1. In defining the Larger Parcel for our analysis, we have considered the fact that, according to public records, Lot 1 contains 23.80± acres of land area. Given the significantly lesser size of the subject property Permanent Easement, we have refined our definition of the Larger Parcel to just a portion of Lot 1 in order to produce credible assignment results. That said, the Larger Parcel is an irregular-shaped, corner-block parcel with frontages measuring 528.00± feet along the south side of Republic Plaza and 132.00± feet along the east side of Dolson Avenue. Per our aerial measurements, the Larger Parcel contains 1.633± acres (71,150± square feet) of land area. According to public records, it is zoned within a Heavy Industrial (I-2) District by the City of Middletown.

The subject property Permanent Easement is an irregular-shaped parcel to be situated at the Dolson Avenue frontage of the Larger Parcel, just south of its intersection with Republic Plaza. Per the survey map provided by our client, the Permanent Easement measures 93.51± feet in length, with a width of 11.27± feet at its widest point. It contains 0.028± acres (1,206± square feet) of land area.

Consolidated Edison, Inc.
Page 2
February 9, 2024

As previously discussed, once the Permanent Easement is acquired from the Larger Parcel, a Remainder Parcel is created. However, as the taking of the Permanent Easement is representative of a transfer of property rights as opposed to a physical division of the land, it is to be noted that the Remainder Parcel is materially identical to that of the Larger Parcel.

The intended use of this appraisal report is to assist the intended users in understanding the market value of the subject property and for submission and review by the New York State Public Service Commission and other authorities that regulate our client. The intended users of this appraisal report are our client, Consolidated Edison, Inc. (Con Edison) and Orange & Rockland Utilities, Inc. (ORU) and those persons authorized by Con Edison to utilize this report, including the New York State Public Service Commission.

This appraisal report is intended to conform to the current Uniform Standards of Professional Appraisal Practice (USPAP), as promulgated by the Appraisal Standards Board of the Appraisal Foundation, and the Code of Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute.

In arriving at the appraised value, we considered items influencing value, including the location, size, utility and zoning of the subject property, comparable sales and market trends. We did not investigate the subject property for contaminants or environmental hazards, because environmental audits must be conducted by professional environmental specialists. Should an environmental audit disclose the presence of contaminants on the subject property, this finding may affect our value estimate.

We are of the opinion that the market value of the subject property Permanent Easement, as of December 29, 2023, *predicated upon all assumptions and limiting conditions as defined within the body of this report*, was:

EIGHT THOUSAND THREE HUNDRED DOLLARS

$8,300.00

A report of 74 pages, plus Addenda, is attached hereto and made part hereof, and the valuation is expressly made subject to the conditions and comments appearing herein.

Very truly yours,

GOODMAN-MARKS ASSOCIATES, INC.

Matthew J. Guzowski, MAI, MRICS
President
Goodman-Marks Associates, Inc.
Certified General Real Estate Appraiser
New York State Certificate #468986

Matthew F. Boylan, MAI
Executive Vice President
Goodman-Marks Associates, Inc.
Certified General Real Estate Appraiser
New York State Certificate #4651008

Anthony M. Savino
Assistant Vice President
Goodman-Marks Associates, Inc.
Certified General Real Estate Appraiser
New York State Certificate #4654108

Luke Postiglione
Associate
Goodman-Marks Associates, Inc.

CERTIFICATE OF APPRAISERS

PERMANENT EASEMENT AT 89-99 DOLSON AVENUE
CITY OF MIDDLETOWN
ORANGE COUNTY, STATE OF NEW YORK
GM FILE NO.: 23-1423

We, Matthew J. Guzowski, Matthew F. Boylan, Anthony M. Savino and Luke Postiglione, certify to the best of our knowledge and belief:

THAT, the statements of fact contained in this report are true and correct.

THAT, the reported analyses, opinions, and conclusions are limited only by the reported assumptions and hypothetical conditions and are our personal, impartial, and unbiased professional analyses, opinions, and conclusions;

THAT, we have no present or prospective interest in the property that is the subject of this report and no personal interest with respect to the parties involved;

THAT, we have performed services regarding the property that is the subject of this report within the three-year period immediately preceding acceptance of this assignment;

THAT, we have no bias with respect to the property that is the subject of this report or to the parties involved with this assignment;

THAT, our engagement in this assignment was not contingent upon developing or reporting predetermined results;

THAT, our compensation for completing this assignment is not contingent upon the development or reporting of a predetermined value or direction in value that favors the cause of the client, the amount of the value opinion, the attainment of a stipulated result, or the occurrence of a subsequent event directly related to the intended use of this appraisal;

THAT, our analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the *Uniform Standards of Professional Appraisal Practice (USPAP)*;

THAT, we have each made a personal inspection of the property that is the subject of this report;

THAT, no one provided significant real property appraisal assistance to the person(s) signing this certification;

THAT, the reported analyses, opinions, and conclusions were developed, and this report has been prepared, in conformity with the Code of Professional Ethics and Standards of Professional Appraisal Practice of the Appraisal Institute;

THAT, the use of this report is subject to the requirements of the Appraisal Institute relating to review by its duly authorized representatives;

That, as of the date of this report, Matthew J. Guzowski and Matthew F. Boylan have completed the continuing education programs for Designated Members of the Appraisal Institute and Matthew J. Guzowski has completed the continuing education program for Designated Members of the Royal Institute of Chartered Surveyors.

Date of Appraisal Report: February 9, 2024

Matthew J. Guzowski, MAI, MRICS
President
Goodman-Marks Associates, Inc.
Certified General Real Estate Appraiser
New York State Certificate #468986

Matthew F. Boylan, MAI
Executive Vice President
Goodman-Marks Associates, Inc.
Certified General Real Estate Appraiser
New York State Certificate #4651008

Anthony M. Savino
Assistant Vice President
Goodman-Marks Associates, Inc.
Certified General Real Estate Appraiser
New York State Certificate #4654108

Luke Postiglione
Associate
Goodman-Marks Associates, Inc.

SUMMARY OF SALIENT FACTS & CONCLUSIONS

Property Location:	89-99 Dolson Avenue City of Middletown Orange County, State of New York
Tax Map Identification:	Section 46, Block 1, Lot 1
Current Owner of Record:	Orange & Rockland Utilities, Inc.
Property Rights Appraised:	Fee Simple Estate; Permanent Easement
Property Description:	One (1) permanent surface easement reportedly being sought by the City of Middletown for the purpose of installing a sidewalk along Dolson Avenue at the Larger Parcel.
Land Area:	1.633± acres (71,150± square feet)
Zoning:	Heavy Industrial (I-2) District *City of Middletown*
Highest & Best Use:	*As Vacant* – Development of a professional office building constructed to the maximum density permitted by zoning. *As Improved* – N/A.
Valuation Date:	December 29, 2023

MARKET VALUE CONCLUSIONS

Cost Approach:	N/A
Income Capitalization Approach:	N/A
Sales Comparison Approach:	$8,300.00
Final Opinion of Market Value:	**$8,300.00**

UNDERLYING ASSUMPTIONS & LIMITING & QUALIFYING CONDITIONS

1. This report is intended to comply with the reporting requirements set forth under Standards Rule 2-2(a) of the Uniform Standards of Professional Appraisal Practice for an appraisal report. The information contained in this report is specific to the needs of the client and for the intended use stated in this report. We are not responsible for unauthorized use of this report.
2. No responsibility is assumed for legal or title considerations. Title to the property is assumed to be good and marketable unless stated otherwise in this report.
3. The property was appraised free and clear of any or all liens and encumbrances unless stated otherwise in this report.
4. Responsible ownership and competent property management are assumed unless stated otherwise in this report.
5. The information furnished by others for the appraised property is believed to be reliable. However, no warranty is given for its accuracy.
6. All engineering is assumed to be correct. Any plot plans and illustrative material in this report are included only to assist the reader in visualizing the property.
7. It is assumed that there are no hidden or unapparent conditions of the property, subsI-2l or structures that render it more or less valuable. No responsibility is assumed for such conditions or for arranging for engineering studies that may be required to discover them.
8. It is assumed that there is full compliance with all applicable federal, state and local environmental regulations and laws unless stated otherwise in this report.
9. It is assumed that all applicable zoning and use regulations and restrictions have been complied with, unless a nonconformity has been stated, defined and considered in this report.
10. It is assumed that all required licenses, Certificates of Occupancy or other legislative or administrative authority from any local, state or national government or private entity have been or can be obtained or renewed for any use on which the value estimates contained in this report are based.
11. Any sketch in this report may show approximate dimensions and is included to assist the reader in visualizing the property. Maps and exhibits found in this report are provided for reader reference purposes only. No guarantee as to accuracy is expressed or implied unless stated otherwise in this report. No survey has been made for the purpose of this report.
12. It is assumed that the utilization of the land and improvements is within the boundaries or property lines of the property described, and that there is no encroachment or trespass unless stated otherwise in this report.
13. The included survey map of the subject property site depicts a 50.0±-foot wide, common utility easement corridor at its eastern border (for shared use with the neighboring lot) and a drainage easement which passes through the site, travelling around the marked infiltration pond.
14. We are not qualified to detect hazardous waste and/or toxic materials. Any comment by us that might suggest the possibility of the presence of such substances should not be taken as confirmation of the presence of hazardous waste and/or toxic materials. Such determination would require investigation by a qualified expert in the field of environmental assessment. The presence of substances such as asbestos, urea-formaldehyde foam insulation or other potentially hazardous materials may affect the value of the property. Our value estimate(s) is predicated on the assumption that there is no such material on or in the property that would cause a loss in value unless stated otherwise in this report. No responsibility is assumed for any environmental conditions or any expertise or engineering knowledge required to discover them. Our descriptions and comments are the result of our routine observations made during the appraisal process.

15. Unless stated otherwise in this report, the subject property was appraised without a specific compliance survey having been conducted to determine whether the property is or is not in conformance with the requirements of the Americans with Disabilities Act (ADA). The presence of architectural and communications barriers that are structural in nature that would restrict access by disabled individuals may adversely affect the property's value, marketability or utility.
16. Any proposed improvements are assumed to be completed in a good and workmanlike manner in accordance with the submitted plans and specifications, and conforming to all municipal, building and health codes.
17. Our value conclusions were based on the assumption that the subject property will continue to be adequately maintained and professionally managed to sustain its competitiveness in the marketplace.
18. The distribution, if any, of the total valuation in this report between land and improvements applies only under the stated program of utilization. The separate allocations for land and buildings must not be used in conjunction with any other appraisal and are invalid if so used.
19. Possession of this report, or a copy thereof, does not carry with it the right of publication. It may not be used for any purpose by any person other than the party to whom it is addressed without the written consent of the appraiser(s), and in any event, only with properly written qualification and only in its entirety.
20. Neither all nor any part of the contents of this report (especially any conclusions as to value, the identity of the appraiser(s) or the firm with which the appraiser(s) is/are connected) shall be disseminated to the public through advertising, public relations, news sales or other media without the prior written consent and approval of the appraiser(s).

APPRAISAL DEFINITIONS

Client[1]

The party or parties who engage, by employment or contract, an appraiser in a specific assignment. Comment: The client may be an individual, group, or entity, and may engage and communicate with the appraiser directly or through an agent.

Fee Simple Estate[2]

"Absolute ownership unencumbered by any other interest or estate, subject only to the limitations imposed by the governmental powers of taxation, eminent domain, police power, and escheat."

Intended Use[3]

"The use(s) of an appraiser's reported appraisal or appraisal review assignment results, as identified by the appraiser based on communication with the client at the time of the assignment. (USPAP, 2020-2021 ed.)."

Intended User[4]

"The client and any other party as identified, by name or type, as users of the appraisal or appraisal review report by the appraiser based on communication with the client at the time of the assignment. (USPAP, 2020-2021 ed.)"

Market Value[5]

"The most probable price that a property should bring in a competitive and open market under all conditions requisite to a fair sale, the buyer and seller each acting prudently and knowledgeably, and assuming the price is not affected by undue stimulus. Implicit in this definition is the consummation of a sale as of a specified date and the passing of title from seller to buyer under conditions whereby:

- Buyer and seller are typically motivated;

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1 *The Dictionary of Real Estate Appraisal – Seventh Edition*, Appraisal Institute, Chicago, IL, 2023. p. 31.
2 *Ibid*, 2022. p. 73.
3 *Ibid*, 2022. p. 97
4 *Ibid*, 2022. p. 98
5 *Ibid*, 2022. p. 118

- Both parties are well informed or well advised, and acting in what they consider their best interests;
- A reasonable time is allowed for exposure in the open market;
- Payment is made in terms of cash in U.S. dollars or in terms of financial arrangements comparable thereto; and
- The price represents the normal consideration for the property sold unaffected by special or creative financing or sales concessions granted by anyone associated with the sale." (12 C.F.R. Part 34.42(g); *55 Federal Register* 34696, August 24, 1990, as amended at *57 Federal Register* 12202, April 9, 1992; *59 Federal Register* 29499, June 7, 1994.)"

VALUATION DATE

The date of valuation is December 29, 2023; the date of the inspection of the subject property.

PURPOSE OF THE APPRAISAL

The purpose of this appraisal report is to provide a market value opinion of the subject property Permanent Easement.

INTENDED USE & USERS OF THE APPRAISAL

The intended use of this appraisal report is to assist the intended users in understanding the market value of the subject property and for submission and review by the New York State Public Service Commission and other authorities that regulate our client. The intended users of this appraisal report are our client, Consolidated Edison, Inc. (Con Edison) and Orange & Rockland Utilities, Inc. (ORU) and those persons authorized by Con Edison to utilize this report, including the New York State Public Service Commission.

IDENTIFICATION OF THE SUBJECT PROPERTY

The subject property is representative of one (1) permanent surface easement (i.e., the Permanent Easement), which is reportedly being sought by the City of Middletown for the purpose of installing a sidewalk along Dolson Avenue at the Larger Parcel. The Larger Parcel has been defined as a portion of the tax lot identified on the Orange County Tax Maps as Section 46, Block 1, Lot 1.

SUBJECT PROPERTY OWNERSHIP HISTORY

As an easement, the subject property is a non-possessory real property interest, wherein ownership retains title to the encumbered underlying land area. According to public record, the underlying land area of the subject property (i.e., the Larger Parcel) is currently owned by Orange & Rockland Utilities, Inc. There have been no transfers of the Larger Parcel documented within the past five (5) years. We are not aware of an current listings of sale, offerings or existing contracts of sale involving the Larger Parcel.

MARKETING PERIOD & EXPOSURE TIME

A ***marketing period*** is generally defined as "An opinion of the amount of time it might take to sell a real or personal property interest at the concluded market value level during the period immediately after the effective date of an appraisal. Marketing time differs from exposure time, which is always presumed to precede the effective date of an appraisal. (Advisory Opinion 7 of the Appraisal Standards Board of the Appraisal Foundation and Statement on Appraisal Standards No. 6, "Reasonable Exposure Time in Real Property and Personal Property Market Value Opinions" address the determination of reasonable exposure and marketing time.)" [6]

The Larger Parcel is located within a mature and stable neighborhood and is well positioned to compete within the surrounding market. However, it is acknowledged that issues regarding the site utility of the Larger Parcel could negatively impact its overall marketability. Based on these factors, we estimate that the marketing period for the Larger Parcel would be less than one (1) year.

Exposure time is generally defined as "1) The time a property remains on the market; 2) The estimated length of time that the property interest being appraised would have been offered on the market prior to the hypothetical consummation of a sale at market value on the effective date of the appraisal; Comment Exposure time is a retrospective opinion based on an analysis of past events assuming a competitive and open market." [7]

For the reasons stated above, we estimate that the exposure time would have been less than one (1) year.

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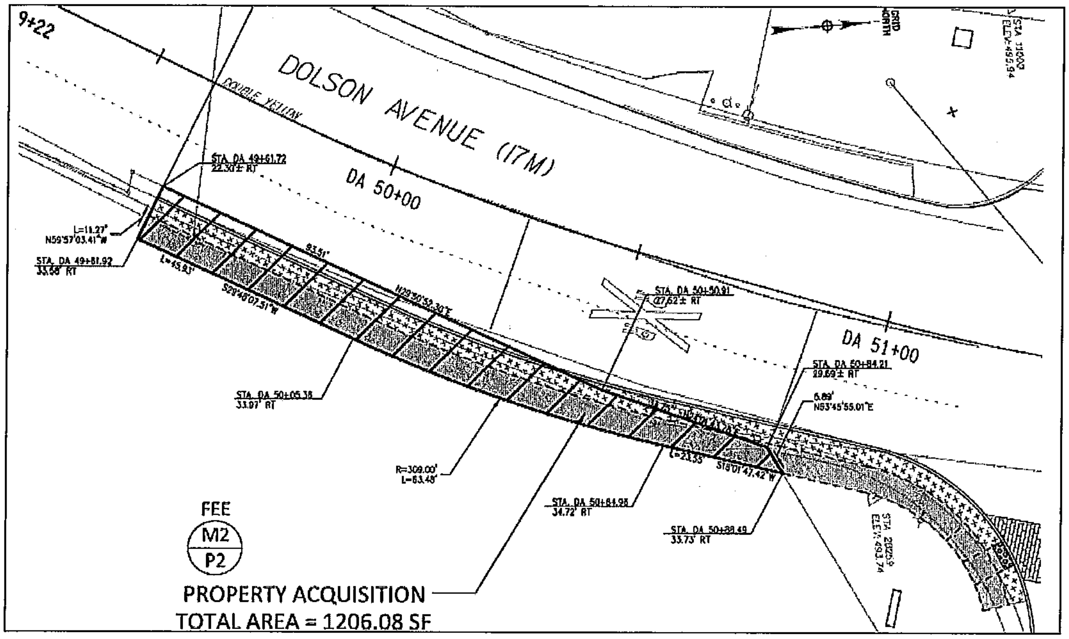
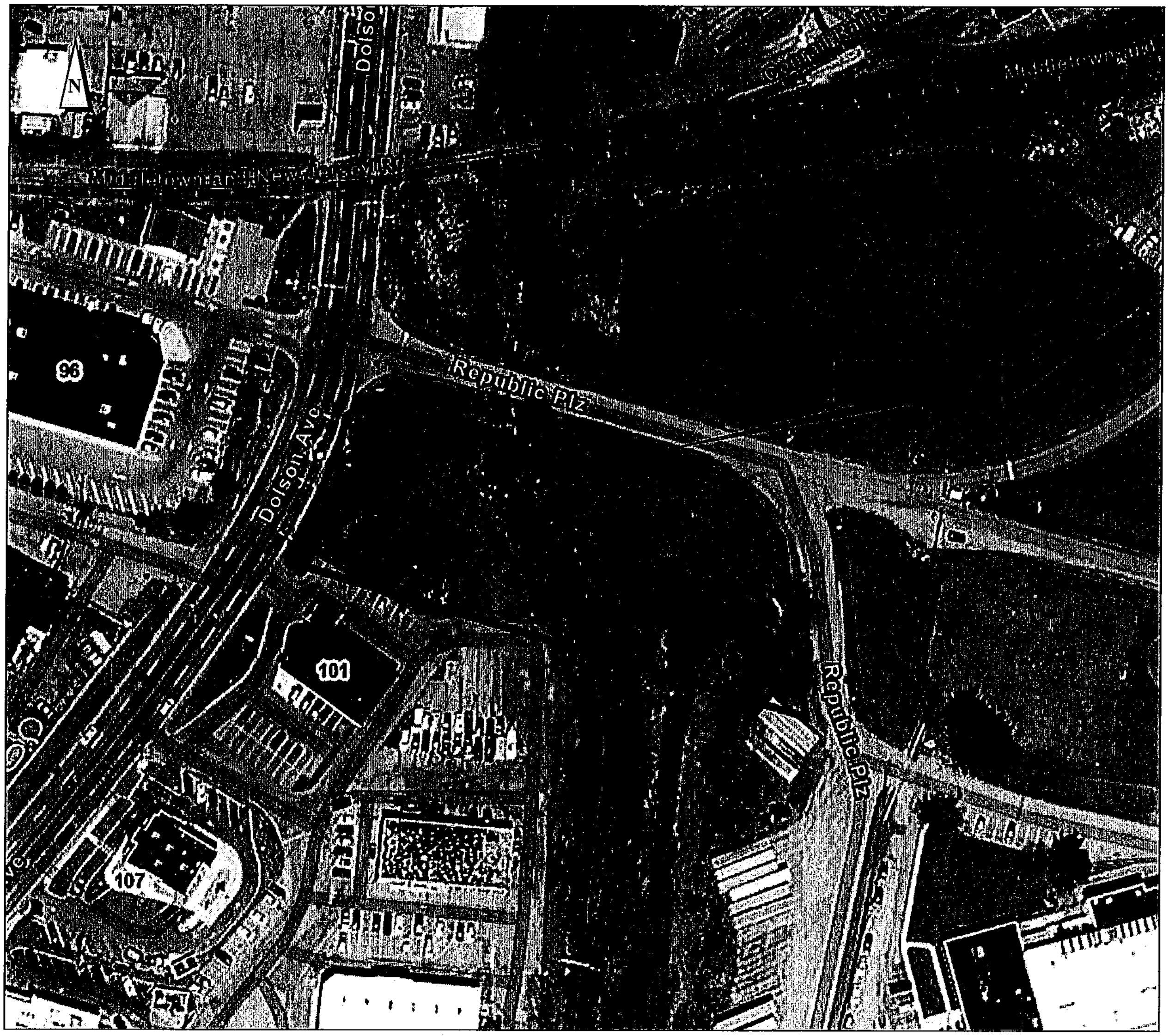
[6] *The Dictionary of Real Estate Appraisal - Sixth Edition*, Appraisal Institute, Chicago, IL, 2015, p 140
[7] *Ibid.*, p 83.

SURVEY MAP



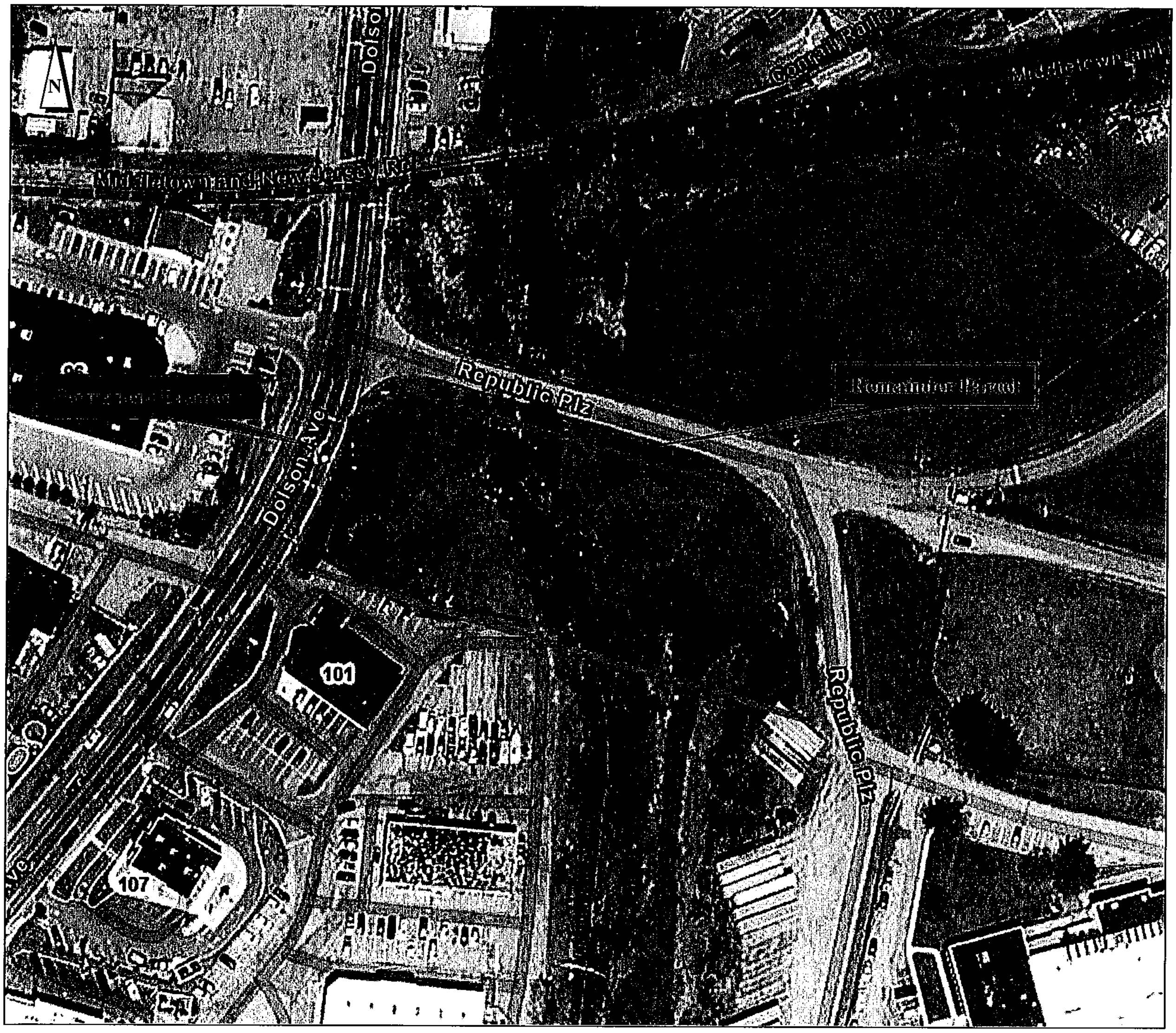
9+22
DOLSON AVENUE (17M)
DOUBLE YELLOW
DA 50+00
DA 51+00
STA. DA 49+61.72
22.30± RT
L=11.27'
N59°57'03.41"W
STA. DA 49+81.92
33.68' RT
L=45.93'
S29°48'07.51"W
83.51'
N29°30'52.30"E
STA. DA 50+05.38
33.07' RT
R=309.00'
L=63.48'
STA. DA 50+50.91
27.62± RT
STA. DA 50+84.21
29.69± RT
6.89'
N63°45'55.01"E
L=23.55'
S18°01'47.42"W
STA. DA 50+64.95
34.72' RT
STA. DA 50+88.49
33.73' RT
FEE
M2
P2
PROPERTY ACQUISITION
TOTAL AREA = 1206.08 SF

AERIAL VIEW[8]



[8] Not to scale. All boundaries estimated by appraiser. Estimates were derived from the Orange County GIS mapping services. See Addenda for legal description.

AERIAL VIEW
(Continued)

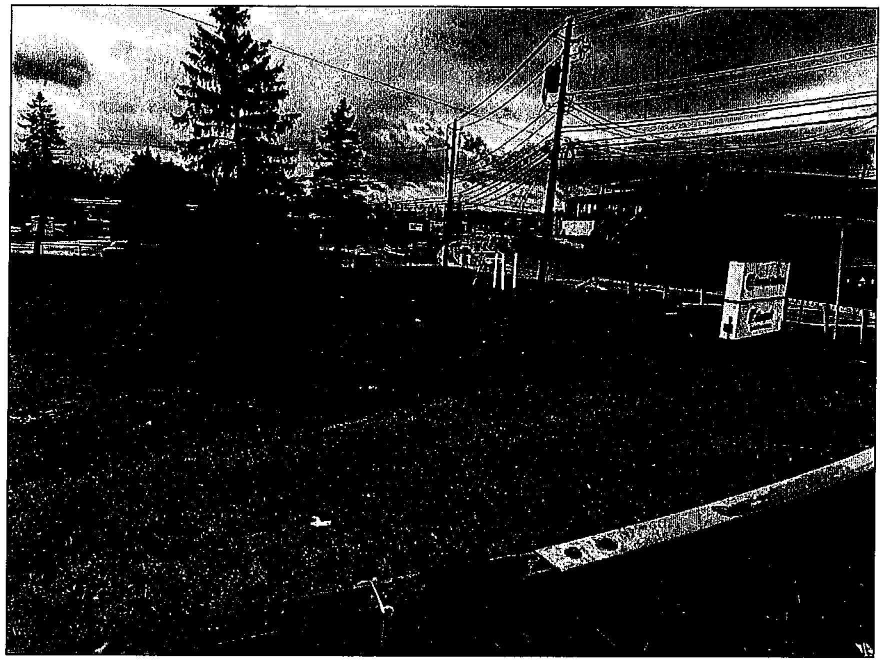


VIEWS OF THE SUBJECT PROPERTY

View E: Larger Parcel from West Side of Dolson Avenue

View N: Permanent Easement from East Side of Dolson Avenue

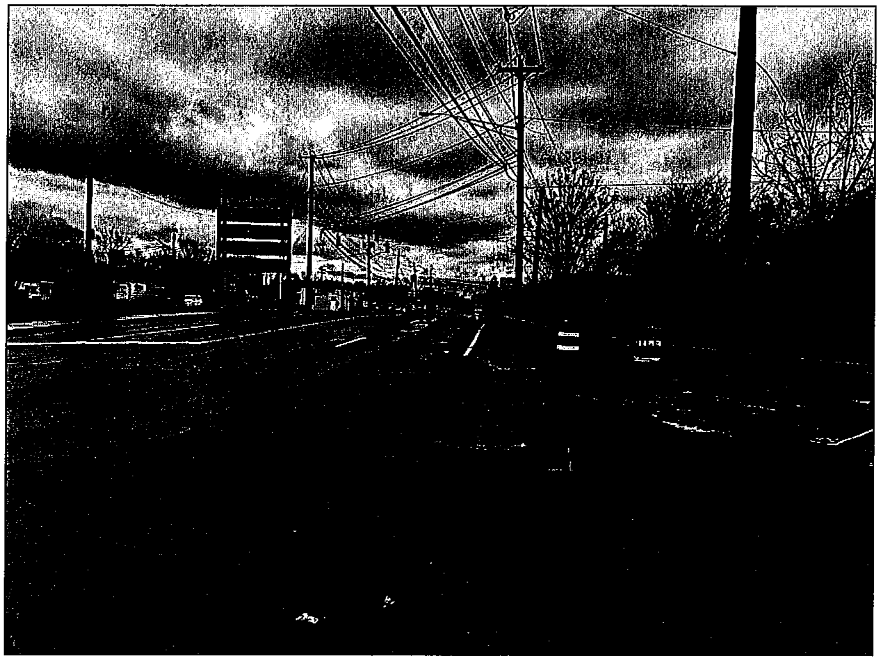
VIEWS OF THE SUBJECT PROPERTY
(Continued)



View S: Permanent Easement from Republic Plaza

View E: Permanent Easement from Dolson Avenue

VIEWS OF THE SUBJECT PROPERTY
(Continued)



View N: Street Scene of Dolson Avenue

View S: Street Scene of Dolson Avenue

SCOPE OF THE APPRAISAL & METHOD OF VALUATION

There are three (3) generally accepted methodologies in the valuation of real estate: the Cost Approach, Income Capitalization Approach and Sales Comparison Approach. In all valuation methods, local market data is sought, when appropriate, for sales and offerings of vacant lots and similar properties, current prices of construction materials and labor, operating expenses over absorption periods and current rates of return on investments. From this data, value estimates may be developed for the land. The scope of this assignment included researching current sales, as well as surveying brokers, appraisers, lenders, building owners, managers and public records.

In estimating the market value of the subject property, we have considered the three (3) approaches to value:

Cost Approach

The Cost Approach assumes that an informed purchaser would pay no more for a property than the cost of producing a similar investment. This approach entails estimating the value of the land as if vacant, which is then added to the depreciated value of the improvements. This is considered a valid indicator when the property is new and there are a sufficient number of land sales.

We have not performed the Cost Approach in this appraisal report because the Larger/Remainder Parcel consists of vacant land.

Income Capitalization Approach

The Income Capitalization Approach values the future benefits (in the form of steady income) from an income-producing property by measuring the potential net income received. This approach is significant in determining the market value of a property where investors purchase the income-producing real estate for its earning power.

We have not performed the Income Capitalization Approach in this appraisal report because the Larger/Remainder Parcel consists of vacant land, which is not a typical income producing property type. Furthermore, market participants would not typically purchase vacant land for its income generating potential.

Sales Comparison Approach

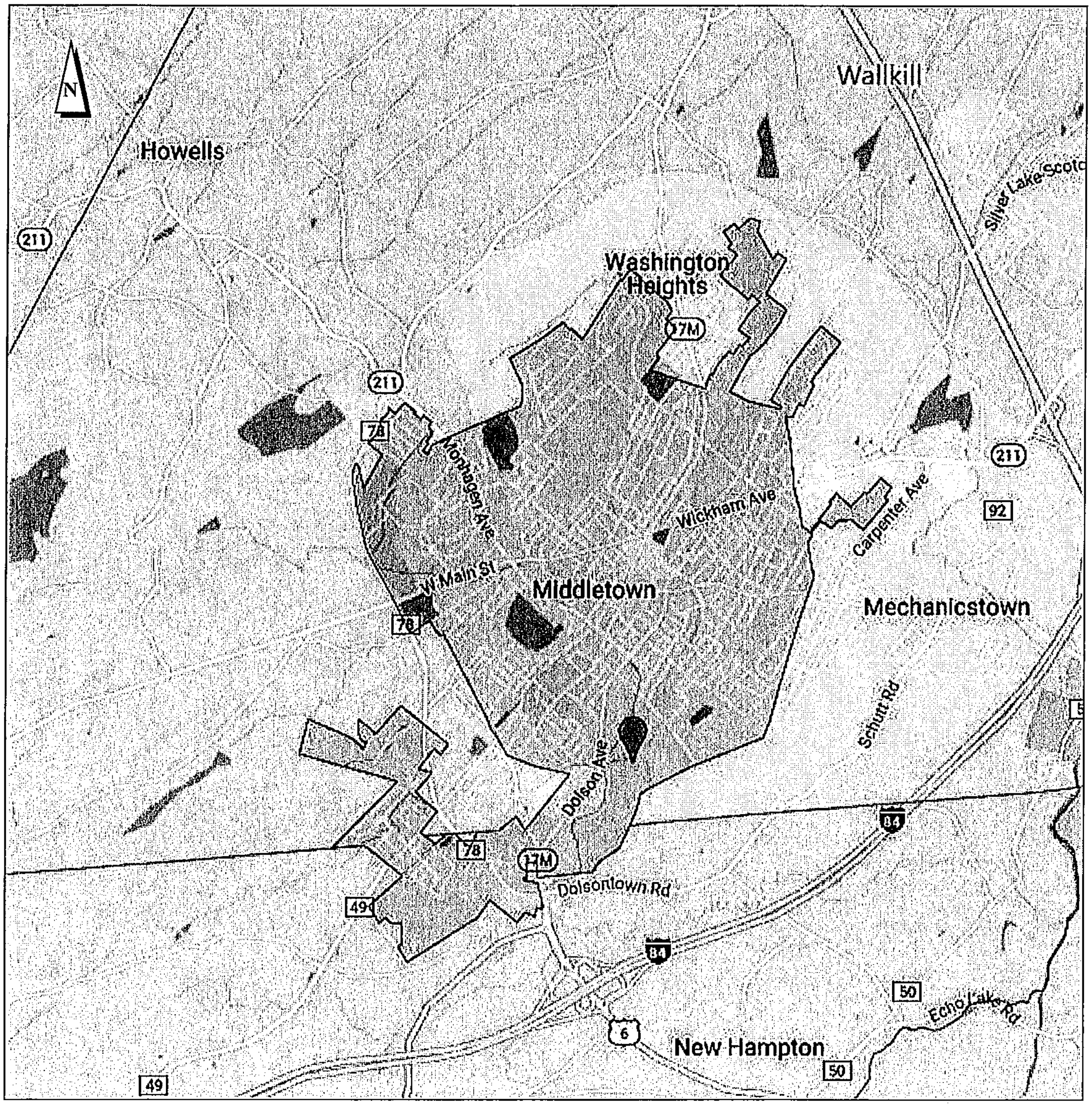
The major premise of the Sales Comparison Approach is the principle of substitution, which states that an informed and knowledgeable purchaser would pay no more for a property than the cost of acquiring an existing property with similar investment features. We have performed the Sales Comparison Approach in this appraisal report herein, utilizing Before-&-After Methodology.

We have surveyed the local market and have identified a number of recent, meaningful transfers of properties which were found to be comparatively similar to the Larger Parcel. The surveyed selection of sales were individually compared and contrasted against the Larger Parcel. During the course of this analysis, adjustments were made to the per-unit values of the comparable sales for market-sensitive differences, where required, in order to conclude to a final opinion market value for the fee simple estate of the Larger Parcel.

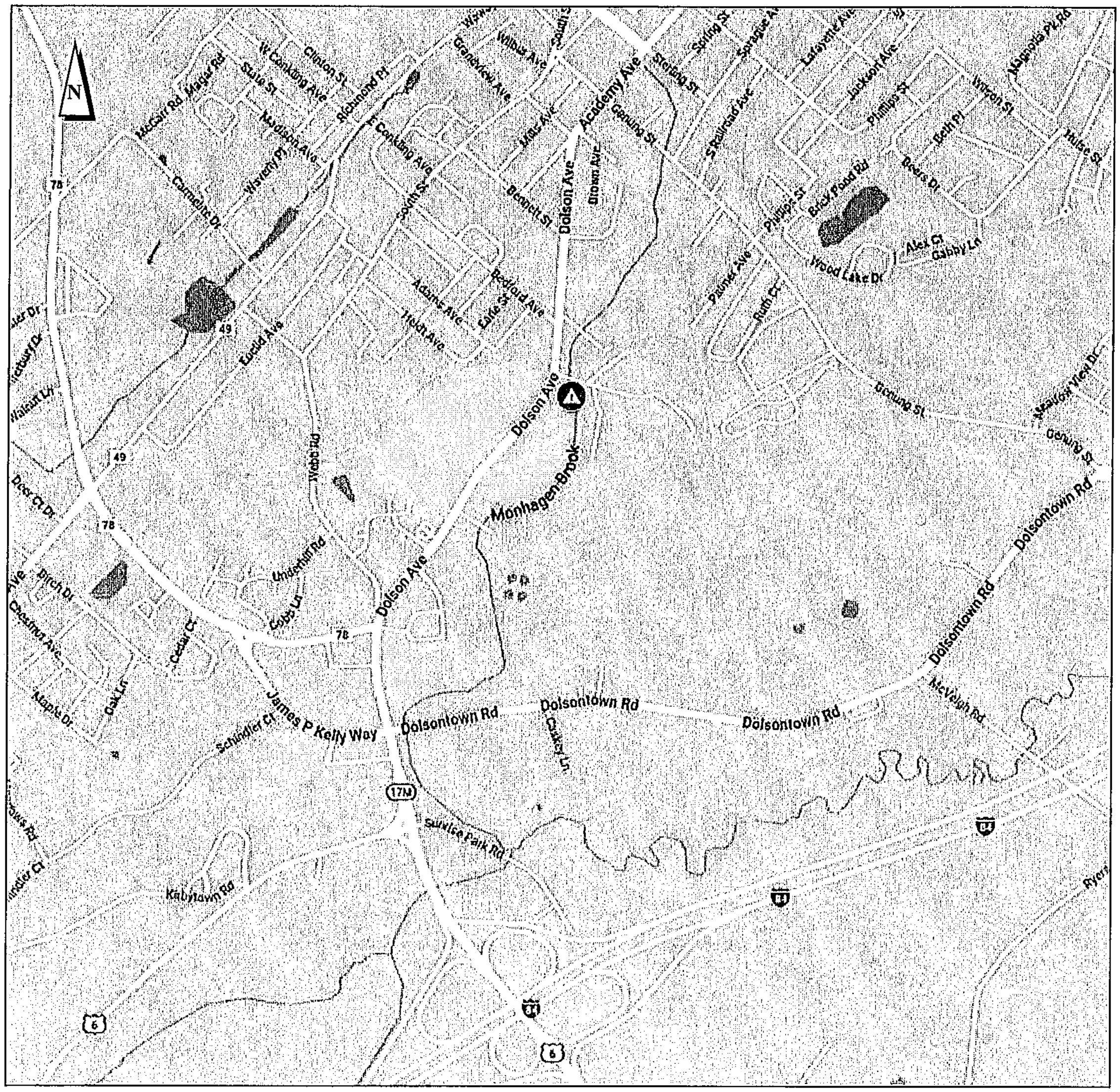
This process was repeated, wherein the analysis was performed against the Remainder Parcel (i.e., following the taking of the subject property Permanent Easement). Then, by calculating the difference between the market value of the Larger Parcel and the Remainder Parcel, an indication of the value of the overall damages attributable to the taking of the subject property Permanent Easement results.

With its underlying land value established, subsequent considerations were made for the subject's impact to property rights and an allocation factor was applied to its indicated fee simple value so as to approximate its ultimate value as divided between the dominant and servient estates.

AREA MAP


N
Wallkill
Howells
Silver Lake Scotc
211
Washington Heights
17M
211
78
Monhagen Ave
211
Wickham Ave
Carpenter Ave
92
W Main St
Middletown
Mechanicstown
78
Schutt Rd
Dolson Ave
84
78
17M
Dolsontown Rd
49
84
50
Echo Lake Rd
6
New Hampton
50
49

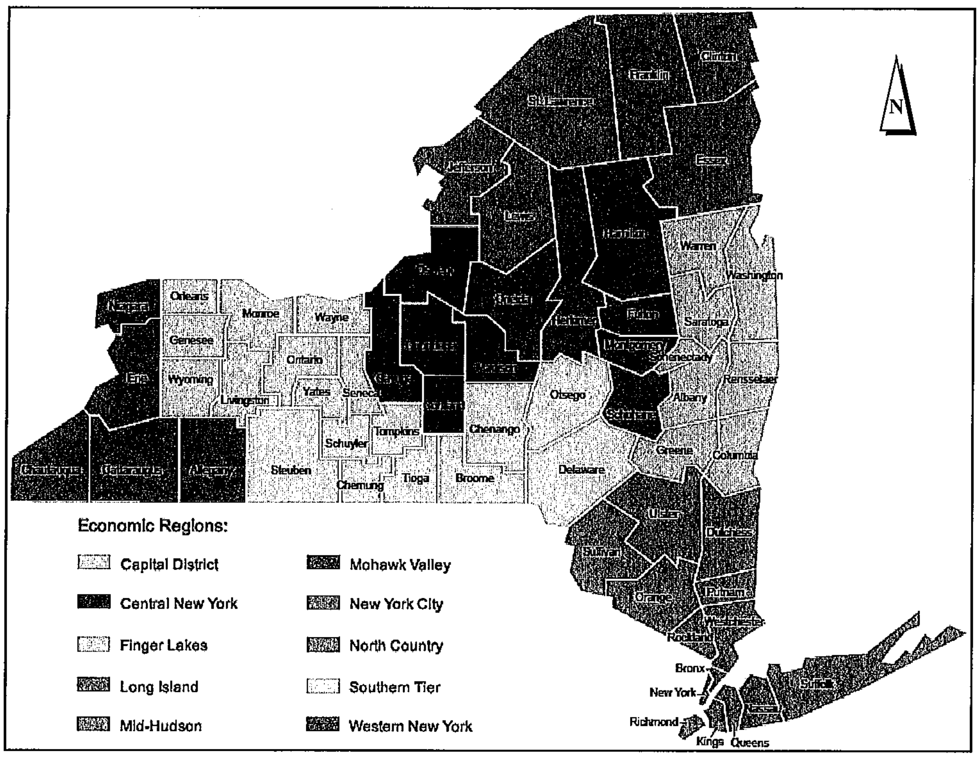
LOCAL AREA MAP



LOCAL AREA DESCRIPTION

The subject property is located in the City of Middletown, Orange County, in the State of New York. Orange County is classified as part of the Mid-Hudson economic region of the State, which also includes the Counties of Dutchess, Putnam, Rockland, Sullivan, Ulster and Westchester.

NYS Economic Regions Map



Region	NYS Counties
Capital District	Albany, Columbia, Greene, Rensselaer, Saratoga, Schenectady, Warren, Washington
Central New York	Cayuga, Cortland, Madison, Onondaga, Oswego
Finger Lakes	Genesee, Livingston, Monroe, Ontario, Orleans, Seneca, Wayne, Wyoming, Yates
Long Island	Nassau, Suffolk
Mid-Hudson	Dutchess, Orange, Putnam, Rockland, Sullivan, Ulster, Westchester
Mohawk Valley	Fulton, Hamilton, Herkimer, Montgomery, Oneida, Schoharie
New York City	Bronx, Kings, New York, Queens, Richmond
North Country	Clinton, Essex, Franklin, Jefferson, Lewis, St. Lawrence
Southern Tier	Broome, Chemung, Chenango, Delaware, Otsego, Schuyler, Steuben, Tioga, Tompkins
Western New York	Allegany, Cattaraugus, Chautauqua, Erie, Niagara

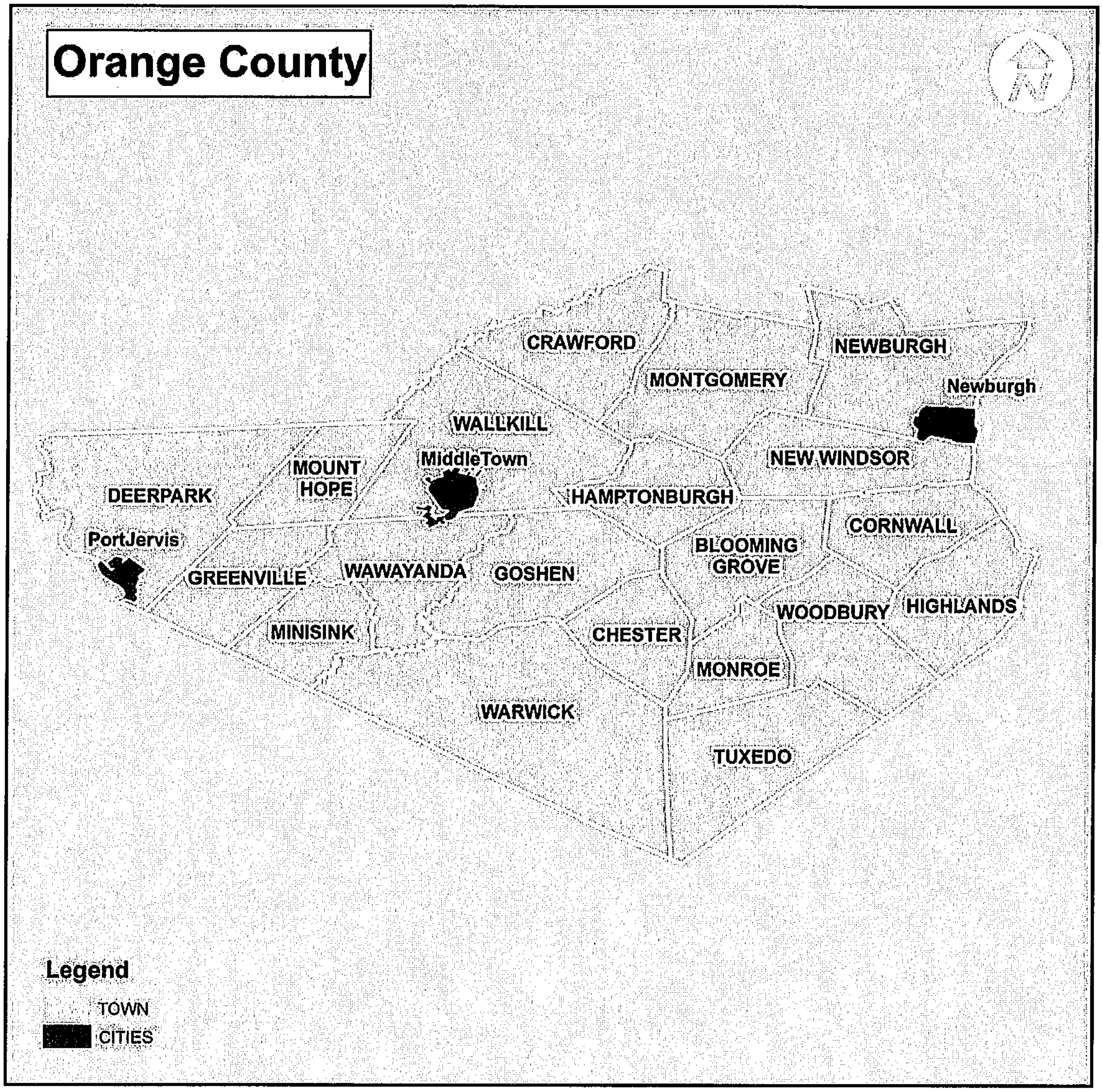
Orange County

Orange County contains a total land area of 811.633± square miles. Population data compiled by the US Census Bureau estimates that the County holds a total population of 404,525± persons as of 2021; a 8.5% increase over the 2020 US Census count of 372,813± persons. This data indicates a population density of 498± persons per square mile. Orange County is bordered at the north by Sullivan and Ulster Counties, at the south by Rockland County and the State of New Jersey, at the east by Dutchess, Putnam and Westchester Counties and at the west by the State of Pennsylvania. Its eastern border is formed by the Hudson River. The County Seat, the Village of Goshen, is located approximately 61.633± miles northwest of Midtown Manhattan by car. Orange County is comprised of twenty (20) towns, nineteen (19) villages and three (3) cities, which have been summarized on the following table:

Summary of Orange County Municipalities

	Towns	
Blooming Grove	Hamptonburgh	Palm Tree
Chester	Highlands	Newburgh
Cornwall	Minisink	Tuxedo
Crawford	Monroe	Wallkill
Deerpark	Montgomery	Middletown
Goshen	Mount Hope	Wawayanda
Greenville	New Windsor	Woodbury
	Villages	
Chester	Kiryas Joel	Unionville
Cornwall-on-Hudson	Maybrook	Walden
Florida	Monroe	Middletown
Goshen	Montgomery	Washingtonville
Greenwood Lake	Otisville	Woodbury
Harriman	South Blooming Grove	
Highland Falls	Tuxedo Park	
	Cities	
Middletown	Newburgh	Port Jervis

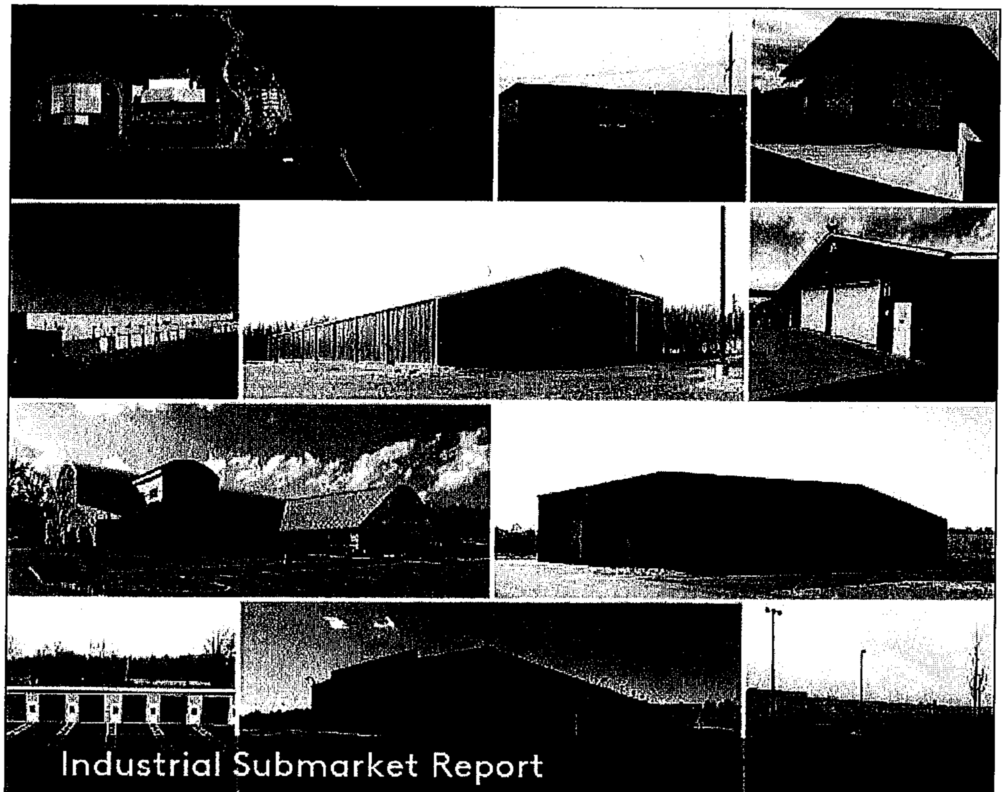
Orange County Municipalities Map



City of Middletown

The City of Middletown contains 5.33± square miles of total land area. According to the U.S. Census Bureau, the population as of 2020 was estimated at 30,345± residents. This reflects an increase in population from the 2010 Census, which counted 28,086± residents. Based upon its current population estimate and total land area, this equates to a population density of 5,693± persons per square mile.

COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT



Orange County

New York - NY (USA)

PREPARED BY

GM

Matthew Guzowski
President

CoStar™

COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

Overview

Orange County Industrial

12 Mo Deliveries in SF	12 Mo Net Absorption in SF	Vacancy Rate	12 Mo Asking Rent Growth
1.1M	**297K**	**7.3%**	**6.1%**

Vacancy in the Orange County industrial submarket is 7.3% and has increased 1.9% over the past 12 months. Meanwhile, the rate of increase in the broader New York market was 2.1%. During this period, 300,000 SF has been absorbed, and 1.1 million SF has delivered. Total availability, which includes sublease space, is 9.3% of all inventory.

Within this submarket, logistics space is by far the largest subtype with 29.4 million SF in this category, followed by 7.0 million SF of specialized space and 1.4 million SF of flex space.

Rents are around $11.90/SF, which is a 6.1% increase from where they were a year ago. In the past three years, rents have increased a cumulative 29.0%. This is also a very affordable submarket, relative to New York as a whole, where average rents are $19.60/SF.

About 3.6 million SF is under construction, representing a 9.4% expansion of inventory. Moreover, total inventory has expanded by 3.7 million SF in the past three years.

There have been 21 sales over the past year. Sales have averaged $149/SF, and the estimated value for the market as a whole is $112/SF. The most frequent of these transactions have been those of logistics space, with 13 sales. This tracks with the overall mix in the submarket, as the subtype is the largest in Orange County. Over the past three years, there have been 115 sales, which have traded for approximately $246 million. The market cap rate for Orange County is 6.9%, moderately above its trailing three-year average of 6.4%.

KEY INDICATORS

Current Quarter	RBA	Vacancy Rate	Market Asking Rent	Availability Rate	Net Absorption SF	Deliveries SF	Under Construction
Logistics	29,381,464	8.3%	$11.61	10.6%	(1,600)	0	3,432,755
Specialized Industrial	7,008,478	3.4%	$12.31	3.6%	(27,500)	0	0
Flex	1,396,966	5.6%	$15.23	6.7%	0	0	130,000
Submarket	**37,786,908**	**7.3%**	**$11.86**	**9.3%**	**(29,100)**	**0**	**3,562,755**

Annual Trends	12 Month	Historical Average	Forecast Average	Peak	When	Trough	When
Vacancy Change (YOY)	1.9%	7.0%	7.5%	13.8%	2007 Q2	2.4%	2021 Q3
Net Absorption SF	297K	376,378	847,868	2,662,074	2021 Q3	(1,549,246)	2003 Q3
Deliveries SF	1.1M	429,946	1,118,907	2,733,357	2021 Q4	0	2013 Q2
Asking Rent Growth	6.1%	4.4%	4.7%	11.6%	2022 Q2	-1.9%	2009 Q4
Sales Volume	$52.5M	$42.4M	N/A	$231.6M	2020 Q1	$0	2006 Q2

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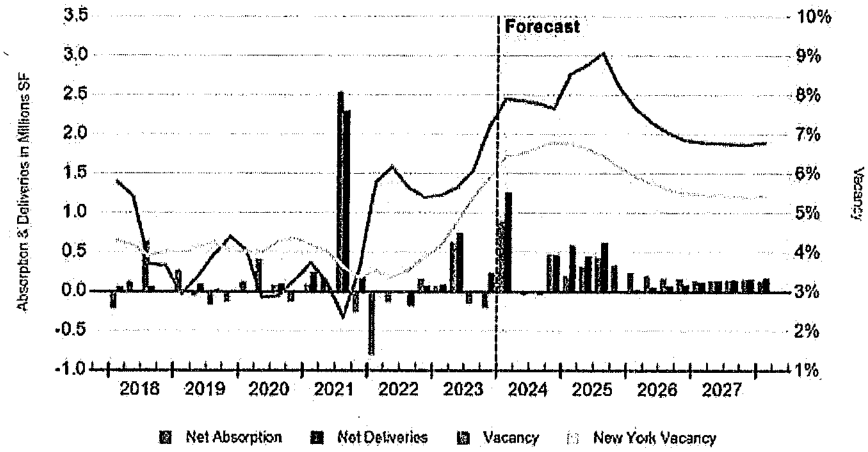
COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

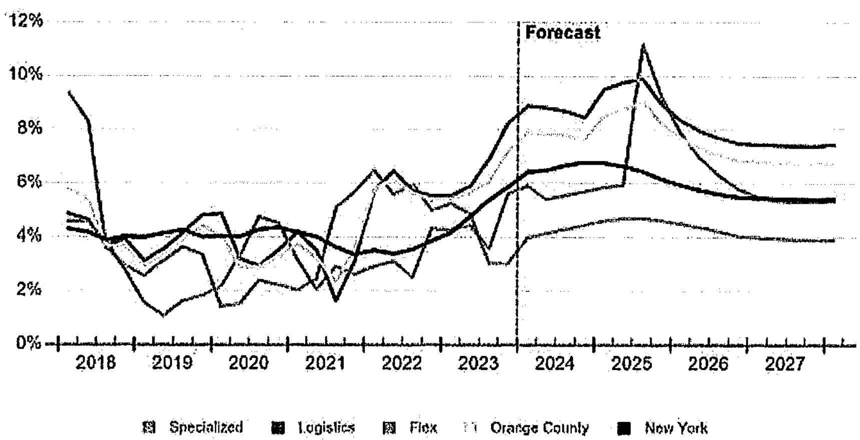
Leasing

Orange County Industrial

NET ABSORPTION, NET DELIVERIES & VACANCY



VACANCY RATE



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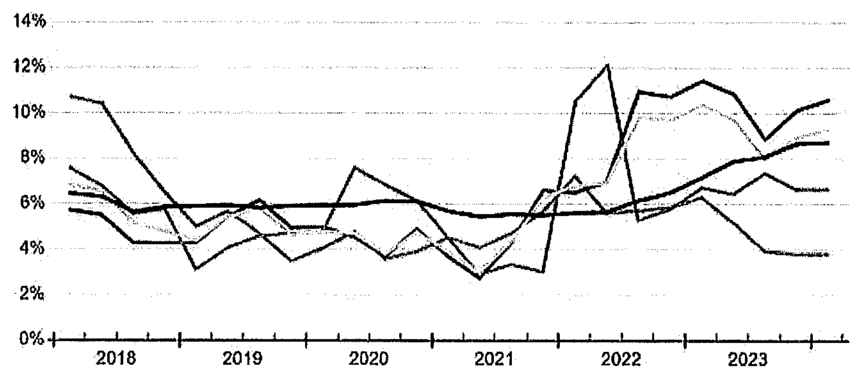
COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

Leasing

Orange County Industrial

AVAILABILITY RATE



4 & 5 STAR MOST ACTIVE BUILDINGS IN SUBMARKET - PAST 12 MONTHS

Property Name/Address	Rating	RBA	Deals	Leased SF	12 Mo Vacancy	12 Mo Net Absorp SF
18 Leonards Dr	★★★★☆	80,000	1	42,000	99.4%	1,000
45 Turner Dr	★★★★☆	282,067	1	2,000	4.7%	(25,500)

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COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

Leasing

Orange County Industrial

3 STAR MOST ACTIVE BUILDINGS IN SUBMARKET - PAST 12 MONTHS

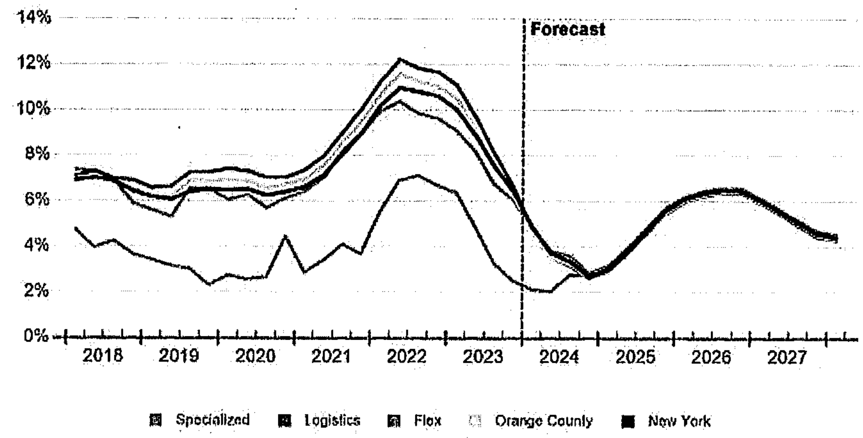
Property Name/Address	Rating	RBA	Deals	Leased SF	12 Mo Vacancy	12 Mo Net Absorp SF
112 Forge Hill Rd	★★★☆☆	143,384	1	26,000	48.7%	51,645
76 Skinners Ln	★★★☆☆	18,000	1	1,000	0%	18,000
561 International Blvd	★★★☆☆	10,445	1	10,445	60.0%	10,445
39 Transport Ln	★★★☆☆	36,882	2	6,450	7.0%	5,176
28 Church St	★★★☆☆	141,610	1	3,800	0.5%	3,800
4 Commerce Drive 4 Commerce Dr S	★★★☆☆	44,817	1	24,900	2.4%	3,297
150 Coldenham Rd	★★★☆☆	82,465	1	20,000	4.9%	879
Hi Tech Park Bldg 1 700 Corporate Blvd	★★★☆☆	36,000	1	8,800	9.8%	(8,800)

COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

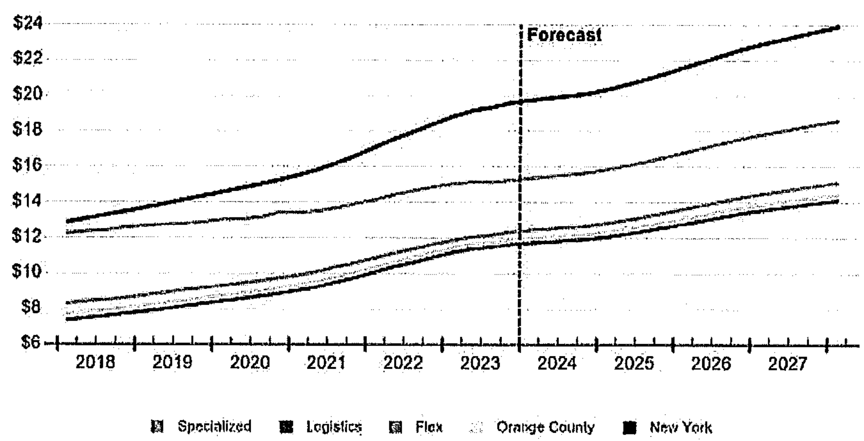
Rent

Orange County Industrial

MARKET ASKING RENT GROWTH (YOY)



MARKET ASKING RENT PER SQUARE FEET



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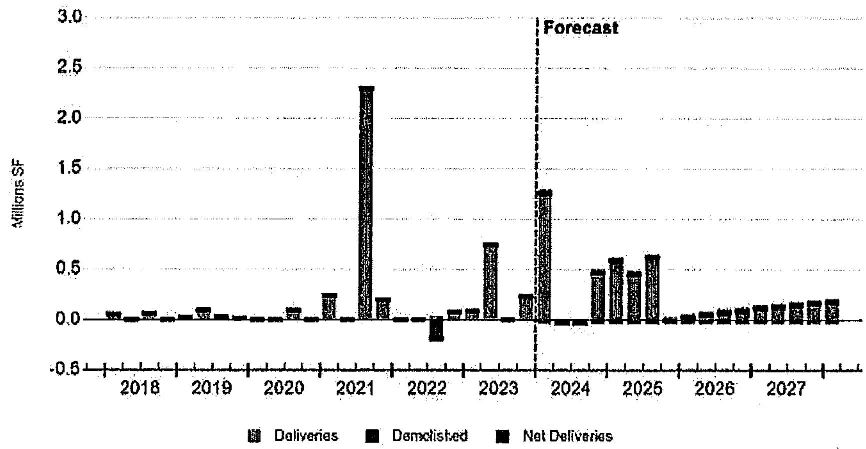
COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

Construction

Orange County Industrial

DELIVERIES & DEMOLITIONS



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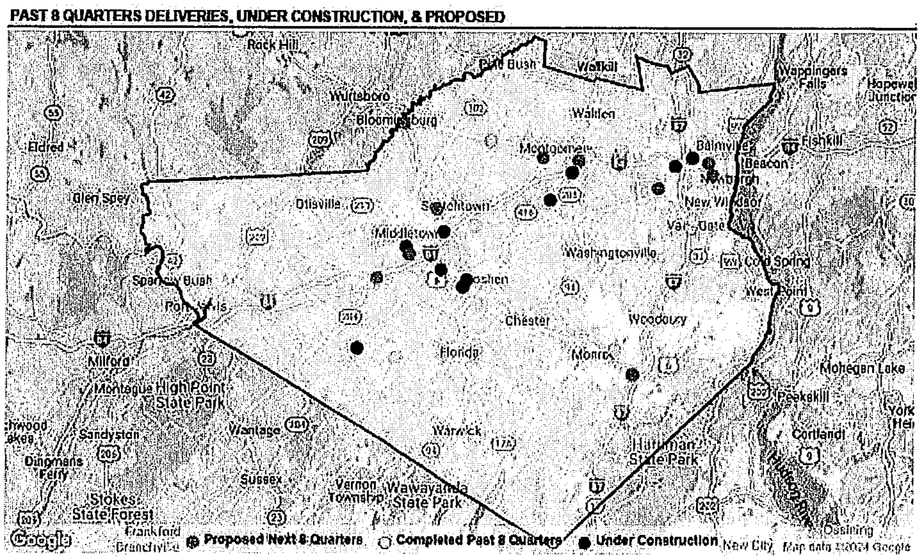
COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

Construction

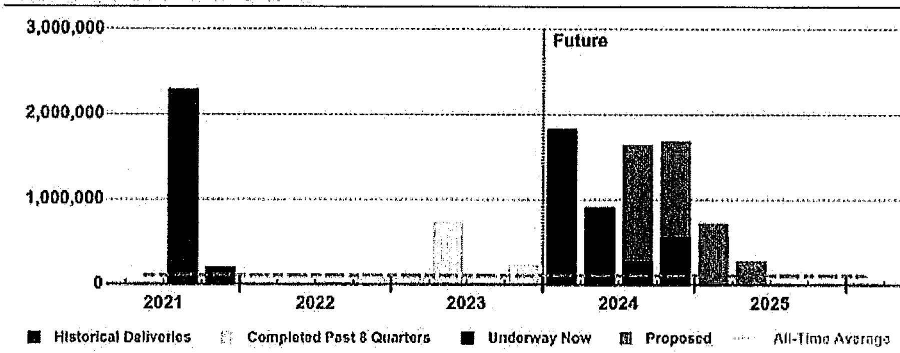
Orange County Industrial

All-Time Annual Avg. Square Feet	Delivered Square Feet Past 8 Qtrs	Delivered Square Feet Next 8 Qtrs	Proposed Square Feet Next 8 Qtrs
423,544	1,169,130	3,562,755	3,504,619

PAST 8 QUARTERS DELIVERIES, UNDER CONSTRUCTION, & PROPOSED



PAST & FUTURE DELIVERIES IN SQUARE FEET



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COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

Sales

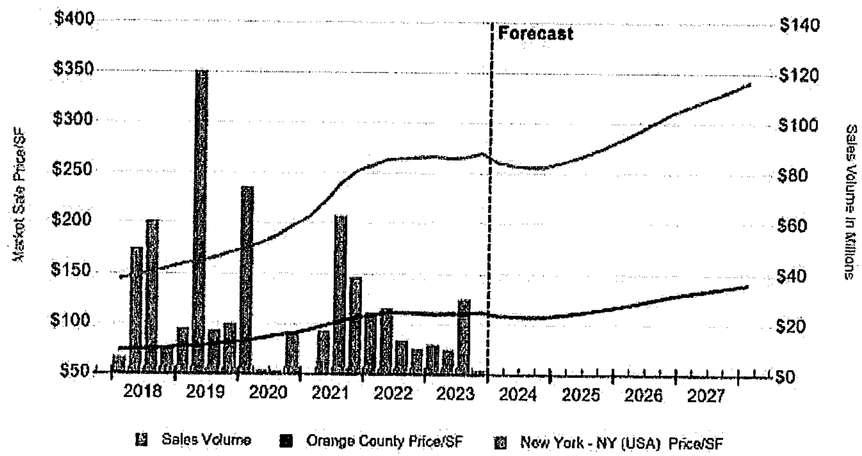
Orange County Industrial

There have been 21 sales over the past year. Sales have averaged $149/SF, and the estimated value for the market as a whole is $112/SF.

The most frequent of these transactions have been those of logistics space, with 13 sales. This tracks with the overall mix in the submarket, as the subtype is the largest in Orange County.

Over the past three years, there have been 115 sales, which have traded for approximately $246 million. The market cap rate for Orange County is 6.9%, moderately above its trailing three-year average of 6.4%.

SALES VOLUME & MARKET SALE PRICE PER SF



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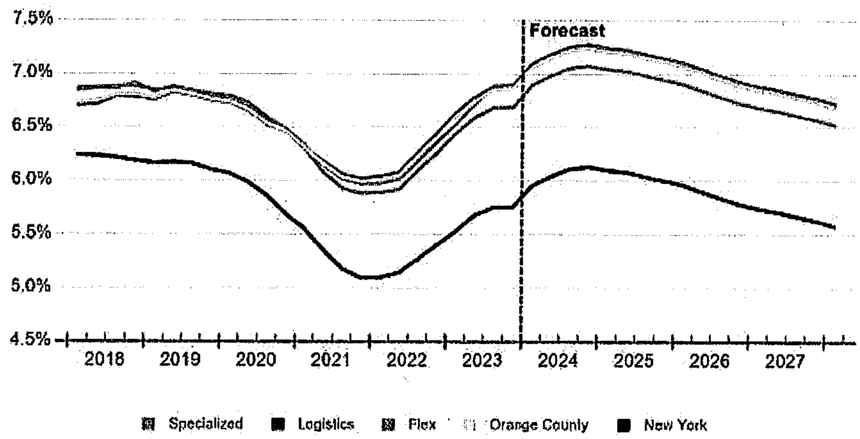
COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

Sales

Orange County Industrial

MARKET CAP RATE



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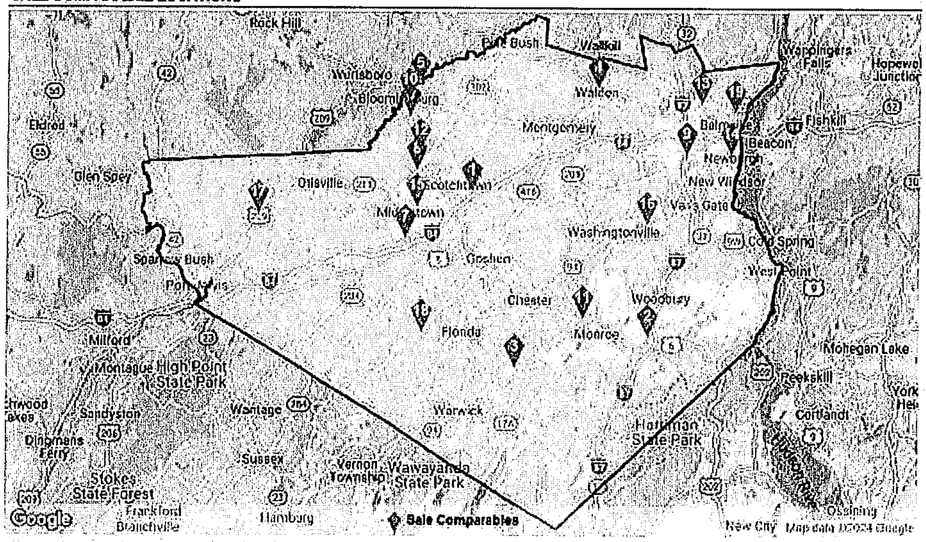
COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT
(Continued)

Sales Past 12 Months

Orange County Industrial

Sale Comparables	Avg. Cap Rate	Avg. Price/SF	Avg. Vacancy At Sale
19	**4.0%**	**$157**	**36.0%**

SALE COMPARABLE LOCATIONS



SALE COMPARABLES SUMMARY STATISTICS

Sales Attributes	Low	Average	Median	High
Sale Price	$188,250	$3,282,514	$2,003,400	$9,870,000
Price/SF	$49	$157	$169	$5,712
Cap Rate	4.0%	4.0%	4.0%	4.0%
Time Since Sale in Months	0.5	6.1	5.1	11.0
Property Attributes	**Low**	**Average**	**Median**	**High**
Building SF	1,728	18,371	8,800	99,300
Ceiling Height	18'	21'10"	22'	25'
Docks	0	4	1	21
Vacancy Rate At Sale	0%	36.0%	0%	100%
Year Built	1900	1978	1989	2010
Star Rating	★☆☆☆☆	★☆☆☆☆ 1.9	★★☆☆☆	★★★☆☆

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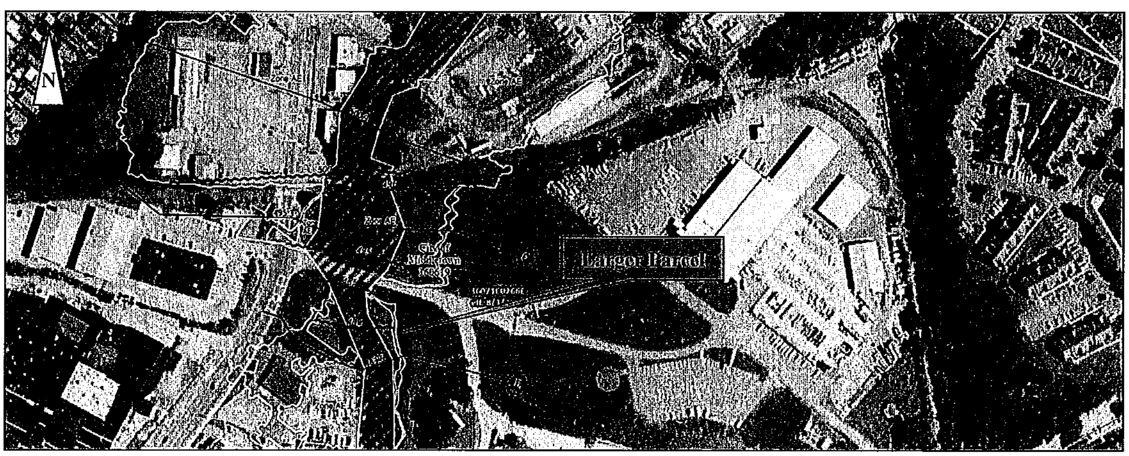
DESCRIPTION OF THE SUBJECT PROPERTY

Larger Parcel

The Larger Parcel is defined as a portion of the tax lot identified on the Orange County Tax Maps as Section 46, Block 1, Lot 1. The Larger Parcel is an irregular-shaped, corner-block parcel with frontages measuring 528.00± feet along the south side of Republic Plaza and 132.00± feet along the east side of Dolson Avenue. Per our aerial measurements, the Larger Parcel contains 1.633± acres (71,150± square feet) of land area. According to public records, it is zoned within a Heavy Industrial (I-2) District by the City of Middletown.

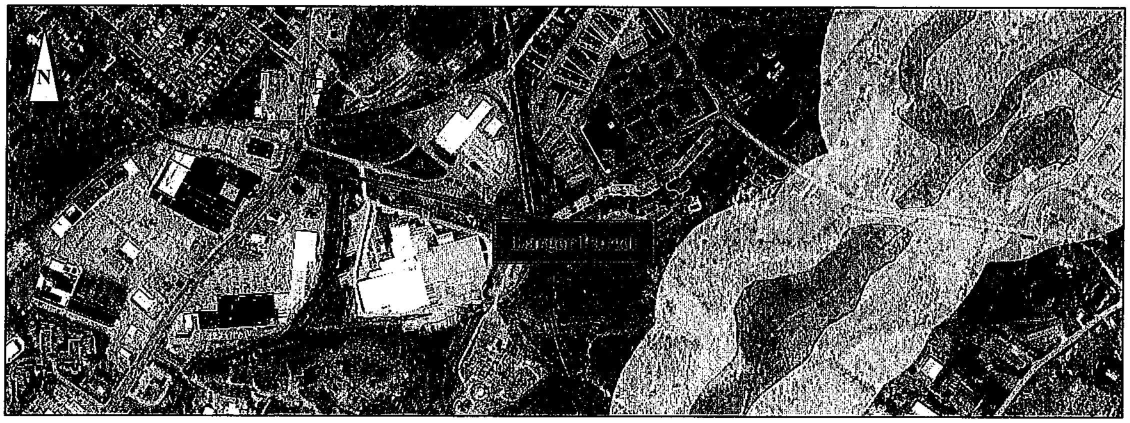
Upon inspection, the site topography of the Larger Parcel was observed to be generally level. It is vacant and is partially forested along a centrally-located waterway known as Monhagen Brook, which runs north-south through the Larger Parcel. Given the presence this waterway, it is indicated by the Federal Emergency Management Agency (FEMA), that the Larger Parcel is home to a regulatory floodway and that certain areas along this floodway are mapped as flood hazard zones.

FEMA FIRM Panel No. 36071C0266E



Additionally, upon consulting the NYS Department of Environmental Conservation (NYSDEC) Environmental Resource Mapper service, it was indicated that the Larger Parcel is not affected by any State-regulated Wetlands.

NYSDEC Wetlands Map



State-Regulated Freshwater Wetlands

State-Regulated Wetlands Checkzone

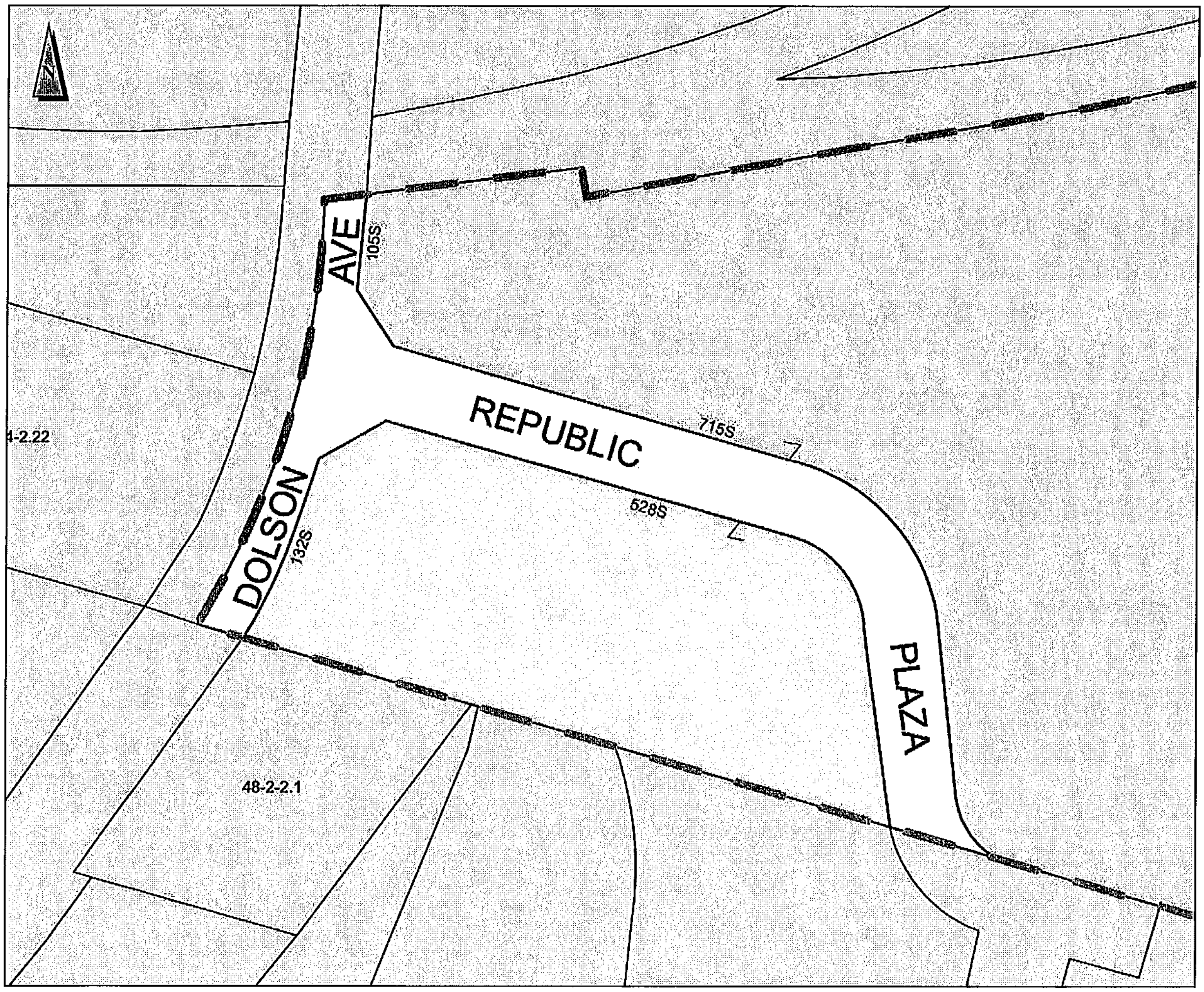
Our research did not reveal any apparent adverse easements, encumbrances or encroachments that would affect the functionality and/or marketability of the Larger Parcel, although the typical utility easements are assumed.

Permanent Easement

The subject property Permanent Easement is an irregular-shaped parcel to be situated at the Dolson Avenue frontage of the Larger Parcel, just south of its intersection with Republic Plaza. Per the survey map provided by our client, the Permanent Easement measures 93.51± feet in length, with a width of 11.27± feet at its widest point. It contains 0.028± acres (1,206± square feet) of land area. This easement is reportedly being sought by the City of Middletown for the purpose of installing a sidewalk.

TAX MAP

Section 46, Block 1, Lot 1



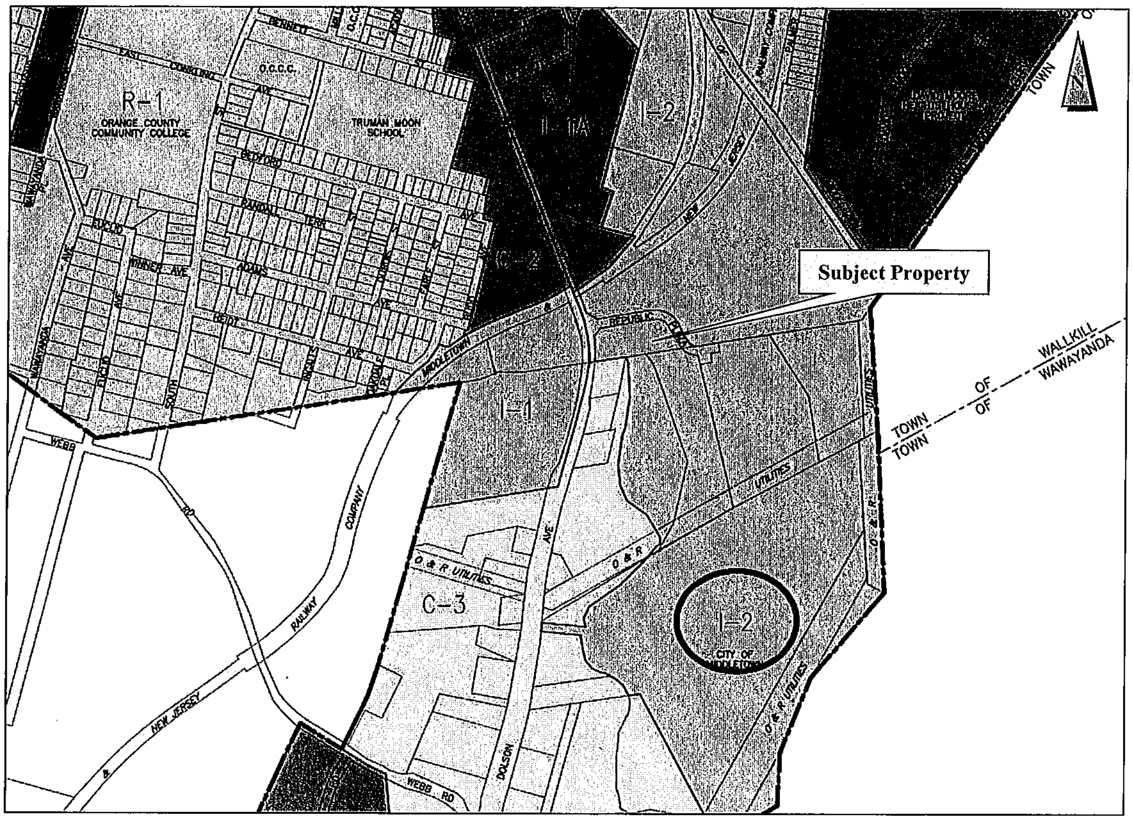
ASSESSMENT & REAL ESTATE TAX DATA

In the table below, we have summarized the most-recently published assessment data available for the tax lot identified on the Orange County Tax Maps as Section 46, Block 1, Lot 1:

Summary of RETX Assessment Data

Section-Block-Lot		46-1-1
Land Assessment Value		$ 119,000
Improvement Assessment Value	+	$ 582,700
Total Assessed Value		**$ 701,700**
Equalization Rate	÷	10.00%
Full Market Value (Rd.)		**$7,017,000**

ZONING MAP


R-1
ORANGE COUNTY COMMUNITY COLLEGE
TRUMAN MOON SCHOOL
O.C.C.C.
I-1A
I-2
C-2
I-1
C-3
I-2
CITY OF MIDDLETOWN
Subject Property
TOWN OF WALLKILL
TOWN OF WAWAYANDA
WEBB RD
DOLSON AVE
O & R UTILITIES
RAILWAY
COMPANY
NEW JERSEY

ZONING EXCERPT

Through zoning, a municipality controls building sizes, population density and the ways in which the land within its borders is utilized. Along with the power to budget, tax and condemn property, zoning is a key tool for carrying out planning policy. The Larger Parcel is zoned within a Heavy Industrial (I-2) District by the City of Middletown.

A summary of use regulations for this zoning district is presented on the following table:

• Any manufacturing use involving primary production from raw materials, or any use involving the conversion or recycling of materials into other usable products.
• Automobile painting, rebuilding or reconditioning (automobile body shops), tire retreading or recapping and battery manufacturing.
• Blacksmith shop or machine shop and steel-fabricating shops.
• Building material sales yard, including the sale of rock, sand, gravel and similar materials as an incidental part of the main business, but excluding concrete mixing.
• Bus terminals and taxi stands.
• Commercial laundry and general cleaning services, including carpet and rug cleaning.
• Contractor equipment storage yard or plant and retail sales of equipment commonly used by contractors.
• Distribution plant for retail goods, ice and cold storage plant, or bottling plant.
• Executive offices and operating facilities for communication companies, and antenna, antenna accessory structures, towers and buildings used in connection with personal wireless services.
• Feed and fuel yards, including the storage of petroleum products.
• Freighting or trucking yard or terminal.
• Lumberyard and retail sales of lumber materials, including incidental millwork.
• Manufacture and maintenance of electric and neon signs, billboards, commercial advertising structures and light sheet-metal products.
• Manufacture and maintenance of electrical and electronic equipment, instruments or appliances.
• Manufacture of carbonic ice, including its processing and distribution.
• Manufacture, compounding, processing, packaging or treatment of such products as candy, pharmaceuticals and food, including meat (but excluding fish products), sauerkraut, vinegar, yeast and the rendering of fats and oils, and large-scale bleaching and dyeing establishments.
• Manufacturing of plastic and plastic products or manufacturing of similar nonferrous products.
• Manufacturing, compounding, processing, packaging or treatment of such products as toiletries, cosmetics, perfumes, and flavorings, including the intermediate ingredients or materials required to produce these items.
• Movie and musical production facilities and similar uses, but excluding nightclubs, bars, theaters and other places of public assembly.

• <u>Offices for the following:</u>
>>> Accountant.
>>> Architect.
>>> Bond and loan companies.
>>> Business offices and offices for philanthropic and charitable institutions.
>>> Engineers and surveyors.
>>> Insurance.
>>> Lawyer.
>>> Medical/dental practitioners.
>>> Real estate.
>>> Stock brokerage companies.

• Photoengraving, lithographers or similar uses requiring offset press.
• Plumbing or sheet-metal shop.
• Printing plants.
• Public garages.
• Railroad yards and freight stations.
• Small boat building, storage and retail sales.
• Stone monument works.
• Veterinary offices or dog or cat hospitals and kennels.
• Wholesale business, storage buildings and warehouses, but excluding self-storage facilities.

There are no uses or accessory uses permitted as of right within Heavy Industrial (I-2) Districts. All uses require the issuance of both a special use permit and site plan approval from the City of Middletown Planning Board.

A summary of dimensional and bulk regulation standards for this zoning district is presented on the following table:

Min. Lot Area	15,000 square feet
Min. Lot Width	100 feet
Min. Front Yard Setback	20 feet
Min. Rear Yard Setback	10 feet
Max. Building Height	2.0 stories or 35 feet

It should be noted that appraisers are not zoning experts. We recognize that issues involving zoning compliance are complex and require the special ability, knowledge and training of professionals familiar with the appropriate regulations. Therefore, matters of zoning compliance and development potential should ultimately be determined by an architect or engineer.

HIGHEST & BEST USE

Highest & Best Use[9]

"The reasonably probable use of property that results in the highest value. The four criteria that the highest and best use must meet are legal permissibility, physical possibility, financial feasibility, and maximum productivity."

In order to determine the highest and best use of the subject site, we have considered the physically possible, legally permitted, economically feasible and maximally productive uses of the property both as vacant and as improved.

Highest & Best Use of Land or a Site as Though Vacant

The Highest & Best Use of Land or a Site as Though Vacant considers the potential uses of a property based on the assumption that the parcel of land is vacant or can be made vacant by demolishing any improvements.

Legally Permissible

The legally permitted uses are determined by the zoning of the Larger Parcel. The Larger Parcel is zoned within a Heavy Industrial (I-2) District by the City of Middletown. There are no uses or accessory uses permitted as of right within Heavy Industrial (I-2) Districts. All uses require the issuance of both a special use permit and site plan approval from the City of Middletown Planning Board. Uses within the district primarily consist of industrial uses, while some commercial office uses are also permitted.

Physically Possible

The physically possible uses are determined by the size and configuration of the Larger Parcel. The Larger Parcel is an irregular-shaped, corner-block parcel with frontages measuring 528.00± feet along the south side of Republic Plaza and 132.00± feet along the east side of Dolson Avenue. Per our aerial measurements, the Larger Parcel contains 1.633± acres (71,150± square feet) of land area. Thus, the Larger Parcel meets the minimum lot area of 15,000 square feet required by zoning for development.

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9 *The Dictionary of Real Estate Appraisal – Seventh Edition*, Appraisal Institute, Chicago, IL, 2022, p. 88.

However, it is indicated by FEMA aerial mapping services that the waterway known as Monhagen Brook, which runs north-south through the Larger Parcel, is a regulatory floodway, and thus, certain areas along this floodway are mapped as flood hazard zones. Running through the approximate center of the Larger Parcel, the property is presented with unique development challenges.

Financially Feasible

The next step is to determine the uses that are economically feasible. The most economically feasible use is the use that provides the greatest return to the land and is the most reasonably probable use in the subject market. Upon inspection, it was observed that uses along Dolson Avenue, a central, commercial thoroughfare, primarily consisted of a mix of automotive, retail and small, professional office uses. Offset from this roadway to the east, land use shifts predominantly to industrial uses (as informed by zoning). Given the location of the Larger Parcel directly along Dolson Avenue, it is indicated that commercial uses would be financially feasible.

Maximally Productive

The final step is to determine from the financially feasible uses, the use that is maximally productive. Our drive-through analysis of the area suggests a stable local real estate market. Given the foregoing, we have concluded that the highest and best use of the Larger Parcel, as vacant, would be for the development of a professional office building constructed to the maximum density permitted by zoning.

Highest & Best Use of Property as Improved

The Highest & Best Use of Property as Improved considers the potential uses of a property as it exists. An existing improvement should be renovated or retained as is so long as it continues to contribute to the total market value of the property, or until the return from a new improvement would more than offset the cost of demolishing the existing building and constructing a new one.

At present, the Larger Parcel is comprised of vacant land. Therefore, an analysis of the highest and best use of the Larger Parcel, as improved, is not applicable.

SALES COMPARISON APPROACH

ANALYSIS OF COMPARABLE LAND SALES

We have analyzed the Larger Parcel by comparing it to a number of meaningful transfers of properties identified as similar to the Larger Parcel. This analysis was repeated with the surveyed comparable sales for the Remainder Parcel following the acquisition of the subject property Permanent Easement. We have utilized the sale price on a per-acre-of-land-area basis, which is a typical unit of measure utilized by investors participating in this particular market.

The following table presents a summary of the comparable land sales:

Summary of Comparable Land Sales

No.	Location	Sale Date	Adj. Sale Price	Land Area (Sq. Ft.)	Land Area (Acres)	Zoning	Sale Price per Acre
1	18-22 Stanton Street Middletown, NY	3/7/23	$ 630,950*	52,553	1.21	I-2	$521,446
2	1089 NY-211 E Wallkill, NY	5/20/22	$4,000,000	492,228	11.30	ENT-L	$353,982
3	Wembly Rd New Windsor, NY	3/4/22	$1,300,000	161,172	3.70	PI	$351,351
4	21 Hempstead Rd New Windsor, NY	2/19/20	$850,000	65,340	1.50	PI	$566,667

The retained value of the improvements has been deducted at an estimated rate of $50 per square foot of GBA.

The comparable land sales transacted between February 2020 and March 2023. They contain between 1.21± and 11.30± acres of land area. Their unadjusted sale prices range from $351,351 to $566,667 per acre of land area, with a mean and median value indicator of $448,362 and $437,714 per acre of land area, respectively.

Discussion of Land Sales Adjustments

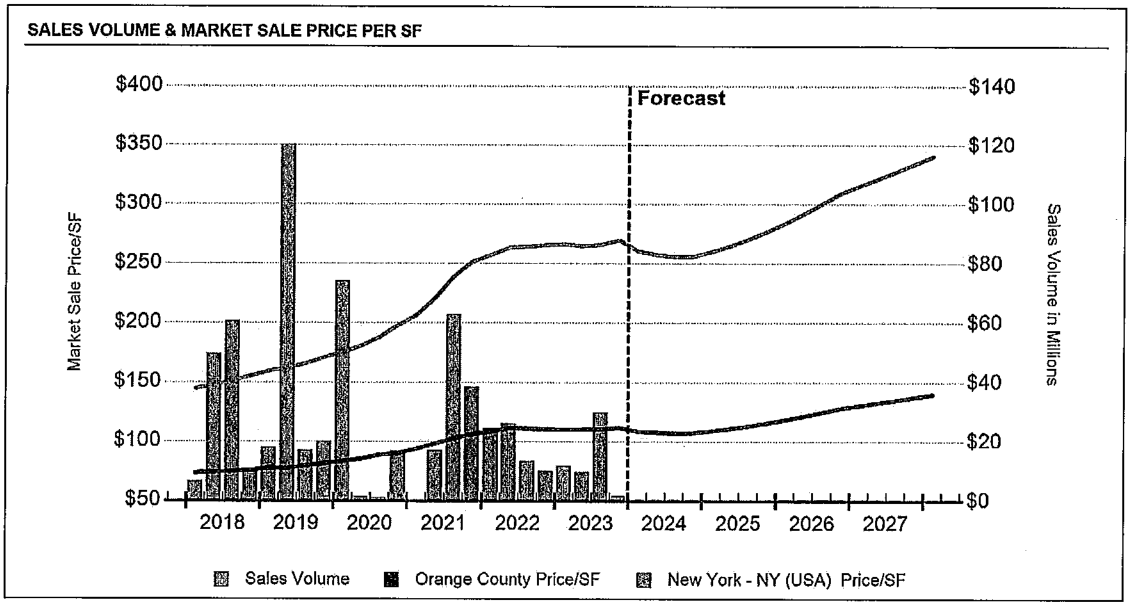
Prior to estimating the land value of the Larger/Remainder Parcel, we considered the presented land sales and the difference between the comparables as they relate to the Larger/Remainder Parcel. On this basis, we applied quantitative adjustments to each of the prices per acre of land area to reflect these differences and refine the indicated range.

An upward adjustment indicates that the comparable is inferior to the Larger/Remainder Parcel, while a downward adjustment indicates the comparable to be superior.

Since each of the comparable land sales was transferred for cash or its equivalent, financing adjustments were not necessary.

Market Conditions (Time)

We have first considered an adjustment for market conditions (time), whereby older sales are adjusted to reflect current market conditions. The comparable land sales transacted between February 2020 and March 2023. According to the CoStar Industrial Submarket Report included in this appraisal report, sale prices for industrial properties have modestly increased over the course of the time period surveyed.



Given the foregoing, Sale #1, #2, and #3 transacted under market conditions which were similar to those in existence as of the date of valuation and no adjustments were applied. Sale #4 transacted in Q1 2020 under comparatively inferior market conditions and was adjusted upward for this category.

Location

The Larger Parcel is located along Dolson Avenue, in the City of Middletown, Orange County.

All of the comparable sales are located in Orange County. Sale #1 is located less than 1.0± mile from the Larger Parcel and is concluded to be similar. Sale #1 required no adjustment. Sale #2 is located along NY-211, though notably, it is found well outside the heavily-trafficked commercial length of the roadway found in the area surrounding its intersection with NY-17. Thus, it was also ultimately concluded to be similar to the Larger Parcel. Sales #3 and #4 are found in the Town of New Windsor within an industrial park. They too share similar locational characteristics with the Larger Parcel and were not adjusted on this basis.

Size

We have considered an adjustment for size. Typically, smaller parcels sell for more on a per-acre-of-land-area basis than their larger counterparts. This reflects both bulk discounting and the diminishing pool of potential users as size and whole-dollar amounts increase. The Larger Parcel contains 1.633± acres of land area. The comparable sales contain between 1.50± and 11.30± acres of land area. Sales #1 and #4 are similar in size to the Larger Parcel and were not adjusted. Sales #2 and #3 are greater in size by varying degrees and were adjusted upward accordingly.

Following the acquisition of the Permanent Easement, a Remainder Parcel is created. However, given that the acquisition of the subject property represents a transfer of property rights as opposed to a physical division of the land, the Remainder Parcel is materially identical to the Larger Parcel. Therefore, identical adjustments have been applied in the analysis of the Remainder Parcel for this category.

Site Utility

An adjustment for the site utility considers the shape of the site, as well as block positioning, street frontage, accessibility and site topography. The Larger Parcel is an irregular-shaped, corner-block parcel with frontages measuring 528.00± feet along the south side of Republic Plaza and 132.00± feet along the east side of Dolson Avenue.

Upon inspection, the site topography of the Larger Parcel was observed to be generally level. However, it is indicated by FEMA aerial mapping services that the waterway known as Monhagen Brook, which runs north-south through the Larger Parcel, is a regulatory floodway, and thus, certain areas along this floodway are mapped as flood hazard zones. Running through the approximate center of the Larger Parcel, the property is presented with unique development challenges.

The comparable sales are considered to be conducive to development. A review of environmental factors, including the influence of flood hazards and State-regulated wetlands, revealed that the comparable properties were not negatively influenced by such elements. Therefore, we have concluded that the comparable sales are significantly superior to the Larger Parcel and downward adjustments were applied. Identical adjustments have been applied in the analysis of the Remainder Parcel for this category as well.

Zoning

Through zoning, a municipality controls building sizes, population density and the ways in which the land within its borders is utilized. Along with the power to budget, tax and condemn property, zoning is a key tool for carrying out planning policy. The Larger Parcel is zoned within a Heavy Industrial (I-2) District by the City of Middletown.

A review of the zoning pertinent to the comparable sales indicated a similar breadth of permissible uses and dimensional and bulk regulations. Therefore, no adjustments have been performed for this category.

The table on the following page summarizes the aforementioned adjustments made to the comparable land sales:

ADJUSTMENTS TO THE COMPARABLE LAND SALES
(Before – Larger Parcel)

						Adjustments					
No.	Location	Sale Date	Sale Price per Acre x	Mkt./ Time Adj. =	Time-Adj. Price per Sq. Ft. x	Loc. +	Size +	Site Util. +	Zoning =	Total Adj. =	Adj. Sale Price per Sq. Ft.
1	18-22 Stanton Street Middletown, NY	3/7/23	$521,446	0%	$521,446	0%	0%	-30%	0%	-30%	$365,012
2	1089 NY-211 E Wallkill, NY	5/20/22	$353,982	0%	$353,982	-10%	20%	-30%	0%	-20%	$283,186
3	Wembly Rd New Windsor, NY	3/4/22	$351,351	0%	$351,351	0%	5%	-30%	0%	-25%	$263,513
4	21 Hempstead Rd New Windsor, NY	2/19/20	$566,667	5%	$595,000	0%	0%	-30%	0%	-30%	$416,500

ADJUSTMENTS TO THE COMPARABLE LAND SALES
(After – Remainder Parcel)

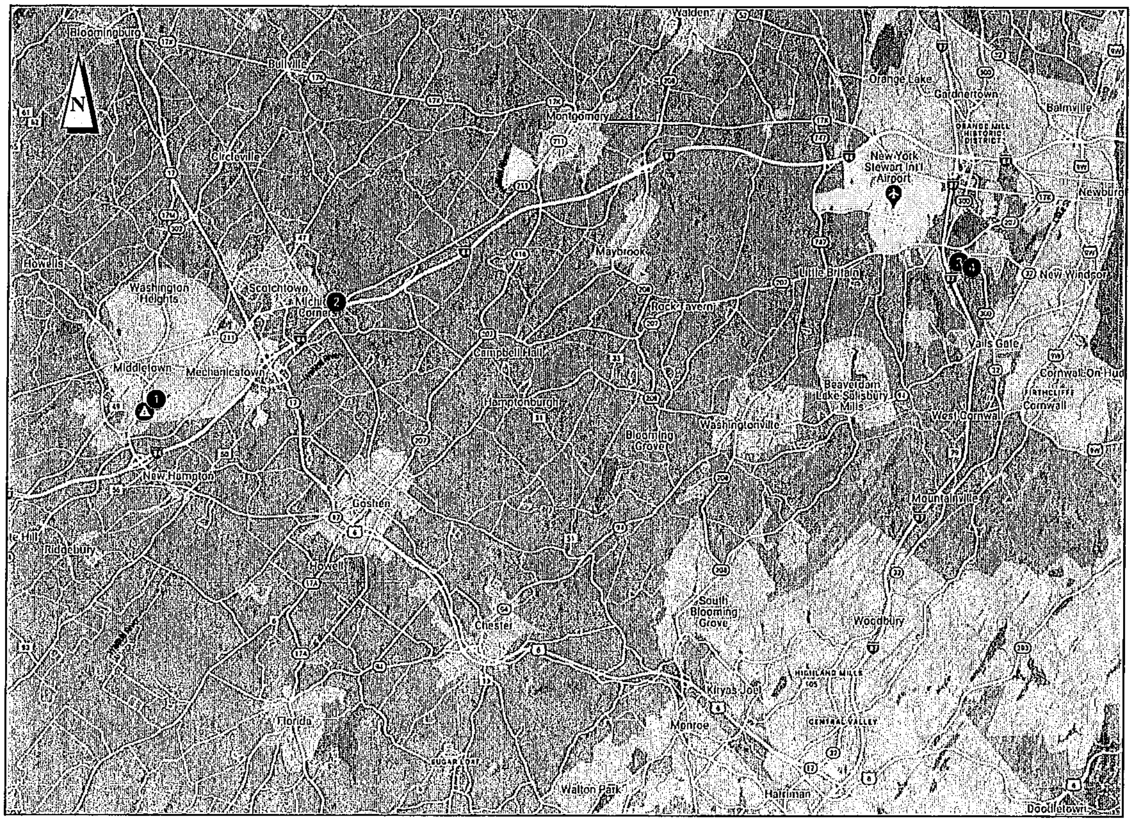
No.	Location	Sale Date	Sale Price per Acre	x	Mkt./ Time Adj.	=	Time-Adj. Price per Sq. Ft.	x	Adjustments: Loc.	+	Size	+	Site Util.	+	Zoning	=	Total Adj.	=	Adj. Sale Price per Sq. Ft.
1	18-22 Stanton Street Middletown, NY	3/7/23	$521,446		0%		$521,446		0%		0%		-30%		0%		-30%		$365,012
2	1089 NY-211 E Wallkill, NY	5/20/22	$353,982		0%		$353,982		-10%		20%		-30%		0%		-20%		$283,186
3	Wembly Rd New Windsor, NY	3/4/22	$351,351		0%		$351,351		0%		5%		-30%		0%		-25%		$263,513
4	21 Hempstead Rd New Windsor, NY	2/19/20	$566,667		5%		$595,000		0%		0%		-30%		0%		-30%		$416,500

VALUE CONCLUSION – SALES COMPARISON APPROACH

Following adjustments in the analysis of the Larger Parcel, the presented land sales ranged from $263,513 to $416,500 per acre of land area, with a mean and median value indicator of $332,053 and $324,099 per acre of land area, respectively. Given identical adjustments, we have concluded to a fee simple market value of $330,000 per acre of land area for both the Larger and Remainder Parcels by approximating the mean and median value indicator.

In order to most accurately calculate the overall damage value posed by the subject property Permanent Easement, we have converted our fee simple market value conclusion to a dollar-per-square-foot basis, which is equivalent to $7.58 per square foot of land area.

COMPARABLE LAND SALES LOCATION MAP



No.	Location
1	18-22 Stanton Street, Middletown, NY
2	1089 NY-211 E, Middletown, NY
3	Wembly Road, New Windsor, NY
4	21 Hempstead, New Windsor, NY

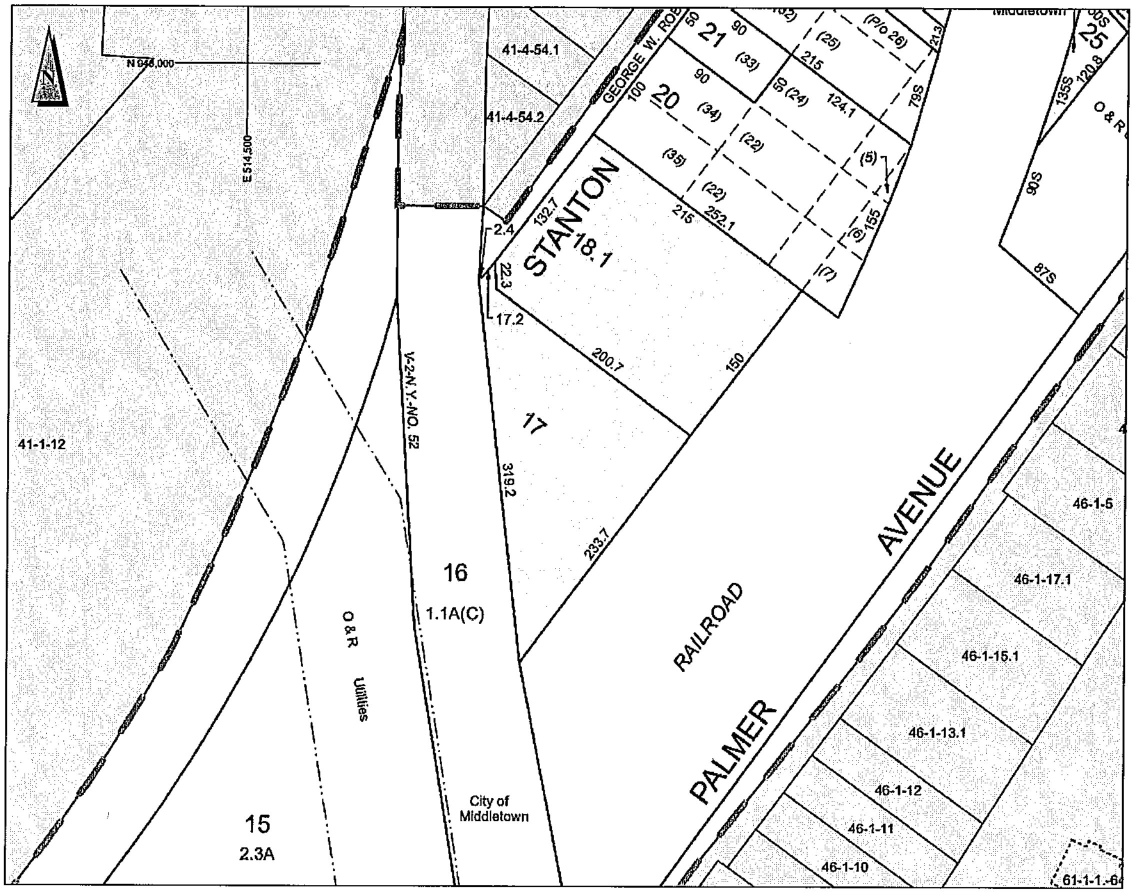
LIST OF COMPARABLE LAND SALES

Land Sale #1	**18-22 Stanton Street**
Section 45, Block 4, Lots 17 & 18.1	**Middletown, Orange County, NY**

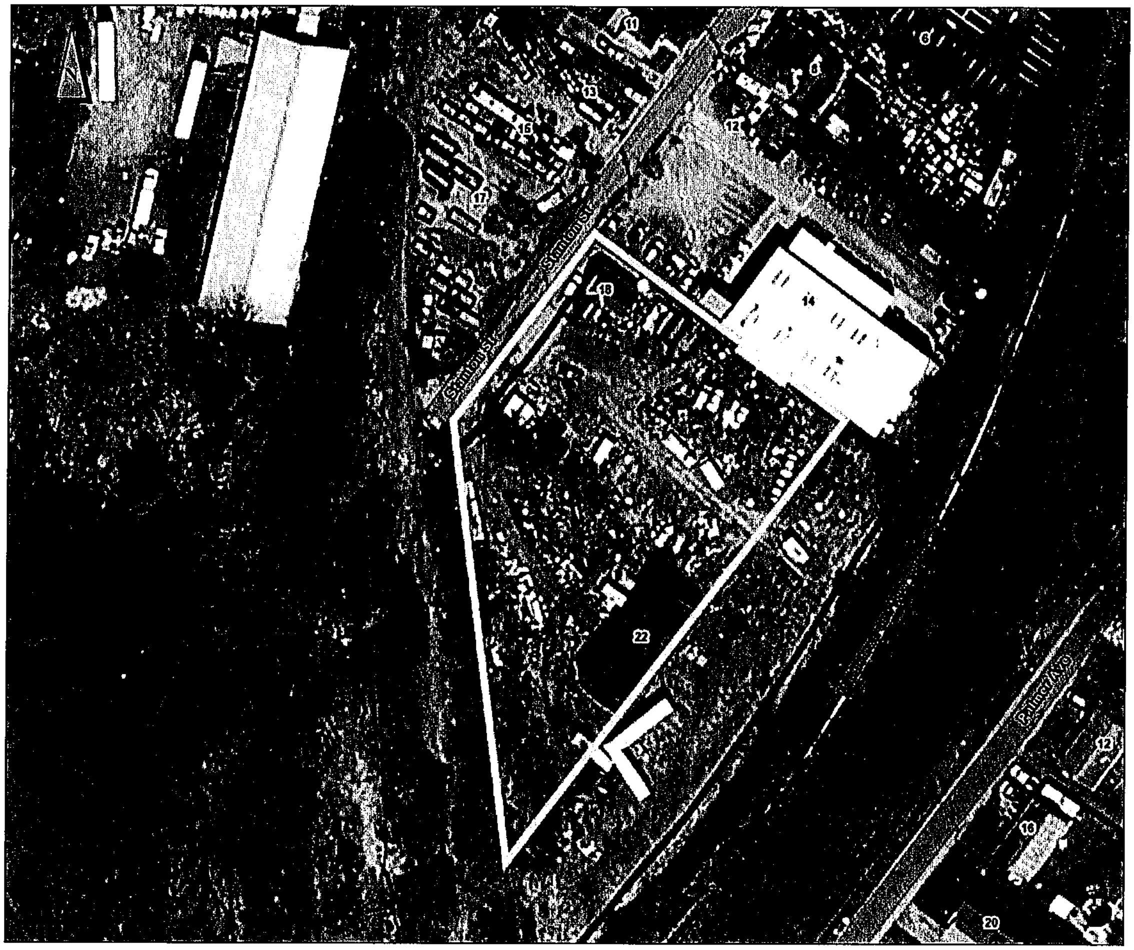
Grantor / Grantee	Viserta Living Trust / Bobcat Road LLC
Date of Sale (Recorded)	3/7/23 (3/22/23)
Deed Book-Page	15395-1556
Description	Irregular-shaped parcel with frontage measuring 132.70± feet on the southeasterly side of Stanton Street in the City of Middletown. At the time of sale, the site was included with a single-family dwelling converted to office use. Per public records, it contains 781± square feet of GBA. The site is also improved with a warehouse building, which contains 3,600± square feet of GBA and features 13.0±-foot ceiling heights. The property shares identical zoning with the subject property. We have deducted the value of the retained improvements at the site, estimated at $50 per square foot of GBA, in order to ascertain its underlying land value.
Land Area	1.21± acres (52,553± square feet)
Zoning	Heavy Industrial (I-2) *City of Middletown*
Indicated Sale Price **Less: Retained Improvement Value** **Adjusted Sale Price**	$850,000 $219,050 $630,950
Sale Price per Acre	$521,446

TAX MAP – LAND SALE #1

Section 45, Block 4, Lots 17 & 18.1



GIS MAP – LAND SALE #1

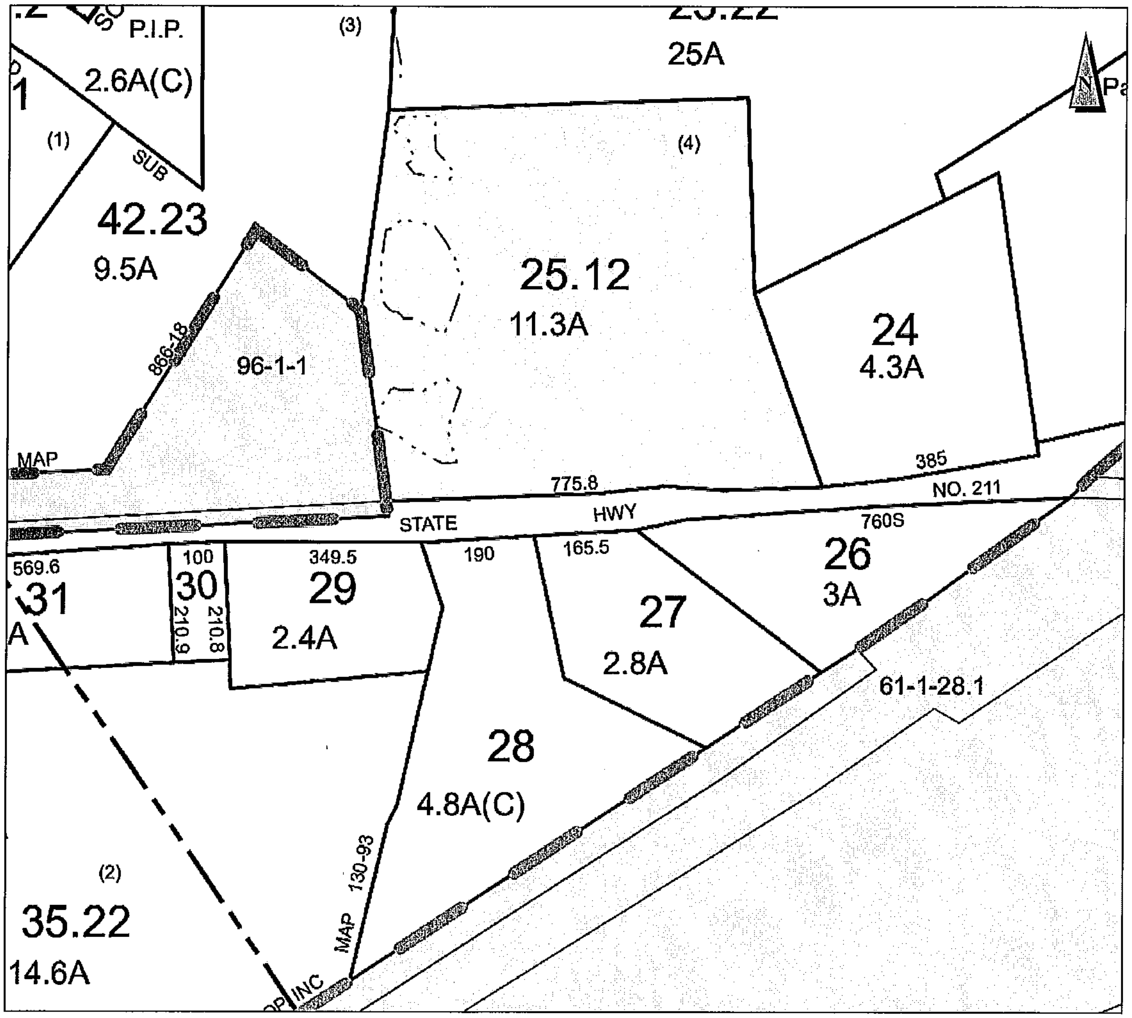


Land Sale #2 Section 44, Block 1, Lots 25.12	1089 NY-211 E Wallkill, Orange County, NY

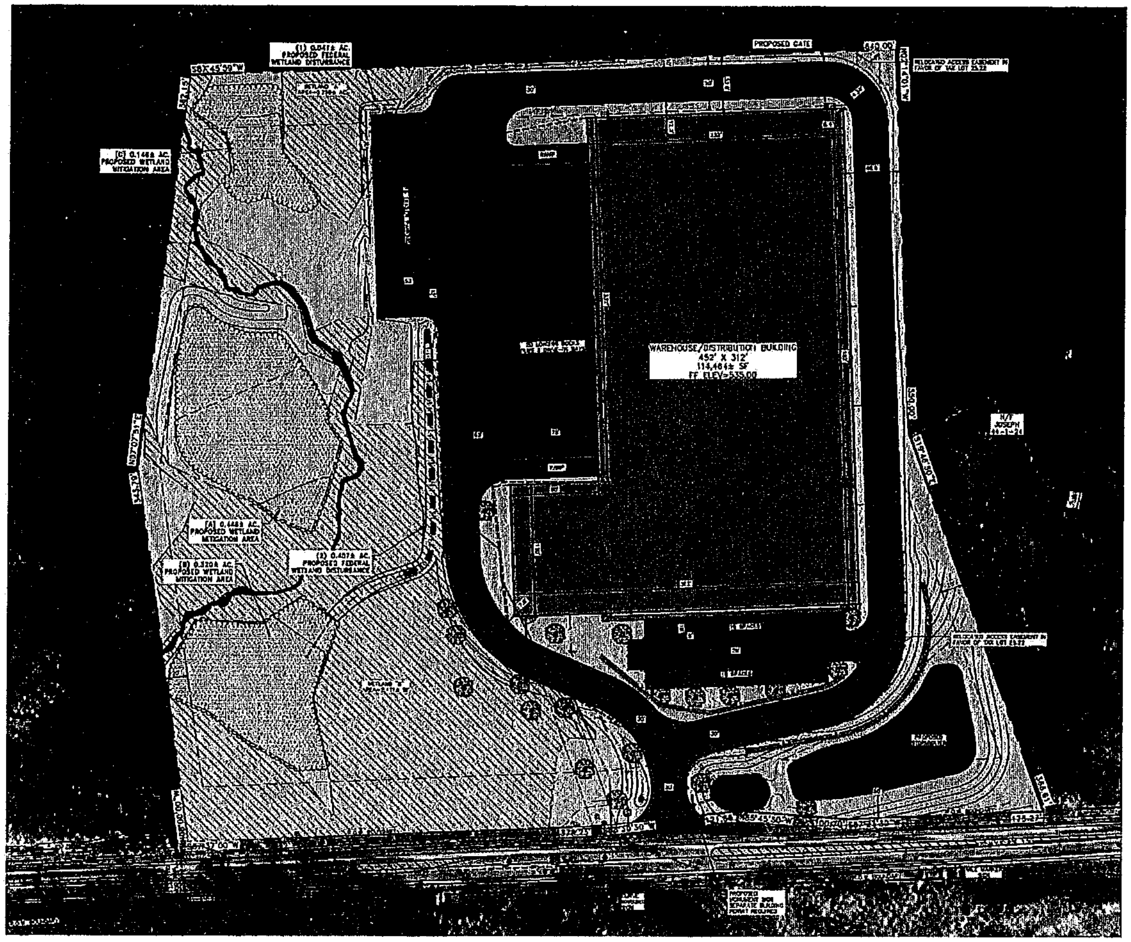
Grantor / Grantee	211 Middletown Group LLC / 211 Equities LLC
Date of Sale (Recorded)	5/20/22 (6/3/22)
Deed Book-Page	15245-365
Description	Slightly-irregular-shaped, mid-block parcel with frontage measuring 775.80± feet on the north side of NY-211 E in the Town of Wallkill. The sale included plans and approvals for a 114,464± square-foot warehouse building. The site was cleared of any forestation subsequent to the sale.
Land Area	11.30± acres (492,228± square feet)
Zoning	Enterprise, Light Industry (ENT-L) *Town of Wallkill*
Indicated Sale Price	$4,000,000
Sale Price per Acre	$353,982

TAX MAP – LAND SALE #2

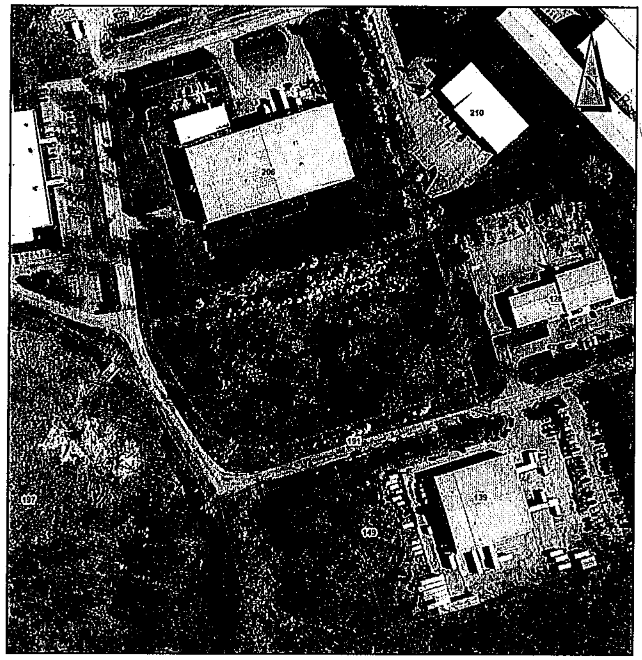
Section 44, Block 1, Lots 25.12



DEVELOPMENT PLAN MAP – LAND SALE #2



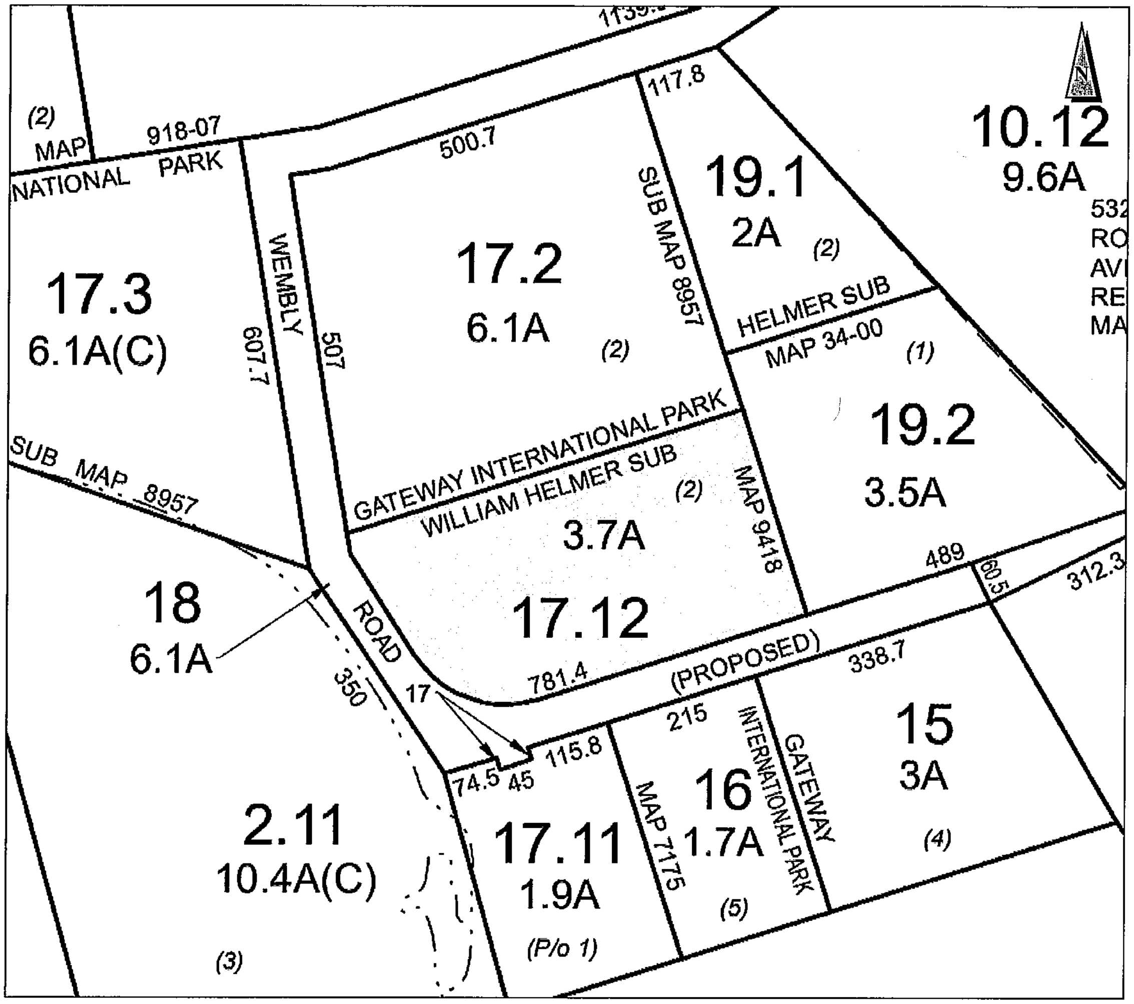
Land Sale #3	Wembly Road
Section 4, Block 3, Lots 17.12	New Windsor, Orange County, NY



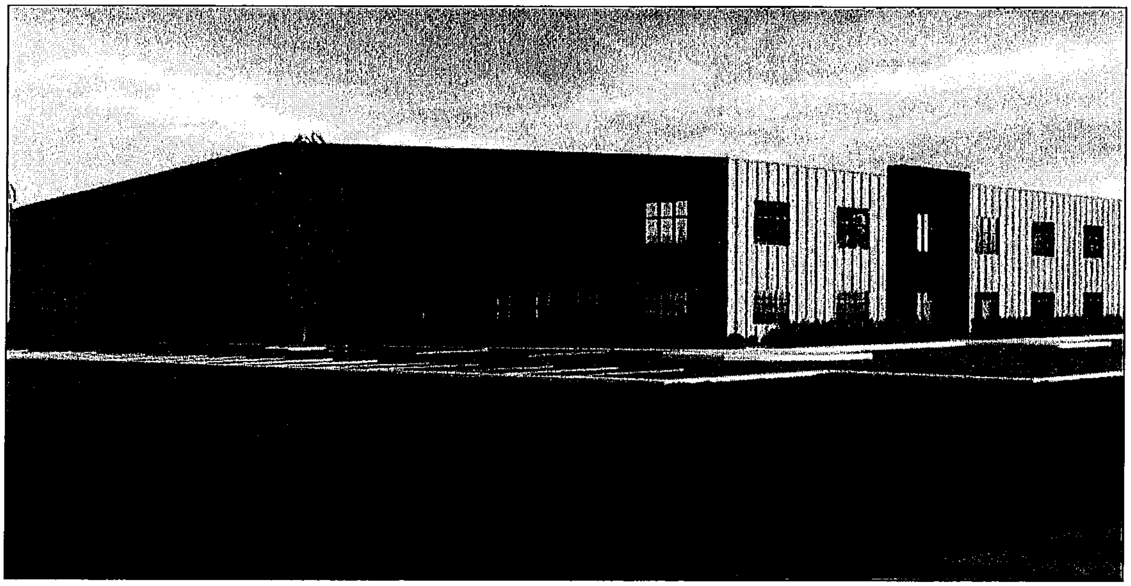
Grantor / Grantee	LLFNGW Realty LLC / Wembly Road LLC
Date of Sale (Recorded)	3/4/22 (3/23/22)
Deed Book-Page	15189-297
Description	Slightly-irregular-shaped parcel with frontage measuring 781.40± feet along the northerly side of Wembly Road in the Town of New Windsor. The sale included plans and approvals for a 53,000± square-foot modern warehouse building, which reportedly features ceiling heights of 32.0± feet.
Land Area	3.70± acres (161,172± square feet)
Zoning	Planned Industrial (PI) *Town of New Windsor*
Indicated Sale Price	$1,300,000
Sale Price per Acre	$351,351

TAX MAP – LAND SALE #3

Section 4, Block 3, Lots 17.12



DEVELOPMENT RENDERING – LAND SALE #3

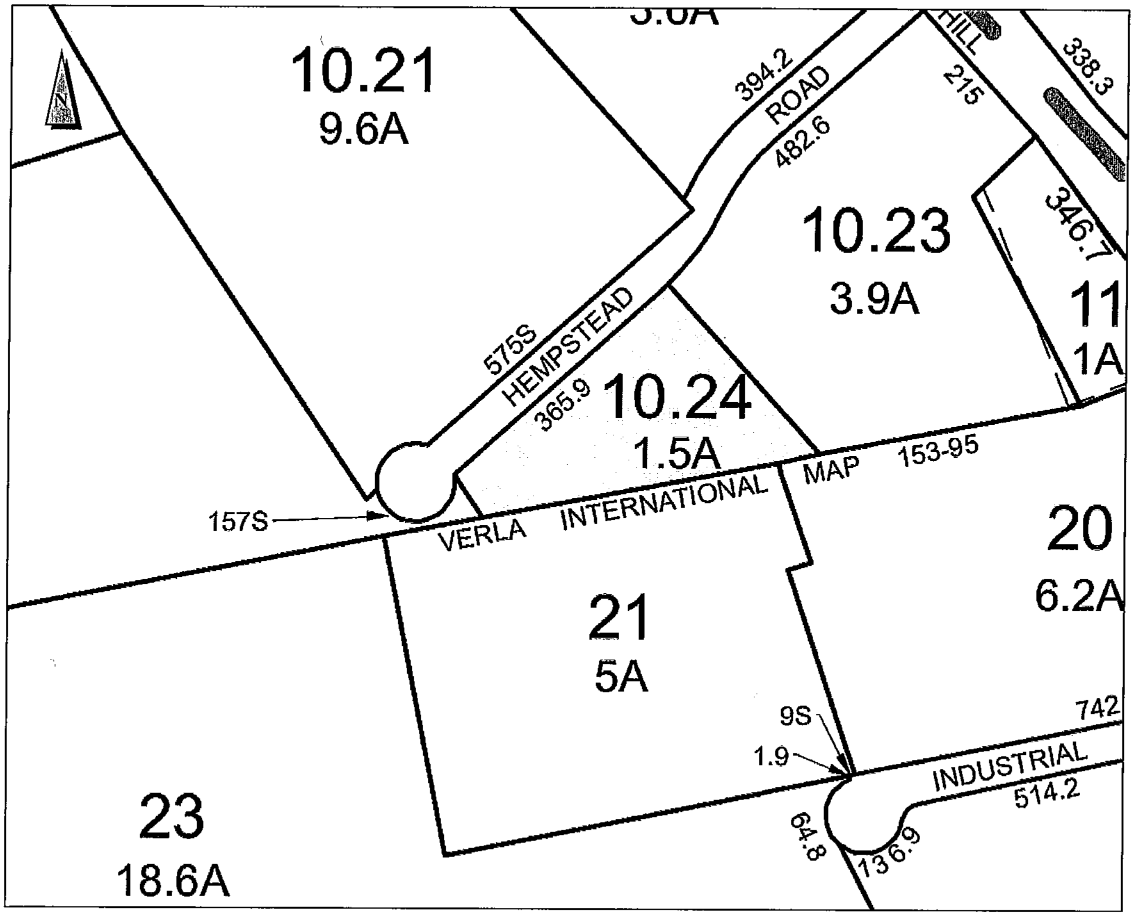


Land Sale #4 Section 4, Block 3, Lot 10.24	21 Hempstead Road New Windsor, Orange County, NY

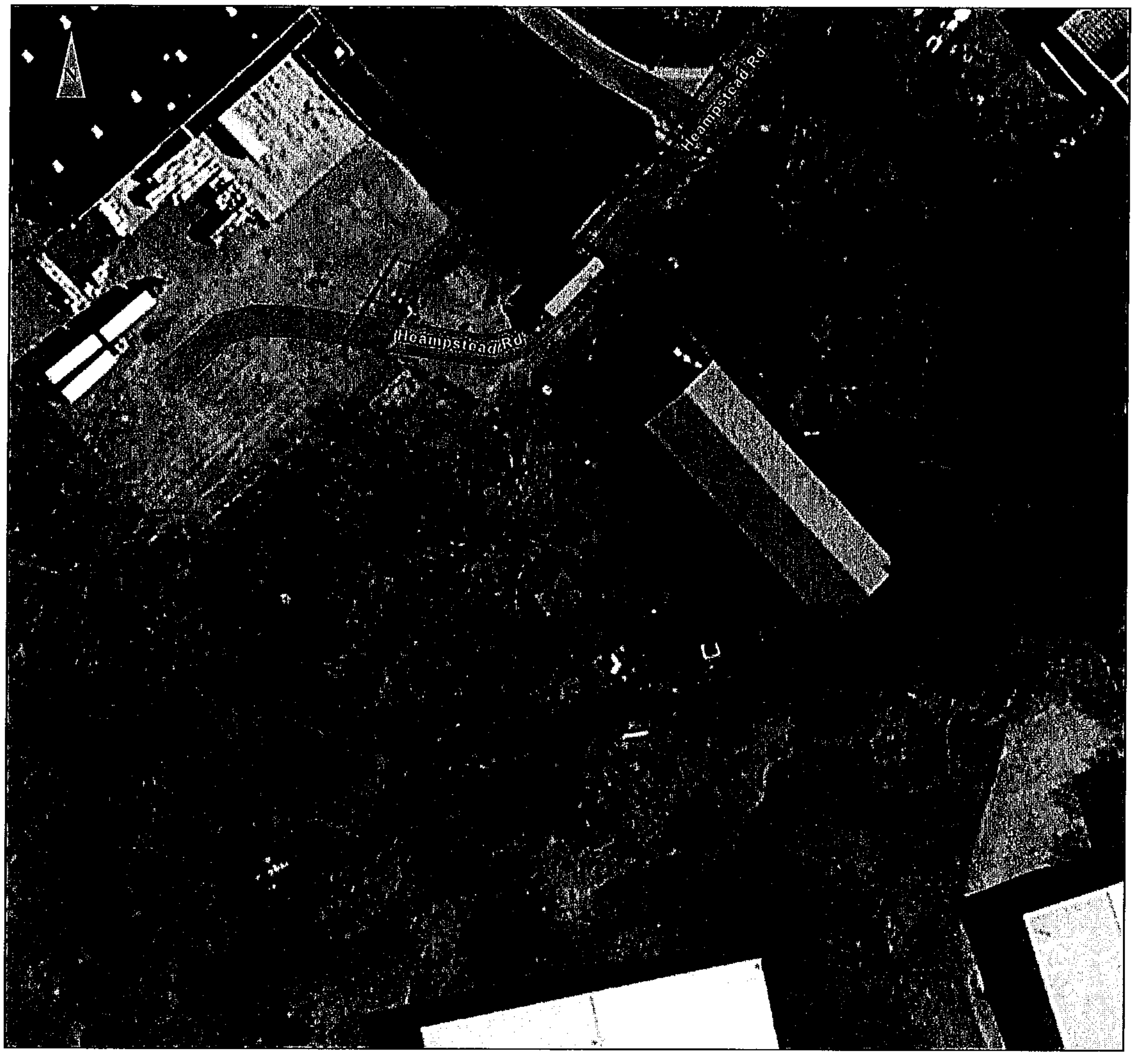
Grantor / Grantee	DePaulis & Son Inc / Hempstead LLC
Date of Sale (Recorded)	2/19/20 (3/26/20)
Book-Page	14723-1559
Description	Irregular-shaped parcel with frontage measuring 365.90± feet along the southerly side of Hempstead Road in the Town of New Windsor. The site was vacant at the time of sale and was subsequently improved with a one- and part-two-story warehouse building. According to aerial measurements, it contains approximately 8,900± square feet of GBA.
Land Area	1.50± acres (65,340± square feet)
Zoning	Planned Industrial (PI) *Town of New Windsor*
Indicated Sale Price	$850,000
Sale Price per Acre	$566,667

TAX MAP – LAND SALE #4

Section 4, Block 3, Lot 10.24



GIS MAP – LAND SALE #5



VALUE CONCLUSION – PERMANENT EASEMENT

A fee simple estate consists of absolute ownership rights for a property, such as the right to sell, mortgage, lease, use and occupy a property, as well as the preservation of the development rights inherent to that property. Per the definition of a fee simple estate, this form of ownership grants a Bundle of Rights, which include: 1) the right of possession, 2) right of control 3) right of exclusion 4) right of enjoyment and 5) right of disposition. To account for the impact to property rights posed by the Permanent Easement, we have applied an allocation factor to our conclusion of its fee simple underlying land value. In choosing an appropriate allocation factor, we have reviewed the following "Easement Valuation Matrix" included in the publication titled "The Valuation of Easements," prepared by Mr. Donnie Sherwood, SR/WA, MAI, FRICS (November / December 2014):

Easement Valuation Matrix[10]

Easement Valuation Matrix

Percentage of Fee	Comments	Potential Types of Easements
90% - 100%	• Severe impact on surface use • Conveyance of future uses	Overhead electric, flowage easements, railroad right of way, irrigation canals, exclusive access easements
75% - 89%	• Major impact on surface use • Conveyance of future uses	Overhead electric, pipelines, drainage easements, railroad right of way, flowage easements
51% - 74%	• Some impact on surface use • Conveyance of ingress/egress rights	Pipelines, scenic easements
50%	• Balanced use by both owner and easement holder	Water or sewer lines, cable lines, telecommunications
26% - 49%	• Location along a property line location across non-usable land area	Water or sewer line, cable lines
11% - 25%	• Subsurface or air rights with minimal effect on use and utility • Location with a setback	Air rights, water or sewer line
0% - 10%	• Nominal effect on use and utility	Small subsurface easement

38 RIGHT OF WAY NOVEMBER/DECEMBER 2014

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[10] *Source: "The Valuation of Easements", Donnie Sherwood, SR/WA, MAI, FRICS (November / December 2014).*

It is proposed that the Permanent Easement shall encumber a portion of the Larger Parcel along its Dolson Avenue frontage and is reportedly being sought by the City of Middletown for the purpose of installing a sidewalk. Given the implication of the property rights forgone, we have considered that the acquisition of the Permanent Easement is representative of a near full fee taking, and thus, its value is equivalent to 90.0% of the underlying fee simple land value.

Our conclusion of the market value posed by the Permanent Easements is summarized on the following table:

Value Conclusion – Permanent Easements

Land Area (Sq. Ft.) - Permanent Easement		1,206
Market Value per Sq. Ft.	x	$ 7.58
Indicated Fee Simple Market Value		**$9,141.48**
Allocation Factor @ 90.0% of Fee Simple Value	x	90.0%
Overall Damage Value		$8,227.33
(Rd. Up)		**$8,300.00**

Our conclusion of market value, as ascertained through the utilization of Before-&-After Methodology, have been summarized on the following table:

Value Conclusion – Before & After Analysis

Component:		Larger Parcel *(Before)*	-	Remainder Parcel *(After)*	=	Permanent Easement *(Damages)*
Land Area (Acres)		1.633	-	1.633	=	
Market Value per Acre	x	$330,000	x	$330,000		
Indicated Fee Simple Market Value		**$538,890**		**$538,890**	=	
Less: Permanent Easement	-	$ 0	-	$ 8,227		
Adjusted Market Value		$538,890	-	$530,663		$8,227
(Rd. Up)						**$8,300**

CORRELATION & VALUE CHOICE

In estimating the market value of the subject property, we have considered the three (3) approaches to value:

Cost Approach

We have not performed the Cost Approach in this appraisal report because the Larger/Remainder Parcel consists of vacant land.

Income Capitalization Approach

We have not performed the Income Capitalization Approach in this appraisal report because the Larger/Remainder Parcel consists of vacant land, which is not a typical income producing property type. Furthermore, market participants would not typically purchase vacant land for its income generating potential.

Sales Comparison Approach

We have performed the Sales Comparison Approach in this appraisal report herein, utilizing Before-&-After Methodology. We have surveyed the local market and have identified a number of recent, meaningful transfers of properties which were found to be comparatively similar to the Larger Parcel. The surveyed selection of sales were individually compared and contrasted against the Larger Parcel. During the course of this analysis, adjustments were made to the per-unit values of the comparable sales for market-sensitive differences, where required, in order to conclude to a final opinion market value for the fee simple estate of the Larger Parcel.

This process was repeated, wherein the analysis was performed against the Remainder Parcel (i.e., following the taking of the subject property Permanent Easement). Then, by calculating the difference between the market value of the Larger Parcel and the Remainder Parcel, an indication of the value of the overall damages attributable to the taking of the subject property Permanent Easement results.

With its underlying land value established, subsequent considerations were made for the subject's impact to property rights and an allocation factor was applied to its indicated fee simple value so as to approximate its ultimate value as divided between the dominant and servient estates.

FINAL VALUE CONCLUSION

We are of the opinion that the market value of the subject property Permanent Easement, as of December 29, 2023, *predicated upon all assumptions and limiting conditions as defined within the body of this report*, was:

EIGHT THOUSAND THREE HUNDRED DOLLARS

$8,300.00

QUALIFICATIONS

The firm of Goodman-Marks Associates, Inc., with offices located at 170 Old Country Road, Mineola, New York, 420 Lexington Avenue, New York, New York and 55 Madison Avenue, Morristown, New Jersey, is a licensed real estate broker in the State of New York. Members of the firm are licensed real estate appraisers in the States of New York and New Jersey.

The firm has furnished real estate appraisals to financial institutions for mortgage and sale purposes, and many of these valuation assignments have been performed throughout the country.

The types of assignments that we typically handle encompass all facets of the real estate appraisal/consultation spectrum. These have included office buildings (both urban and suburban), shopping centers (strip, neighborhood and regional mall), freestanding department stores, fast-food buildings, gas stations, apartment houses (both urban and suburban; high-rise and garden type), cooperative and condominium residential housing (to be developed as well as to be converted), mixed-use development, hotels and motels, industrial and warehouse facilities and vacant land. Special types have included banks, auto showrooms, theaters, schools, bowling alleys, golf courses, nursing homes, etc.

Members of the firm have testified as to the value of land and buildings before the Supreme Court of the State of New York, the Court of Claims of New York State and the United States Federal Court.

The above history, the additional personal experience, affiliations, numerous similar properties appraised and education of the appraisers, as outlined on this and the following pages, qualify them as competent to complete this assignment.

MATTHEW J. GUZOWSKI, MAI, MRICS, PRESIDENT
GOODMAN-MARKS ASSOCIATES, INC.

GENERAL EXPERIENCE

Over 34 years as a commercial real estate appraiser and consultant.
Testified as an expert witness:

New York State Supreme Court, New York County
New York State Supreme Court, Queens County
New York State Supreme Court, Kings County
New York State Supreme Court, Dutchess County
New York State Supreme Court, Suffolk County
U.S. District Court, Eastern District of New York
U. S. Bankruptcy Court, Kings County
Civil Court of the City of New York, Kings County
District Court, Landlord & Tenant Court, Suffolk County
Zoning and Arbitration Testimony, Dutchess County

EMPLOYMENT

4/91 to Date: *Goodman-Marks Associates, Inc.*

President preparing narrative appraisal reports of income-producing and other properties to determine market valuations. These reports are used for mortgage purposes, settlement of estates, real estate tax certiorari actions and condemnation cases.

1/83 to 4/91: *New York City Economic Development Corporation*
161 William Street
New York, New York

Vice President of appraisal services preparing narrative appraisal reports and reviewing fee appraisals to determine the market value of real estate for disposition, development and lease.

EDUCATION

College:

St. John's University
Degree: MBA – Finance
December, 1989

Queens College, C.U.N.Y.
Degree: BA – English
January, 1981

Professional:

Appraisal Institute
Courses successfully completed:

1A1 - Real Estate Appraisal Principles
1A2 - Basic Valuation Procedures
SPP - Standards of Professional Practice
1BA - Capitalization Theory & Techniques - Part A
1BB - Capitalization Theory & Techniques - Part B
2-1 Case Studies in Real Estate Valuation
2-2 Report Writing and Valuation Analysis

Seminars attended:

Arbitration in Real Estate
Real Estate Financial Statement Analysis

MATTHEW J. GUZOWSKI, MAI, MRICS, PRESIDENT
GOODMAN-MARKS ASSOCIATES, INC. – (Continued)

PROFESSIONAL MEMBERSHIP

Appraisal Institute - MAI Designation #10114
Long Island, New York Chapter
Chairman – Admissions Committee, Long Island Chapter, 2000-2006
Chairman – Budget & Finance Committee, Long Island Chapter, 2007
Treasurer – Long Island Chapter, 2007
Secretary – Long Island Chapter, 2008
Vice President – Long Island Chapter, 2009
Senior Vice President – Long Island Chapter, 2010
President – Long Island Chapter, 2011

The Royal Institution of Chartered Surveyors I.D. #6404964

REBNY – Membership I.D. #49202

Community Bankers Mortgage Forum

International Right of Way Association I.D.#7902612

GUEST LECTURER New York University – Real Estate Institute

LICENSES

Certified General Real Estate Appraiser
State of New York Certificate #468986
State of New Jersey Certificate #42RG00146100
State of Connecticut Certificate #RCG0001210
New York State Salesperson License #10401205644

MATTHEW F. BOYLAN, MAI, EXECUTIVE VICE PRESIDENT
GOODMAN-MARKS ASSOCIATES, INC.

EMPLOYMENT

7/07 to Present: *Goodman-Marks Associates, Inc.*

Executive Vice President preparing advanced narrative appraisal reports of income-producing and other properties to determine market valuations. Assignments include financing for many local and national lenders, government/municipality work, real estate tax certiorari actions, condemnation, litigation, arbitration, estate planning and large-scale downtown revitalization projects among other things. Over the past several years Matthew has concentrated his work in the New York City market, including each of the five (5) Boroughs. Matthew also has experience valuing commercial property in a variety of markets including Long Island, Westchester, New Jersey, Connecticut, Boston, Raleigh and Washington DC.

EDUCATION

College:

Buffalo State College – Buffalo, New York
Bachelor of Science Degree
Major: Business Administration
2003-2007

Professional:

Courses successfully completed:
Appraisal Institute
Course 100GR – Basic Appraisal Principles
Course 101GR – Basic Appraisal Procedures
Course 300GR – Real Estate Finance Statistics and Valuation Modeling
Course 401G – General Appraiser Sales Comparison Approach
Course 400G – General Appraiser Market Analysis and Highest & Best Use
Course N403G – General Appraiser Income Approach/Part 1
Course N404G – General Appraiser Income Approach/Part 2
Course 402G – General Appraiser Site Valuation and Cost Approach
Course N420DM – Business Practices and Ethics
Course 405G – General Appraiser Report Writing and Case Studies
AQ-GE-1 – Fair Housing, Fair Lending and Environmental Issues
Course 501GD – Advanced Income Capitalization
Course 503GD – Advanced Concepts & Case Studies
General Demonstration Report – Capstone Program

New York University
USPAP - Uniform Standards of Professional Appraisal Practice

New York Real Estate Institute
GE-3 – Using the HP12C Financial Calculator

PROFESSIONAL MEMBERSHIP

Appraisal Institute - MAI Designation

LICENSE

Certified General Real Estate Appraiser
New York State Certificate #4651008

ANTHONY M. SAVINO, ASSISTANT VICE PRESIDENT
GOODMAN-MARKS ASSOCIATES, INC.

EMPLOYMENT

3/16 to Date: *Goodman-Marks Associates, Inc.* – Assistant Vice President

Real Estate Appraiser preparing narrative appraisal reports of income-producing and other properties to determine market valuations. These reports are used for mortgage purposes, settlement of estates, litigation, real estate tax certiorari actions and condemnation cases.

EDUCATION

College:

University of Tampa – Tampa, FL
Bachelor of Science
Major: International Business
December, 2005

Professional:

Appraisal Institute
Basic Appraisal Principles (R-5)
Basic Appraisal Procedures (R-6)
National Uniform Standards of Professional Appraisal Practice (USPAP)
General Appraiser Market Analysis and Highest & Best Use (G-4)
General Appraiser Sales Comparison Approach (G-5)
General Appraiser Site Valuation & Cost Approach (G-6)
General Appraiser Income Approach (G-7)
General Appraiser Report Writing & Case Studies (G-8)
Real Estate Finance, Statistics and Valuation Modeling (SMF)
Fair Housing, Fair Lending & Environmental Issues (GE-1)
Using the HP-12C Financial Calculator (GE-3)

LICENSE

Certified General Real Estate Appraiser
New York State Certificate #4654108

EASEMENT AGREEMENT

THIS EASEMENT AGREEMENT (this "**Easement Agreement**"), dated as of ____________________, 2024 (the "**Execution Date**"), made by **ORANGE AND ROCKLAND UTILITIES, INC.**, a New York corporation with offices located at One Blue Hill Plaza, Pearl River, New York 10965 ("**Grantor**"), and the **CITY OF MIDDLETOWN**, a New York municipal corporation, having offices located at 16 James Street, Middletown, New York 10940 ("**Grantee**"). Grantor and Grantee are sometimes referred to herein individually as a "**Party**" and collectively as the "**Parties.**"

WITNESSETH:

WHEREAS, Grantor owns the 23.8 acre property located at 89-99 Dolson Avenue in the City of Middletown, Orange County, New York, which is designated on the Orange County New York Tax Map as Section 46, Block 1, Lot 1 (the "**Property**"); and

WHEREAS, Grantee is in the process of upgrading certain transportation related infrastructure located within the City of Middletown, Orange County, New York (the "**Project**"); and

WHEREAS, as part of the Project, Grantee desires to construct a sidewalk for public use along the edge of the Property adjacent to Dolson Avenue ("**Sidewalk**") that will encumber approximately 1,206 square feet of the Property ("**Easement Area**"), as described in, and depicted on, **Exhibit A** attached hereto and made a part hereof; and

WHEREAS, Grantee has requested an easement from Grantor for the construction, public use of the Sidewalk in the Easement Area; and

WHEREAS, Grantor has agreed to grant to Grantee an easement for the construction, and public use of the Sidewalk in the Easement Area, pursuant to the terms of this Easement Agreement; and

WHEREAS, this Easement Agreement is subject to the review and approval of the New York State Public Service Commission ("**Commission**") pursuant to New York State Public Service Law Section 70 ("**Section 70 Approval**"); and

WHEREAS, Grantor will file a petition with the Commission seeking Section 70 Approval of this Easement Agreement ("**Petition**"); and

WHEREAS, the Section 70 Approval process typically takes a minimum of six months from the date a Petition is filed with the Commission; and

WHEREAS, Grantor and Grantee have entered into a License Agreement as of the Execution Date (the "**License Agreement**"), pursuant to which Grantor has granted Grantee temporary access to the Easement Area so that Grantee may commence construction of the Sidewalk, subject to the terms and conditions set forth in the License Agreement; and

WHEREAS, the License Agreement provides that the License Agreement will terminate under certain circumstances, including, without limitation, 15 days after the Commission issues a final order regarding the Petition.

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, Grantor and Grantee hereby agree as follows:

1. Effectiveness.

(a) The definitions set forth in this Easement Agreement prior to this **Section 1(a)** are hereby incorporated into the operative provisions of this Easement Agreement and are binding upon the Parties.

(b) For purposes of this Easement Agreement, the "**Effective Date**" shall mean the date:

(i) that is the earlier of: (A) the fifteenth day following the date that the Commission approves this Easement Agreement or is deemed to have approved this Easement Agreement pursuant to New York State Public Service Law Section 70 ("**Section 70**"), within the time period provided by **Section 1(d)**, with no conditions and (B) the fifteenth day following the date that the Commission approves this Easement Agreement pursuant to Section 70 with conditions, within the time period provided by **Section 1(d)**, and neither Party shall have sent a written notice to the other Party stating that any such condition is not acceptable to such Party within the time frame provided for such notices in **Section 1(d);** and

(ii) that Grantor receives payment from Grantee in the amount of Eight Thousand Three Hundred Dollars ($8,300.00) (the "**Easement Payment**"). Grantee shall make the Easement Payment to Grantor by the earlier of the two dates referred to in **Section 1(b)(i)**. The Easement Payment has been negotiated by the Parties as an appropriate and reasonable value for the effectiveness of this Easement Agreement.

(c) Promptly after the Effective Date, the Parties shall acknowledge the Effective Date in the Effective Date Acknowledgement attached hereto and incorporated herein as **Exhibit B**, and shall replace **Exhibit B** with the completed executed Effective Date Acknowledgement.

(d) Without limiting any other provision contained in this Easement Agreement, this Easement Agreement shall terminate if the Commission (i) declines to approve this Easement Agreement, (ii) is deemed not to have approved this Easement Agreement, pursuant to Section 70 or (iii) approves it with any one or more conditions that are not acceptable to either Party in its sole discretion; provided, however, in order to give rise to a termination of this Easement Agreement due to an unacceptable condition, a Party must send a written notice to the other Party stating why such condition is not acceptable within ten (10) business days after the Party sending notice has received written notice of such condition. Notwithstanding anything contained herein to the contrary, this Easement Agreement shall terminate if the Commission fails to either approve this Easement Agreement with conditions acceptable to both Parties or to reject this Easement Agreement within one (1) year from the Execution Date.

2. **<u>Effectiveness of Easement Agreement</u>.** As of the Effective Date, all of the Sections following this **Section 2** shall be effective.

3. **<u>Definitions</u>.** As used in this Easement Agreement, the following terms shall have the following definitions:

(a) "**Environmental Laws**" mean all current and future federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), agreements, Environmental Permits (as defined below) and guidance documents issued or published by any Governmental Authority (as defined below), in each case, relating to pollution, protection of the environment, natural resources or human health and safety, to the presence, Release (as defined below) of, threatened Release of, or exposure to, Hazardous Substances (as defined below), or to the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or arrangement for such activities with respect to, Hazardous Substances.

(b) "**Environmental Permits**" mean the permits, licenses, consents, approvals, manifests and other authorizations or certifications required by any Governmental Authority with respect to Environmental Laws, including without limitation with respect to Remediation (as defined below).

(c) "**Governmental Authority**" means any federal, state, or local government or any court, administrative or regulatory agency, board, committee or commission or other governmental entity or instrumentality, or any department thereof, having jurisdiction over Grantor's Facilities (as defined below) located on the Property, the Property, or the construction, use or maintenance of the Sidewalk, other than Grantee.

(d) "**Grantee's Agents**" means any and all contractors, subcontractors, employees, agents, representatives, licensees, servants or any other person or entity working for, or acting on behalf of, Grantee in connection with this Easement Agreement.

(e) "**Hazardous Substances**" means (i) any petroleum, petroleum products or by products and all other hydrocarbons (including, without limitation, petrochemicals and crude oil) or any fraction thereof, coal ash, radon gas, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, chlorofluorocarbons and other ozone-depleting substances, and (ii) any chemical, material, substance, product, waste (including thermal discharges) or electromagnetic emissions that is, has been, or hereafter shall be (x) listed or defined as hazardous, toxic, or dangerous under any Environmental Laws, (y) listed at 40 C.F.R. 302.4 or 6 NYCRR Part 597 (or their successors), or (z) prohibited, limited or regulated by or pursuant to any Environmental Laws.

(f) "**Legal Requirements**" mean applicable former, current and future laws (including common law and Environmental Laws), treaties, regulations, rules, orders, ordinances, codes, decrees, judgments, directives, orders (including consent orders), Permits and requirements of all federal, state, municipal and local governments and their departments, agencies, commissions, boards and bureaus.

(g) "**Permits**" mean the permits, licenses, consents, approvals and other governmental authorizations relating primarily to the activities of Grantee at the Sidewalk and public use of the Sidewalk contemplated by this Easement Agreement, including, without limitation, the Environmental Permits.

(h) "**Release**" means any actual or threatened release, spill, emission, emptying, escape, leaking, dumping, injection, pouring, deposit, disposal, discharge, dispersal, leaching or migration into the environment or within any building, structure, facility or fixture.

(i) "**Remediation**" means the investigation, handling, cleanup, removal, transportation, disposal, treatment (including *in-situ* treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances, in each case, including, without limitation, any monitoring, operations and maintenance activities that may be required by any Government Authority after the completion of such investigation, handling, cleanup, removal, transportation, disposal, treatment (including *in situ* treatment), management, stabilization, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Authority in connection with such investigation, handling, cleanup, removal, transportation, disposal, treatment (including in situ treatment), management, stabilization, neutralization, collection, or containment (including any such obligation that may be imposed on Grantor or Grantee under a brownfield cleanup agreement or a consent order).

4. **Easement Grant.** Grantor hereby grants, conveys and releases to Grantee, and its successors and assigns: (a) a temporary, exclusive easement over, and across the Easement Area for access by Grantee and Grantee's Agents for the purpose of construction of the Sidewalk, including but not limited to, construction, staging and storage of equipment and supplies in the Easement Area (the "**Construction Easement**") and (b) a non-exclusive easement over and across the surface of the Easement Area for (i) non-vehicular access, ingress and egress by the public for use as a sidewalk (the "**Public Access Easement**"; and together with the Construction Easement, collectively, the "**Easements**").

5. **Term.**

(a) The Construction Easement shall only become effective on the date that Grantee commences construction of the Sidewalk ("**Construction Easement Commencement Date**"), provided that Grantee notifies Grantor of such date in writing, at least three (3) months prior thereto. The Construction Easement shall permit the Grantee and Grantee's Agents to perform within the Easement Area, at Grantee's sole cost and expense, construction of the Sidewalk. The Construction Easement is temporary and shall terminate on the earlier of the following, which earlier date shall be deemed to be the "**Construction Easement Termination Date**": (i) the date Grantee notifies Grantor in writing that construction of the Sidewalk has been completed (the "**Construction Completion Date**") or (ii) one (1) year after the Construction Easement Commencement Date; provided that such period shall be extended for a reasonable period needed for Grantee to complete the construction if on the expiration of such one (1) year period Grantee is diligently pursuing same to completion. In the event that the Sidewalk is not completed within one (1) year after the Construction Easement Commencement Date, subject to the permitted extension described on subsection (ii) above, Grantor shall have the right to terminate this Easement Agreement upon written notice delivered to Grantee.

(b) The Public Access Easement shall become effective on the Construction Completion Date. The Public Access Easement is intended to be perpetual, but this Easement Agreement shall terminate, without any notice required to be given to Grantee, if the Sidewalk becomes unusable or is abandoned for any reason whatsoever for a continuous period of one (1) year, and otherwise as provided in this Easement Agreement.

(c) Upon any termination of this Easement Agreement for any reason, this Easement Agreement shall be of no further force and effect, Grantor will possess all of the rights to the Easement Area it enjoyed prior to the delivery of this Easement Agreement, and neither of the Parties shall have any further obligations under this Easement Agreement except that Grantee shall remain fully liable for those obligations under this Easement Agreement that expressly survive termination, including, without limitation, those set forth in Taxes, Assessments and Other Charges (**Section 13**), Environmental Obligations (**Section 16**), Insurance (**Section 17**), Indemnity (**Section 18**), Non-Disclosure (**Section 20**), Reimbursement **(Section 26)** and Venue; Jurisdiction **(Section 31)** and for those obligations incurred prior to termination of this Easement Agreement that remain unfulfilled by Grantee at the time of termination. Upon the request of Grantor, Grantee will sign and deliver an appropriate instrument, in recordable form, releasing the rights given to it by this Easement Agreement (a "**Termination Agreement**"), and any related transfer tax forms, and Grantor may record such Termination Agreement at the Recording Office of Orange County, New York (the "**Recording Office**") at the sole cost of Grantee. In the event that Grantee does not sign and deliver a Termination Agreement upon Grantor's request, Grantor will have the right to execute and deliver the Termination Agreement on behalf of Grantee and record the Termination Agreement in the Recording Office. The provisions and obligations of this subsection shall survive the termination of this Easement Agreement.

(d) Upon the termination of this Easement Agreement pursuant to the terms of this Easement, Grantee, at its sole cost and expense, shall remove the Sidewalk and any other personal property or fixtures of Grantee or the public from the Easement Area. Grantee, at its sole cost and expense, shall repair any damage done to the Easement Area caused by such removal, and shall restore the Easement Area substantially to the condition that existed prior to the construction of the Sidewalk, including, without limitation, (i) addressing any Hazardous Substances in accordance with **Section 16** and (ii) seeding the Easement Area to the reasonable satisfaction of Grantor. Any portion of the Sidewalk, personal property or fixtures not so removed by Grantee or Grantee's Agents shall be deemed abandoned and Grantor may either appropriate any portion thereof to its own use or dispose of same at Grantee's cost and expense. Grantee shall have no more than sixty (60) days after the termination of this Easement Agreement to remove such items and to repair any damage to the Easement Area, as the case may be, caused by such removal. The provisions and obligations of Grantee in this subsection shall survive the termination of this Easement Agreement.

6. <u>Construction Requirements</u>. Grantee shall comply with the following in connection with any construction or removal of the Sidewalk (the "**Work**"):

(a) Plans must be submitted to Grantor for the proposed Work prior to the commencement of the Work for Grantor's review and approval (the "**Approved Plans**"), and the Work shall be performed in accordance with the Approved Plans.

(b) Any changes to the Approved Plans must be delivered to Grantor for Grantor's approval in advance of implementation.

(c) All costs associated with the Work shall be borne by Grantee.

(d) Grantee is responsible, at the sole cost and expense of Grantee, for any and all required Permits and approvals necessary for the Work, including without limitation, Environmental Permits.

(e) All Work must comply with all Legal Requirements, including, without limitation Environmental Laws.

(f) Prior to the commencement of any Work, Grantee shall deliver to Grantor certified copies of the policies, or if previously consented to by Grantor in writing, Certificates of Insurance, evidencing the insurance coverage required under **Section 17**.

(g) Within six (6) months following the completion of any construction or removal Work, Grantee shall deliver to Grantor a set of as-built plans that sets forth the actual location of the Sidewalk.

(h) Stockpiling of soil or construction materials, or Hazardous Substances within the Easement Area is prohibited.

(i) As required by state law, Grantee must call 811, "Call Before You Dig", five (5) working days before Grantee or Grantee's Agents break ground.

(j) Upon completion of any Work, the Easement Area shall be restored by Grantee to the condition existing prior to the commencement of such Work, other than the removal of the completed Work within the Easement Area.

(k) Grantor shall not be responsible for any damage to Grantee's property located in the Easement Area, except to the extent that such damage is caused by the negligence or willful misconduct of Grantor.

(l) During any Work, Grantee shall not (i) remove any unnecessary soil or earth from the Easement Area, (ii) pile or store excavated material or any other materials within the bounds of any parking areas or any roads used to access, service, maintain or repair Grantor's Facilities, (iii) transport, use, Release or store any Hazardous Substances on, in, at or near the Easement Area, (iv) violate any requirements of Legal Requirements, including without limitation, the National Electric Safety Code, Environmental Laws and OSHA or any other requirements for proper clearance from any overhead transmission lines, nor (v) perform such work in a manner that adversely affects or interferes with Grantor's Facilities or the use and enjoyment of the Easement Areas or the Property by Grantor or any other parties with rights thereto.

(m) If damage is sustained by, or occurs to, Grantor's Facilities or its other property during any Work (including, without limitation, any Release of Hazardous Substances), Grantee shall notify Orange and Rockland Security, at telephone number 845-577-3130 immediately upon the occurrence of such mishap and confirm notification in writing within twenty-four (24) hours thereafter. Alternatively, if Orange and Rockland Security is not reachable, Grantee shall notify the Orange and Rockland Distribution Control Center at 845-577-3013. If the Orange and Rockland Distribution Control Center is not accessible, Grantee shall use its best efforts to locate an alternate number to provide the immediate notification to Grantor. All damages and repairs caused in whole or in part by Grantee and/or Grantee's Agents shall be paid by, and be the sole liability of, Grantee.

(n) Grantee, at its sole cost and expense, will restore the portions of the Easement Area disturbed by Grantee or Grantee's Agents to substantially the same condition and grade that existed prior to such disturbance. Grantee will seed the Easement Area after completion of any Work to the reasonable satisfaction of Grantor.

(o) Grantor shall have the right to enter upon the Easement Area to inspect the progress of any Work permitted by this Easement Agreement and to determine that the provisions of this Easement Agreement are being complied with; provided that Grantor shall not be obligated to make any such inspection and Grantee agrees that any review, inspection and/or approval by Grantor of any Work is solely for Grantor's benefit, and does not constitute any representation, warranty or assumption of liability by Grantor with respect to any aspect thereof whatsoever.

7. Reserved Rights. Without in any way intending to limit the rights of Grantor as the fee owner of the Property, the rights granted to Grantee under this Easement Agreement are subject to Grantor's rights to construct, erect, repair, expand, alter, replace, install, maintain or remove its improvements, facilities and equipment, including, but not limited to, parking areas, electric, gas and/or steam transmission or distribution lines, communication lines and/or facilities, service connections, facilities and appurtenances, including but not limited to pipes, fixtures, conduits, counter poises, manholes and duct lines, together with the wires, cables and terminal boxes presently located in, on, over, through, across or adjacent to the Easement Area and those constructed or installed by Grantor after the Execution Date (all of which are herein referred to as "**Grantor's Facilities**"); provided that, with respect to Grantor's Facilities that are constructed or installed after the Execution Date, Grantor's use of such Grantor's Facilities is not inconsistent with, and does not materially interfere with the Easements.

8. Compliance with Legal Requirements. All repair work performed by Grantee or Grantee's Agents pursuant to this Easement Agreement and all use pursuant to the Public Access Easement, shall be in compliance with all Legal Requirements and this Easement Agreement. Grantee shall, and shall cause Grantee's Agents to, comply with all Legal Requirements and any and all rules and regulations applied by Grantor to the Easement Area. Without limiting the foregoing, Grantee shall, and shall cause Grantee's Agents to, comply with all Environmental Laws, and take such action or, omit to take such action, so as not to violate any Environmental Laws. Grantee shall be solely responsible to obtain and procure all Permits and any other items needed for the repairs and public use of the Easement Area as permitted herein.

9. **Repairs and Maintenance.** Grantor shall maintain and make all repairs, ordinary and extraordinary, foreseen and unforeseen, to the Sidewalk at the sole cost and expense of Grantor, provided, however, that Grantee shall make any such repairs to the Sidewalk, at the sole cost and expense of Grantee, to the extent that the need for such repairs was caused by Grantee. Grantor shall keep the Easement Area free and clear of rubbish, debris, and refuse, and shall keep the Sidewalk free of snow and ice, at the sole cost and expense of Grantor. Grantee shall not encumber or obstruct the Sidewalk.

10. **Restrictions.** Grantee shall not, and shall cause Grantee's Agents to not, construct, erect or place on any portion of the Easement Area any trees, buildings, structures, machinery or vehicles that will interfere with Grantor's use of the Easement Area, or the conduct of Grantor's operations. Grantor retains the right to install equipment under, above and within the Easement Area, provided that the operation and use of such equipment does not interfere with public use of the Sidewalk.

11. **Default and Termination.**

(a) Without limiting any other provision contained in this Easement Agreement, upon the occurrence of an Event of Default (as hereinafter defined), Grantor shall have the right to terminate this Easement Agreement upon notice to Grantee, and this Easement Agreement will terminate on the date specified in said notice.

(b) Event of Default: To the extent not otherwise provided, each of the following events shall constitute an "**Event of Default**":

(i) Non-payment: If Grantee fails to timely pay any amount when due hereunder and such failure continues for fifteen (15) days or more after written notice from Grantor that such payment is overdue; or

(ii) Breach/Failure to Perform: If Grantee or Grantee's Agent fails to perform or comply with any of the terms or provisions of this Easement Agreement (except for payment obligations that are covered by **Section 11(b)(i)**), and (A) Grantee fails to cure such failure within thirty (30) days after receipt of written notice from Grantor of such failure (a "**Default Notice**"), or (B) if the failure to perform is of a nature that it cannot reasonably be cured within said thirty (30) day period, if Grantee fails (1) to commence curing such failure within such thirty (30) day period, (2) at any time thereafter to diligently and in good faith proceed to cure such failure or (3) fails to complete curing such failure within sixty (60) days after receipt of the Default Notice; or

(iii) Prohibited Uses: If any portion of the Easement Area or any portion thereof shall be used for any purpose other than the purposes provided for herein; or

(iv) Liens/Encumbrances: If Grantee causes or permits any lien, encumbrance, chattel mortgage or any security interest to be created, filed or otherwise apply with respect to the Property, including, without limitation, the Easement Area, or any portion thereof, and fails to discharge, at Grantee's expense, by bonding or otherwise, the same within thirty (30) days thereafter. Grantee shall defend, indemnify and hold harmless Grantor and Grantor's affiliates (including Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc.) and their respective directors, trustees, officers, employees, agents, representatives, successors and assigns (collectively "**Grantor's Indemnitees**") from all damages, costs and expenses arising from such liens, encumbrances, chattel mortgages or security interests; or

(c) In addition to all other rights and remedies available to Grantor, upon a default, breach or other failure of any obligations to be performed by, or on behalf of, Grantee pursuant to this Easement Agreement, Grantor may perform such obligations and take any and all other actions as it determines are necessary to cure such failure provided that (i) if no emergency exists, Grantor shall have provided Grantee with thirty (30) days prior written notice of its intent to take such action ("**Grantor Cure Notice**"), and such failure shall be continuing upon the expiration of such thirty (30) day period (or if such failure is not curable within said period, within sixty (60) days of Grantee's receipt of a Grantor Cure Notice, provided Grantee begins to cure such failure within such thirty (30) day period and thereafter diligently prosecutes the same to completion) or (ii) in any situation that is an emergency or in which the integrity, operation, reliability, or security of the Property or Grantor's Facilities is endangered, as determined by Grantor in its sole discretion, Grantor shall have provided written or (notwithstanding any other provisions of this Easement Agreement) oral notice, if practicable, or, if such notice is not practicable, then without giving prior notice to Grantee, but with notice given as soon thereafter as practicable. Grantee shall immediately reimburse Grantor for the entire cost and/or expense of such cure and any other actions by Grantor in connection therewith, including, without limitation, all internal and third party costs and expenses.

12. **<u>Relocation</u>.** If Grantor decides to change the course or lay-out of any of Grantor's Facilities, or to construct, install, maintain or operate new facilities in, on, over or across the Easement Area, requiring relocation or altering of the Easement Area, Grantor will give Grantee not less than thirty (30) days' notice in which notice Grantor shall reasonably describe the action or activity intended to be taken by Grantor. After receipt of such notice, Grantee shall cooperate with Grantor by promptly doing all things necessary to relocate or alter the Sidewalk so as not to interfere with Grantor's work, provided that any such relocation of the Easement Area is not inconsistent with, and does not materially interfere with, its use by Grantee as contemplated by this Easement Agreement. The expenses incurred by Grantee in relocating or altering Grantee's facilities shall be the sole responsibility of Grantor.

13. **<u>Taxes, Assessments and Other Charges</u>.** Grantee agrees to pay any and all taxes, assessments and other impositions assessed or imposed on, or that arise out of, or are attributable to, use of the Sidewalk, the execution of this Easement Agreement and/or the recording of this Easement Agreement. If a lien shall at any time be filed against the Property, including. without limitation, any portion of the Easement Area or other property of Grantor, or any interest therein because of such taxes, assessments or impositions, Grantee shall cause the same to be discharged of record by either payment, deposit or bond within twenty (20) days after receiving notice of said lien. If Grantee shall fail to discharge such lien within such period, then, in addition to any other rights or remedies of Grantor and notwithstanding any other provision herein to the contrary, Grantor may terminate this Easement Agreement by giving Grantee notice of its election to do so, and five (5) days after the forwarding of said notice, this Easement Agreement shall be deemed terminated. In addition, if Grantee shall fail to timely pay any such taxes, assessments and other impositions, Grantor may (but shall not be obligated to) make such payment on behalf of Grantee and, notwithstanding **Section 11(b)(ii)**, such payment may be made prior to any notice or the expiration of any cure period in the event necessary to avoid any penalty, interest, late charge, lien or foreclosure. Grantee shall promptly reimburse Grantor for any such payment made, as well as all internal and third party any costs and expenses incurred by Grantor in connection therewith. The foregoing reimbursement obligations of Grantee shall survive the termination of this Easement Agreement.

14. Grant Limited. No other or greater estate, right or interest than that specifically herein set forth shall be deemed to be permitted, or granted to Grantee, or created hereby; nor shall any other use or occupancy, for whatever length of time continued, be deemed to create any greater estate, right or interest than that which is specifically given by this Easement Agreement.

15. Interference. Subject to **Section 4**, Grantee will exercise the rights hereby permitted or granted so as not to interfere with or endanger the proper and safe operation, use and enjoyment of Grantor's Facilities or Grantor's use of the Easement Area, or use of its other remaining property.

16. Environmental Obligations.

(a) Grantee shall not, and shall cause any and all of Grantee's Agents, and Grantee's permittees and invitees to not, use, store, or bring any Hazardous Substances on or about the Easement Area. If any Hazardous Substances are released, discharged, spilled, emptied, emitted, dumped, injected, poured, deposited, dispersed, or otherwise leak, escape, leach or migrate (each, a "**Release**"), or are discovered or encountered (each, a "**Discovered Release**") on or about the Easement Area as a result of or in connection with Grantee's activities, the construction or use of the Sidewalk or any unauthorized use of the Easement Area, or if a Release is threatened, Grantee shall: (A) immediately notify Grantor of the Release, Discovered Release or threatened Release; (B) promptly take all actions, at Grantee's sole cost and expense as are necessary to perform Remediation of any such Release, Discovered Release or threatened Release as if Grantee were the party solely responsible for investigating and remediating such Release, Discovered Release or threatened Release under Environmental Laws and to perform such other work as may be required to safeguard the health, safety or welfare of any persons, and the Easement Area from any such Release, Discovered Release or threatened Release; and (C) restore any impacted portion or portions of the Easement Area to at least the condition that existed prior to the Grantee's activities (except for any condition which was the subject of the Remediation) as well as the condition required by Environmental Laws, to transport and dispose of any associated Hazardous Substances to a properly licensed disposal or treatment facility approved by Grantor and to satisfy the requirements of any Governmental Authority exercising jurisdiction with respect to the Easement Area or such Release or threatened Release. Following completion of any required Remediation or achieving regulatory closure for any Release, Grantee shall be required to perform, at Grantee's sole cost and expense, any sampling and analysis determined to be necessary by Grantor or any Governmental Authority to document that the Remediation has been performed as required herein and in accordance with any remediation plans in effect and all Environmental Laws. In the event that Grantee does not perform the obligations contained in this **Section 16(a),** Grantor may cause such obligations to be performed by Grantor's personnel and/or others at the expense of Grantee.

(b) The provisions and obligations of this **Section 16** shall survive the termination of this Easement Agreement.

17. <u>Insurance</u>.

(a) Grantee shall procure and maintain and keep in force until the termination of this Easement Agreement, and thereafter as required in this Easement Agreement, and as otherwise required by Grantor, the following minimum insurance coverages with insurance companies licensed to write insurance in the State of New York or eligible surplus lines insurance carriers approved by Grantor, and in either case, with a minimum A.M. Best financial strength rating of A or better and financial size category of VIII or better:

(i) Employment Related Insurance

(A) Workers' Compensation Insurance as required by law, which shall contain a waiver of subrogation in favor of Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc.

(B) Employers' Liability Insurance:

(1) Bodily Injury by Accident: $1,000,000 each Accident

(2) Bodily Injury by Disease: $1,000,000 Policy Limit

(3) Bodily Injury by Disease: $1,000,000 Each Employee

(C) Where applicable, insurance required by the United States Longshoremen's and Harbor Workers' Act, the Federal Employers, Liability Act, and the Jones Act and Maritime Employers Liability.

(ii) Commercial General Liability Insurance, including Contractual Liability, with limits of not less than Two Million Dollars ($2,000,000) per occurrence and Four Million Dollars ($4,000,000) in the aggregate for bodily injury, including death, and property damage and, for at least ten (10) years after the termination of this Easement Agreement, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The policy shall cover all operations (including crane and rigging activities if applicable). The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without Grantor's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards, work on or near a railroad, or independent contractors. Sudden and accidental pollution coverage shall be included. The insurance policy or policies shall name Orange & Rockland Utilities, Inc., Consolidated Edison, Inc., Consolidated Edison Company of New York, Inc. as additional insureds. Endorsements <u>CG 20 10 10 01 and CG 20 37 10 01 (or equivalent)</u> are required. Policy must contain a severability of interest clause. There shall be no exclusions for claims by Grantee's Agents against Grantor based on injury to Grantee's Agents or any of Grantee's Agents' employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State or municipal permit, the insurance policy or policies shall also name the State of New York or such other municipality as additional insureds. The insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the work hereunder involves or impacts such adjoining properties or any other required entity. Grantor reserves the right to request additional parties to be included as additional insured if necessary. The policy(ies) shall be primary and non-contributory and contain a waiver of subrogation in favor of Grantor.

(iii) Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired vehicles used by Grantee, Grantee's Agents, with a combined single limit of not less than One Million Dollars ($1,000,000) per accident for bodily injury, including death, and property damage. Policy to include CA 99 48 - Broadened Pollution for Covered Autos and the Motor Carrier Act endorsement (MCS 90). Policy will be primary and non-contributory, contain a waiver of subrogation and will name the Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds.

(iv) Excess or Umbrella Liability Insurance on an occurrence and a drop down and follow form basis over and above the Employers' Liability, Commercial General Liability and Comprehensive Automobile Liability Insurance coverages, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence and aggregate. The Excess policy(ies) must be as broad as the underlying policies and must contain the same extensions (Additional Insured, Waiver of Subrogation and Primary and Non-Contributory) required under the Primary underlying policies.

(v) If applicable or if required by Grantor, a separate Railroad Protective Liability Policy should be provided for work in connection with construction or demolition work on or within fifty (50) feet of a railroad. Such policy shall include coverage for bodily injury and property damage resulting from Grantee's work and usage for which the railroad could be held liable, and physical damage to property owned by the railroad, leased to the railroad, or otherwise within railroad right of way. Any policy shall be subject to the review and approval of the applicable railroad or operating Governmental Authority.

(vi) Pollution Liability Insurance (Pollution Liability and Contractors Pollution Liability) in an amount of not less than Ten Million Dollars ($10,000,000) per occurrence and aggregate. The policy will provide coverage for claims resulting from pollution or other environmental impairment arising out of or in connection with any work and from transportation (including transportation by watercraft if applicable) and disposal of pollutants or anything contaminated by pollution. Such insurance is to include coverage for cleanup, third party bodily injury and property damage and remediation and will be written on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within ten (10) years following the period for which coverage is required and that would have been covered had the coverage been on an occurrence basis. There shall be no exclusions for asbestos, lead paint, silica or mold/fungus/legionella. Coverage shall apply to sudden and non-sudden conditions. The policy shall name Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds, be primary and non-contributory and contain a waiver of subrogation in favor of Grantor.

(vii) Professional Liability Insurance in the amount not less than Five Million Dollars ($5,000,000) per claim and Five Million Dollars ($5,000,000) in the aggregate or until termination of this Easement Agreement and for at least ten (10) years following the termination of this Easement Agreement.

This requirement applies to Grantee's consultants, all architect and engineering, surveying and construction management, and any design-assist or design-build subcontractors. For all other Grantee's consultants providing professional services, a minimum of One Million Dollars ($1,000,000) per claim and in the aggregate will be required. Such insurance shall have a retroactive date no later than the Effective Date or the date when Grantee or Grantee's Agents first performed professional services.

(viii) If applicable, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, and drones used by Grantee or any of Grantee's Agents, with a combined single limit of not less than Ten Million Dollars ($10,000,000) for bodily injury, including death, and property damage. The insurance policy shall name Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds, be primary and non-contributory and contain a waiver of subrogation.

(ix) If applicable, for any asbestos abatement portion or lead abatement portion of any work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than Ten Million Dollars ($10,000,000) for bodily injury including death and property damage. Each insurance policy, with the exception of the Employer's Liability insurance identified above shall name Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds. The policy will be primary and non-contributory and contain a waiver of subrogation. Where the abatement or remediation work is to be performed by a Grantee's Agent, Grantee shall require Grantee's Agent to name Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds, be primary and non-contributory and contain a waiver of subrogation, and to submit copies of the policies to Grantee.

(b) All policies of insurance required herein, except with regard to Worker' Compensation and Professional Liability and Property insurance required by this **Ssection 17** shall name Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison

Company of New York, Inc. as additional insureds and include a Waiver of Subrogation. Each such policy shall provide that the insurance provided to the additional insureds is primary and non-contributory to any insurance or self-insurance held by Grantee. Grantor will require all insurance policies, including Workers' Compensation, required by this **Section 17** to include clauses stating that the insurers(s) waive all rights of recovery/subrogation, where not prohibited by any Applicable Law. All liability policies required herein will include a severability of interest clause.

(c) The requirements contained herein as to the types and limits of all insurance to be maintained by Grantee are not intended to and shall not in any manner, limit or qualify Grantee's liabilities and obligations assumed under this Easement Agreement.

(d) Grantee and Grantee's Agents shall pay all premiums, costs and expenses within any deductibles or self-insured retentions, regardless of the number of losses. Grantee shall obtain Grantor's written approval for to the terms and amount of any self-insured retentions.

(e) Grantee's Agents must maintain the same insurance requirements stated above (unless otherwise stated) and comply with the additional insured requirements herein. In addition, their policies must state that they are primary and noncontributory and contain a waiver of subrogation in favor of Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc.

(f) Grantee shall, and shall cause Grantee's Agents to, furnish Grantor with written notice at least thirty (30) days prior to the effective date of cancellation of the insurance or any changes in policy limits or material scope of coverage.

(g) Grantor shall have the right, upon request, to require Grantee to furnish Grantor, with a copy of the insurance policy or policies (or binders) required herein. Upon signing this Easement Agreement and prior to any work taking place, Grantee shall furnish Grantor with Certificates of Insurance evidencing that all required insurance policies have been obtained, showing their expiration dates and the additional insureds as required under this Easement Agreement. In addition, Grantee shall collect and submit certificates of insurance from all of Grantee's Agents evidencing the required coverages and extensions.

(h) Certificates of insurance identifying this Easement Agreement shall be sent to:

Orange & Rockland Utilities, Inc.
c/o Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, New York 10003
Attention: Director of Real Estate

(i) Grantor reserves the right to revise the insurance requirements as necessary.

(j) For purpose of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Grantee shall be deemed to have assumed tort liability for any injury to any employee of Grantee or any other party arising out of the performance of any work and/or the permitted use of the Easement Area.

(k) In the event of any claim/allegation, bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with the work or this Easement Agreement, Grantee, in accordance with the provisions of the insurance policies shall inform promptly and in writing the insurers that notice is being provided on behalf of Grantee and the Additional Insured Parties and that Grantee intends to invoke the coverage of the policies to protect the interest and preserve the rights of Grantee and the Additional Insured Parties. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Grantee shall provide a copy of such written notice, including a copy of any incident report or accident report, by sending to: Orange & Rockland Utilities, Inc., Attention: General Litigation. The terms of this subsection (k) shall not apply to the extent that the injury, damage or harm is caused by the willful misconduct or negligence of Grantor.

(l) Additional Provisions

(i) Grantee and its Contractors and Subcontractors (as applicable) will be responsible for insuring their own property and equipment utilized for this Project.

(ii) All policies shall include waivers of subrogation, primary and non-contributory, and other endorsements and extensions required by Grantee. All such policies and provisions shall be subject to review and approval of Grantee in relation to their form and substance. Grantee may revise insurance requirements by written notice to Grantor.

(iii) Neither the maintenance of the insurance specified in this **Section 17** nor the limits of liability applicable to such insurance shall define or limit the liability of Grantee or Grantee's Agents under this Easement Agreement.

(iv) Grantor's failure to require strict compliance or exercise its rights with regard to this **Section 17** shall not constitute a waiver on Grantor's part.

(v) The provisions of this **Section 17** shall survive the termination of this Easement Agreement.

18. <u>Indemnity</u>.

(a) To the fullest extent permitted by law, Grantee shall defend, indemnify and save free and harmless Grantor and Grantor's Indemnitees from and against any and all claims, liabilities, actions, proceedings, causes of action, demands, obligations, damages, suits, liens, attachments, fines, costs and expenses (including, without limitation, reasonable attorney and expert fees), recoveries or payments, whether based in contract, tort (including negligence, gross negligence or strict liability) or otherwise, that are asserted, suffered, incurred, by any person or entity (including the Parties hereto) that arise from, relate to or are connected with, in whole or in part, (i) the construction or use during construction of the Sidewalk by Grantee or Grantee's Agents, (ii) any negligence or willful misconduct of Grantee, or Grantee's Agents, (iii) any default or failure of Grantee to perform its obligations contained in this Easement Agreement or (iv) any violation or non-compliance with Environmental Laws, including any Remediation costs relating to any of the Easement Area or this Easement Agreement. The foregoing are hereinafter referred to collectively as the "**Covered Claims**". Grantee, with respect to its employees, expressly agrees, that Grantor may pursue claims for contribution and indemnification against Grantee in connection with any claims made against Grantor for injury to and/or death to employees of Grantee, notwithstanding the provisions of Section 11 of the New York Workers' Compensation Law limiting such claims for contribution and indemnification against employers. Grantee hereby waives the limitations on contribution and indemnification claims against employers provided in Section 11 of the New York Workers' Compensation Law insofar as such claims are asserted by Grantor against Grantee.

(b) To the fullest extent permitted by law, Grantee hereby irrevocably and unconditionally releases and forever discharges Grantor and Grantor's Indemnitees from any and all liability for any of the Covered Claims, and waives any and all rights to assert any of the Covered Claims against Grantor or Grantor's Indemnitees or any of them.

(c) Insofar as the facts or law relating to any of the foregoing would preclude Grantor or its affiliates or their respective employees or agents from being completely indemnified by Grantee, they shall be partially indemnified by Grantee to the fullest extent permitted by law.

(d) Grantor's failure to require strict compliance or exercise its rights with regard to this **Section 18** shall not constitute a waiver on Grantor's part.

(e) The provisions of this **Section 18** shall survive the termination of this Easement Agreement.

19. **<u>Notices</u>.** Any notice, consent, approval, certificate, permission or other communication required or permitted to be given or made by either Party to the other, pursuant to this Easement Agreement shall be in writing and shall be deemed given, if delivered personally, by nationally recognized overnight courier or by certified mail, return receipt requested, as of the date of receipt or the date of refusal to accept receipt by the addressee (whichever is the earlier to occur). No other method of delivery shall satisfy the Notice requirements hereunder. Notices, consents, approvals, certificates, permissions and other communications shall be addressed to:

If to Grantor, sent to:

Orange and Rockland Utilities, Inc.
c/o Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Attention: Director, Real Estate Department

with a copy to:

Orange and Rockland Utilities, Inc.

c/o Consolidated Edison Company of New York, Inc.
4 Irving Place
New York, NY 10003
Attention: Associate General Counsel – Commercial Transactions

If to Grantee, sent to:

City of Middletown
16 James Street
Middletown, NY 10940
Attention: Mayor

Any Party may designate a different address from the one described above for the purpose of this **Section 19** by sending written notice to the other Party in the manner prescribed herein.

20. Non-Disclosure. Grantee agrees that at no time, during the term hereof or at any other time, shall Grantee directly or indirectly make or cause or permit others to make any media disclosure, press release, marketing release, advertisement, or any similar public statement or announcement regarding this Easement Agreement, the Easements, the public use of the Easement Area, or otherwise using Grantor's name, without obtaining Grantor's prior written consent, which consent may be withheld in Grantor's sole and unfettered discretion. Grantee and Grantor agree that Grantee's violation of this **Section 20** will constitute a material violation of this Easement Agreement and that the damages that Grantor will suffer will be substantial, but will be impossible or difficult to ascertain with precision. Grantor is entitled to injunctive relief to enforce this **Section 20** and to enjoin any violations or threatened violations of this **Section 20**. Grantee hereby agrees to reimburse Grantor for any and all court and/or reasonable attorney fees and internal and third party costs and expenses incurred by Grantor in connection with a violation or threatened violation of this **Section 20** by Grantee. The provisions of this **Section 20** shall survive the termination of this Easement Agreement.

21. Condition of Easement Area – Title. Grantee accepts the Easement Area "as-is", in its present condition after a full and complete examination thereof (including without limitation its environmental condition or the presence of Hazardous Substances). Grantor makes no representation or warranty as to the suitability of the Easement Area for the Sidewalk, or otherwise. The Easement Area is subject to **(i)** title, title defects, encumbrances, conditions, covenants, restrictions, agreements, easements, and mortgages, if any, as may exist with respect to the Easement Area, including, without limitation, the existing easement that affects a portion of the Easement Area that benefits Grantor in connection with Dolson Avenue (the "**Existing Easement**"), **(ii)** any state of facts that an inspection or accurate survey of the Easement Area would disclose, **(iii)** all zoning, safety, labor, health, sanitation and other laws, orders, rules and regulations of any Governmental Authority including, without limitation, Environmental Laws, and violations, if any, thereof, and **(iv)** subject to **Section 4**, Grantor's right to grant or convey easements or any other interest in the Easement Area. To the extent that the Existing Easement and this Easement Agreement affect the Easement Area, and the terms of such easements conflict as they affect the Easement Area, Grantor may choose which provision shall govern the issue subject to the conflict.

22. Entire Agreement; Severability. All understandings and agreements heretofore had between the Parties relating to the subject matter of this Easement Agreement are merged into and superseded by this Easement Agreement, which alone fully and completely expresses the Parties' understandings and agreements, and that the same are entered into after a full investigation, neither Party relying upon any statement or representation not embodied herein. If any provision of this Easement Agreement or the application thereof to any person or circumstances shall, for any reason and to any extent, be invalid or unenforceable, the remainder of this Easement Agreement and the application of that provision to other persons or circumstances shall not be affected, but rather shall be enforced to the extent permitted by law.

23. **Construction and Headings**. This Easement Agreement shall be construed without regard to any presumption or other rule requiring construction against the Party who prepared this Easement Agreement. The headings contained in this Easement Agreement are for reference purposes only and shall not affect in any way the meaning or interpretation of this Easement Agreement.

24. **Estoppel Certificate**. Grantee agrees, within ten (10) days after written request by Grantor, to execute, acknowledge and deliver to, and in favor of, any present or proposed lender, mortgagee, purchaser, tenant or the like of all or any part of the Property, an estoppel certificate, in a form reasonably satisfactory to such lender, mortgagee, purchaser, tenant or the like, stating: **(i)** whether this Easement Agreement is in full force and effect; **(ii)** whether this Easement Agreement has been modified or amended and, if so, identifying and describing any such modification or amendment; **(iii)** whether Grantee knows of any sums then due and owing under this Easement Agreement from Grantee, and if so, specifying the amount thereof and the reason therefore; and **(iv)** whether Grantee knows of any default (or event that, with the passage of time, the giving of notice, or both, would constitute a default) on the part of either Party hereto, or whether there is any outstanding claim against either Party arising under this Easement Agreement and, if so, specifying the nature of such default or claim.

25. **No Waiver**. Grantor's failure to insist in any one or more instances upon the strict performance of any one or more of the obligations of this Easement Agreement, or to exercise any election herein contained, shall not be construed as a waiver or relinquishment of the performance of one or more obligations of this Easement Agreement, or of the right to exercise such election, but the same shall continue and remain in full force and effect with respect to any subsequent breach, act or omission. Any waiver by Grantor shall be effective only if in writing and signed by Grantor, and then only with respect to the particular event to which it specifically refers.

26. **Reimbursement**. Grantee shall promptly pay to Grantor, within thirty (30) days of receipt of any invoices rendered by Grantor: (i) the full amount of all internal and third party reasonable costs and expenses that may be incurred by Grantor in connection with any Work, including, without limitation, reviewing any plans and examining the Work. and (ii) the full amount of any other costs and expenses Grantee is required to pay or reimburse to Grantor pursuant to the terms of this Easement Agreement. The provisions and obligations of this **Section 26** shall survive the termination of this Easement Agreement.

27. **Grantee Representations**. Grantee hereby warrants and certifies to Grantor that: (i) Grantee is authorized to execute and deliver this Easement Agreement; and (ii) the person executing this Easement Agreement on behalf of Grantee is authorized and empowered to bind Grantee to the terms of this Easement Agreement by their signature hereto.

28. Running With the Land.

(b) The benefits and burdens, rights and obligations, right of way, easement, provisions and restrictions created by this Easement Agreement shall be indivisible, and appurtenant to and run with the land and burden and be binding upon the Parties and their successors-in-interest. The covenants, agreements, restrictions, terms, provisions and conditions of this Easement Agreement shall bind and benefit such successors-in-interest (whether by sale, foreclosure or otherwise) with the same effect as if they were mentioned in each instance when either Party is named or referred to herein, it being understood and agreed that upon any transfer of ownership (whether by sale, foreclosure or otherwise) of all or any part of the Property, each such successor in interest shall thereupon and thereafter assume, and perform and observe, any and all of the obligations of its predecessors in interest under this Easement Agreement.

(c) Notwithstanding the foregoing, neither this Easement Agreement, nor any of the rights, interests or obligations hereunder, shall be assigned, sublet or otherwise encumbered, transferred or set over by Grantee, including by operation of law. Notwithstanding anything herein to the contrary, nothing in this Easement Agreement is intended to confer upon any other person except the Parties any rights or remedies hereunder nor shall it create any third-party beneficiary rights in any person or entity.

29. Recordation of Agreement; Transfer and Recording Fees and Taxes. Simultaneously with the execution of this Easement Agreement, at the sole cost and expense of Grantee, Grantee shall prepare and duly execute any transfer tax returns and other forms required for the recordation of this Easement Agreement, and Grantor shall duly execute any such required transfer tax returns and other required forms. At the sole cost and expense of Grantee, promptly following the Effective Date, Grantee shall submit to the Recording Office (i) this Easement Agreement for recording, (ii) the executed transfer tax returns and other required forms and (iii) any required payments. Grantee shall provide a copy of the recorded Easement Agreement to Grantor promptly following Grantee's receipt of the recorded Easement Agreement.

30. Governing Law. This Easement Agreement shall be governed by and construed in accordance with the laws of the State of New York (regardless of the laws that might otherwise govern under applicable principles of conflicts of law).

31. Venue; Jurisdiction. Each Party irrevocably submits to the exclusive jurisdiction of the Supreme Court of the State of New York, Orange County, for the purposes of any suit, action or other proceeding arising out of this Easement Agreement or any transaction contemplated hereby. Each Party agrees to commence any action, suit or proceeding relating hereto in the Supreme Court of the State of New York, Orange County. Every party further agrees that service of process, summons, notice or document by a method and as otherwise specified in **Section 19** shall be effective service of process for any action, suit or proceeding brought against such Party in any such court. The Parties irrevocably and unconditionally waive any objection to the laying of venue of any action, suit or proceeding arising out of this Easement Agreement or the transactions contemplated hereby in the Supreme Court of the State of New York, Orange County and hereby further irrevocably and unconditionally waive and agree not to plead or claim in any such court that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum. The provisions of this **Section 31** shall survive the termination of this Easement Agreement.

32. **<u>Amendments</u>.** This Easement Agreement may not be amended, modified or supplemented except by an instrument in writing signed on behalf of each Party hereto referring to this Easement Agreement in recordable form that is recorded in the Recording Office.

33. **<u>Counterparts</u>.** This Easement Agreement may be executed in two counterparts, each of which will be deemed an original, but all of which shall constitute one and the same instrument. This Easement Agreement shall not become effective and binding upon either Party until this Easement Agreement or a counterpart thereof is signed by each Party and delivered to the other Party.

IN WITNESS WHEREOF, the parties have duly signed and delivered this Easement Agreement as of the Execution Date first above written.

GRANTOR:

ORANGE AND ROCKLAND UTILITIES, INC.

____
Name:
Title:

GRANTEE:

CITY OF MIDDLETOWN

____
Name:
Title: MAYOR

STATE OF NEW YORK)
) SS.:
COUNTY OF _________)

On the ___ day of ____________________, in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared ____________________ ______________________________, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

____
Notary Public

[O&R/Grantor]

STATE OF NEW YORK)
) SS.:
COUNTY OF ORANGE)

On the 4 day of September, in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared Joseph M. DeStefano, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity, and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Notary Public

[Middletown/Grantee]

Richard P. McCormack
Notary Public- State of New York
NO. 01MC6302099
Qualified in Orange County
Commission Expires April 28, 2026

EXHIBIT A

Legal Description and Depiction of Easement Area

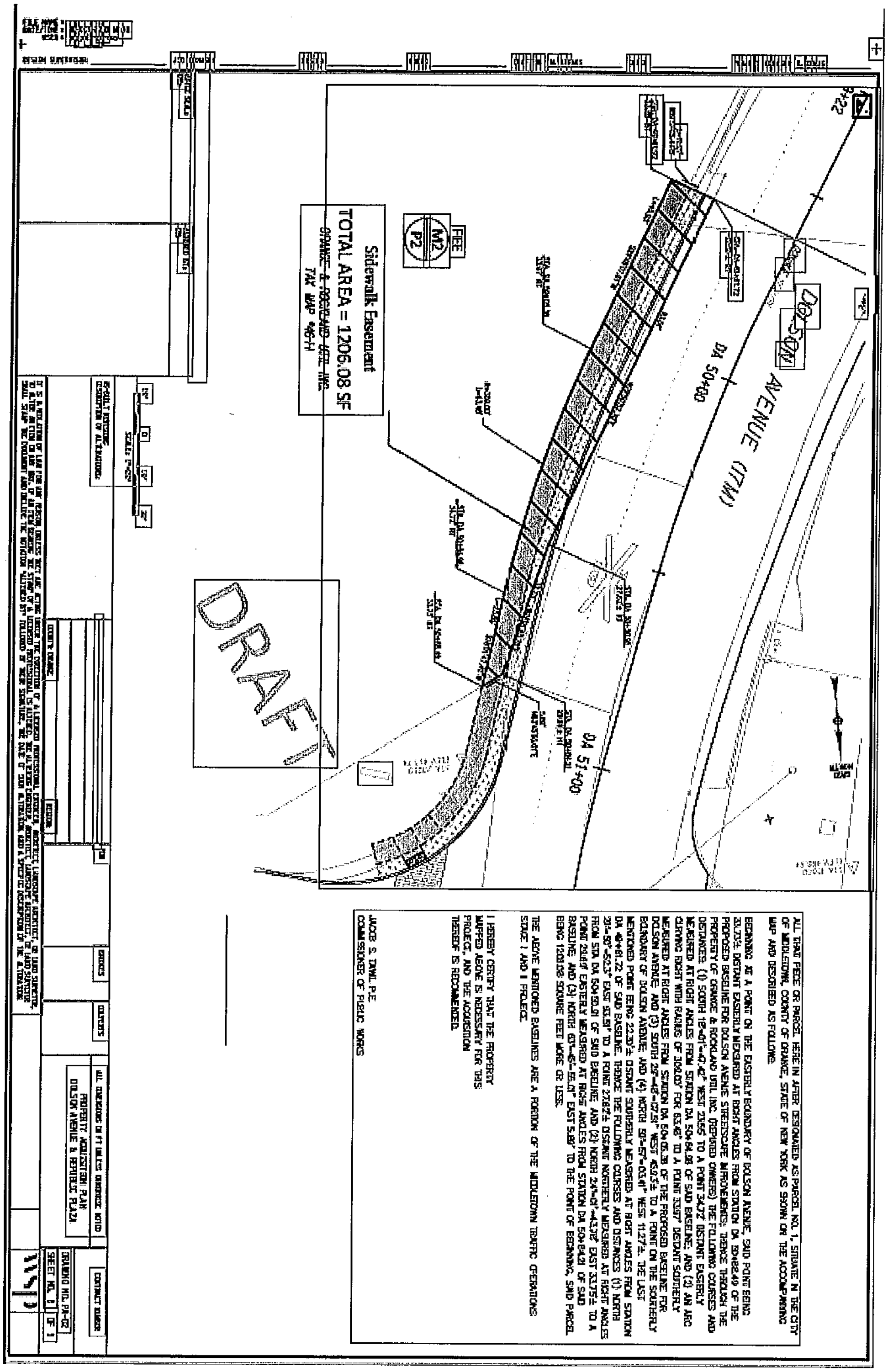


EXHIBIT B

Easement Effective Date Acknowledgement

[To be Completed Upon the Effective Date of the Easement Agreement]

[Date of this Acknowledgement]

Effective Date of Easement Agreement: ____

GRANTOR:

ORANGE AND ROCKLAND UTILITIES, INC.

____
Name:
Title:

GRANTEE:

CITY OF MIDDLETOWN

____
Name:
Title: Mayor

EASEMENT AGREEMENT

Dated_______________, 2024

The land affected by the within instrument lies in
Tax Map Section, Block and Lot 46-1-1
City of Middletown. County of Orange, State of New York

RECORD AND RETURN TO:

ORANGE AND ROCKLAND UTILITIES, INC.
C/O CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.
4 Irving Place
New York, New York 10003
ATT: DIRECTOR, REAL ESTATE

LICENSE AGREEMENT

THIS LICENSE AGREEMENT (this "License Agreement") dated as of ____________, 2024 (the "Effective Date") between **ORANGE AND ROCKLAND UTILITIES, INC.**, a New York corporation, having offices located at One Blue Hill Plaza, Pearl River, NY 10965 ("Company") and the **CITY OF MIDDLETOWN**, a New York municipal corporation, having offices located at 16 James Street, Middletown, New York 10940 ("Licensee"). The Company and Licensee are sometimes referred to herein individually as a "Party" and collectively as the "Parties."

WITNESSETH:

WHEREAS, the Company owns and occupies a 23.8-acre property located at 89-99 Dolson in the City of Middletown ("City"), Orange County, New York, which is designated as Tax Map Section 46, Block 1 and Lot 1 (the "Property"); and

WHEREAS, Licensee wishes to install a sidewalk along the edge of the Property adjacent to Dolson Avenue ("Sidewalk") that will encumber approximately 1,206 square feet of the Property ("Sidewalk Area") as described in Exhibit A to this License Agreement; and

WHEREAS, Licensee's installation of the Sidewalk will require the Parties to enter into an easement agreement; and

WHEREAS, the Parties have negotiated and executed an easement agreement that will allow Licensee to install the Sidewalk in the Sidewalk Area ("Easement Agreement"); and

WHEREAS, the Easement Agreement is subject to the review and approval of the New York State Public Service Commission ("Commission") pursuant to New York State Public Service Law Section 70 ("Section 70 Approval"); and

WHEREAS, the Company will file a petition with the Commission seeking Section 70 Approval of the Easement Agreement ("Petition"); and

WHEREAS, the Commission's Section 70 Approval process typically takes a minimum of six months from the time a Section 70 petition is filed with the Commission; and

WHEREAS, the Company is willing to grant Licensee temporary access to the Sidewalk Area, upon the terms and conditions of this License Agreement, so that Licensee can commence installation of the Sidewalk; and

NOW, THEREFORE, in consideration of the premises and the mutual promises contained herein, the Company and Licensee hereby agree as follows:

1. **Effectiveness and Term.**

(a) The definitions set forth in this License Agreement prior to this Section 1(a) are hereby incorporated into the operative provisions of this License Agreement and are binding upon the Parties.

(b) This License Agreement is effective as of the Effective Date, and shall terminate 15 calendar days after the Commission has issued a final order regarding the Petition, but in no event shall this License Agreement remain effective more than one (1) year after the Effective Date (the "Term"), unless this License Agreement is terminated prior to such time in accordance herewith.

(c) This License Agreement shall terminate if the Commission (i) declines to approve the Petition, (ii) is deemed not to have approved the Petition pursuant to Section 70 or (iii) approves the Petition with any one or more conditions that are not acceptable to either Party in its sole discretion. However, in order for this License Agreement to be terminated due to an unacceptable condition, a Party must send a written notice to the other Party stating that such condition is not acceptable within ten (10) business days after the Party sending notice has received written notice of such condition.

(d) Upon the termination of this License Agreement under Section 1(c) or Section 11, Licensee shall remove the Sidewalk and return the Sidewalk Area to the condition that existed as of the Effective Date within thirty (30) days of such termination. If Licensee does not comply with the immediately preceding sentence, the Company may remove the Sidewalk and return the Sidewalk Area to the condition that existed as of the Effective Date, at the sole cost and expense of Licensee.

(e) Upon the expiration or termination of this License Agreement for any reason, the defense, indemnity and hold harmless provisions of Section 8 hereof, the disclaimer provisions of Section 7 hereof, the right of the Company under Sections 1(d), and 6 to have the work there referenced performed by Company personnel and/or others at the sole cost and expense of Licensee, and Sections 18 and 19 hereof shall survive.

2. **Grant of Right To Access the Sidewalk Area; Permitted Use**. Subject to the terms and conditions hereof, the Company shall permit Licensee and its affiliates and their respective employees, contractors and subcontractors (collectively, the "Permitted Persons") to access the Sidewalk Area during the Term, for the sole purpose of installing the Sidewalk (the "Permitted Use"). Prior to commencing installation of the Sidewalk, the City shall submit plans for the Sidewalk to the Company for its review and approval, which approval will not be unreasonably withheld. Licensee shall construct the Sidewalk in accordance with the approved plans. The Permitted Use is the only access to and use of the Sidewalk Area that is permitted by this License Agreement and no Permitted Person may access or use the Sidewalk Area for any other purpose. The Company will consider any request by Licensee for temporary encroachments on portions of the Property necessary to install the Sidewalk through the Company's standard encroachment review process. Notwithstanding anything contained herein to the contrary, no Permitted Persons shall be granted access to, and no portion of

the Permitted Use shall commence within the Sidewalk Area until the Effective Date of this License Agreement.

3. **Oversight and Maintenance**. Licensee shall be solely responsible for overseeing the installation of the Sidewalk.

4. **Security**. The Company shall have no responsibility for any portion of the Permitted Use. As between the Company on the one hand and Licensee on the other, Licensee shall be solely responsible for securing and safeguarding (i) any and all Permitted Persons (and their possessions) while present on or about the Sidewalk Area, (ii) all work performed by any and all Permitted Persons on or about the Sidewalk Area, and (iii) any and all equipment, tools, supplies, materials and other personal property used in connection with such work or brought onto or located at or about the Sidewalk Area by or on behalf of any and all Permitted Persons. To the fullest extent permitted by law, the Company shall have no responsibility for any equipment, tools, supplies, materials or other personal property that may be brought onto or located at or about the Sidewalk Area and which is subsequently lost, stolen or damaged. To the fullest extent permitted by law, the immediately preceding sentence shall apply even under circumstances where the Company may be partially negligent.

5. **Compliance with Laws, Regulations and Procedures; Denial of Access and Removal for Non-Compliance**. Licensee shall comply with and shall cause all other Permitted Persons to comply with all applicable laws, rules, regulations, and ordinances (including, but not limited to, Environmental Laws, as defined below, and the Occupational Safety and Health Act), as well as all regulations, procedures and directives of the Company, while at or about the Sidewalk Area. Licensee shall be responsible for obtaining and maintaining all permits, licenses, and any other governmental permission required for, or in connection with, the Permitted Use (including without limitation Environmental Permits (as defined below)), except those required for the Company's maintenance obligations. Licensee shall cause any and all Permitted Persons who are not in compliance with such laws, rules, regulations, ordinances, procedures and directives or who otherwise engage in objectionable, improper or illegal conduct to be refused access to the Sidewalk Area and, if present on the Sidewalk Area, to be removed immediately therefrom.

6. **Hazardous Substances.**

(a) Licensee shall not and shall cause any and all other Permitted Persons to not, use, store, or bring any "Hazardous Substances" (as defined below) on or about the Sidewalk Area. If any Hazardous Substances are released, discharged, spilled, emptied, emitted, dumped, injected, poured, deposited, dispersed, or otherwise leak, escape, leach or migrate (each, a "**Release**"), or are discovered or encountered (each, a "**Discovered Release**") on or about the Sidewalk Area as a result of or in connection with the Permitted Use or any unauthorized use of the Sidewalk Area by or on behalf of Licensee or any other Permitted Persons, or if a Release is threatened, Licensee shall: (1) immediately notify the Company of the Release, Discovered Release or threatened Release; (2) promptly take all actions, at Licensee's sole cost and expense as are necessary to perform Remediation (as defined below) of any such Release, Discovered Release or threatened

Release as if Licensee was the party solely responsible for investigating and remediating such Release, Discovered Release or threatened Release under Environmental Laws and to perform such other work as may be required to safeguard the health, safety or welfare of any persons, and the Sidewalk Area from any such Release, Discovered Release or threatened Release; and (3) restore any impacted portion or portions of the Sidewalk Area to at least the condition that existed prior to the Permitted Use (except for any condition which was the subject of the Remediation) as well as the condition required by Environmental Laws, to transport and dispose of any associated Hazardous Substances to a properly licensed disposal or treatment facility approved by the Company and to satisfy the requirements of any Governmental Authority (as defined below) exercising jurisdiction with respect to the Sidewalk Area or such Release or threatened Release. Following completion of any required Remediation or achieving regulatory closure for any Release, Licensee shall be required to perform, at Licensee's sole cost and expense, any sampling and analysis determined to be necessary by the Company or any Governmental Authority to document that the Remediation has been performed as required herein and in accordance with any remediation plans in effect and all Environmental Laws. In the event that Licensee does not perform the obligations contained in this Section 6(a), the Company may cause such obligations to be performed by Company personnel and/or others at the expense of Licensee.

(c) As used in this License Agreement, the term "Hazardous Substances" means (i) any petroleum, petroleum products or by products and all other hydrocarbons (including, without limitation, petrochemicals and crude oil) or any fraction thereof, coal ash, radon gas, asbestos, asbestos-containing material, urea formaldehyde, polychlorinated biphenyls, chlorofluorocarbons and other ozone-depleting substances, and (ii) any chemical, material, substance, product, waste (including thermal discharges) or electromagnetic emissions that is, has been, or hereafter shall be (x) listed or defined as hazardous, toxic, or dangerous under any Environmental Laws, (y) listed at 40 C.F.R. 302.4 or 6 NYCRR Part 597 (or their successors), or (z) prohibited, limited or regulated by or pursuant to any Environmental Laws.

(d) As used in this License Agreement, the term "Environmental Laws" means all current and future federal, state, local and foreign laws (including common law), treaties, regulations, rules, ordinances, codes, decrees, judgments, directives, orders (including consent orders), agreements, Environmental Permits (as defined below) and guidance documents issued or published by any Governmental Authority, in each case, relating to pollution, protection of the environment, natural resources or human health and safety, to the presence, Release of, threatened Release of, or exposure to, Hazardous Substances, or to the generation, manufacture, processing, distribution, use, treatment, storage, transport, recycling or handling of, or arrangement for such activities with respect to, Hazardous Substances.

(e) As used in this License Agreement, the term "Environmental Permits" means the permits, licenses, consents, approvals, manifests and other authorizations or certifications required by any Governmental Authority with respect to Environmental Laws, including without limitation with respect to Remediation.

(f) As used in this License Agreement, the term "Governmental Authority" means any federal, state, local, domestic or foreign government or any court, administrative or regulatory agency, board, committee or commission or other governmental entity or instrumentality, domestic, foreign or supranational or any department thereof, with jurisdiction over the Sidewalk Area or activities conducted thereon, other than Licensee.

(g) As used in this License Agreement, the term "Remediation" means the investigation, handling, cleanup, removal, transportation, disposal, treatment (including *in-situ* treatment), management, stabilization, neutralization, collection, or containment of Hazardous Substances, in each case, including, without limitation, any monitoring, operations and maintenance activities that may be required by any Government Authority after the completion of such investigation, handling cleanup, removal, transportation, disposal, treatment (including *in situ* treatment), management, stabilization, neutralization, collection, or containment activities as well as the performance of any and all obligations imposed by any Governmental Authority in connection with such investigation,, handling, cleanup, removal, transportation, disposal, treatment (including *in situ* treatment), management, stabilization, neutralization, collection, or containment (including any such obligation that may be imposed on the Company under a brownfield cleanup agreement or a consent order).

7. **As-Is; No Representations Or Warranties By The Company**. The Company is making the Sidewalk Area available hereunder for the Permitted Use on an "**AS-IS**" basis and subject to the other terms and conditions hereof. The Company does not make, and hereby disclaims, any express, implied, statutory, or common law warranty, guarantee, or promise, representation or assurance **INCLUDING ANY WARRANTY OF FITNESS FOR A PARTICULAR PURPOSE,** concerning the suitability or condition (including without limitation its environmental condition or the presence of Hazardous Substances) of the Sidewalk Area for any purpose including, without limitation, the Permitted Use.

8. **Indemnification.** To the fullest extent permitted by applicable law, Licensee shall defend, indemnify and hold the Company, its trustees, directors, officers, employees and agents (collectively, the "Protected Parties") harmless from and against any and all claims, actions, causes of action, damages, loss and liability, including costs and expenses, legal and otherwise, and statutory or administrative fines, penalties, or forfeitures, which, in whole or in part, arise from, relate to, or are connected with the Permitted Use, any unauthorized use of the Sidewalk Area by or on behalf of Licensee or any other Permitted Persons, and any breach or violation by Licensee of any provision of this License Agreement, unless the damages are caused in part or wholly by the intentional misconduct or negligence of the Company, its employees, officers, directors or agents. Licensee, with respect to its employees, expressly agrees that the Company may pursue claims for contribution and indemnification against Licensee in connection with any claims made against the Company for injury to and/or death to employees of Licensee, notwithstanding the provisions of Section 11 of the New York Workers' Compensation Law limiting such claims for contribution and indemnification against employers. Licensee hereby waives the limitations on contribution and indemnification claims against employers provided in Section 11 of the New York Workers' Compensation Law insofar as such claims are asserted by the Company against Licensee or such contractors or subcontractors.

9. **Insurance**.

(a) Licensee shall procure and maintain the following insurance during the Term the following minimum insurance coverages with insurance companies licensed to write insurance in the State of New York or eligible surplus lines insurance carriers approved by the Company, and in either case, with a minimum A.M. Best financial strength rating of A or better and financial size category of VIII or better:

(i) Employment Related Insurance

(A) Workers' Compensation Insurance as required by law, which shall contain a waiver of subrogation in favor of Orange & Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc.

(B) Employers' Liability Insurance:

(1) Bodily Injury by Accident: $1,000,000 each Accident

(2) Bodily Injury by Disease: $1,000,000 Policy Limit

(3) Bodily Injury by Disease: $1,000,000 Each Employee

(C) Where applicable, insurance required by the United States Longshoremen's and Harbor Workers' Act, the Federal Employers, Liability Act, and the Jones Act and Maritime Employers Liability.

(ii) Commercial General Liability Insurance, including Contractual Liability, with limits of not less than Two Million Dollars ($2,000,000) per occurrence and Four Million Dollars ($4,000,000) in the aggregate for bodily injury, including death, and property damage and, for at least ten (10) years after the termination of this License Agreement, Products/Completed Operations Liability Insurance with similar but separate and independent limits. The policy shall cover all operations (including crane and rigging activities if applicable). The insurance shall be in policy forms which contain an "occurrence" and not a "claims made" determinant of coverage. There shall be no policy deductibles without the Company's prior written approval. The insurance shall contain no exclusions for explosion, collapse of a building or structure, or underground hazards, work on or near a railroad, or independent contractors. Sudden and accidental pollution coverage shall be included. The insurance policy or policies shall name Orange and Rockland Utilities, Inc., Consolidated Edison, Inc., Consolidated Edison Company of New York, Inc. as additional insureds. Endorsements CG 20 10 10 01 and CG 20 37 10 01 (or equivalent) are required. Policy must contain a severability of interest clause. There shall be no exclusions for claims by Licensee's Agents against the Company based on injury to Licensee's Agents or any of Licensee's Agents' employees. To the extent any Work is in or related to public streets, roadways, walkways, or similar areas and is being performed under a New York State or municipal permit, the insurance policy or policies shall also name the State of New

York or such other municipality as additional insureds. The insurance policy or policies shall also name the owners of adjoining properties as additional insureds where any portion of the work hereunder involves or impacts such adjoining properties or any other required entity. The Company reserves the right to request additional parties to be included as additional insured if necessary. The policy(ies) shall be primary and non-contributory and contain a waiver of subrogation in favor of the Company.

(iii) Comprehensive Automobile Liability Insurance, covering all owned, non-owned and hired vehicles used by Licensee, Licensee's Agents, with a combined single limit of not less than One Million Dollars ($1,000,000) per accident for bodily injury, including death, and property damage. Policy to include CA 99 48 - Broadened Pollution for Covered Autos and the Motor Carrier Act endorsement (MCS 90). Policy will be primary and non-contributory, contain a waiver of subrogation and will name the Orange and Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds.

(iv) Excess or Umbrella Liability Insurance on an occurrence and a drop down and follow form basis over and above the Employers' Liability, Commercial General Liability and Comprehensive Automobile Liability Insurance coverages, with a minimum combined single limit of Twenty Million Dollars ($20,000,000) per occurrence and aggregate. The Excess policy(ies) must be as broad as the underlying policies and must contain the same extensions (Additional Insured, Waiver of Subrogation and Primary and Non-Contributory) required under the Primary underlying policies.

(v) If applicable or if required by the Company, a separate Railroad Protective Liability Policy should be provided for work in connection with construction or demolition work on or within fifty (50) feet of a railroad. Such policy shall include coverage for bodily injury and property damage resulting from Licensee's work and usage for which the railroad could be held liable, and physical damage to property owned by the railroad, leased to the railroad, or otherwise within railroad right-of-way. Any policy shall be subject to the review and approval of the applicable railroad or operating Governmental Authority.

(vi) Pollution Liability Insurance (Pollution Liability and Contractors Pollution Liability) in an amount of not less than Ten Million Dollars ($10,000,000) per occurrence and aggregate. The policy will provide coverage for claims resulting from pollution or other environmental impairment arising out of or in connection with any work and from transportation (including transportation by watercraft if applicable) and disposal of pollutants or anything contaminated by pollution. Such insurance is to include coverage for cleanup, third party bodily injury and property damage and remediation and will be written on an occurrence basis; or, if on a claims-made basis, the coverage must respond to all claims reported within ten (10) years following the period for which coverage is required and that would have been covered had the coverage been on an occurrence basis. There shall be no exclusions for asbestos, lead paint, silica or mold/fungus/legionella. Coverage shall apply to sudden and non-sudden conditions. The policy shall name Orange and Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds, be primary and non-contributory and contain a waiver of subrogation in favor of the Company.

(vii) Professional Liability Insurance in the amount not less than Five Million Dollars ($5,000,000) per claim and Five Million Dollars ($5,000,000) in the aggregate or until termination of this License Agreement and for at least ten (10) years following the termination of this License Agreement.

This requirement applies to Licensee's consultants, all architect and engineering, surveying and construction management, and any design-assist or design-build subcontractors. For all other Licensee's consultants providing professional services, a minimum of One Million Dollars ($1,000,000) per claim and in the aggregate will be required. Such insurance shall have a retroactive date no later than the Effective Date or the date when Licensee or Licensee's Agents first performed professional services.

(viii) If applicable, Aircraft Liability Insurance, covering all owned, non-owned and hired aircraft, including helicopters, and drones used by Licensee or any of Licensee's Agents, with a combined single limit of not less than Ten Million Dollars ($10,000,000) for bodily injury, including death, and property damage. The insurance policy shall name Orange and Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds, be primary and non-contributory and contain a waiver of subrogation.

(ix) If applicable, for any asbestos abatement portion or lead abatement portion of any work, Asbestos Abatement General Liability Insurance and Lead Abatement Liability Insurance, as applicable, each with a combined single limit of not less than Ten Million Dollars ($10,000,000) for bodily injury including death and property damage. Each insurance policy, with the exception of the Employer's Liability insurance identified above shall name Orange and Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds. The policy will be primary and non-contributory and contain a waiver of subrogation. Where the abatement or remediation work is to be performed by a Licensee's Agent, Licensee shall require Licensee's Agent to name Orange and Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds, be primary and non-contributory and contain a waiver of subrogation, and to submit copies of the policies to Licensee.

(b) All policies of insurance required herein, except with regard to Worker' Compensation and Professional Liability and Property insurance required by this section shall name Orange and Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc. as additional insureds and include a Waiver of Subrogation. Each such policy shall provide that the insurance provided to the additional insureds is primary and non-contributory to any insurance or self-insurance held by Licensee. The Company will require all insurance policies, including Workers' Compensation, required by this section to include clauses stating that the insurers(s) waive all rights of recovery/subrogation, where not prohibited by any Applicable Law. All liability policies required herein will include a severability of interest clause.

(c) The requirements contained herein as to the types and limits of all insurance to be maintained by Licensee are not intended to and shall not in any manner, limit or qualify Licensee's liabilities and obligations assumed under this License Agreement.

(d) Licensee and Licensee's Agents shall pay all premiums, costs and expenses within any deductibles or self-insured retentions, regardless of the number of losses. Licensee shall obtain the Company's written approval for to the terms and amount of any self-insured retentions.

(e) Licensee's Agents must maintain the same insurance requirements stated above (unless otherwise stated) and comply with the additional insured requirements herein. In addition, their policies must state that they are primary and noncontributory and contain a waiver of subrogation in favor of Orange and Rockland Utilities, Inc., Consolidated Edison, Inc. and Consolidated Edison Company of New York, Inc.

(f) Licensee shall, and shall cause Licensee's Agents to, furnish the Company with written notice at least thirty (30) days prior to the effective date of cancellation of the insurance or any changes in policy limits or material scope of coverage.

(g) The Company shall have the right, upon request, to require Licensee to furnish the Company, with a copy of the insurance policy or policies (or binders) required herein. Upon signing this License Agreement and prior to any work taking place, Licensee shall furnish the Company with Certificates of Insurance evidencing that all required insurance policies have been obtained, showing their expiration dates and the additional insureds as required under this License Agreement. In addition, Licensee shall collect and submit certificates of insurance from all of Licensee's Agents evidencing the required coverages and extensions.

(h) Certificates of insurance identifying this License Agreement shall be sent to:

Consolidated Edison Company of New York, Inc.

4 Irving Place

Mailbox #150

New York, New York 10003

Attention: Director, Real Estate Orange and Rockland Utilities, Inc.

(i) The Company reserves the right to revise the insurance requirements as necessary.

(j) For purpose of interpretation or determination of coverage of any policy of insurance or endorsement thereto, Licensee shall be deemed to have assumed tort liability for any injury to any employee of Licensee or any other party arising out of the performance of any work and/or the permitted use of the Sidewalk Area.

(k) In the event of any claim/allegation, bodily injury, death, property damage, or other accident or harm arising out of, relating to, or in any way connected with the work or this License Agreement, Licensee, in accordance with the provisions of the insurance policies shall inform promptly and in writing the insurers that notice is being provided on behalf of Licensee and the Additional Insured Parties and that Licensee intends to invoke the coverage of the policies to protect the interest and preserve the rights of Licensee and the Additional Insured Parties. Simultaneously with providing the written notice required by this paragraph to the applicable insurers, Licensee shall provide a copy of such written notice, including a copy of any incident report or accident report, by sending to: Orange and Rockland Utilities, Inc., Attention: General Litigation. This paragraph shall not apply to injuries caused by the intentional misconduct or negligence of the Company, its employees, officers, directors or agents

(m) Additional Provisions

(i) Licensee and its Contractors and Subcontractors (as applicable) will be responsible for insuring their own property and equipment utilized for this Project.

(ii) All policies shall include waivers of subrogation, primary and non-contributory, and other endorsements and extensions required by Licensee. All such policies and provisions shall be subject to review and approval of Licensee in relation to their form and substance. Licensee may revise insurance requirements by written notice to the Company.

(ii) Neither the maintenance of the insurance specified in this Section nor the limits of liability applicable to such insurance shall define or limit the liability of Licensee or Licensee's Agents under this License Agreement.

(iii) The Company's failure to require strict compliance or exercise its rights with regard to this Section 9 shall not constitute a waiver on the Company's part.

(v) The provisions of this Section 9 shall survive the termination of this License Agreement.

10. <u>Force Majeure</u>. In the event that the Permitted Use of the Sidewalk Area cannot be provided by the Company hereunder because of act of God, act or failure to act of governmental authority, extraordinary weather conditions, accident such as fire or explosion, strikes, lockouts, or other industrial disturbances, riot, failure of public transportation facilities, epidemic or pandemic, or any other cause (whether of the kind herein enumerated or otherwise) that is beyond the reasonable control of the Company, the Company shall have no obligation or liability as a result thereof.

11. Termination for Breach. In the event of a material breach of this License Agreement by Licensee, the Company shall provide written notice to Licensee of said breach. If said breach is not remedied within thirty (30) calendar days of written notice of such failure, or if such failure is not reasonably capable of being remedied within thirty (30) days and remedial action is not commenced promptly, and thereafter diligently pursued, then the Company may terminate this License Agreement.

12. Inspection. The Sidewalk Area and the Permitted Use shall at all times be subject to inspection by the Company; provided, however, that the Company shall have no obligation to conduct any such inspections.

13. Notices. All legal notices and communications hereunder required to be in writing shall be personally delivered or mailed by registered or certified mail return receipt requested, as provided below. A Party may change its address for receipt of written notices by notifying the other Party in writing of such change pursuant to this Section.

If to the Company:

Orange and Rockland Utilities, Inc.
One Blue Hill Plaza
Pearl River, New York 10965
Attention: Manager, Real Estate

If to Licensee:

City of Middletown
16 James Street
Middletown, New York 10940
Attention: Mayor

Such notice or other communication shall be deemed duly given when received or when receipt is refused by the addressee.

14. No Interest In Real Property. This License Agreement does not create any interest in real property, nor does it grant, convey, or otherwise transfer any interest in real property (including without limitation, the Sidewalk Area). This License Agreement does not confer upon Licensee or any Permitted Person the right to exclusive possession of any real property or any portion thereof as against the Company or any other person or entity.

15. No Assignment By Licensee. This License Agreement may not be assigned or transferred by Licensee without the prior written consent of the Company. Any such purported assignment or transfer without such consent shall be void.

16. No Partnership, Joint Venture Or Agency Relationship. This License Agreement is not intended to, and shall not create, a partnership, joint venture, or principal-agent relationship between the Parties, nor shall any act in the performance thereof operate to do so.

17. No Third Party Rights. Nothing in this License Agreement, express or implied, is intended to confer upon any person, other than the Parties hereto and their permitted assigns, any rights or remedies under, or by reason of, this License Agreement.

18. Submission To Jurisdiction/Choice Of Forum. The Company and Licensee hereby irrevocably submit to the exclusive jurisdiction of the courts located within the State of New York with regard to any controversy arising out of, relating to, or connected with this License Agreement. The venue for any litigation concerning this License Agreement shall be the Supreme Court of the State of New York, Rockland County.

19. Non-Disclosure. Licensee agrees that at no time, during the Term or at any other time, shall Licensee directly or indirectly make or cause or permit others to make any media disclosure, press release, marketing release, advertisement or any similar public statement or announcement regarding this License Agreement, the Permitted Use, or otherwise using the Company's name, other than to applicable licensing authorities, without obtaining the Company's prior written consent, which consent may be withheld in the Company's sole and unfettered discretion; provided however that this provision shall exclude any information that may become available to the public through public hearings and notices required by a public body or board Licensee agrees that in addition to the Company's other remedies pursuant to this License Agreement and applicable law, the Company is entitled to injunctive relief to enforce this Section and to enjoin any violations or threatened violations of this Section.

20. Waiver. Neither the performance by the Company of any of Licensee's obligations under this License Agreement, nor any failure of the Company to insist on strict performance by Licensee or to assert rights in one or more instances shall constitute a waiver by the Company of such performance or rights, either then or in the future. Any waiver shall be effective only if in writing and signed by the Company's authorized representative, and then only with respect to the particular event to which it specifically refers. No termination or rescission hereof, in whole or in part, because of a breach hereof shall be deemed a waiver of any money damages to which the Company may be entitled because of said breach.

Except as otherwise provided in this Agreement, any failure or delay by the Licensee in asserting or exercising any term, condition, or covenant under this License Agreement shall not constitute a waiver of such term, condition, or covenant, or operate as a waiver of any other term, condition, or covenant. Any waiver shall be effective only if in writing and signed by Licensee's authorized representative, and then only with respect to the particular event to which it specifically refers. No termination or rescission hereof, in whole or in part, because of a breach hereof shall be deemed a waiver of any money damages to which Licensee may be entitled because of said breach.

21. Entire Agreement. This License Agreement, contains the entire agreement between the Parties hereto relating to the subject matter hereof and any prior or contemporaneous oral or written understandings or agreements relating to such subject matter are merged herein.

22. No Oral Modification. This License Agreement may be modified only by a writing signed by each of the Parties.

23. Counterparts. This License Agreement may be executed in counterparts, each of which shall be deemed an original, but all of which shall together constitute one and the same instrument. This License Agreement and any counterpart thereof may be delivered via email, it being the express intent of the Parties that such License Agreement and any counterpart thereof delivered via email (together with the signatures thereon) shall have the same force and effect as if they were originals

24. Headings. The headings of the Sections of this License Agreement are inserted for convenience only and shall not be deemed to constitute part of this License Agreement.

25. New York Law. This License Agreement shall be interpreted and the rights and liabilities of the Parties determined in accordance with the laws of the State of New York, without recourse to such State's choice of law principles.

IN WITNESS WHEREOF, the Parties have executed and delivered this License Agreement as of the Effective Date.

ORANGE AND ROCKLAND UTILITIES, INC.	CITY OF MIDDLETOWN
By ____________________	By ____________________
Title ____________________	Title Mayor

EXHIBIT A

Description of Sidewalk Area

[Insert description of Sidewalk Area]

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Green
Seconded by: Alderman Kleiner
Date of Adoption: September 3, 2024
Index No: 177-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/2024

Authorizes a Public Hearing on a 4 Lot Subdivision on Orange Terrace

BE IT RESOLVED that the Common Council of the City authorizes a public hearing on a 4 lot subdivision on Orange Terrace to be held on Tuesday, October 1, 2024, at or as close to 7:30 PM as possible in the Common Council Chambers.

Prepared by:
Rick McCormack, City Clerk

Attachments:
None

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Tobin
Seconded by: Alderman Witt
Date of Adoption: September 3, 2024
Index No: 169-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Authorization to Transfer $10,000 in the Police Department Budget

BE IT RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the Treasurer to transfer $10,000 in the following manner to cover unanticipated shortfalls.

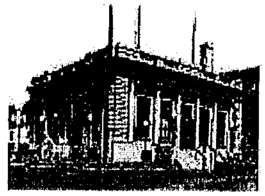
FROM	TO	AMOUNT
A.3120.417 Gas & Oil	$7,000	A.3120.433 Training
A.3120.417 Gas & Oil	$3,000	A.3120.479 Equipment rental

Prepared by:
John Ewanciw, Chief of Police

<u>Attachments:</u>

1.	08272024

JOHN EWANCIW
CHIEF OF POLICE



TELEPHONE
845-343-3151
FAX NUMBER
845-343-2660

CITY OF MIDDLETOWN POLICE DEPARTMENT

2 JAMES STREET
MIDDLETOWN, NEW YORK 10940
ESTABLISHED 1888

August 27, 2024

Honorable Joseph DeStefano
Mayor-City of Middletown and
Board of Estimate and Apportionment
16 James Street
Middletown, NY 10940

Dear Mayor DeStefano and Members of the Board of Estimate,

I am requesting that the City of Middletown Common Council approve the following transfers requests within our 2024 budget lines to cover unanticipated shortfalls:

From	Amount	To
A.3120.417 Gas & Oil	$7,000	A.3120.433 Training
A.3120.417 Gas & Oil	$3,000	A.3120.479 Equipment rental

Very truly yours,

John Ewanciw
Chief of Police

JE:ccd

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Kleiner
Seconded by: Alderman Johnson
Date of Adoption: September 3, 2024
Index No: 170-24

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Authorizes a $26,652.87 Budget Transfer from the Water Fund

BE IT RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the Treasurer to transfer $ $26,652.87 in the following manner to cover CDM Smith's properly budgeted expenses for the Water Withdrawal Permit Project. The funds were transferred from the Contractual account at the end of 2022.

FROM	TO	AMOUNT
Water Fund	F.8310.400 Contractual Services	$26,652.87

Prepared by:
Jacob Tawil

Attachments:

1.	Transfer of Funds 8-21-24-Water contractual

DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

Date: August 21, 2024
To: Honorable Members of the Board of Estimate
And Apportionment
Cc: Leonora Liz-Treasurer
Richard McCormack- City Clerk
From: Jacob Tawil-Commissioner of Public Works
Re: Transfer of Funds

I respectfully request a transfer from Water Fund back into Water Contractual Services to cover properly budgeted expenses by CDM Smith for Water Withdrawal Permit Project. The funds were transferred out of Contractual account at the end of 2022.

	FROM	AMOUNT	TO
1.	Water Fund	$26,652.87	F.8310.400 Contractual Services

Thank you.

MC

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderwoman Wray
Seconded by: Alderman Johnson
Date of Adoption: September 3, 2024
Index No: 171-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Authorizes a Proposal from Ackerly and Hubbel Appraisal Corporation for Watershed Property Phase 1 Appraisals

BE IT RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes a Proposal from Ackerly and Hubbel Appraisal Corporation for Watershed Property Phase 1 Appraisals for the following three properties, for $4000.

- Economic Unit 1 - Portion of Parcel ID# 17-1-13 totaling 25 acres of residential land located along Ridge Road in the Town of Mount Hope, NY - owned by Tijeras Ridge, LLC
- Economic Unit 2 - Portion of Parcel ID# 16-1-33.1 totaling 5 acres of residential land located off Guymard Turnpike in the Town of Mount Hope, NY - owned by Christina Kaufman
- Economic Unit 3 - Portion of Parcel ID# 19-1-7.22 (122± acres), all of Parcel 19-1-8.2 (6 acres) and all of Parcel 3-1-58 (7 acres) totaling 135± acres of residential land improved with a barn located along Mountain Road in the Town of Mount Hope and Greenville, NY - owned by

Donald Hosking, et al.

BE IT FURTHER RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the Mayor to sign the proposal.

*The funds are available within the project-approved funding.

Prepared by:
Jacob Tawil

Attachments:

1.	BOE- WATERSHED PROPERTY APPRAISAL CONTRACT

DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

Date: August 28, 2024

To: Honorable Mayor DeStefano, Members of the Board of Estimate and Apportionment, Members of the Common Council

Cc: Rosa Tumminia, Deputy Treasurer and Richard McCormack, City Clerk

From: Jacob Tawil, Commissioner of Public Works

Re: Appraisal Services Contract- Ackerly & Hubble August 27, 2024 Watershed Property Acquisition

Greetings,

We are respectfully requesting the approval to engage with the referenced firm for the Phase I appraisal services of three properties at a cost of $4,000.

The funds are available within the project approved funding.

Thank you.

ACKERLY & HUBBELL APPRAISAL CORP

August 27, 2024

City of Middletown
Mayor Joseph Destefano,
16 James Street
Middletown NY 10940

Telephone:	(845) 346-4100
Email:	dstefano@middletown-ny.com
C/O: RJ Smith	richard.smith@randcommercial.com

Re: 223 Ridge Drive, Off Guymard Turnpike and Mountain Road, Towns of Mount Hope and Greenville, Orange County, NY

APPRAISAL SERVICES CONTRACT
"ENGAGEMENT LETTER"

To Whom it May Concern:

This contract is an agreement between Ackerly & Hubbell Appraisal Corp. (APPRAISER), and City of Middletown (CLIENT). Payment is not contingent upon arriving at a particular value.

The subject consists of three economic units described as follows:

- Economic Unit 1 – Portion of Parcel ID# 17-1-13 totaling 25 acres of residential land located along Ridge Road in the Town of Mount Hope, NY – owned by Tijeras Ridge, LLC

- Economic Unit 2 – Portion of Parcel ID# 16-1-33.1 totaling 5 acres of residential land located off Guymard Turnpike in the Town of Mount Hope, NY – owned by Christina Kaufman

- Economic Unit 3 – Portion of Parcel ID# 19-1-7.22 (122± acres), all of Parcel 19-1-8.2 (6 acres) and all of Parcel 3-1-58 (7 acres) totaling 135± acres of residential land improved with a barn located along Mountain Road in the Town of Mount Hope and Greenville, NY – owned by Donald Hosking, et al.

APPRAISER agrees to conduct a scope of services that includes:

- Visual inspection of the subject property and reviewing necessary maps including topographic, flood plain maps, zoning maps, survey, etc.
- Valuing the appropriate interest of the property and based on the highest and best use
- Conducting market research with analysis by sales approach and Income approach if applicable.
- A Verbal Appraisal Report will be provided with a letter summarizing the discussions provide along with a Sales Comparison grid.

Economic Unit 1 - CLIENT agrees to remunerate APPRAISER a fee of ***$1,250.*** A digital PDF'd copy of the letter summary of the verbal report will be provided only via email. An invoice will be provided upon completion of the verbal appraisal.

Economic Unit 2 -- CLIENT agrees to remunerate APPRAISER a fee of ***$1,250.*** A digital PDF'd copy of the letter summary of the verbal report will be provided only via email. An invoice will be provided upon completion of the verbal appraisal.

Economic Unit 3 - CLIENT agrees to remunerate APPRAISER a fee of ***$1,500.*** A digital PDF'd copy of the letter summary of the verbal report will be provided only via email. An invoice will be provided upon completion of the verbal appraisal.

****The total cost to for all three economic units is $4,000***

Post appraisal services:

- Any necessary revisions and discussions regarding the submitted report are included in the initial fee.
- Any further consultations, meetings, or additional appraisal services will be billed on an hourly basis at $250 per hour.

In order to complete the assignment the following items are requested (information noted as Confidential by the client will remain as such) and if unavailable we will request it from the owner upon client consent:

- Survey
- Property deed
- Documentation of any easements, covenants, etc.

Information marked as "confidential" by the client will remain as such. The purpose of the assignment is to render an opinion of market value of the subject property as of the valuation date. The intended use of the appraisal is to establish market value for the potential purchase of the parcel. The only intended user of this appraisal report is the client, City of Middletown. No party, other than the intended user, should rely on this appraisal for any purpose whatsoever.

Delivery of verbal report will be 3-4± weeks from the date of inspection contingent upon receipt of all necessary items in order to complete the appraisal. In the event that any payment is not paid when due, CLIENT shall pay all expenses of collection, including, but not limited to, court costs and attorneys' fees.

Thank you for the opportunity of presenting this contract for your consideration. The contract is valid for 30 days. If the contract meets with your approval, please execute a signed pdf original, required payment and requested data. Signed contract and data in pdf format via email only.

Payment is accepted by check only payable to: Ackerly & Hubbell Appraisal Corp, mailed to:
1072 Main Street, Fishkill NY 12524

Respectfully submitted:

ACKERLY & HUBBELL APPRAISAL CORP.

Andrew Ward
Senior Appraiser
State Certified General Real Estate Appraiser No. 46...48872

AW

Project will commence upon receipt of signed contract and payment

AUTHORIZATION TO PROCEED

I agree to the terms and conditions of the Appraisal Service Contract set forth herein, and hereby authorize APPRAISER to proceed with said services.

Signature

9/4/2024
Date

Joseph M. DeStefano
Printed Name

MAYor
Title

Person to contact for inspection

Phone number

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Johnson
Seconded by: Alderman Kleiner
Date of Adoption: September 3, 2024
Index No: 172-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Authorizes a $12,467.95 Budget Transfer for Repairs at the Sewer Treatment Plant

BE IT RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the Treasurer to transfer $ $12,467.95, in the following manner, to cover unanticipated repairs at the Sewer Treatment Plant.

FROM	TO	AMOUNT
F.8130.200- Other Equipment	F.8130.440- Repairs to Equipment	$12,467.95

Prepared by:
Jacob Tawil

Attachments:

1.	Transfer of Funds 8-28-24-within STP budget

DEPARTMENT OF PUBLIC WORKS

MEMORANDUM

Date: August 28, 2024
To: Honorable Members of the Board of Estimate
And Apportionment
Cc: Leonora Liz-Treasurer
Richard McCormack- City Clerk
From: Jacob Tawil-Commissioner of Public Works
Re: Transfer of Funds

I respectfully request a transfer within our 2024 budget lines to cover unanticipated repairs at the Sewer Treatment Plant.

	FROM	AMOUNT	TO
1.	F.8130.200 Other Equipment	$12,467.95	F.8130.440 Repairs to Equipment

Thank you.

MC

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Tobin
Seconded by: Alderman Kleiner
Date of Adoption: September 3, 2024
Index No: 173-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green			x	
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	7		1	1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Appointment of Johnathan Scarpati, Jayden Arocho, and Ricardo Parchment as City of Middletown Volunteer Firefighters

BE IT RESOLVED, the Common Council of the City of Middletown appoints the following Firefighters for membership in the Volunteer Fire Department:
Johnathan Scarpati – McQuoid Engine & Ladder Co. #3
Jayden Arocho – Waalkill Engine Co. #6
Ricardo Parchment - Waalkill Engine Co. #6

Prepared by:

Attachments:
None

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Masi
Seconded by: Alderman Johnson
Date of Adoption: September 3, 2024
Index No: 174-24

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Authorizes Side Letter Agreements to Extend the Probationary Period for Three Employees

Prepared by:

Attachments:

1.	Side LetterFirefighter Barone Probation 2024
2.	Side LetterFirefighter Galdmaz Probation 2024
3.	Side LetterFirefighter Lake Probation 2024

SIDE LETTER OF AGREEMENT
BETWEEN
CITY OF MIDDLETOWN AND THE MIDDLETOWN
PROFESSIONAL FIREFIGHTERS, INC

This Side Letter of Agreement ("Agreement") is made this ___ day of August 2024, by and between, City of Middletown ("City"), the Middletown Professional Firefighters, Inc. ("Union"), and Eric Barone ("Firefighter Barone"); (collectively referred to as the "Parties"), as follows:

1. It is hereby agreed by and between the City and the Union that the that the probationary period for Firefighter Barone shall be extended to 52 weeks from his date of hire to ___________________.
2. The Parties also agree that the extension of this probationary period is not grievable nor arbitrable.
3. This Agreement shall take effect upon the execution of this Agreement.

______________________________________ September ~~August~~ 4, 2024
Mayor Joseph M. DeStefano

______________________________________ August ___, 2024
Middletown Professional Firefighters, Inc.

______________________________________ August ___, 2024
Eric Barone

SIDE LETTER OF AGREEMENT
BETWEEN
CITY OF MIDDLETOWN AND THE MIDDLETOWN PROFESSIONAL FIREFIGHTERS, INC

This Side Letter of Agreement ("Agreement") is made this ___ day of August 2024, by and between, City of Middletown ("City"), the Middletown Professional Firefighters, Inc. ("Union"), and Pedro Galdamez ("Firefighter Galdamez"); (collectively referred to as the "Parties"), as follows:

1. It is hereby agreed by and between the City and the Union that the that the probationary period for Firefighter Galdamez shall be extended to 52 weeks from his date of hire to ________________.
2. The Parties also agree that the extension of this probationary period is not grievable nor arbitrable.
3. This Agreement shall take effect upon the execution of this Agreement.

____
Mayor Joseph M. DeStefano

September ~~August~~ 4, 2024

____
Middletown Professional Firefighters, Inc.

August ___, 2024

____
Pedro Galdamez

August ___, 2024

SIDE LETTER OF AGREEMENT
BETWEEN
CITY OF MIDDLETOWN AND THE MIDDLETOWN PROFESSIONAL FIREFIGHTERS, INC

This Side Letter of Agreement ("Agreement") is made this ___ day of August 2024, by and between, City of Middletown ("City"), the Middletown Professional Firefighters, Inc. ("Union"), and Noah Lake ("Firefighter Lake"); (collectively referred to as the "Parties"), as follows:

1. It is hereby agreed by and between the City and the Union that the that the probationary period for Firefighter Lake shall be extended to 52 weeks from his date of hire to ____________________.
2. The Parties also agree that the extension of this probationary period is not grievable or arbitrable.
3. This Agreement shall take effect upon the execution of this Agreement.

____ ~~August~~ September 4, 2024
Mayor Joseph M. DeStefano

____ August ___, 2024
Middletown Professional Firefighters, Inc.

____ August ___, 2024
Noah Lake

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Witt
Seconded by: Alderwoman Wray
Date of Adoption: September 3, 2024
Index No: 175-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

Date 9/4/24

Authorization to Enter into a Lease Agreement with Binghamton Health Campaign, Inc.

BE IT RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes a lease agreement with Binghamton Health Campaign, Inc.

BE IT FURTHER RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the Mayor to sign the agreement.

Prepared by:
Maria Bruni, Director of Economic and Community Development

Attachments:

1.	Binghamton Health Campaign Inc. Confluence Running LEASE

LEASE AGREEMENT

AGREEMENT OF LEASE, made this ___ day of September, 2024 by and between:

CITY OF MIDDLETOWN

a municipal corporation having a principal office at 16 James Street, Middletown, New York, 10940, hereinafter referred to as "Landlord", and

Binghamton Health Campaign, Inc.
CONFLUENCE RUNNING

a New York State Corporation having a mailing address at 171 Matthews Street, Binghamton, New York 13905 hereinafter referred to as "Tenant":

W I T N E S S E T H: The parties hereto for the consideration hereinafter mentioned covenant and agree as follows:

1. **Letting of Premises.** The Landlord hereby leases to the Tenant and the Tenant hereby hires from the Landlord the following described premises, viz.:

Ground Floor, Southeastern Side, as more particularly shown on sketch attached hereto, plus that space in the basement directly beneath the ground floor space and the adjacent common corridor space as shown on the sketch, which is attached.
45-53 North Street
Unit 3
Middletown, New York

to be used as a retail store by Tenant.

2. **Term.** The Tenant shall be entitled to have and to hold the demised premises with the appurtenances, rights and privileges for a **five (5) year term** beginning on the first day of the month.

3. **Rent.** The annual rent for the five-year Term shall be **$9.00 per square foot** or **$1,537.50 per month**, commencing on or before the first day of the month for which the premises is to be rented. The **first one (a) month** of the initial Term shall be **rent free**.

4. **Utility Charges and Assessments.** Tenant is responsible for heat and electricity in its rented space, which shall be separately metered from the rest of the building. Tenant shall be responsible for a proportionate share of the common corridor area (calculated by square footage) for heat and electricity, which shall be billed to Tenant. Tenant is responsible for all other utilities, including, but not limited to, telephone, cable and internet services.

5. **Security**. The Tenant shall pay to the Landlord a security deposit in the sum of **one (1) month's rent** or **$1,537.50**. This sum shall secure the full and faithful performance by the Tenant of all of the terms, covenants and conditions of this Lease. This sum shall be returned to the Tenant upon the expiration of this Lease, provided the Tenant has fully and faithfully carried out all of its obligations under this Lease.

6. **Renewal.**

(a) This Lease may, at the option of the Tenant, be renewed for a **five (5) year** term beginning on the first day of the month following the expiration of the Term described in Paragraph 3, above, on the same terms and conditions as are specified herein, except that the rent shall be increased **in increments of $1.00 per square foot for each year of the renewal Term**, and except as may be modified hereinafter, by giving to the Landlord a written notice in the manner hereinafter provided of its intention to renew not later than **ninety (90) days** prior to the end of the term stated herein.

(b) This Lease may, at the option of the Tenant, be renewed for a **second** **five (5) year** term beginning on the first day of the month following expiration of the Renewal Term described in subparagraph (a), above, on the same terms and conditions as are specified herein, except that the rent shall be increased **in increments of $1.00 per square foot for each year of the renewal Term**, and except as may be modified hereinafter, by giving to the Landlord a written notice in the manner hereinafter provided of its intention to renew not later than **ninety (90) days** prior to the end of the first renewal term.

7. **Common corridor area**.

(a) The Tenant and other tenants are **jointly responsible** for maintenance and cleaning of the common area, with the understanding that any failure to do so will be remedied by the City and billed to the Tenants. The Tenant and other tenants are also jointly responsible for opening and closing the common area; the first tenant to arrive shall open the common area and the last tenant to leave shall close it.

(b) The Landlord shall provide pest control services for the common area and bill the Tenant and other tenants proportionately based upon square footage of the demised premises.

(c) Tenant shall have the use of the **adjacent three (3) foot space** in the common corridor area (extending outward from the rental space) for tables and chairs at no extra rent.

8. **Basement.** The Tenant shall have access and use of the basement area directly below its premises and the adjacent common corridor space as shown on the sketch, which is attached, at no extra rent. The Tenant is responsible for maintenance and cleaning of its basement area, with the understanding that any failure to do so will be remedied by the City and billed to the Tenant.

9. **Maintenance.**

(a) The Tenant must maintain the demised premises in a clean and orderly fashion at all times.

(b) The Tenant must provide for preventive pest control services in its demised premises.

10. **Repairs and Improvements.**

(a) The Landlord shall, prior to the commencement of the Term, install heating, lighting and air conditioning systems in the demised premises.

(b) The Landlord shall take care of the demised premises, fixtures and appurtenances, and Landlord shall make all repairs necessary to put and keep the premises in good order and condition at its own cost and expense, except for those repairs incidental to the Tenant's day-to-day occupancy of the demised premises (including maintenance and upkeep of the operating systems). All damage or injury to the demised premises and to the fixtures, appurtenances and equipment thereof or to the building or to its fixtures, appurtenances and equipment which may be caused by the carelessness, omission, neglect, improper conduct or other act of the Tenant or its employees, agents or visitors (whether invited or uninvited) shall be repaired, restored or replaced by the Tenant. Reasonable wear and tear shall be excepted from the Tenant's obligation and responsibility to the condition of the demised premises.

(c) The Tenant shall at the end of the term quit and surrender the demised premises in as good order and condition as when received, normal wear and tear and damage by the elements excepted. It is understood and agreed by and between the parties hereto that during the lease period the Tenant reserves the right to make minor alterations or installations, including but not limited to, installation of telephone and/or electrical outlets, erection or relocation of movable partitions, etc.

(d) The Tenant may make major improvements or alterations, provided that such improvements/alterations are (1) made with Landlord's consent, and (2) acceptance of the work by the Commissioner of Public Works. The costs of any such major improvements/alterations shall be borne by the Tenant.

(e) Any fixtures or equipment installed by the Landlord shall not be removed by the Tenant at any time unless the Landlord consents in writing.

11. **Access.**

(a) The Landlord shall be responsible for snow-plowing requirements for the entire term and any renewed terms of this lease. If the Landlord fails to promptly remove snow from the premises, Tenant may do so and receive a dollar-for-dollar credit against its rent obligation for any expenses incurred as a result thereof.

(b) The Tenant and other tenants will be allocated a **combined total** of **twelve (12) parking spots** at the rear of the building.

12. **Garbage disposal.** The Landlord shall supply a garbage dumpster to the Tenant and pick-up services six (6) days a week at no charge. The dumpster area will be located at the rear of the building, and the Tenant and other tenants must maintain this area in a clean and orderly fashion; a failure to do so will result in corrective action by the Landlord and billing of the Tenant proportionately to its rented space. In this dumpster area, the City will provide oil disposal at a charge to any tenant who utilizes it.

13. **Compliance.** The Landlord shall ensure that the premises comply with all laws, rules, orders, ordinances and regulations of any entity having jurisdiction over the premises. The Tenant, in its use of the demised premises, agrees to comply with all applicable laws, rules, orders, ordinances and regulations.

14. **Landlord's Right of Entry.** The Tenant shall permit the Landlord at all usual proper times to enter the demised premises for the purposes of inspection or sale; and suffer the Landlord to make repairs and improvements to all parts of the building and to comply with all governmental orders and requirements applicable to the building. The Tenant shall permit the Landlord during the ninety (90) days prior to the expiration of this Lease to place the usual notices of advertisement for rental upon the exterior of the demised premises, and to show the demised premises to prospective lessees. The Landlord, in exercising its rights under this Paragraph, shall not unreasonably interfere with the Tenant's access, use and occupancy of the premises.

15. **Quiet Enjoyment.** The Landlord covenants with the Tenant that the Tenant, upon complying with the terms of this Lease, shall and may peacefully and quietly enjoy the demised premises.

16. **Early Termination**. The Tenant shall have the right of early termination of this Lease, provided that the Tenant provides Landlord with **one hundred twenty (120) days prior notice** of its intent to terminate.

17. **Notice.** Any notices or demands from Landlord to Tenant or from Tenant to Landlord shall be in writing and shall be deemed duly served by regular mail, addressed to Tenant at the address set forth herein or such other address as Tenant shall have designated by notice in writing to the Landlord; if to the Landlord, at the address of the Landlord set forth herein, or such other address as Landlord shall have last designated by notice in writing to the Tenant. Notice shall be deemed served when mailed or when hand delivered.

18. **Personal Property.** Any and all articles of personal property including, but not limited to, business and trade fixtures, machinery, equipment, cabinet work, furniture, movable partitions, carpeting and water coolers, radio, owned or installed by the Tenant at its sole expense are and shall remain the property of the Tenant and may be removed by Tenant at any time during the term of this Lease. Upon expiration of this lease, Landlord may require the Tenant to remove all such personal property. If such property is removed at any time, the cost of repairing any damage to the building arising from such removal shall be paid by the Tenant.

19. **Signs.** The Tenant may post and maintain such signs and notices as is reasonably required to inform the public as to its location in the demised premises. All signs must be pre-approved by Landlord and by the applicable municipal building department and/or architectural review board.

20. **Subletting.** It is understood and agreed by and between the parties hereto that the Tenant may **not** sublet or assign any portion of the demised premises without the prior approval of the Landlord.

21. **Indemnification by Tenant.** The Tenant shall hold harmless and indemnify the Landlord and its officers, employees, agents to the fullest extent permitted by law from and against any and all liability, obligations, losses, claims and damages whatsoever, attributable to or caused by the negligence of Tenant or its employees or agents, provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Landlord are not incurred or do not result from the negligence or the intentional wrongdoing of the Landlord or any of its members, officers, agents or employees.

22. **Indemnification by Landlord.** The Landlord shall hold harmless and indemnify the Tenant and its officers, employees, agents to the fullest extent permitted by law from and against any and all liability, obligations, losses, claims and damages whatsoever, attributable to or caused by the negligence of Landlord or its employees or agents, provided that any such claims, causes of action, judgments, liabilities, damages, losses, costs or expenses of the Tenant are not incurred or do not result from the negligence or the intentional wrongdoing of the Tenant or any of its members, officers, agents or employees.

23. **Insurance**. The Tenant shall maintain throughout the term of this lease, and any renewal thereof, at its own cost and expense, **liability insurance** naming the Landlord as **additional insured and waiver of subrogation** with a **combined limit of One Million ($1,000,000.00/$2,000,000.00) Dollars** for bodily injury and property, and the Landlord shall be provided with a certificate of memorandum thereof prior to Tenant's occupancy. The Tenant shall also maintain throughout the term of this lease, and any renewal thereof, at its own cost and expense, **casualty insurance** sufficient to insure the value of goods and equipment stored or utilized in the demised premises or common areas by the Tenant, including betterments and improvements made by the Tenant, it being the express agreement of the parties hereto that the Landlord is exempt from any and all liability for any damage to property possessed by Tenant caused by or resulting from steam, electricity, gas, water, rain, ice, snow, wind, or any leak or flow from or into any part of the demised premises, or from any natural catastrophe or act of God, or from any other cause or happening whatsoever unless said damage be caused by or be due to the negligence of the Landlord or its officers, employees or agents.

24. **Casualty.** Tenant must give Landlord prompt notice of fire, accident, damage or dangerous or defective condition. Landlord is not required to repair or replace any equipment, fixtures, furnishings or decorations unless originally installed by Landlord. If the fire or other casualty is caused by an act of neglect of Tenant, Tenant=s employees or visitors (whether invited or uninvited), then all repairs must be made at Tenant's expense. Landlord has the right to demolish or rebuild the building if there is substantial damage by fire or other casualty that endangers the structural integrity of the building. Landlord may cancel this lease within thirty (30) days after the substantial fire or casualty by giving Tenant notice of Landlord's intention to demolish or rebuild. This lease will end thirty (30) days after Landlord's cancellation notice to Tenant. Tenant must deliver the demised premises to Landlord on or before the cancellation date in the notice. If the lease is cancelled, Landlord is not required to repair the premises or building. The cancellation does not release Tenant of liability in connection with the fire or casualty.

25. **Default.** If Tenant defaults with respect to any of the covenants herein contained, the Landlord may re-enter the premises by summary proceeding or otherwise, and the same to have again, re-possess and enjoy. The Tenant expressly waives the service of any notice in writing of intention to re-enter. Tenant shall not be deemed to be in default under this lease unless (A) in the case of a payment default, Tenant shall fail to cure such default within ten (10) days after Landlord shall have given Tenant written notice of such default, and (B) in the case of non-payment default, Tenant shall fail to cure such default within thirty (30) days after Landlord shall have given Tenant written notice of such default (or, if such non-payment default cannot reasonably be cured within such thirty (30) day period, Tenant shall have failed to commence such cure within such thirty (30) day period and, after such commencement, diligently pursued such cure to completion).

26. **Late Charge.** Notwithstanding the default provisions in Paragraph 25, above, in the event any payment of rent is not received **within fifteen (15) days** after it is due, a **late charge of 5% of the entire payment** shall be due to Landlord. Such late charge shall be paid with the next monthly rental payment.

IN WITNESS WHEREOF, the parties hereto have caused this Lease to be executed in counterparts the day and year first written above.

LANDLORD
CITY OF MIDDLETOWN

BY: Joseph M. DeStefano, Mayor

TENANT
Binghamton Health Campaign, Inc.

BY: Matthew Francis Gawors, CEO

CITY OF MIDDLETOWN, NEW YORK
COMMON COUNCIL
RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: Alderman Witt
Seconded by: Alderman Masi
Date of Adoption: September 3, 2024
Index No: 176-24

I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.

Richard P. McCormack
Clerk to the Common Council

Names	Ayes	Noes	Abstain	Absent
Ald. Tobin	x			
Ald. Jean-Francois				x
Ald. Johnson	x			
Ald. Wray	x			
Ald. Kleiner	x			
Ald. Green	x			
Ald. Witt	x			
Ald. Masi	x			
Pres. Rodrigues	x			
Total	8			1

I hereby approve the attached Resolution/Local Law.

Joseph M. DeStefano, Mayor

9/4/24
Date

Authorizes an Amendment to City Code to designate a Handicap Parking Spot in Front of 9 Sunnyside Avenue

BE IT RESOLVED that the Common Council of the City of Middletown authorizes an amendment to City Code to place place of a handicap parking spot in front of 9 Sunnyside Avenue.

Prepared by:
Rick McCormack, City Clerk

Attachments:
None