



**CITY OF MIDDLETOWN  
COMMON COUNCIL MEETING AGENDA  
SEPTEMBER 3, 2024**

1. PLEDGE OF ALLEGIANCE
2. ROLL CALL
3. APPROVAL OF MINUTES
  - 3.1. Accept the Minutes of August 20, 2024
4. CORRESPONDENCE, COMMUNICATION AND REPORTS
  - 4.1. Town of Wawayanda Public Hearing Notice: Zoning and Subdivision Proposed Local Law
5. FOR THE GOOD OF THE CITY
6. REMARKS OF THE MAYOR
7. REMARKS OF THE DEPARTMENT HEADS
8. PUBLIC HEARINGS AND GRIEVANCES
9. PETITIONS AND COMPLAINTS
10. REMARKS OF THE ALDERMAN AND REPORTS OF THE COMMITTEES
11. UNFINISHED BUSINESS
12. NEW BUSINESS
  - 166- Authorizes a Proposal from Barton & Loguidice for Amendment #5 for Additional  
24 Construction Administration & Observation Services for the Water System  
Improvements Project
  - 167- Resolution Declaring Parks Department Equipment as Surplus.  
24

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

169- Authorization to Transfer \$10,000 in the Police Department Budget  
24

170- Authorizes a \$26,652.87 Budget Transfer from the Water Fund  
24

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

172- Authorizes a \$12,467.95 Budget Transfer for Repairs at the Sewer Treatment Plant  
24

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

13. LOCAL LAWS

14. AUDIT OF CLAIMS AND ACCOUNTS

14.1. Resolution Authorizing the Accounts be Audited, Claims Adjusted, and the  
Treasurer be Authorized to Issue Warrants for their Payment

15. ADJOURNMENT



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: None  
Seconded by: None  
Date of Adoption: September 3, 2024  
Index No:

**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         |      |      |         |        |
| Ald. Jean-Francois |      |      |         |        |
| Ald. Johnson       |      |      |         |        |
| Ald. Wray          |      |      |         |        |
| Ald. Kleiner       |      |      |         |        |
| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

**Accept the Minutes of August 20, 2024**

Accept the Minutes of August 20, 2024

Prepared by:

**Attachments:**

|    |                     |
|----|---------------------|
| 1. | 08.20.24 CC Minutes |
|----|---------------------|



COMMON COUNCIL MEETING  
CITY OF MIDDLETOWN  
August 5, 2024 Minutes  
City Hall  
16 James Street  
Middletown, New York 10940

J. Miguel Rodrigues, President  
Ald. Jude Jean-Francois  
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

ALL: Pledge of Allegiance

PRESIDENT J. MIGUEL RODRIGUES: Please remain standing,  
as I ask for a moment of silence for former Police Commissioner  
Gene Vignola. May he rest in peace. Thank you.

Roll.

CITY CLERK: Alderman Tobin.

ALDERMAN SPARROW TOBIN: Here.

CITY CLERK: Alderman Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Here.

CITY CLERK: Alderman Johnson.

ALDERMAN PAUL JOHNSON: Here.

CITY CLERK: Alderwoman Wray.

ALDERWOMAN KATE WRAY: Here.

CITY CLERK: Alderman Kleiner.

ALDERMAN GERALD P. KLEINER: Here.

CITY CLERK: Alderman Green.

ALDERMAN ANDREW GREEN: Here.

CITY CLERK: Alderman Witt. Alderman Masi. President  
RODRIGUES?

PRESIDENT J. MIGUEL RODRIGUES: Here.

CITY CLERK: Quorum is present.

PRESIDENT J. MIGUEL RODRIGUES: Approval of minutes?

CITY CLERK: We need a motion for August 5th, 2024,  
please.

PRESIDENT J. MIGUEL RODRIGUES: Motion by Alderman

Jean-Francois. Seconded by Alderman Tobin. All in favor?

ALL: Aye.

PRESIDENT J. MIGUEL RODRIGUES: Correspondence.

CITY CLERK: We have a request for a subdivision approval from Orange Terrace LLC.

PRESIDENT J. MIGUEL RODRIGUES: Refer to Committee.

Okay, for the good of the city, I would like the mayor to come up.

MAYOR JOSEPH M. DESTEFANO: Good evening, everyone.

You know, with so much happening in the city over the last five to 10 years, with the opening of new businesses, and almost every week we're doing ribbon cuttings, and almost every rental property downtown that is available for commercial rent is either leased and occupied or being withheld off the market by the owner, not for the lack of interest, we sometimes forget the people who help bring us here.

Over the past couple of years, we started recognizing some of the businesses, like Tony Boffa's, when they went out of business. They retired. We recognized their accomplishments and contributions to the city. Maria's Beauty Fashion, like 40 years or 50 years in business here. And we also had Armando the tailor on the corner of King and North Street. But that was all after the fact.

So, working with Maria and the Economic Development Office, we felt that we would put together a program on a monthly

basis to recognize some of the current businesses that are still operating in the city.

And so, we decided for our first one in this round of recognitions, to acknowledge the work at Fuzion Barber Shop. They were established in 2004 by Raul Steele and I just -- and Idris Daniels. The current owner is Raymond Marquez, who started working at Fuzion in 2013. In 2017, Raul and Idris wanted to retire, offered the establishment to Raymond for a fee. In 2018, Raymond and Nicole purchased Fuzion Barber Shop.

In 2019, they renovated right here in downtown, made an additional commitment to being in our inner city in the downtown area. They added other merchandise type of activities into their business -- custom embroidery, merchandise, hosting events, participating in activities such as the backpack programs and things in our local schools, working with our veterans, and they loved being a part of the community.

So, I'd like to have the -- Raymond and Nicole come on up. And as a symbol of our appreciation here. And as I said, we're going to be doing this on a monthly basis. He's the lucky one because he's getting the more expensive plaque. In the future, they're going to be getting certificates of recognition. So, it's always good to be number one. So, we want to say thank you.

RAYMOND MARQUEZ: I'm a little nervous. So, I -- first and foremost, I want to thank my Lord and Savior. Without him,

it wouldn't be possible.

MAN 1: Amen. Amen.

RAYMOND MARQUEZ: Thank my wife next to me. This is amazing. Words can't explain what I'm feeling right now, but I came a long way just (indiscernible).

MAN 2: It's all right, bro. Take your time. Just keep it true. We love you, man.

MAN 3: That's right.

RAYMOND MARQUEZ: This is an amazing feeling. I just got to say it. I love everybody that's beyond me, all my supporters. Without them, there wouldn't be no Fuzion. I just really, really want to thank my two brothers in the back, man, Idris, and Raul.

I love you, brothers. I love you guys, because without you guys, it wouldn't be possible. You know? I just love everything about this shop, everything that it brings, the opportunity that it brings to the kids from the giving back, to the bookbags, to going to the high school, cutting for free, everything that we do. It's just amazing.

The opportunities that it opened up for other entrepreneurs, who worked at the shop, who got their own shops, like my brother over here, Jorge Vega. You know, he's out at Port Jervis. You know, we got Sean from 6 West, who actually came out of Fuzion also.

So, it just gives so many opportunities for the young

youth and those who are there with me right now to open up their own establishment and become entrepreneurs for themselves also. That's what Fuzion did for me.

Once again, I still want to thank my brother right there and my other brother. He flew all the way from Atlanta for this. It's amazing.

I got my cousin. I love you, cuz. I love you, love you, love you. My other brother, Mr. Williams, Brizzo, everybody who's here. Thank you. I love all you guys. Thank you so, so much.

After here, we will have an afterparty at Sadie's Bookstore, so if you want to come by. They got nice, good food. And I love you, love you, my brother. I love you. Keep shining, you hear me? Please, please. And that's about it, I guess, right? Love everyone who came. Thank you, guys.

(Indiscernible) --

MAYOR JOSEPH M. DESTEFANO: Congratulations.  
Congratulations.

MAN 4: Hang on, one more, one more, one more.

WOMAN 1: Go on, go ahead.

MAN 4: Damn, (indiscernible) --

WOMAN 1: Yes.

MAN 4: (Indiscernible) -- hey, Raul.

RAYMOND MARQUEZ: Hey, bro.

MAN 4: All right. He's here in the house, baby.

MAN 5: If you're free to leave.

WOMAN 2: Thank you.

RAYMOND MARQUEZ: Thank you. Thank you. Thank you.

MAYOR JOSEPH M. DESTEFANO: Thank you.

MAN 6: Bless, God bless.

WOMAN 2: I appreciate you. Thank you. Peace be with you. Thank you again.

MAN 7: Good night.

MAN 8: How long are you going to be in town? How long are you going to be in town?

MAN 9: I'm leaving in the morning.

MAN 8: Are you?

MAN 9: (indiscernible) --

WOMAN 3: They have quite the following.

MAN 10: Yeah, sure is.

(Background Conversations)

PRESIDENT J. MIGUEL RODRIGUES: All right. So, we're back with the good of the city. At this time, I would like to call up Dave and Anna from Run 4 Downtown.

DAVE MADDEN: Thank you, Mr. President. And wow, I mean, that was really cool, right? They've been down here for 20 years; we've been down here for 20 years. That was very cool. But how about this past weekend? This past weekend was absolutely phenomenal.

Every single piece of the Run 4 Downtown, the Marshall

& Sterling Insurance Run 4 Downtown was a record this year. It was the 18th year we've done this. It should've been 19, but we all know what happened in 2020.

But participants, be it runner, be it walker, be it Zumba participant, through the roof. Extra people from the community that came downtown, through the roof; restaurants, through the roof; sponsors, through the roof. This was an absolutely phenomenal weekend. We can't wait for next year.

Next year it's August 16th, 2025. But let's just try to thank some of the people that were here involved with the Run 4 Downtown. You've got the runners. You have the walkers. You have Zumba participants. Spectators out on the course, spectators are the finish line, spectators throughout downtown. Volunteers.

Groups came out from everywhere. Kiwanis, Lyons, you know, just huge groups. Middletown High School volleyball team, Middletown High School National Honors Society. Groups of volunteers, sponsors through the roof. We can't believe the outreach that people, organizations are making toward us to become a part of this event.

The restaurants -- we had 17 restaurants sampling food for the participants and for all the people that came downtown. City officials, your backing, I mean, the support of the city is phenomenal. Middletown Police, unbelievable. Fire Department, unbelievable. DPW. There are so many pieces to this puzzle, it

blows my mind, like, when these pieces all fall in place. Parks and Rec, Middletown High School, the Bid, Paramount Theater, Orange County Tourism giving us some money for promotional things.

And we can't do this without the support of the community, and the community is out there. They're out in front of their houses. They're cheering on the runners. They're cheering on the walkers. They're coming downtown and they're being a part of this amazing, amazing weekend.

I thank you all, and I really like -- usually I'm burned out by the end of this, but I'm so pumped up, I'm ready to go. My committee's going to kill me, but we're ready to go and start planning for 2025. Thank you, all.

PRESIDENT J. MIGUEL RODRIGUES: Great job. Thank you.

All right. Moving over to -- for the good of the city, anyone would like to address the Council, please step forward. You have three minutes. The clock will start. Please be respectful to everyone.

KELLY UHLER: Hello, good evening. My name is Kelly Uhler. I'm a registered nurse. I currently live in Kingston, New York. I just moved there this past August. I drove an hour to be here tonight, and I would like to talk to you about Good Cause Eviction.

Kingston has passed it. Beacon has passed it. I'd really like to see Middletown pass it. I have family members

that live in Middletown, and I lived outside -- 15 minutes outside of Middletown from 2001 to 2016, so 15 years of my life.

I lived in Ithaca for three years, and I started my career as a registered nurse working the pandemic in critical care, managing ventilators.

And I had an apartment for \$1,000 a month. I've stayed in that apartment for three years, consistently paid every single month. And at the end of my third year, my landlord approached me and said, we want to do some work on the kitchen. And I said, that's fine. I'd love to see a new kitchen. We've been here three years. He said, well, unfortunately I'm going to have to ask you to leave.

Another tenant in the building, it was a six-unit building. They also were paying about \$1,200 a month. They were also asked to leave in order for him to fix the skylight. Both tenants were very happy to stay there and to pay whatever rent increase it would be, but we were told we would have to leave.

Several days later, we saw both our apartments listed on Zillow for 50 percent more. I consider that to be predatory, and I would like to see people in Middletown have the right to safe housing without the fear of losing their job.

I worked in an impoverished community in a severely understaffed ICU, and I had planned to stay there for six months to another year. And when you look around at other housing, they had been in the \$1,600, \$1,700 range, and my husband is a farmer.

He makes minimum wage. You know, as someone with a college education, it's very difficult to afford housing.

And when you pay consistently, there should be no reason for someone to leave. So basically, starting as a new RN, to be fully transparent, I was making about \$1,500 every two weeks. So, my rent would've went from about half of my paycheck to about two-thirds of what I was making.

So, if we could do something -- now I live in Kingston and I feel safe living there, knowing that I can serve my community and not lose my housing at any time if I'm paying consistently. Let's see. I mean, together, we paid him almost \$94,000, between both tenants, and to just lose your housing like that just because he wants to raise it 50 percent, I just don't think that should be something that's allowed.

In college, you learn about Maslow's Hierarchy of Needs. There's psychological, safety, love, esteem, and self-actualization. And able to go up, to be able to have higher self-esteem, feeling loved and belonged, you need to be able to have the first two of those pillars, which is physiological, which would be food, shelter, and then safety.

So, by me losing my housing, that affected the first pillar, which would be shelter. And then safety needs, which would be employment as well as shelter.

So, I just would like to really see that passing Middletown, so that my family who lives in Middletown could stay

safely, save for a house, and be able to have a little extra money on the side to be able to go on vacation.

Dental care is very expensive. Like you shouldn't be worried, like, there's two months left in my lease, am I going to get kicked out for no reason because this guy who owns a building, which I don't, is going to raise it that much.

So, I just wanted to say, Good Cause Eviction, there are a lot of cities passing it. People deserve to be safe in their homes, to be able to give back to their community. I'd just like to see that pass.

With that being said, as an ICU nurse, I cannot overlook what is happening in Gaza right now. I would really like to see a ceasefire passed. In this city, as a nurse, I'm seeing people -- children specifically, because the Gazan population is 40 percent children, they are being operated on with no anesthetic, no clean water, and also no safe shelter.

A lot of cities are passing this. Be ahead of the times. Do the right thing, and try to stop sending money over to arms, when over \$350,000 of the City of Middletown is investing in arming Israel, when we could be investing it back in our own communities.

Thank you so much for your time. Have a good evening.

PRESIDENT J. MIGUEL RODRIGUES: Anyone else?

JASON NIETZSCHMANN: All right, good evening, City of Middletown. My name's Jason Nietzsche. I live in

Middletown's Fourth Ward, and I'm back again to talk about Good Cause, briefly. Just want to touch on a few things.

First off, I want to say congratulations to the City of Beacon. They actually just passed the strongest version of Good Cause Eviction just last night. So really, really excited about that. And it's thanks to the work of community members who are door knocking, they're going, speaking to their community members about Good Cause, who are really happy about that sort of grassroots movement.

It looks like Newburgh's actually going to be joining them when they vote unanimously to pass it on September 9th. I was just at their Common Council meeting because I work in Newburgh as well. I've worked doing social work with the homeless. I've worked at HONOR's homeless shelter. I now work at Access: Supports for Living. So, I have a lot of clients in Newburgh and Middletown.

So, we really want to see Good Cause passed. There's a reason why Kingston, Beacon, Albany, different places are passing this law. And so, I invite the Council to get in contact with the aldermen of other neighboring communities because there's no gimmicks, there's no tricks with this law. It simply protects our tenants from unfair evictions and egregious price hikes in their rent, thus preventing gentrification and the loss of our community.

So, yes, the mayor is right, that Good Cause Eviction

was sued and struck down. But that was only because there was no state law in place that allowed for Good Cause Eviction to stand. So, now that that's in place, you're seeing cities like Kingston, Beacon, a lot of cities are opting in, and we really, really need Middletown to opt in as well because we're just seeing so many people being evicted left and right.

I also just want to touch on -- oh, also, the portfolio size that we're asking for is to sponsor one unit, so that we can protect as many tenants as possible, so that there's no loopholes for landlords. So that's very important.

Also, I just want to mention for the past 11 weeks, I want to say, like 11 weeks or so, there's been a lot of community members in Middletown and the Hudson Valley area organizing and mobilizing for Palestinian liberation and the end to the death and destruction that we're seeing in Gaza. So, I did drop off the resolutions in everyone's mailbox this morning. So, if you haven't had a chance to look that over, please do. But I'm just going to touch on a few points from that resolution.

I do have my master's in public health. I care about scientific integrity. I helped draft this resolution with community members. It's very much factual, so I'm just going to go through a few points.

So, we want the City of Middletown to be united against all forms of violence and recognize that all life is precious. Pretty basis. I mean, there's nothing really like, up for debate

with that. I feel like everyone could agree with that.

We also want Middletown to be a safe and welcoming community that actively promotes peace and unity and respect for all residents. We want the Middletown City to condemn all forms of discrimination, not limited to anti-Semitism, anti-Arab racism, Islamophobia, fascism, anti-black racism, white supremacy, you name it, anti-Indigeneity, and xenophobia throughout the world.

We also express profound sorrow and condemnation for the tragic loss of both Palestinian and Israeli civilians, including children and elderly. We want our city to denounce the indiscriminate retaliation by the State of Israel, following October 7th.

And while the death toll, the official death toll in Gaza is 40,000 right now, the widely known, prestigious medical journal known as The Lancet estimates that the true number could be as high as 186,000 or more. And like Kelly was saying, this is mostly children that we're talking about here, so --

PRESIDENT J. MIGUEL RODRIGUES: Your time is up.

JASON: Okay, right. Thank you so much, you all.

PRESIDENT J. MIGUEL RODRIGUES: Thank you.

BILL CHAPLINSKY: Good evening. My name's Bill Chaplinsky, and I'd like to identify myself as a -- first of all, a proud Jew, and a proud Zionist, for which I will absolutely -- I will not renounce.

I -- the -- I would like to approach this in a way that we can actually start the dialogue. There is no question that nobody's in favor of killing children. There is no question nobody's in favor of doing war of any kind. But there has to be a context. There has to be some type of intelligence about the history of the situation.

First of all, we're talking about a ceasefire, and in quotations "genocide." I'm very impressed that we're here, the first day that the City of Middletown is going to adopt a foreign policy. It's quite interesting.

The problem is that genocide is used here and thrown out, and numbers like 186,000 sound very easy and they come off. But when we look at other type of genocide, we choose or actually used to ask questions. Why is this night different than any other night? Well, why is this so-called genocide different than anything else?

At present, in South Sudan -- and these are true factors right now -- there is one million people being in the -- suffering from famine and displacement. So, why doesn't that one qualify for that? Well, because it's not politically correct. The killing is being done by Arabs, and the victims are black. So that doesn't count.

The great peace-loving Hezbollah within the past 10 years actually killed -- and there document internationally -- 250,000 Syrians. And this is definitely proven. There are

thousands and hundreds of thousands of civilians from this conflict that are living in Turkey, in Jordan. But these are not particularly convenient because they're Arabs killing Arabs. And obviously, nobody actually cares about that.

When I hear things like, Free Palestine, Free Palestine from whom, from Hamas? The fact is that when we talk about the, again, this genocide, we have the type of thing going on in which nobody condemns Hamas. Hamas lives in tunnels. The distance of these tunnels is probably close to the whole New York City subway.

And they're down there while all the civilians are up there. And the fighters come out, and then they just retreat. What makes them as cowards.

As a matter of fact, many, many people, many Jews, and all people of good will have been in favor of a Palestinian state. The fact is, that a Palestinian state could have been there in 1948. It was rejected and were attacked by five different Arab countries. 1967, after the Six Day War, there was a pronouncement in Khartoum saying no peace, no recognition.

Then in 2000, thanks to the help from President Clinton, there was a plan that was almost -- and practically all that they have requested given, but Arafat did not want it.

Why is that the difference? Because the fact is that they did not include the destruction of Israel, and that's what they cannot accept anyway. The fact is, as I like to put it in

many, many ways, Palestinians, which are very proud people that deserves a lot better, should have gotten Mandela, and they got Arafat. And that's the curse.

As a matter of fact, with good will, ceasefires need two, not only. ceasefires need to have people that have been kidnapped, children, need to be free, not with any conditions. So yes, there is a lot that can be done.

But you cannot be one-sided. Study the history. I'll be happy to discuss every single thing, all of which is historically proven. And I think we'll come to a better place. And I thank you.

PRESIDENT J. MIGUEL RODRIGUES: Okay. Going forward, you'll hear a bell, and please wrap it up after that bell. Okay.

KYLE CONAWAY: Do I get time too like he got?

PRESIDENT J. MIGUEL RODRIGUES: Everybody got extra time.

KYLE CONAWAY: Good evening, my name is Kyle Conaway. I am an educator. I am a community activist. I love humanity. I love people. Part of what gets me up in the morning, I love teaching. I love teaching. I get excited.

I try to take that energy that I have for the school day outside in the community. And the operative word you find in the community is unity. As elected officials, you have the power to influence someone's experience and behavior.

Policy impacts behavior. No Middletown, no Newburgh,

none of these local cities are going to "impact" foreign policy. But what you're going to do is inspire people. You have been elected because someone thought you, or a group of people thought you were for their interest.

And are you interested in community? Nobody supports the death of children or supports the death of marginalized people. And doing the history lesson, nobody, whether they were Jewish, Arabic, black, women, nobody deserves to be marginalized just because of your skin color, your gender, your sexual preference.

What Middletown and other cities get to do is show their community you matter. Where you come from matters. We are considerate of you. Because the fact is, America has always been great. We don't need to make it great again. It's already great.

Part of the reason is great because we get to elect our leaders. And we get to elect the people who impact our experiences and regulate behaviors from people who are not considerate of others.

So, to pass a ceasefire resolution says what? It says that we want peace. You are also, besides impacting people's behavior through policy, you impact people's behavior ceremonially. Being a leader is significant.

I am also the president of the Newburgh/Highland Falls branch of the NAACP. I've learned in my position; I can't just

do what I want. Right? I have to be appropriate. I'm a father. I'm a teacher. I'm going to remind you I'm a teacher. I just -- I love teaching, yo.

I can't do what I want. I am a ceremonial person; more is caught than taught. Have you ever heard that? As a parent, they pick up more what you do than what you say. Your constituents and the people that your policies impact, more is caught than taught. When you pass this, it's saying if you're Arabic -- can I get two seconds?

If you come from this marginalized place because the issue is, our country is funding a situation that's hurting people. This is manifest destiny all over again. We want to be apologetic to the Native Americans because of -- we wanted to get to the West, I mean, we wanted to get to the Pacific Ocean.

We are seeing the same thing in real-time right now. This is manifest destiny all over again. What, we're going to be apologetic 100 years from now? Passing a resolution says you care about all people. When you're not discounting any group of people, you're saying you're trying to support a group of people who are getting the force of a machine that they really can't fight back.

And it's up to us in our privileged position to say hey, let's work. Let's do something different. Let's be about unity, community. And we can talk about history later. Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Thank you.

KATE: Hi, I'm not going to be that long, I promise. My name is Kate. And this is my daughter Julia. My family and I moved to Middletown almost three years ago. We love living here, and we definitely have that Middi pride.

I'm at home full-time with my now three and five-year-old. And last year, my five-year-old was selected from the lottery for a full day of universal pre-K. Being able to send my son to school for a full day was such a relief for me as his primary caregiver.

I have no family nearby. And being a single income household, we do not have any money for any kind of childcare. We don't have any extra money, so hence them being here with me tonight.

When I learned that close to \$388,000 of Middletown's federal taxpayer money is siphoned off and sent to Israel for weapons and whatnot, I wondered how many additional full-day pre-K spots that money could've funded. And the answer is 38. 38 families that could've been unburdened from the cost of childcare. I challenge you to invest in our community by passing a ceasefire resolution that demands our federal officials divest in the genocide that is being carried out by Israel. Thank you.

KEVIN GOMEZ: Good evening, members of the Common Council. My name is Kevin Gomez, member of the Middletown community. And like many of my esteemed friends and colleagues

here, also a parent and a father.

All of us want the best for our children, and a future blessed with peace. But do we want a real peace or a fictitious peace? Do you get peace by surrender or appeasement or by eliminating the root cause of danger, which October 7th reminded us, was terrorism?

On October 7th, there was a ceasefire. Israel was not in conflict with its neighbors. In fact, the only country in the Middle East where citizens, residents could freely gather and debate and discuss and disagree be they Arab, Hebrew, Israeli, Jewish, or Christian, where they invoked the name of Allah, Hashem, or Yeshua, it's Israel.

If we eliminate our most indispensable and trusted ally, who will be America's most trusted partner in world affairs? Sure, would it be right to support a ceasefire that at the end of the day could result in the destruction of a people, of a race, of a country that was born out of the ashes of a holocaust? Is that what we want to do?

I do agree that we should have peace and lasting peace in the Middle East. But again, the United States should not be the country that takes a dagger and strikes it in the back of its neighbor or the back of its best friend. We need to stand for what is right. Okay? If we want to bring peace to the Middle East, then Israel has the right, the right recognized by its neighbors, Egypt, and Jordan, to defend itself.

And as a country, we want to see our taxpayer dollars go back to investment and infrastructure, and our needs locally, of course, as opposed to addressing foreign wars, then let's stand by our ally so that it could defeat terrorism and hopefully bring back the peace and stability the people are -- were enjoying prior to that. Thank you very much. Prior to October 7th.

MAN 1: Hello. I was afraid to speak at first, but sometimes you got to stand up for what's right. I'm a Dominican Palestinian American, and I live here. And all I see in the news is kids dying, innocent kids.

I never knew they were terrorists. You know? Hospitals getting bombed, places with food getting bombed. Where does it stop? They talk about October 8th, but I've been talking about at least 40-something years, that they've been deprived, like living in a prison.

I have family there. All the time, people get arrested for no reason there, and have days, weeks, months that they haven't seen their poor families, you know. And to hear people talk like, kids don't matter, is sickening, you know.

I don't know how people could look at themselves in the mirrors and see all these kids dying, you know. It makes no sense. Allies to what? You know, it's innocent kids dying. You talk about a country that let you guys come in and live there, you know. And you're talking about stabbing people in the back,

I think you guys are, you know, the main people to do it.

But besides the point, I think this would be a nice resolution because people, man, these are innocent kids. These aren't just kids, man. They're innocent. You know? And that's all I have to say.

KAMEL JAMAL: Hello, how are you today? My name is Kamel Jamal. I am coming from Beacon, New York, where we just passed a ceasefire resolution.

I'm a local businessman in Beacon. And I can't tell you how much support that came out from the community, when we were able to pass the ceasefire.

The important thing is, is our community. The important thing is the generations that are going to follow. Right now, before you, we have an opportunity for a ceasefire, a ceasefire that's going to stop the killing, that's going to start the process for peace, regardless.

And we're talking about 100 years. We're not talking about since October 7th, but that's another story. Right now, you have an opportunity in your hand to talk to your kids that are going to ask you, this is going down in history. This is the worst thing to happen on our watch. We all bear witness. And this will hang on your neck. It hangs on my neck every day. I was born in a refugee camp to parents that were 1948 survivors.

I can't tell you the generational trauma that we deal with every day, that I try to take away from my kids as I raise

them here in America, for only this to happen, and now their trauma is going to be even worse. This is an opportunity for humanity to rise. This is an opportunity to dig down deep inside and feel your compassion and put an end to this. The higher governments are talking about ceasefire. Our presidential candidates are talking about peace, a ceasefire. It has to start at a local level.

And talking about our tax dollars, our tax dollars in every one of these cities, if you do the numbers, see how much is going to Israel. See how much is going to Israel. I'm not going to talk about their divesting or moving that. We want a ceasefire resolution to protect our community. It has worked for us in Beacon. It has worked for us in Newburgh. It will work here in Middletown.

The community will bind together and work together. I worked with the Hebrew Alliance in Beacon. We spoke after a resolution was passed. We hated each other for that moment, but peace prevails. And it starts at a local level. I encourage you all to dig down deep inside and know where I'm coming from.

This is not a political movement for me right now. This is about humanity, and we are all humans. We all have kids. If you don't have kids, we all have loved ones. And it's important to keep that in mind. And I thank you for your time. And I look forward to celebrating a ceasefire resolution with you.

MIKE GARDA: Good evening, everybody. Thanks to everyone for giving me the platform to share a little bit about my experience and why the ceasefire resolution is so important to me. My name is Mike Garda. I have been a resident of Orange County for over four years now. I am a licensed mental health counselor, and I work extensively with clients in Middletown and in Orange County.

My partner is a teacher at Middletown High School and is deeply connected to the community and this city. In my career, I have not seen anything that has struck my clients with such a sense of despair, hopelessness, apathy, and dread as much as the atrocities in Palestine.

I have had my clients tell me that they no longer wish to live on a planet where they have to bear witness to the deaths of hundreds of thousands of vulnerable people. Clients have expressed that they have a complete distrust in local, state, and national governments as the people in power continue to cooperate in an operation that displaces millions of people.

I have had my clients share that if the War in Gaza continues, that they will simply kill themselves because they have no hope for a future that will look like this. I have an ethical, moral and a personal duty to share that the war in Palestine has exacerbated an already out of control mental health crisis in our community.

And continuing to support this war is a local issue, as

it perpetuates a local mental health crisis, not like anything that I have seen as a counselor.

It's known that the City of Middletown taxpayers spent nearly \$400,000 each year to fund this war, and this money could be allocated to hire more school psychologists, more social workers to assist youth that are already feeling the weight of the world crashing down on them since the pandemic.

This money could go to properly staff programs at Crystal Run, at Cornerstone, and at Garnet Hospital, where the most vulnerable folks in our community have been struggling with their mental health.

This money could assist with access to childcare, affordable housing, and healthcare services, all of which have an undeniable link to mental health wellness. So, I ask the City of Middletown Common Council, join with Newburgh, Beacon, Kingston, and other cities in our state to put pressure on the government to do the right thing by passing the ceasefire resolution. Thanks.

ERIC BLUMENAU: One second. Good evening, Common Council. My name is Eric Blumenau. I'm -- I guess I'm a resident of Middletown, just on the other side, the other Zip code.

I know this is a very tough topic, but I -- we have to step back and look at the picture here. This is not our war. We did not create it. This is a war that's going on over 3,000

miles away. Okay? And yes, it hurts to the core for many people. And it brings out the worst in people or it brings out the best in people. And there are people that are in the middle.

As I came into this room tonight, I saw the plaque behind you. And it says, Incorporated City of Middletown 1888. Well, in 1878 Temple Sinai, it's former version now, came to town. For 136 years, Temple Sinai has been working hand-in-hand or has sat in the City of Middletown. Rabbi Schwab worked tirelessly on what's called the Interfaith Council.

And what's the Interfaith Council? It's a group of -- it's everybody. It's all ethnics. It's all religions. And he basically was a pioneer, a founder of this organization. There has been a great working community since that time.

Fast forward, unfortunately, times have changed. The world has changed. The community has changed. We have been able -- we have to do what we have to do to protect our community, to protect our shul.

Friday nights, we have a guard. We have a guard on Saturday. That's not living. But that's the new norm now. So, we do have a long history. Middletown has been a great home for me, for my children, for my wife, for my friends.

Again, the police department makes regular sweeps to our property. We have worked hand-in-hand, side-by-side with all members of the community, establishing, again, what's known as the Greater Interfaith Council.

We stand in solidarity on the -- at -- I forget the name -- the one for downtown park to light a menorah. Everyone is welcome. There's all inclusion. No one is excluded. It doesn't matter size, shape, color, religious background. Everyone is welcome.

It's evolved. We've worked hard to foster this relationship. As the president of the temple, which I am, unfortunately, or it's a -- you know it's a volunteer job, but I have a fiduciary responsibility to our organization, to be strong, to make sure that we operate, and we have open doors for anyone that wants to come there. It's all right, I'm almost wrapping up.

So, we really oppose a resolution that would actually create more division within the community. We've worked too hard to get to where we are today. And I think this would be a step backwards for a city as small as we are to take a position for a war that is not -- that we are not involved in.

We can't use this as a pawn for any short-sided political stunt. So, think wisely before we vote on this. Thank you.

MIRA ZARIA: Good evening, Council. I hope you all are doing well, and that you and your families are in good health. My name is Mira Zaria, and I'm a resident of Chester, New York. I did once upon a time live in Middletown during my childhood and spent a lot of my formative years here. And some of my favorite

memories are in this town.

I'm here today to speak on behalf of the ceasefire resolution. I consider myself a revolutionary, a visionary and a creative. I feel deeply and fully, and my imagination is vibrant. So, I want to paint you a picture based on the footage that I've seen that have come out of Gaza. It is uncomfortable, so please be mindful.

Sometimes, I like to close my eyes and put myself in Gaza. I can feel the sand and the rocks being underneath my bare feet, and I can feel the sun beating down on my skin.

And with my eyes closed, I see. I see the death and the carnage. I walk through these moments, these moments that I've seen before. Her head is under a building as her dead body dangles. He's a toddler grasping for his last breaths, from being shot in the neck.

She's a precious baby with her head caved in, in a way that I can hardly make out the features of her face. He is holding his lifeless father wrapped in white, lying with him and holding him close, and so tight as if to avoid their permanent departure. Closely listening to the roaring silence coming from his chest.

I do this to remind myself of what I'm fighting for, to protect my humanity. This has been everyday life in Gaza for the last 11 months. Imagine that was you, that someone shot your life partner in the face or presented the hollowed-out body of

your first-born child.

I've imagined it with my loved ones, my brother, my sister, my mother, my partner. I can't begin to describe to you how it feels simply to imagine that. Now imagine living it. This is someone's reality in Gaza as I speak to you now.

Whose peace would you be protecting? A friend holds a friend accountable and tells you when you're doing something wrong, us as the United States towards Israel. I beg you to see the humanity in Palestinians and what they are facing.

I beg you to look at Palestinians as if you are looking in a mirror, to see yourself in them. No one on God's green Earth deserves to experience such a hell on Earth. A ceasefire is needed immediately. We have the power to choose a different path, and that starts with recognizing our responsibility to take accountability and to act.

I would also like to read quotes from a book that explicitly discusses liberation psychology. Liberation psychologists understand that the health of individuals and the health of communities, the health of those who suffer from oppression and those who inflict it categorizes, which sometimes overlap in our complex world are inextricably intertwined.

When we are complicit in the harm of others, whether we are aware of it or not, it undermines our own humanity, our own capacity to behold. This is because we can't truly be well until everyone else is well.

None of us are alive today created systems of an equality, but it is up to us to figure out how to change them. Practice and liberation requires us to embody in everything that we do the values we wish to see in the world. This requires us to practice accountability, treat others with dignity, and deal with conflict consciously.

Accountability has to do with taking responsibility for our words and actions when we cause harm, taking the steps necessary to repair the relationships involved, and changing our behavior so that we do better going forward.

I would also like to read a quote from Thích Nhat Hanh. He was a Buddhist activist, who was deeply involved with Martin Luther King, and deeply involved in Vietnam during the Vietnam movement. He was very -- a very big voice for peace and seeing the humanity in everyone involved.

He said, "Sometimes nonaction is violence. If you allow others to kill and destroy, although you're not doing anything, you are also implicit in that violence. So, violence can be an action or a nonaction."

And just to end off, I would also like to read off a few quotes from the Bible that I personally love. "Learn to do good, seek justice, correct oppression, bring justice to the fatherless and plead the widow's cause. He who justifies the wicked and he who condemns the righteous are both like an abomination to the Lord.

Open your mouth for those who are mute, for the rights of those who are destitute. Open your mouth, judge righteously. Defend the rights of the poor and the needy."

I will end this off with, to ask the Councilmembers to take a look in the mirror. What kind of person are you really? What are your values worth? Are they things you just say to convince -- are they things we just say to convince ourselves that we are good people? Or are we actually that person?

I know that nobody here could look at what's happening in Gaza and feel pride in that or think that that is okay. It is one thing to say you have certain morals and to really truly think that you believe them, and it is one thing to live them consciously. Thank you.

DONALD GREEN: My name is Donald Green. I'm a resident of Middletown. I am in total agreement with a lot of things that I'm hearing from this side of the room.

Of course, none of us are in favor of mutilation and killing of children. None of us are in favor of war. None of us want to see this go on any longer than it has to. And certainly, we're all in favor of, in the end, a ceasefire resolution.

But just to point out the State of Israel actually proposed a ceasefire resolution to the Palestinians at least six times that I'm aware of since the 1930's.

MAN 12: No, that's false.

DONALD GREEN: And -- not false. You can Google it.

And even more recently --

PRESIDENT J. MIGUEL RODRIGUES: And let's be respectful.

DONALD GREEN: You'll have your chance. And even more recently, again, they have been told publicly that the only solution that our enemies are looking for is destruction of the State of Israel.

There's none of us who would be in favor of a ceasefire if somebody was breaking into our home with the intent to murder us. That's why this is happening. On October 6th, there was no need for a ceasefire because there wasn't a war.

MAN 13: (Indiscernible) --

JEFF BERKMAN: I'm Jeff Berkman, lifelong resident of Middletown. Pardon my voice. I'm a little sore. The resolution calls for a ceasefire. I'm reading the newspaper and watching the news on TV, that Secretary of State Blinken is calling to (indiscernible) the negotiating countries Doha and Qatar.

And I hear that the American position for the ceasefire, and the Israeli position are the same. So, the reason why there's no ceasefire going on right now is because Hamas hasn't acted in favor of it.

I see in the narrative that I read earlier that it was intended to be welcoming and unifying. Well, from my perspective, the resolution doesn't do either. People -- I hope some of you are from Middletown, I hear people that have

Middletown connections.

But for some others that want to give advice to the City of Middletown, I would have preferred if it was more of our own.

The health territory -- the health authorities that we talk about, when one speaker mentioned the 40,000 deaths, well, in the first place, every single death of any innocent civilian, Palestinian, Israeli, anybody, it's a tragedy. But I look at the 40,000 tragedies that are reported, and I see that it's by local health officials. Local health officials means Hamas. There was an election I think 17 years ago, the one election that happened in Gaza, and they elected Hamas.

So, it's tragic, but that's part of the history of this. There's plenty of mistakes on everybody's side. But also, when Hamas gives out the figures about casualties, they freely admit that they're talking about not just civilians, but combatants as well. And there's literally thousands of combatants.

So, I'm not saying that it was insignificant. It's a tragedy, like I said. But it's -- who's telling us what information, and can we rely on it. I have doubts.

All right. Another kind of a war strategy of Hamas is to embed themselves in civilian centers -- hospitals, schools. Recently it was a different terrorist group. It was a soccer field that was hit, and children get hurt and killed. And what

happened?

But let's look at what happened -- I'll speed it up. Let's remember October 7th. I mean, that's what broke the ceasefire and brought this -- these people into war. And the hideousness of that attack is like unparalleled. I mean, just massive misery and hate.

I wish that -- and by the way, who was it perpetrated against? Mostly young adults that went to a peace concert, and a Kibbutz (indiscernible) -- agriculture collectives, for those that don't know what I'm saying.

Since my time is out, but I'd just like to ask a question. It -- because I think it depends on what you -- how you see your role as an alderman. Do you see it as someone that safeguards the safety of our streets and our water supply?

We have great recreational opportunities for our residents. In other words, helping your neighbor. Is that your prime work here? Or do you want to have a different zone, like this resolution kind of urges? And that is that you become scholars of international law.

I think it's kind of obvious that this is not the right jurisdiction of government for this resolution. I think that Congress is the more appropriate. And they didn't ask for my opinion as to where else, though I'd be happy to talk to people that would want to.

At any rate, thank you for your attention, and I prayed

-- I pray, and I hope many of you can join me, that Secretary Blinken gets the desired result of having a ceasefire, with hostages being released.

People forget about hostages. They intruded on the border; they killed 1,200 Israelis --

MAN 14: (Indiscernible) --

JEFF BERKMAN: And --

MAN 15: (Indiscernible) --

JEFF BERKMAN: I knew I'd get heckled at least at one point. But God bless America. Thank you for your attention.

AMANDA CRUMP: Hi, good evening, Councilmembers. My name is Amanda Crump, and I live in the Fourth Ward here in Middletown. I'm here to speak about the ceasefire resolution.

First of all, I would like to encourage or invite anyone to come up and say exactly what they think is wrong with the resolution if they have read it. I think it's pretty neutral and I think it's just like a really easy ask for a ceasefire and for peace.

But anyways, my partner Jason and I have been protesting on 211 for 11 weeks now. Since we have been protesting, we have built a community together that I am so proud to be a part of.

Two-thirds of U.S. voters across the political spectrum support a permanent ceasefire in Gaza. Today, I am asking that you represent your city's demand and pass our ceasefire

resolution.

We are choosing to target this specific genocide because our tax dollars are funding it. To my knowledge, we are not funding the oppression that is occurring in Sudan.

Middletown sends \$387,961 a year to funding Israel's weapons. I can name countless things that this money could go towards, but here are just a few examples. This money could pay for 46 households with public housing for a year, 134 children receiving free or low-cost healthcare, four elementary school teacher's salaries, 1,104 households with solar electricity produced for a year, and 10 students with their loan debt canceled.

I work as a domestic violence advocate for Fearless in Newburgh, and I can tell you how desperately our program and other social programs could use that money. The turnover for people in social work is outstanding because the wages are not livable. The general funding as well is very limited, and at times, we struggle to help our clients be financially sustainable, even though the situation they ended up in was because someone took full advantage of them and left them with nothing.

I call upon the Council to stand up for your community and make our voices be heard. This money should be going back into our community and not funding the countless bombs that have caused mass death and destruction as well as pollution. Please

think of your community.

I also would like to address the kind of verbal abuse that we have experienced while protesting. Many people have driven past us and said things like, kill them all, kill yourself, eff Palestine, shut the eff up, I hope you die, go get a job, which always strikes me as strange, because we protest on a Sunday and most people work a 9:00 to 5:00, regardless.

And people have called us slurs and names like, excuse my language, faggots, retards, losers, idiots. These are just a few examples. But the most common is just people who drive by and say eff you.

I as an American Jew have felt unsafe in my community protesting for Palestine, and so have the rest of my friends and fellow protestors. It is one thing to disagree and have a conversation, but it is another to sabotage and yell obscenities and personally hurt and discourage people who are just exercising their free speech.

I am fearful for the people that stand with Israel and the horrendous things that they have done. I am fearful because these same people have revealed their inner thoughts to us and shown that there is deep-seeded hate and violence in their hearts.

If you disagree with us, then it is either you're in denial and refuse to see the violence and destruction that has been circulating all of our social medias, or you have been lied

to that being anti-Zionist and anti-Semitic are the same, which they are not.

You may have been fed misinformation and do not know that the displacement of Palestinians and the killing of Palestinians has been going on since before the 1948 Nakba Massacre. There has not been a ceasefire. This has been ongoing.

Or you may genuinely somebody someone who is racist, who believes that the 2,000 lives lost by Israelis are more valuable than the 40,000 lives lost by Palestinians, and the countless homes, schools, workplaces, and stores that have been destroyed.

I also would like to reference the death count published by The Lancet, which includes some of the people that cannot be counted because they are buried beneath the rubble. And that number is 186,000. And this is just the count since October 2023. This is not counting the murders that have been occurring since long before that.

I have been told by people that I should just stop, that I cannot make a difference with my voice. I am here today asking that you be on the right side of history. I am asking that you recognize our voices and that you recognize the Palestinian people.

People in America are losing hope everywhere. This is the one big thing we can do to make a difference. I ask that you

allow us to make a difference. I ask that you prove to us that our voices matter, and that the Palestinian lives matter, and that you join us in standing up against injustice.

I also would quickly like to address Good Cause Eviction by sharing a quick example of what has happened to many --

PRESIDENT J. MIGUEL RODRIGUES: Your time is up; your time is up.

AMANDA CRUMP: Okay, thank you.

ANDREW HILLER: Hi, my name's Andrew Hiller. I live in Rosendale and was not planning to speak here tonight, actually. I do a lot of housing organizing in the mid-Hudson Valley and was here just to support all the (indiscernible) for the Good Cause conversation.

But it really just pains me to hear my fellow like, Jewish community spreading misinformation about the history of the conflict in Israel/Palestine, and really supporting -- or at least providing the smokescreen so a genocide can continue to happen.

So first, I'll just say please do pass Good Cause. There is a really terrible housing crisis, obviously in this community. I'm sure you're all aware of it. People are suffering from unfair evictions and rent increases. And it's really critical protection to keep this community safe for working class people and keep them in their homes.

Regarding Israel/Palestine, I urge you, please, to pass the ceasefire resolution. I'm the Jewish grandson of two Holocaust survivors. My mother was born in Bergen-Belsen as a displaced person. And to hear, you know, my community come up here and equivocate about whether 40,000 people have died or not is really, really upsetting to me.

Just for the record, you know, in every conflict up to October 7th, the civilian administration in Gaza has given a death toll. It's been proven to be accurate by the United Nations after the fact many, many times. And, if anything, it -- the 40,000 is a gross understatement of the actual numbers.

As Amanda was saying, a medical journal recently like, did an analysis that shows that people who are killed, not through direct causes like bombing, but through starvation, or not being able to get medical services, the number is much closer to 186,000.

I also have family living in Israel/Palestine. And it was extremely painful to watch the events of October 7th unfold. You know, it's like, pretty much impossible to hear details of what happened on that day and not think about my sister and her kids, my nieces, and nephews and all those horrible things happening to them.

But Judaism also teaches me that all human lives are precious. And so, the violent deaths of tens of thousands of Gazan civilians is no less painful to watch. And it's just

really horrifying that our government supports and funds the brutal collective punishment of over two million people.

We know that millions of Gazans have been cut off from food, water, and electricity. All 2.3 million Gazans are at crisis levels of food and security. Half a million are starving. Children who are lucky enough to not be killed by bombs are dying of malnutrition.

Every Gazan nearly has been displaced from their home multiple times. Scores of aid workers and journalists have been killed. 1.9 million Gazans have been displaced. And it's impossible to know how many civilians have been killed so far.

I'll just, you know, wrap by saying that I know you're hearing from lots of supporters of Israel right now, that Israel must be allowed to continue its campaign against Gaza for the safety of all Jews everywhere. The historical oppression of Jews is a tragedy, but it does not justify this atrocity. If anything, it teaches us that this atrocity must be stopped. And the fact that Israel carries it out in the name of Jewish people makes both Israelis and Jews around the world less safe, not more. Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Okay, anyone else?

JOSEPH WILLIAM GARITO: Good evening, everybody. My name is Joseph William Garito. I'm a lifetime Middletown resident. I was born at Horton Hospital November 15th, 8:33 a.m. in the morning. You know I've been here.

I support these people. I support the people of Palestine. I support the safety of all Jews everywhere. I believe that this is the right thing to do. I didn't write nothing. The truth is that I've been involved in this cause for years, for a long time.

And I know a child, who he's not a kid anymore, and a lot of his family is dead. And I don't know what to do. Sometimes I feel like I gave them false hope because I met him like, 10 years ago. I was at a rally in New York, and I'm just - - I'm, Christ, I'm too ashamed to even message him and see how he's doing.

You know, I had a lot of family issues and stuff come up, and I walked away from the cause for a little bit. And it just hurts me to see it all come down to this because I told him that things were going to be okay, and we were going to fight for this and make it happen.

And he can't even return home. He has family members; he don't even know if they're alive or dead. It's horrible. And I just -- I'm sorry. It's just -- you see damages. You know the story. You got these people, they're in a city and it's walled in. And what are they going to do? You know?

You could say that they elected their government, but you know, say if Russia takes over and drops bombs on America and blames us because we voted for Biden, oh, it's the Americans voted for Biden. It just sounds -- it's the silliest thing I've

ever heard. It just doesn't make any sense.

There's so many innocent people -- so many people are just in danger of famine, disease. And the ceasefire, it helps so everything can calm down and they could bring the aid in and help people. You can't say you're wiping out your enemy when you can't even distinguish who they are, and you're not even looking.

There's so many bombs going off, so -- it's -- they just sold \$18 billion worth of arms to Israel. And where are they dropping them? They can't even really explain it.

I just -- I can't let this cause go, and I keep seeing this kid's face. And it's just -- I don't know. I support everything that they're talking about. I want everyone to be safe. I believe that, you know, I don't know much about the Jewish faith. But Zionism, if you believe that is God has given you the land and it should be God. It shouldn't be American bombs. It shouldn't be walls. It shouldn't be cameras. It shouldn't be streets for Jews and that Arabs can't walk on. It shouldn't be guns pointed in people's faces. It shouldn't be checkpoints. It shouldn't be people missing in prisons for months. It's just -- it's too much.

And you know, I got a lot on me, you know, and I'm just letting it out, but I'm just trying to be real. It's too much. It's just -- it needs to be passed on a local level, so everyone knows. And we need to push it up. All right? Thank you very much. I'm sorry -- I didn't really have nothing written down,

but I want to say thank you to everybody. Okay?

PRESIDENT J. MIGUEL RODRIGUES: I'm going to stop you right there. You only get -- talk once.

WOMAN 4: Okay.

PRESIDENT J. MIGUEL RODRIGUES: You can't go up to the mic again.

WOMAN 4: Okay, (indiscernible) there's --

PRESIDENT J. MIGUEL RODRIGUES: Okay? Nope. You got -- we're up for the next one and that's it. Public comment. All right. Hearing none, mayor?

MAYOR JOSEPH M. DESTEFANO: Well, good evening once again. Just to -- Maria if you could fast-forward to the Randy McLean sign -- slide. You know, this is what America was about, where people can come to their -- to the public square.

Tonight, it's the Common Council room, and voice their opinions. Usually, we get local issues. Once in a while, we do have national issues and international issues that come up. And we all have our individual opinions. And -- but it's important that the voices be heard tonight on both sides.

I believe that there were some contradictions in some of the discussions from this side of the room. One, I heard that we should pass a resolution because everyone supports it in Middletown, yet the one young lady was saying about all the harassment that their group is getting when they're picketing on Sundays by numerous cars, the name-calling, and so on.

So, we have -- just in my own little world here in Middletown, and my office, you know, we have many individuals, we have many groups, they've contacted me on this issue over the last several months. It's obviously a very divisive issue. We all have opinions on national issues, international issues. And once in a while, as I said, this Council does chime in as a body. It's rare, but it does happen.

I believe that it's -- we all can agree that we would like to see the hostages freed. We would like to see a ceasefire put in place ASAP. We'd also like to see a permanent solution to the crisis in the Middle East.

But the comments this evening, or not all, but quite a few of the comments this evening, and the emails and the -- some of the demands on the resolution -- someone said, well, what in the resolution don't you like. Well, quite a bit of it. You're not talking -- you're not asking for a ceasefire. You're asking for more than a ceasefire. And you can read it yourself on your "therefore, be it resolves".

But the bigger question is, is what is our primary responsibility as municipal leaders? Is it to bring people together? Is it to listen to people when there are national issues or international issues are on -- going on, and give them that platform, give them the town square, give them the opportunity for them to convince their neighbors.

It's not up to me or, I don't believe, you, to tell

somebody how they should think about the Middle East crisis or any international issue. I can voice my opinion individually, and I do. But I don't need someone to come here and tell me that by not doing so, that we're doing something morally incorrect.

It's not my responsibility to talk to your kids. It's your responsibility to talk to your kids. That's like saying an athlete is the icon for your kids, and the -- you know, you want your kids to emulate certain athletes, but when their behavior goes wrong you sort of back off and say, hey, you know, it's the parents' responsibility, it's not the athlete's responsibility. It might be a bad analogy, but it's there.

But again, what is our responsibility as local elected officials? And my -- I view it as a bringing the community together, providing safety and security for our local residents, addressing the day-to-day operations of the city, addressing whether a neighborhood is having speeding problems, or their kids can't get into a summer youth program, or providing programs such as that.

This past week, this guy on the screen here, Randy McLean, he's a city employee, he's also a volunteer fire chief. And Randy, along with a couple of police officers saved a woman from a burning home this past week. Five people were injured, one died. When Randy, who lived around the corner, was there within one minute, as a volunteer, took the ladder off the truck, knocked down a fence with others, climbed up and rescued this

woman from a porch. He didn't know if she was a Jew, a Muslim, black, white at the time. He just knew there was somebody on the roof screaming that they needed to be rescued because of the fire.

That is part of our responsibility as local elected officials. I've had meetings with representatives of the Jewish Federation over the last several months, concerned about safety issues. I think you heard Mr. Blumenau talk about the conditions at the temple on Fridays and Saturdays, the need to have security. That's real fear. That's fear because we get notices about things that are going on in this country, and especially in cities, in large cities, where there are a -- where temples are present, and it raises a security concern for people who are going to temple.

So, we do listen to them, and we do try to address their concerns. But at the same time, last week, I met with a group of Muslim women, a Muslim women's organization, to discuss how we can help them with their mission.

They're a new group. They're forming to provide ESL training for the women in their community, to try to arrange meeting space, and other ways that they've said to us, or said to me and Maria I think was present with me, that -- how we as a community can help them accomplish their mission.

That is a role that we in local government can play. I didn't say because I don't like what's going on in Gaza, I have a

side in Gaza on either one of those two groups, that I don't want to listen to what you have to say, or that I'm going to pass a resolution opposing your point of view on something on an international basis. I sat down, I listened. And we're trying to work with both of those groups.

Our police department recently -- has retained Stevenson Monterey on a grant through Senator Skoufis' office. And his primary role is to coordinate services related to police activity for victims of crime, work with the Fearless program -- I heard the one young lady say that she works with Fearless -- for the domestic programs, domestic violence programs, through the PV -- PD, along with other programs to divert our youth from criminal activity. Those are local activities that we, as a City Council, need to address.

We also meet with the Soccer Club, which is mostly a ethnic group, primarily Latin American, and we also met with Youth Football, because they share fields. And over time, we try to get them to work together to coordinate schedules, so that both groups can enjoy some of the new physical activity -- new plans that we built, such as Wolslayer Field, so both groups of people can join them. But we didn't sit down and say, hey, most of these kids are not Middletown kids or weren't born here in Middletown, so therefore, we're not going to -- we're going to give priority to the football players.

I mean, it's -- we don't look at things that way. We

look at people as people. So those are some of the things that we in city, or especially small city government do. We're here to listen. We're here to give a forum to express your opinions. And you had a -- plenty of time tonight. The Council President was kind enough to go beyond the three minutes for I think every one of the speakers.

And while some of you, and may be very knowledgeable about foreign policy, some of us individually have some foreign policy background or follow the CNN, MSNBC, or Fox News, whatever your channel is of choice, and watch it diligently to learn about what's going on in the world. And many cities have passed resolutions that also promote misinformation about what happened on October 7th and since during this war in the Middle East.

I'm not here to debate the war in Middletown, New York. I believe we should stick to our mission as a Common Council, as a city government. We should keep meeting with local groups. And I would be more than happy to listen to more -- to what the -- both groups have to say on this issue, welcome them back to future Common Council meetings if they so choose because they are not only speaking to us, you're also speaking to kids. You're also speaking to families in the Greater Middletown area. And it's your job to sell your position. Because not everybody -- the 30,000 people in Middletown don't agree with you.

I don't know who they agree with because we don't have any polling data to say that, but -- and it's not even the issue

of polling. It's an individual choice of how you come down on this issue. It's not something that we in the City of Middletown can dictate to Washington.

So, sticking to our mission, bringing the community together, not to promote hate -- we do not promote hate. We try to bring people together. We don't support racist conspiracy theories. And our job is to protect our residents. And by doing all of those things, that's exactly what we do.

The place for action based on whatever side of this issue you are, you know, you are on is Washington, D.C. And you all have the opportunity to voice your opinions on this in November.

And just another point of factual clarification, the City of Middletown -- and I know what you're coming from, some analysis of maybe federal budgets that you have done about all the income taxes that are paid by Middletown residents, and a portion of it going to Washington.

But I want to clarify for those who are watching, the City of Middletown does not send money to Washington, D.C. for the purpose of buying weapons. We all pay individual taxes as property -- or not as property owners, but as employees or workers. And I think they came up with some kind of formula, and it could be accurate, may not be accurate, I don't know. But we don't send money to Washington, D.C. for the purpose of sending arms to Israel. We pay taxes for national defense, for Medicare,

Medicaid, all those good things. But so, we as a city, as a community did not send money to Washington.

So, talk to your kids. You've talked to us. If you'd like to come back and talk to us again, feel free to do so. There's an Interfaith Council in the City of Middletown. Feel free to contact them, speak to them also.

But I did notice that the majority of people who spoke in support of this resolution are not from Middletown. And I think all of us as individuals have heard from our constituents. If we're going to measure whether we're going to put forth a resolution as on an issue like this, I think I would need to hear more from the people in the City of Middletown than I would need to hear from someone from Rosendale or Chester or Beacon or any of these other communities.

The other thing that was said is that I don't believe that the group that dropped this resolution off has identified who they are, because everyone spoke the same tongue for basically -- so, it's obviously an organized event.

And because the same facts don't just get out there where everyone did the same calculation. And I know that there are groups out there that are conservative. There's also groups that are very liberal and leftist. Conservative, left, right, whatever you want to, do your politics. But I think it's important when you come up to a meeting, a public meeting, you identify who you are and speak truth. If you're going to want us

to give your words any credibility, I think you should have identified yourself as members of the Democratic Socialists of America, because that's some of the previous correspondences have done that. They have identified DSA.

Now I may be wrong, the DSA references in some of the literature might not be the Democratic Socialists of America. But I think it's important to come up here and say who you are, who you're representing, where your data came from.

There's obviously some statistical differences. There are factual differences because we have 186,000 dead, and then we have another person in the same group saying 40,000 dead. So, I just don't know where the information's coming from.

So, if it's coming from the DSA, and you'd like to send us more information and data on that, I'd be more than welcome to read it, and to engage in that on a personal level. But I think it's the wrong thing to do on a city level.

So that's my thoughts on that issue. I thought it was important for me to chime in, since the -- we had well over probably an hour and a half, an hour, and 45 minutes of -- or an hour and a half of conversation from the public.

And I really do appreciate everyone coming tonight and voicing their opinions. So, let's go back to the beginning here, Maria. And just to touch the Run 4 Downtown, you know, Randy and Dave and Anna Madden really have done such an outstanding job with this race, 18 years. And you know, Dave doesn't pat himself

on the back enough, but we really appreciate the efforts that were put in this year.

We had approximately 800 runners, as he said. The sponsors and the -- these are the main sponsors of the event. And this is all through the private donations to the Run 4 Downtown Committee. The Run 4 Downtown Committee takes this money that they make, and then they put it into projects in downtown. They have done the clock at Run 4 Downtown Park. They've contributed money to the pavilion, \$60,000, I believe, or \$65,000 to the pavilion at Erie Way. This year, they've given money for the veteran -- for the fireman's statue, Fireman Joe, that will be going back up, hopefully soon. And I think this year's project is some improvements in Thrall Park, in the Thrall Park area.

So, we need to thank them. We need to thank these businesses that are on the screen here. Those are the large sponsors. These are also businesses that participated. And thank all of the people who came and participated not only in the race, but in the post-race activities. So, thank you so much.

This is the Committee, Dave, and Anna, in the middle, and they do put a lot of time in, a lot of effort. And they don't get patted on the back enough, but they do it year-round. Dave said they're going to start soon. And they do a great job for our community and a lot of an awareness that comes in.

A lot of people that came in saw the activity that's

going on in the city. Some new businesses. One that I know specifically was considering coming into Middletown, into the downtown area, and it looks like after the Run 4 Downtown that they made their decision that they will be coming into downtown.

So, we're just waiting on some paperwork to go through on that. So, that has a positive effect all over the place for us in the city, so thank you Dave, Anna, and the Committee, and all the sponsors and volunteers.

I did talk about Randy a bit, but -- and just let me tell you what he did. The call came in at 5:23 a.m. And Randy was the -- or is the First Assistant Chief. Randy lives on Lake Avenue. The fire was on Napa Avenue, which is a block away.

He arrived on the scene within a minute. And Chief McLean radioed in that there was a working fire, and he transmitted for a second alarm to come for additional help.

Immediately after the radio transmission, Chief McLean again radioed in, notifying first responders that there was a report of an entrapment on the second floor. Chief McLean then ran back to the back of the house, where he saw the trapped female on the second-floor roof, and confined -- and confirmed the entrapment.

With the assistance of Middletown Police Officer Andrew Sciandra, Chief McLean immediately grabbed the ladder off of Engine 1. He knocked down -- the two of them knocked over a fence, placed the ladder, and Chief McLean then ascended to the -

- on the ladder and rescued the lady on the roof. He was able to escort the female down the stairs, or down the ladder to safety, and moments before the area was occupied -- that was occupying -- she occupied became engulfed in flames.

Lieutenant Harrier from the Middletown Police Department has confirmed the role of the officers, of Officer Sciandra, along with Officer Reyes and Officer Hurley.

So, I wanted to publicly acknowledge them and ask that the Common Council invite them to a future meeting with some kind of -- and we can give them some kind of accommodation for their heroic actions. So that would be at a future meeting for the Council President to set.

O&W. I know Jerry's going to ask about it, so I'm going to give it to you. You've seen the work that's been going on at O&W. This is all part of the phase one project. As you know, we were confident that we hired a company, CNS Engineers out of Syracuse, who are experts in this restoration of these buildings, working with historic tax credits, and all of the different potential funding sources.

What -- they initially could -- the building is in such horrible shape; the original analysis was done mostly with drones on the inside to determine the status of -- the condition of the building. We then appropriated -- I think this bid was \$1.8 million to do some shoring, restoration, a remediation of asbestos and other potential problems, and clearing away the

loose debris. So, we're in that process now.

At some point in the near future, I think within a couple weeks, we will then be at a stall time, because then the National Parks Service, along with the State Historic Preservation people will come in with our engineers, and they will be physically able to go into the building to see what needs to be saved, what -- and what can be saved and what can't be saved and make determinations on that.

The engineers will then come up with cost estimates. And that's when we all have to make a decision as a community, and as a community whether we want to continue to invest in this structure or whether it would have to be torn down.

Our hope is that we're going to be able to save this building. And at least it looks that way at this point. There are serious problems with it. You don't need to be an engineer to look at it and determine that we don't have serious problems. We do.

But we also have serious money coming in from other governmental sources, well over \$15 million in state and federal grants. Assemblywoman Gunther was able to secure the largest grant at this point, of \$4.1 million. And Senator Skoufis is trying to (indiscernible) with some buckos, too.

We're hoping and confident that the historic tax credits will be applied by the SHPO and the National Parks Service for the structure that brings in additional money to the

project. So, we're very confident we have a tenant that will take the entire building at a decent rent. So, it's a matter of getting this building fixed so it's habitable to certain standards, but it also at the same time, restored to its original status, which thus the historic tax credits.

Without the restoration of the building to the original structure, the historic tax credits are not available. So, for example, some have questioned the north end of the building, where they had the fire maybe 10, 15 years ago. That is a shell right now, no roof and is a shell. At this point, the National Parks Service has determined that that must be restored. And that adds a significant cost to the restoration of the project.

We're hoping though that when everything comes together now, when they're able to get into the building, evaluate the condition and to look at the -- what would be in the best interests of saving this building, they'll make the right determinations for our city and for the building and for the historical significance of retaining buildings such as this. So, we'll know after I think within a -- it's a 75-day process. I think SHPO, which is the State Historic Preservation, does the -- an evaluation and makes recommendations, and that goes on to the National Parks Service. And they have 45 days. It might be reversed. It might be Parks first and then SHPO. I'm not sure, but it's a total of 75 days.

So, before the winter, we'll know what we're doing with

this building, where we're going, and hopefully, and I'm still confident that we will be able to save the building. So that's where we're at with that (indiscernible).

The Dolson Town Quarter redevelopment, at our last meeting we had some residents, a few from Middletown, some from Waywayanda. We've also had calls from the Town of Waywayanda residents regarding the development along that Route 6 corridor and the Dolson Town corridor.

The first projects that came up on Dolson Town, there was a trash transfer station, along with some warehousing. We did hire a CDM Smith, who is our consultants on it to review the process.

You know, New York State is a home (indiscernible) state. So, we don't have a lot of say in whether a project is a good project for a community or a bad project for a community. Same as Waywayanda doesn't have a lot of say on what we like to see in our community. But there is a process. It's called SEQR, and we have the opportunity to comment, and we do.

So, at this point with the Dolson Town project, our consultant determined that it was not in the best interest of the city to pursue any action against Waywayanda, that they were doing things correctly. We might not have agreed with him, but they were doing things correctly. They did their generic environmental impact statement, and they were addressing the traffic and all of the issues that we were raising in our initial

responses to them.

Apparently now that there's a number of additional warehouses that are being proposed on Route 6, and we're waiting for our consultants to get back to us to see what they would recommend about updating this study now to include the Route 6 corridor.

I know, I did forward all of our information to the local advocates that were involved in this project in Waywayanda. They are organized and give them access to whatever information that we have, and we'll continue to monitor it.

But the advice from CDM Smith was that the city would spend in excess of \$250,000 in order to try to fight the Dolson Town projects, and our results would not be good. So, anyone with any common sense will say, we'll have to rely on the Waywayanda Planning Board and the Waywayanda Town Board to do the right thing. That's on Dolson Town. We'll look at Route 6 and continue to do so. And what's next? That's it.

So, any questions? Alderman Kleiner?

ALDERMAN GERALD P. KLEINER: Very quickly. Any update on the warehouse building of Playtogs (indiscernible) --

MAYOR JOSEPH M. DESTEFANO: No, that's a --

ALDERMAN GERALD P. KLEINER: Because I get asked that a lot.

MAYOR JOSEPH M. DESTEFANO: Yeah, yeah, they had a tenant. That's why they designed and built it. They -- you

know, they increased the ceiling height to 35-feet. They went through the Zoning Board of Appeals. They were granted the appeal.

I think it's a 16-bay distribution, not necessarily a huge warehouse like is being proposed, you know, 150 bays. But I guess they lost their tenant. But ironically, it is the same developer who is proposing all of the projects on Dolson Town and on Route 6, who owns that piece of the Playtogs project.

Playtogs, that building itself is zoned industrial. And it's zoned industrial for a reason, well, because of the railroad track that went behind it, and that there was talk about changing the zoning, but we do not want to add high density housing on that project. So, we decided collectively to leave it as a light industrial zoning.

So, if we do hear any news, we will certainly share it with you. But any user would have to go back to the Planning Board.

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

MAYOR JOSEPH M. DESTEFANO: Thank you.

PRESIDENT J. MIGUEL RODRIGUES: (Indiscernible) the Department Heads, I'm going to call up the fire chief. I know there's a fire call, so he has to get out of here.

FIRE CHIEF ROBERT BRADY: Good evening, Council, President, and Council. As the Mayor said, and I don't want to

downplay it at all, speaking with Randy and the officers that day, you know, we went around about our business. After the rescues were made, there was three rescues. Being commander of that incident, and when you hear positive entrapment of six people living in a house, it's gut-wrenching. On my way there, I think I pulled up about 40 seconds behind Randy, but I'm a volunteer fireman in this city for 34 and a half years. The volume of fire was intense. Just look at the houses next door. Both of them sustained damage from the heat. Two officers made a rescue on the side of the house, and then Randy went to the rear.

And just as long as everyone understands, the ground ladder that he used is out of service because the whole top of it was damaged due to the fire. After he made the rescue, it was literally 20 to 30 seconds, and that whole back of the house was fully engulfed. So, the decision to jump or the decision, you know, to just sit was seconds.

So, the officer that attended with Randy, they did a phenomenal job, never -- I asked them afterwards, and neither of them, you know, wanted to take a break, because then the focus became on the deceased that was inside the building, and you know, we still had hope for the longest time. I mean, I think everyone on the scene knew, you know, what the outcome was going to be, but no one, until we left at 1:30 gave hope -- gave up hope.

So, but I thank the mayor for you know, recognizing the

efforts that were done.

You know, we had a third alarm back in the end of June on Hanford Street. Again, one person was taken to the hospital. The homeowner was taken to the hospital for injuries, non-life threatening, you know, thank God.

We've had very busy months where, you know, 115 in July, this month alone we're on the 20th, and we're at 80 calls already. You know, so you know, we are -- we're unfortunately in this business, we're getting busier, and that's something we don't want to see. But that's all I have.

PRESIDENT J. MIGUEL RODRIGUES: Any questions for the fire chief? Alderman Kleiner?

ALDERMAN GERALD P. KLEINER: Thank you. Has there been any determination to the cause of the fire?

FIRE CHIEF ROBERT BRADY: No, the fire's still under investigation.

ALDERMAN GERALD P. KLEINER: Okay, thank you.

FIRE CHIEF ROBERT BRADY: Once I get some kind of determination, I'll definitely share.

PRESIDENT J. MIGUEL RODRIGUES: All right, thank you, chief.

FIRE CHIEF ROBERT BRADY: Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Economic Development?

MARIA: Good evening, everyone. I, too, want to share that this past weekend was epic. It started on Thursday night

with the "We are the Champions" Queen Tribute Concert. This was part of the whole weekend celebration with Run 4 Downtown. And we had about 700 people at that concert.

And then Friday night, we had a free outdoor concert as well downtown. And all this led up to the race on Saturday. And Dave and Anna are amazing. They started this 18 years ago, and it's just grown. And we're already looking forward to next year.

With that said, this weekend, we have a bunch of stuff also coming up. We have Thursday and Friday at John F. Degnan Square, outdoor summer concert. We rescheduled one of them for Thursday night from (indiscernible) now, circa 22 featuring Amy Smith.

And then Friday night, The Specs, both at 7:00 at Degnan Square Thursday and Friday. Then, Farmer's Market. Farmer's Market has been doing phenomenal as well. It's busy every weekend. Our SNAP and coupon program has been going well.

Also, Saturday night, the Parks Department along with the BID is -- has an outdoor movie, free outdoor movie showing Disney's Pixar "Cars". And this movie is sponsored by First Federal Savings Bank, the bank right next door. So, we thank them as well for their sponsorship and support. And that's all I have for tonight.

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

ALDERMAN GERALD P. KLEINER: The -- we've been

listening -- it takes a village to get together that back-to-school community barbeque, but I haven't seen any place where it says where it is. So, you've said it's probably going to be in the back of Davidge Park, as usual? That's September 7th?

MARIA: Yeah, chief -- that's -- yeah, the chief could speak to that.

ALDERMAN GERALD P. KLEINER: Oh okay.

MARIA: Okay?

ALDERMAN GERALD P. KLEINER: Okay, very good.

MARIA: Yeah.

ALDERMAN GERALD P. KLEINER: Thank you.

MARIA: Yeah.

PRESIDENT J. MIGUEL RODRIGUES: Great. Anyone else?  
Thank you, Maria. Police chief.

POLICE CHIEF JOHN EWANCIW: Good evening. Just to answer your question, it is going to be September 7th, Saturday, 1:00 to 9:00 at the rear of Davidge Park. Fliers have not gone out, to my knowledge yet. We're supposed to have a meeting today to discuss and finalize some of the details. And that had to be postponed due to some scheduling conflicts. But that should be going out soon. It's a collaboration between the city entities, the school district, and some of our private partners throughout the community.

I don't have much this evening. However, I do just want to highlight the message, what the mayor said, and Chief

Brady in regard to the fire on Friday. Coming to that scene, it was another great example of the entities of the City of Middletown, all the services coming together to work collectively together in unison to provide an amazing service to our community.

So, outstanding work by all their -- very proud of the men and women of the police department and the fire department. DPW was right there helping out as well, and some other people from the community came out. So, outstanding. Awful ending, but it was great to see everybody come together to work so hard for a common goal. Other than that, I have nothing, unless you have questions for me.

PRESIDENT J. MIGUEL RODRIGUES: Questions? Alderman Jean-Francois?

ALDERMAN JUDE A. JEAN-FRANCOIS: Chief, was there any children in the house?

POLICE CHIEF JOHN EWANCIW: To my knowledge, there was no children, young adults.

ALDERMAN JUDE A. JEAN-FRANCOIS: Okay.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Kleiner?

ALDERMAN PAUL JOHNSON: I just wanted to -- oh --

PRESIDENT J. MIGUEL RODRIGUES: (indiscernible)  
Alderman Johnson.

ALDERMAN PAUL JOHNSON: I'm Johnson, thanks.

PRESIDENT J. MIGUEL RODRIGUES: Well, he raised his

hand.

ALDERMAN PAUL JOHNSON: I would like to clarify, you said 1:00 to 9:00 for that event, for the It Takes a Village?

POLICE CHIEF JOHN EWANCIW: 1:00 to 5:00.

PRESIDENT J. MIGUEL RODRIGUES: Okay.

POLICE CHIEF JOHN EWANCIW: 1:00 to 5:00.

ALDERMAN PAUL JOHNSON: That would make more sense.

POLICE CHIEF JOHN EWANCIW: Yes, (indiscernible) by saying 1:00 to 9:00 -- 1:00 to 5:00.

PRESIDENT J. MIGUEL RODRIGUES: Okay. Go ahead, Alderman Kleiner.

ALDERMAN GERALD P. KLEINER: All right, I just wanted to ask, is there one resolution about extending the agreement with the Middletown, is it Pistol and Rifle Club or whatever for the police department. But just so people understand, because the agreement now goes through 2032, and you want to extend it to 2062, that my understanding is that's because of some bank loans and things that they have to have set for that amount of time. Is that correct?

POLICE CHIEF JOHN EWANCIW: Yes, so that agreement is for the Middletown Pistol and -- Association, which it's a unique situation that dates way back way before me. But the building is actually on city property, but the building itself was built by that association on an agreement between the city and the Association. I think it dates back into the early '70s.

They came to us about a year ago. I sat with the leadership there, with Alex Smith, and discussed the terms and the purpose behind their request. We actually met with their attorney as well.

Basically, they are looking to make improvements on the facility, which would require them to take out some type of loan. And the lending institution wasn't willing to give them the amount for the loan terms that they wanted with such a short amount of time left on their lease. That's why they came to us.

We went over the suggested improvements with them. We have no issue with them, and they still are going to have -- we will still, as a police department, have the ability to utilize it as we do today.

ALDERMAN GERALD P. KLEINER: Great, thank you.

POLICE CHIEF JOHN EWANCIW: Mm hmm.

PRESIDENT J. MIGUEL RODRIGUES: Okay, anyone else?  
Thank you, chief.

POLICE CHIEF JOHN EWANCIW: Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Okay. City Clerk?

CITY CLERK: Nothing this evening.

PRESIDENT J. MIGUEL RODRIGUES: Any questions for the City Clerk? All right. Petitions and complaints?

CITY CLERK: We have one petition this evening. That's a petition to remove no parking signs on Dubois Street.

PRESIDENT J. MIGUEL RODRIGUES: Forward to Committee.

Okay. Words from the Alderman. Alderman Green.

ALDERMAN ANDREW GREEN: All right, thank you. Mayor, what you stated regarding the resolution, regarding some of the facts and the misinformation, disinformation spread across, you know, news and things, I know my -- many of my constituents are actually here this evening, and I don't think any of them voted on me for my foreign policy.

I am certainly not in favor of killing children and innocent people across anywhere, whether it be here in Middletown or 5,000, you know, miles away. You know, this just popping up on my desk this evening, apparently it was dropped off this morning. You know, I couldn't in any good faith at all vote on anything like this this evening.

So, I do know that my, you know, when I went to bed last night, I was really concerned about how I was going to talk to some of my constituents to get them to agree on a sidewalk somewhere. I'm pretty sure that if they went to the United States Congress and tried to bring that in front of them, they would've laughed them out of the building. There are correct public places and political entities in this country to handle these that are a lot more qualified on the foreign policy than I am. So, I'll leave it to those much wiser than I am.

Other than that, we had a great constituents meeting. We do have one on the second Monday of every month. I look forward to hoping to see everyone here at 7:00 p.m. then.

And just you know, to speak on Randy and the officers. That you know, it's something that if you know Randy, he didn't think twice about it. His goal was to save someone's life, to do what he does for this city every day. And I couldn't be more proud of him and the officers, who, you know, don't necessarily have fire training or things like that, to just not even think about it and go and assist him, just well done by everyone, so thank you.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Kleiner?

ALDERMAN GERALD P. KLEINER: Thank you. I also want to thank Randy and the police officers and the fire department. And we just -- we depend on them so much, and they're unbelievable in their response and what they're willing to do no matter when it happens. So, we really thank them for that.

And I congratulate people from the barber shop. I think that's a great idea, recognizing the businesses. I don't -- haven't given a barbershop any business in about 20 years, but I do recognize that a lot of people do, and I think it's great, and particularly the support they had and the people who were here.

So, I still get lots of positive comments about the work going on around town. You get a few, you can't get there from here, but everybody understands that it will be over, and everything is really looking good.

I do support Good Cause Eviction. And I would like to

see us work on having it in Committee and really get it tailored to Middletown in terms of what size and how it applies and see what we need to do with the state law to opt in, but I just certainly think it's a good idea.

I just want to mention, Nathan Hallock and Lewis Wisner and Thomas Collins. Nathan Hallock, during the Civil War, was a Middletown guy. He rescued an injured comrade, and at the risk of his own life, brought him to safety. And Lewis Wisner, I know got up on a beam and distracted enemy fire to rescue half of his company. Thomas Collins was able to capture a regimental flag from the enemy. That's no small task.

They're all Medal of Honor winners. And they're all buried in Hillside Cemetery. And we -- I still thank them for their valor and their self-sacrifice. It's not about people who got shot up so much or got killed, and so they're not important. They're very important. Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Wray?

ALDERWOMAN KATE WRAY: Good evening. I have to echo Alderman Kleiner. I apologize. I'm -- I had -- I dropped my daughter off at college. I was in South Carolina. I did like a 12-hour drive yesterday. I'm -- I think I'm a little exhausted and dehydrated, but I'm feeling it right now and I think people can see that. But I'm a little bit kind of shot. But -- so, I apologize for that.

But you know, this meeting, our Common Council meeting

is for us to conduct city business. And it's -- I appreciate everyone's right to speak their feelings on a global issue. I have my own feelings about it.

You know, I used to work with a woman who had family who lived out in Gaza, and you know, an Israeli family had a fire, and all the Palestinian families, you know, helped them, and gave them furniture and clothes and care and food.

This is not an issue for the people. This is not about Jews disliking Palestinians. This is about a handful of people in power who don't understand what they're doing. It is a humanitarian issue, I agree with that, but it is not a City of Middletown business issue.

We have the right as Americans to effect policy. We do that with our vote, with who we vote to be our representatives in the Congress, in the Senate, and as our President. But this is not a forum to debate foreign policy.

You want to come in and speak to me about Good Cause Eviction, I'm all about it. I am a -- in full support of that because that is the type of thing that pulls the rug out from under families and puts people in crisis. That is what we are here to talk about. I'm here to talk about the safety of the people who live here in Middletown, and what we do and our role with the power to protect them and provide for them. So that's what I want to talk about in a meeting.

And I apologize and it is -- I absolutely -- you know,

someone spoke about terrorism. And you know what? We as a nation were a victim of terrorism. And we did not blanket destroy another country, another people, a race as a retaliation for that attack.

We did our homework. We did our work, and we did it the right way. And that is what should be happening, but that's a side issue.

Randy McLean, from our fire department, a true hero, as are all of our firefighters. And I'm really proud of him and I think we should all be really proud of him.

And that's really all I have to -- I'm sorry, I'm just kind of feeling it this evening. That's all I have.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Johnson.

ALDERMAN PAUL JOHNSON: Thank you. Well, with respect to your comments, I would tend to agree. It's not our venue. Netanyahu appears to be being held -- I won't use the word hostage, but a small group in his cabinet that want him to go.

I don't know of any -- I'm not a foreign policy expert. Maybe some of you are. I don't know of anybody who loves Netanyahu or loves his policy, both internally or externally. The theory is, he wants to keep it going to stay in power because if he gets out of power, he'll go to jail. Does that sound familiar? No, okay.

So, not something I want to discuss in this context. You know, emergency calls are often evaluated by response time.

You can't get better than that, I mean, really. I live here, you live there, I heard the thing, I'm right there. So that's remarkable, and kudos to all.

With respect to Run 4 Downtown, I am never available on Saturday mornings from eight to one, which is when this event occurs, but I did go to the Paramount. And I know Ms. Bruni has spent, I think a decade trying to get this theater to be where we want it to be.

And the lighting, the sound, the energy, mayor, if somebody saw the events of Saturday and it clinched the deal to move their business here, I think if they were at the Paramount Thursday night, that also would've clinched the deal, so congratulations to all.

The O&W, I'm not an architect, nor an engineer, I think that's fairly obvious. I did manage to tour that building. I think it was three years ago. I went up to all three floors. Some people thought that was a foolish thing to do. It probably was.

So, I do not see the vision to transform it. And it makes me a little nervous when the mayor says, you know, we have to make this happen, otherwise we'll lose that particular form of funding. I just want to be clear, mayor, all of the restoration is how the outside of the building looks, right, not the inside?

MAYOR JOSEPH M. DESTEFANO: No, both.

ALDERMAN PAUL JOHNSON: There are things on the inside

of the building that must be restored?

MAYOR JOSEPH M. DESTEFANO: You mean the historic renovation?

ALDERMAN PAUL JOHNSON: Yes.

MAYOR JOSEPH M. DESTEFANO: Yeah, no, it's -- that's why SHPO and the National Parks will be coming down to see what on the interior --

ALDERMAN PAUL JOHNSON: Really?

MAYOR JOSEPH M. DESTEFANO: -- needs to be saved, too.

ALDERMAN PAUL JOHNSON: Wow.

MAYOR JOSEPH M. DESTEFANO: But it's -- the building's in bad shape, and you have been -- you've been the doom and gloomer. There's no question about it. But --

ALDERMAN PAUL JOHNSON: I'm still Johnson, just so you remember, right.

MAYOR JOSEPH M. DESTEFANO: But we -- as was explained at the start of the process, if we have to tear the building down, we're going to be spending millions of dollars. It's not a -- we spend \$120,000 to tear down a house. So, it's worth the -- the \$1.8 million or \$2 million that we have into it right now will go towards -- if we have to eventually demolish it --

ALDERMAN PAUL JOHNSON: Wow.

MAYOR JOSEPH M. DESTEFANO: -- it's not entirely money lost, because you're doing the remediation. But we're not going to be doom and gloom. We're going to keep moving. We have the

possibility of additional state historic funds going into the project.

We have the ability possibly of new market tax credits going into the project. So, we're going to put together a financial plan that will hopefully, over the period of 20 to 30 years, make sense, when you balance out the revenue that's coming in over that period of time, and the fact that you're not spending \$2, \$3, \$4 million to demolish a building.

We demolished one building at the Psych Center 13, 14 years ago, it was about a million and a half dollars. The building was already down. It was a fire damage (indiscernible). So just bringing that number forward.

So, we -- we're doing the right thing at this point, but we can't control the condition of the building at this point. And then, and also remember, there's a lot of people on social media is that we haven't controlled the building for all those years. Most of the years, the building has been privately owned.

ALDERMAN PAUL JOHNSON: Right.

MAYOR JOSEPH M. DESTEFANO: And so, but we would like to save it, and I think it's an iconic structure here in the city. It's symbolic of our city going backwards in the '60s and late '60s, '70s and early '80s. But it could also be a symbolic of what's happening in our downtown and throughout our city of restoration. So, we're going to keep the thumbs up and keep it moving.

ALDERMAN PAUL JOHNSON: Thank you. Your characterization is close to accurate. I really was not sure that this was a good way to go in the beginning when it was going to be one to tear it down and seven to fix it. And now we're up to 21. But at this point, I think the community is for the most part behind us, and I hope the project will prevail.

With respect to Good Cause, the next legislative meeting, we will address the parking conversation that was put off because I need four people -- Public Works, police chief, mayor, attorney, and that's what happened.

As far as Good Cause, that is on our Legislative Committee potential agenda, but we're still waiting for the administration to gather some of the wrong facts and figures as to alternatives at the state level versus what's being proposed as having been adopted by the other cities within our region.

So, it's not forgotten. It's just, it's not ripe on the vine, as they say in the trades. Thank you very much.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Yes, good evening. I have a message for the Commissioner of DPW. Our reservoir level is at 94 percent.

PRESIDENT J. MIGUEL RODRIGUES: (Indiscernible) --

ALDERMAN JUDE A. JEAN-FRANCOIS: We will have to thank mother nature for all this rain that we've been getting, so we're in good hands there.

And with respect to our -- I'd like to thank our community for their support and patience for the annual paving and milling project, that as of Monday, the project is all completed. And please, do not get confused with the traffic operations project. That's going to be going on for a while, weather permitted, probably another year or so. So, separate the two. But as of Monday, that project is all completed.

Congratulations to Fuzion Barber Shop, 20 years. It's been a long time. Alderman Kleiner, I got to tell you, I wish my hair could grow that long because a haircut is \$50. So, this is it.

Yes, as far as Good Cause, I'm all for it. And I'm looking for us to do something about that. I think it's well overdue, and we will. Thank you.

PRESIDENT J. MIGUEL RODRIGUES: Alderman Tobin.

ALDERMAN SPARROW TOBIN: Yeah, I mean, a lot of stuff tonight. So as far as Good Cause, I'm in favor of it.

As far as you know, the Gaza, the people that we've heard from that are from Middletown don't seem to be in agreement. I mean, we hear about well, other cities, like Newburgh's doing this, Poughkeepsie's doing this. But we're not those cities; we're Middletown. So, we do things our way. So, I think we've got to do what's in the best interest of our community and there doesn't seem to be agreement on this.

As far as the Run 4 Downtown, I'd like to thank Dave,

Anna, Maria, Rick, what an excellent job. I was out there passing out water. And there's tons of people. I couldn't imagine how many people signed up. I know it must've broke last year's records.

And everybody had a smile on their face. I mean, it was a tough race. We were on the uphill final leg of the race. And from, you know, little kids to seniors, everybody was out there, you know, doing their best. So, it was great to be a part of that. And I'd like to -- all the positive attention they bring to the city, it's so great.

Fuzion Barber Shop, 20 years, it's great to recognize their success and staying in the business and choosing to stay in Middletown, and in our downtown area. And I'd like to thank Chief McLean and the other officers for their bravery and their -- the quick response that saved people's lives. That can't be said enough.

And as for the farmer's market, we're lucky in the City of Middletown to have such access to fruits and vegetables, that we're lucky. Some areas in the United States, they only have dollar stores, where there's no fresh foods.

We have DA TANG, Garcia, Market Fresh all within walking distance of downtown. Then we have Shoprite on either side, so we're lucky to have a community where we have access to these, you know, fresh fruits and vegetables. So, and we have the Indian Farmer's Market just opened up, so it's definitely a

nice thing to have in the city is their farmer's market. Thank you.

PRESIDENT J. MIGUEL RODRIGUES: All right. At this time, we're going to take a brief two-minute break and then we'll come right back.

(Break)

PRESIDENT J. MIGUEL RODRIGUES: All right. We'll start back again with remarks of alderman. It's my turn now.

So, I first want to start off by condolence to the Vignola family. I served with Gene on the Police Commission for 10 years, and he served almost 15 years -- a veteran and a really dedicated person to the City of Middletown.

Randy, I called him that night, being a fireman for 24 years, I know the feeling. Call him, how you doing. After everything, 9:00 at night, and he said the same thing. He said, you know what was bothering me is I'm throwing a ladder over, and it was comical trying to jump over one fence and then the other fence, and the power line falls down.

And the power line falls over the police officers and lands on his gun belt, not thinking, they're just (indiscernible), they threw a garbage can to try to put the live line and pushed it away, and to get to that person. That's Middletown.

MAN 16: Plastic garbage can.

PRESIDENT J. MIGUEL RODRIGUES: Plastic garbage can.

Not a metal one. It was probably ours, the 95-gallon ones.

So, 21 years ago, I sat in front of Mr. Berkman's house, and he's the reason why I'm here today. He made me run for office. I hate politics. I still hate politics. Everybody knows I can't stand democrats or republicans, but we're here. And why am I here? Because of Middletown.

I became an alderman, and then the following year, I became finance chair, and then I pushed -- met with Eric. Eric's the reason why we have these cameras, and we have Wi-Fi, and we have the cable, you know, here. Why? Because I invite anybody to come here, regardless of what your opinion is, whatever you do, yes, come up here, speak. I'm not a fan of the clock. I like to let people talk, but we do try to get home to get to work tomorrow morning and be respectful to each other.

Seeing here, and being like almost like the referee, half the room, half the room, I -- we are Middletown. A couple of years ago the Iraqi War was going on. Again, my democrats and republicans in Congress passed the Iraqi War, we got to go and invade Iraq because of 9/11.

Mr. Kleiner brought up a thing to impeach George Bush. Like an idiot, I said yes, let's do it. To this day, when I knock on doors, I still get people saying, why did you do that. That wasn't about Middletown. That wasn't. And veterans say it all the time.

I still knock on doors. In March, our petitions are

due. We knock on doors. We see people. They still say, Miguel, you know you did a really bad thing in 2000-whatever. And I say, and you know what, we did it.

But I learned my lesson. Quality of life, garbage, water, sewer, recreation, police, that's what we're here for. That's our job. We are here also to talk to our elected officials in Albany and to talk to our Congressmen, our Senator and they hear us. We're invited.

I think Middletown has a great relationship with our congressmen and our elected officials who make the big decisions. So, it's a very, very long, lengthy -- I know we can work together, the Interfaith Council, everybody. I like to see people work together, not fight, and argue, and clap, and against each other and everything.

We -- nobody wants to see what's going on, not since October 7th or the years before that and the years to come. Everybody deserves to live, raise their family, and do the right thing, and have the quality of life.

Maybe you guys could reach across the aisle, talk to each other after the meeting, introduce yourselves. We're all here. My number's always on the website, available to over 30,000 people. If you want to have coffee, I'm available. We're listening.

But to come here and demand this from the Council, at the same day that we all got off our work and everything, I know

from experience it doesn't work. It's all about what we are here, what are the symbols behind us, and what we do for Middletown.

And now, let's go to new business.

CITY CLERK: Good evening. We have a resolution sponsored by Alderman Johnson, authorizing an agreement with Pets Alive for 2024.

PRESIDENT J. MIGUEL RODRIGUES: The resolution's sponsored by Alderman Johnson, seconded by Alderman Tobin. Any discussion? Roll.

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Green, accepting a \$950 donation for the summer book mobile from the Enlarged City School District of Middletown.

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

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Kleiner, authorizing a transfer of \$5,270 for camp scholarships.

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

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: It carries. A resolution sponsored by Alderman Johnson.

ALDERMAN PAUL JOHNSON: Yes.

CITY CLERK: Authorizing a -- the renewal of (indiscernible) with (indiscernible).

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

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson?

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Jean-Francois, authorizing a budget transfer of \$10,000 from the fund balance for a speed dampening pilot program.

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

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Johnson authorizing an agreement with the Middletown Pistol and Rifle Association.

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

Roll.

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner?

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Tobin authorizing a budget transfer of \$43,000 from within the Corporation Council Budget for litigation invoices.

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

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Johnson, authorizing the award of bids for surplus vehicles auctioned off through Auctions International.

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

CITY CLERK: Tobin?

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner?

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Green, authorizing the appointment of a bankruptcy attorney.

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

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Johnson, authorizing the repeal of a handicapped parking spot in front of 26 Broach Street.

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

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries. Resolution sponsored by Alderman Green, authorizing the extension of time of six months for two resolutions that in May 4th, 2021, 9821 and Resolution 9921 for the Presidential Heights Realty subdivision.

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

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: That's it for new business, sir.

PRESIDENT J. MIGUEL RODRIGUES: Okay. Local laws,  
nothing? Audit?

ALDERMAN PAUL JOHNSON: Mr. President, I move the  
accounts be audited, the claims be adjusted, and the City  
Treasurer be authorized to issue warrants with their payment.

PRESIDENT J. MIGUEL RODRIGUES: Resolution sponsored by  
Alderman Johnson. Do I have a second? Alderman Tobin. Roll?

CITY CLERK: Tobin.

ALDERMAN SPARROW TOBIN: Aye.

CITY CLERK: Jean-Francois.

ALDERMAN JUDE A. JEAN-FRANCOIS: Aye.

CITY CLERK: Johnson.

ALDERMAN PAUL JOHNSON: Aye.

CITY CLERK: Kleiner.

ALDERMAN GERALD P. KLEINER: Aye.

CITY CLERK: Green.

ALDERMAN ANDREW GREEN: Aye.

CITY CLERK: President RODRIGUES.

PRESIDENT J. MIGUEL RODRIGUES: Aye.

CITY CLERK: Carries.

PRESIDENT J. MIGUEL RODRIGUES: Move for adjournment?

ALL: So moved.

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.



—

Veritext Legal Solutions  
330 Old Country Road  
Suite 300  
Mineola, NY 11501

Date: August 30, 2024



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

**THE FOLLOWING WAS PRESENTED**

By: Alderman Kleiner  
Seconded by: Alderman Johnson  
Date of Adoption: August 20, 2024  
Index No: 157-24

**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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
Joseph M. DeStefano, Mayor  
Date 8/21/24

**Authorization to Transfer \$5,270.00 for Camp Scholarships**

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 \$ \$5,270.00 in the following manner to cover camp registrations.

| FROM                        | TO                   | AMOUNT     |
|-----------------------------|----------------------|------------|
| A.2705.07 Camp Scholarships | A.2027 Day Camp Fees | \$5,270.00 |

Prepared by:  
Raelynn Bertholf, Supt of Recreation and Parks

**Attachments:**

|    |                           |
|----|---------------------------|
| 1. | 2024 Camp Schlorship List |
|----|---------------------------|

## SCHOLARSHIPS

| NAME                           | WEEK                | AMOUNT     |
|--------------------------------|---------------------|------------|
| Cordero, Skyler                | 2&3                 | \$220.00   |
| Diggs, Amari                   | 1,2,3,4,5,6         | \$780.00   |
| Doolittle, Skyler              | 4                   | \$110.00   |
| Estes, Noah                    | 6                   | \$130.00   |
| Faias, Sofia                   | 5                   | \$110.00   |
| Gonzalez, Jose                 | 2,3                 | \$220.00   |
| Jimenez, Lucas                 | 1,2 +latch          | \$300.00   |
| Jimenez, Nelson                | 1,2 + latch         | \$300.00   |
| Jimenez, Thomas                | 1,2 + latch         | \$300.00   |
| Lopez, Camila                  | 4                   | \$110.00   |
| Lopez, Zuria                   | 4                   | \$110.00   |
| Nesbitt, MacKenzie and Zandaya | 1,2,3,4,5,6 + latch | \$2,470.00 |
| Santiago, Liam                 | 2                   | \$110.00   |
| TOTAL                          |                     | \$5,270.00 |

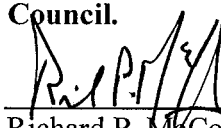


**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

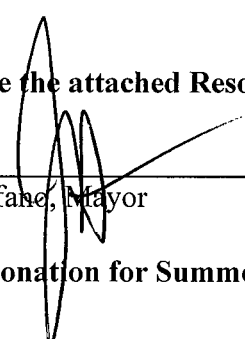
By: Alderman Green  
Seconded by: Alderman Kleiner  
Date of Adoption: August 20, 2024  
Index No: 156-24

**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.**

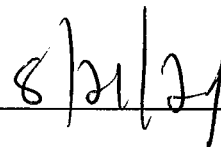
  
Richard P. McCormack  
Clerk to the Common Council

| 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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
Joseph M. DeStefano, Mayor

Date



**Accept a \$950 Donation for Summer Bookmobile from the Enlarged City School District of Middletown**

BE IT RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment to accept a \$950 donation to the Summer Bookmobile from the Enlarged City School District of Middletown.

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 Treasurer to deposit the donation into account A.2705.00 Gifts and Donations.

Prepared by:  
Raelynn Bertholf, Supt of Recreation and Parks

**Attachments:**

|    |            |
|----|------------|
| 1. | Bookmobile |
|----|------------|

[illegible]

223 Wisner Ave. Extension  
Middletown, NY 10940

|            |              |
|------------|--------------|
| Check Date | Check Number |
| 07/17/2024 | 11712        |

| Invoice/CW#                                    | Description                | Amount      |
|------------------------------------------------|----------------------------|-------------|
| 4/16/24                                        | Summer Book Mobile Program | 950.00      |
|                                                |                            | Check Total |
| Vendor : 400650: Middletown Recreation & Parks |                            | 950.00      |

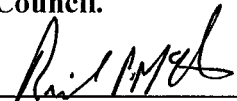


**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: Alderman Johnson  
Seconded by: Alderman Tobin  
Date of Adoption: August 20, 2024  
Index No: 155-24

**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.**

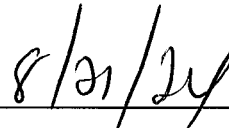
  
Richard P. McCormack  
Clerk to the Common Council

| 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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
Joseph M. DeStefano, Mayor

Date

  
8/21/24

**Authorization to Enter into an Agreement with Pets Alive for 2024**

BE IT RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes an agreement with Pets Alive for the Stray/Feral TNR Program for 2024.

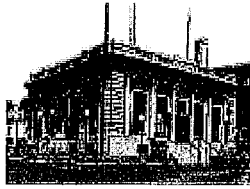
BE IT FURTHER RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the Mayor to sign the agreement.

Prepared by:  
John Ewanciw, Chief of Police

**Attachments:**

|    |                              |
|----|------------------------------|
| 1. | FEREL CAT PROGRAM PETS ALIVE |
|----|------------------------------|

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

July 30, 2024

Honorable Joseph M. DeStefano &  
City of Middletown Common Council  
16 James Street  
Middletown, NY 10940

Dear Mayor DeStefano and Members of the Common Council:

Please find the attached contract with The City of Middletown and Pets Alive for 2024.

The attached contract is to cover the Stray/Feral TNR Program between both parties.

I am requesting the Mayor please sign and return to our department for forwarding.

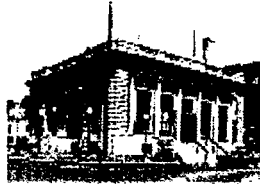
If you have any questions please do not hesitate to contact me.

Very truly yours,

John Ewanciw  
Chief of Police

JE:ccd

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

**Stray/ Feral Cat TNR Program**  
**2024**

**Agreement between the City of Middletown and  
Pets Alive**

## **AGREEMENT**

THIS AGREEMENT made this 21 day of August, 2024 and ending December 31<sup>st</sup>, 2024, between the **City of Middletown**, a municipal corporation organized under the laws of the state of New York, located at 16 James Street, Middletown, New York 10940 ("City"), and **Pets Alive Inc.**, a charitable organization and corporation under the laws of the State of New York, located at 363 Derby Road, Middletown, New York, 10940.

## **WITNESSETH**

WHEREAS, Pets Alive owns and operates a shelter for the care of dogs, cats, and other animals, as well as provides TNR services; and

WHEREAS, the City of Middletown desires to utilize the services of Pets Alive as set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants, promises, and agreements contained herein, Pets Alive and the City of Middletown do hereby agree as follows:

### **Recovery Stations:**

- The care for cats at the recovery area shall include but not limited to; feeding, cleaning, identify friendlies and report issues.
- Males recover overnight, females recover in two/three nights.
- Volunteers will be provided with supplies needed (gloves, cleaning products, food, litter, water bowls, litter pans, etc.) by the organization.
- Pets Alive may also use fosters for recovery stations for both kittens and adults as needed.

### **Issues & Solutions:**

- If a feral cat is very late term pregnant, then the female will be housed or fostered in an isolated area until she has given birth and weaned her kittens. Once weaned, the kittens will be altered and adopted out. The mother cat will be spayed and returned.
- Friendly cats will be identified and adopted out as friendly indoor cats.
- All cats released back into the community will be ear tipped. Ear tipping advises that the cat has already been spayed or neutered.

### **Protocol For Sick Cats:**

- Sick cats will be evaluated on a case-by-case basis.
- If a cat is seriously ill and the veterinarian feels the chances of survival are little to nothing, the cat will be humanely euthanized. The City of Middletown will cover up to \$100 which includes the \$45 TNR fee.

- If a cat needs medical attention before it is released back into the community, The City of Middletown will cover up to \$100 for medical expenses.

### **Volunteers and Staff:**

- The TNR project will mainly be handled by volunteers and managed by TNR Coordinator, Debbie Pesola, under management of Pets Alive staff.
- Will verbally notify residents in the area approximately 2 days prior to trapping in each location (for resident's who usually allow their cats outside, will keep their animals inside during trapping days).
- Trapping will take place on Tuesday nights, and will be spayed/ neutered, vaccinated and ear tipped on Wednesdays at The Animal Rights Alliance (T.A.R.A).
- The ACO will assist Pets Alive with notifications in trapping areas as needed.
- Transport cats to and from the vet once trapped.
- Deliver cats to designated recovery areas after surgery.
- Pick up cats from the recovery area and return him/her to the original colony location.

### **TNR Coordinator and Pets Alive staff will:**

- Schedule volunteers to trap, transport, care-give and other needs as identified.
- Interact with the public as needed.
- Track information such as number of cats, locations, number of inquiries, issues, etc.
- Train all volunteers on trapping and releasing.

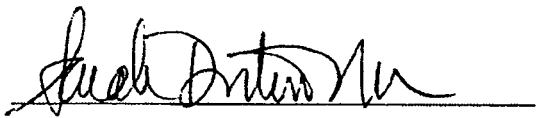
### **TNR Locations:**

- The Middletown ACO will advise Pets Alive via email and or by phone of locations where trapping is needed on city owned property.
- The ACO will direct residents who are in need of TNR services on private property to the Pets Alive website and phone number.

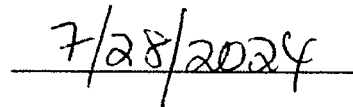
### **Reimbursement from the City of Middletown, New York:**

- The City of Middletown will pay Pets Alive a fee of \$45 per cat for TNR services.
- The City of Middletown will notify Pets Alive when the yearly TNR budget is exhausted.

- Pets Alive will provide a monthly invoice to the City of Middletown ACO via email at [Msmall@middletownpolice.com](mailto:Msmall@middletownpolice.com) and to the confidential secretary at [Cdugan@middletownpolice.com](mailto:Cdugan@middletownpolice.com).
- Accompanied with each invoice shall be a description of each cat that was trapped along with its location and final disposition of each cat (re-released, adopted out, etc.).
- Any documentation provided by the veterinarian for each cat that was TNR'D should accompany the invoice as well.
- Pets Alive will submit a copy of certificate of liability insurance at the time of signing this contract.



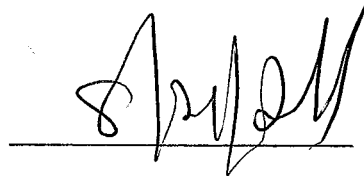
Pets Alive



Date



Joseph DeStefano, Mayor



Date

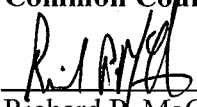


**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

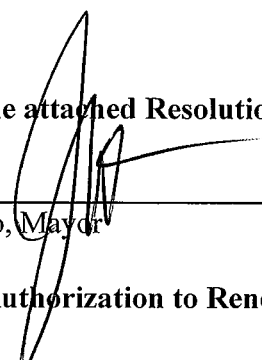
By: Alderwoman Wray  
Seconded by: Alderman Jean-Francois  
Date of Adoption: August 20, 2024  
Index No: 158-24

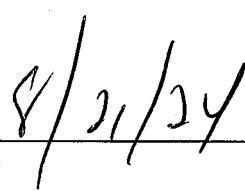
**I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.**

  
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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
Joseph M. DeStefano, Mayor

  
Date

**Authorization to Renew an Agreement with Permittium**

BE IT RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes a renewal agreement with Permittium to continue as the online request platform for vital records.

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:  
Rick McCormack, City Clerk

**Attachments:**

|    |                                                 |
|----|-------------------------------------------------|
| 1. | Middletown City Clerk NY 2024 Permitium Renewal |
|----|-------------------------------------------------|



## Order Form

### Customer Information:

|                                |                                       |
|--------------------------------|---------------------------------------|
| Agency Name ("Customer"):      | City of Middletown City Clerk         |
| Customer Address:              | 16 James Street, Middletown, NY 10940 |
| Primary Contact Name:          | Rick McCormack                        |
| Primary Contact Email Address: | rmccormack@middletown-ny.com          |
| Primary Contact Phone:         | 845-346-4166                          |
| Invoicing Contact Name:        |                                       |
| Invoicing Email Address:       |                                       |

### Order Form Information:

|                                            |                                                                                                            |
|--------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Prepared By:                               | Jeana Tavano                                                                                               |
| Order Form Creation Date:                  | 5/28/2024                                                                                                  |
| Order Form Expiration Date:                |                                                                                                            |
| Subscription Services Invoicing Frequency: | Annual upfront                                                                                             |
| Professional Services Invoicing Frequency: | All applicable fees invoiced on the first invoice issued pursuant to the Effective Date on this Order Form |
| Payment Terms:                             | Net 30                                                                                                     |
| Payment Mechanism:                         | Invoice                                                                                                    |

### Subscription Services and Subscription Fees:

| Name of Service          | Term Start Date | Term End Date | Line Item Annual Price |
|--------------------------|-----------------|---------------|------------------------|
| None                     |                 |               | \$0.00                 |
|                          |                 |               |                        |
|                          |                 |               |                        |
|                          |                 |               |                        |
|                          |                 |               |                        |
| TOTAL SUBSCRIPTION FEES: |                 |               | \$0.00                 |

### Transaction Services:

| Name of Service                       | Term Start Date | Term End Date | Service Fee per Transaction <sup>(1)</sup> | Customer Revenue Share from Service Fee <sup>(2)</sup> | Monthly Minimum Commitment <sup>(3)</sup> |
|---------------------------------------|-----------------|---------------|--------------------------------------------|--------------------------------------------------------|-------------------------------------------|
| VitalDirector                         | 9/1/2024        | 8/31/2025     | \$5.00                                     | \$0.00                                                 | \$0.00                                    |
|                                       |                 |               |                                            |                                                        |                                           |
|                                       |                 |               |                                            |                                                        |                                           |
|                                       |                 |               |                                            |                                                        |                                           |
|                                       |                 |               |                                            |                                                        |                                           |
|                                       |                 |               |                                            |                                                        |                                           |
| TOTAL ANNUAL MINIMUM COMMITMENT FEES: |                 |               |                                            |                                                        | \$0.00                                    |



- (1): Service Fee is charged to consumer (record requester or applicant); there is no charge to the Customer (agency) with the exception of applications or orders where the Customer elects not to pass the Service Fee on to the consumer and instead covers the Service Fee cost.
- (2): If Customer elects to participate in a revenue share from the Service Fee, then the agency's revenue share will be deducted from the total Service Fee. For example, if the Service Fee is \$7.00 per transaction, and the Customer's revenue share is \$2.00, then the Customer will receive \$2.00 from the \$7.00 Service Fee for each transaction.
- (3): If less than the month monthly minimum commitment is collected by Permitium through the collection of service fees (less any applicable revenue share amount collected on behalf of the Customer), then the monthly minimum commitment shortfall will be deducted from the remittance of Customer's monthly funds balance.

**Professional Services:**

Additional details relating to the scope of Professional Services have been included in the Statement of Work attached as Appendix B.

| Professional Services<br>(subject to the attached Statement of Work) | List Price | Discount % | Total Professional<br>Services Fees |
|----------------------------------------------------------------------|------------|------------|-------------------------------------|
| None                                                                 |            |            | \$0.00                              |

|                                                                                   |        |
|-----------------------------------------------------------------------------------|--------|
| <b>TOTAL SUBSCRIPTION AND PROFESSIONAL<br/>SERVICES FEES PAYABLE BY CUSTOMER:</b> | \$0.00 |
|-----------------------------------------------------------------------------------|--------|

Additional terms and conditions related to this Order Form (the "Order Form Terms") are set forth in Appendix A.

By signing this Order Form, I represent and warrant that the information provided is true and accurate, and I am authorized to sign on behalf of Customer and bind Customer to the terms and conditions of this Order Form, including the Order Form Terms and any documents attached to the Order Form or otherwise incorporated by reference. This Order Form is effective as of the earlier of the date of signature below or the first service term start date (the "Effective Date").

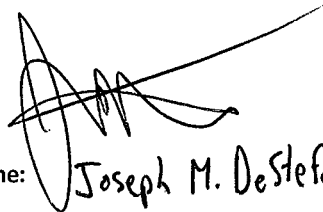
**Customer**

Signature:

Printed Name:

Title:

Date:

  
Joseph M. DeStefano

**Permitium**

Signature:

Printed Name:

Title:

Date:

Signature:

Printed Name:

Title:

Date:



## **Appendix A – Order Form Terms**

### **ORDER TERMS**

Upon execution of this Order Form, Customer (as identified above in Customer Name) and Permitium, LLC ("Permitium") will be parties to a legally binding contract consisting of:

- 1) This Order Form
- 2) The User License Agreement dated September 7, 2022, between Permitium and Customer [attached to this Order Form as Appendix B]

(collectively, the "Agreement").

The parties agree as follows:

- A. Customer agrees to pay the Total Fees Payable in accordance with the Invoicing Frequency and Payment Terms indicated above for the use of the services. Invoices will be sent by electronic delivery unless Customer requests otherwise; in which case, additional fees will apply. Customer's obligations may not be canceled prior to expiration of the Term End Date.
- B. Credit card processing fees at the rate of \$0.30 per transaction plus 3.3% of the transaction total are passed through to the consumer (record requester or applicant) by Permitium along with a \$0.75 VitalVerify fee, when applicable.
- C. The provisions of this Agreement constitute the entire agreement between the parties regarding the subject matter hereof and supersede all proposals, prior agreements, oral or written, and all other communications with respect thereto. No terms and conditions on any purchase order or other document exchanged by the parties will be deemed to modify or amend this Agreement.
- D. This Agreement shall be automatically renewed for successive one (1) year terms unless either party provides the other party with at least sixty (60) days written notice prior to the end of the Term End Date listed on this Order Form.
- E. In the event of any inconsistency or conflict between this Order Form and the User License Agreement, this Order Form will take precedence and prevail.
- F. All capitalized terms used in this Order Form, but not defined, shall have the meanings provided in the User License Agreement.
- G. The terms of this Order are Permitium Confidential Information.
- H. Terms described in the Additional Terms section below will, to the extent in conflict, override terms in the Order Terms and/or the User License Agreement.

### **ADDITIONAL TERMS**

None.



**Appendix B – User License Agreement Dated September 7, 2022**

**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By Ald. Johnson

Sec'd by Ald. Ramkissoon

Date of Adoption 09.06.22

Index No: 204-22

| NAMES              | AYES | NOES | ABSTAIN | ABSENT |
|--------------------|------|------|---------|--------|
| Ald. Tobin         | X    |      |         |        |
| Ald. Jean-Francois | X    |      |         |        |
| Ald. Johnson       | X    |      |         |        |
| Ald. Ramkissoon    | X    |      |         |        |
| Ald. Kleiner       | X    |      |         |        |
| Ald. Green         | X    |      |         |        |
| Ald. Witt          | X    |      |         |        |
| Ald. Masi          | X    |      |         |        |
| Pres. Rodrigues    |      |      |         | X      |
| TOTAL              | 8    |      |         | 1      |

**Resolution Authorizing An Agreement With Permitium To Provide An Online Application  
For Vital Records Requests**

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment and authorizes an agreement with Permitium to provide an online application for Vital Records Requests. There is no cost to the City.

Permitium will provide the residents with a secure, online application platform to request Birth, Death and marriage certificates. Customers will be able to request and pay for certificates online.

RESOLVED; that the Common Council of the City of Middletown concurs with the Board of Estimate and Apportionment and authorizes the Mayor to sign the attached contract.

## USER LICENSE AGREEMENT FOR AN ONLINE VITAL RECORDS REQUEST APPLICATION

This user license agreement for an online vital records request application (the "User License Agreement") is made and entered into this 7 day of September, by and between the City of Middletown City Clerk (the "Customer") and Permitium, LLC ("Permitium"), a corporation in good standing authorized to do business in the State of North Carolina with its principal place of business at 10617 Southern Loop Blvd. Pineville, NC 28134.

For and in consideration of the mutual promises set forth in the User License Agreement, the adequacy of which is hereby expressly acknowledged, the parties do mutually agree as follows:

1. **Basic Obligations of Permitium.** Permitium hereby agrees to provide the services described in the attached Statement of Work (attached hereto as Exhibit 1) in accordance with the terms and conditions of this User License Agreement as requested in writing by the Customer.
2. **Basic Obligations of the Customer.** For any services requested in writing by the Customer, the Customer agrees to compensate Permitium at the rates set forth in the attached Statement of Work (Exhibit 1).
3. **Term.** Contract will be effective from [REDACTED] through [REDACTED]. This Agreement shall be automatically renewed for successive one (1) year terms unless either Party provides the other Party with sixty (60) days prior written notice to the end of the Initial Term or the Renewal Term.
4. **Fee Collection and Payment.** Permitium will collect online payments and agrees to deliver the Customer a monthly statement by the 25<sup>th</sup> of each month which will be itemized for every transaction submitted the previous month along with a check or ACH for the total amount collected less credit card fees listed on Exhibit 1.
5. **Termination for Cause.** At any time after 30 days of the software deployment, the Customer may terminate this User License Agreement immediately and without prior notice if Permitium is unable to meet goals and timetables or if the Customer is dissatisfied with the quality of services provided.
6. **Insurance.** Permitium agrees to maintain a minimum of \$6,000,000 in general liability, \$5,000,000 in cyber liability, and other appropriate insurance, as well as Workers Compensation in the required statutory amount, for all employees participating in the provision of services under this User License Agreement. Certificates of such insurance shall be furnished by the Permitium to the Customer and shall contain the provision that the Customer is given ten (10) days' written notice of any intent to cancel or terminate by either the Permitium or the insuring company. Failure to furnish such insurance certificates or maintain such insurance shall be deemed a material breach and grounds for immediate termination of this User License Agreement. All Permitium liabilities as

defined within this User License Agreement will be capped at the greater of the compensation received by Permitium, or the above stated insurance liability policy limits.

7. **Taxes.** Permitium shall pay all federal, state and FICA taxes for all of its employees participating in the provision of services under this User License Agreement.
8. **Monitoring and Auditing.** Permitium shall cooperate with the Customer, or with any other person or agency acting at the direction of the Customer, in their efforts to monitor, audit, or investigate activities related to this User License Agreement. Permitium shall provide any auditors retained by the Customer with access to any records and files related to the provision of services under this User License Agreement upon reasonable notice. The Customer agrees that its auditors will maintain the confidentiality of any trade secrets of Permitium that may be accessed during an audit conducted under this User License Agreement.
9. **Confidentiality Information.** Permitium agrees that all records, data, personnel records, and/or other confidential information that come within Permitium's possession in the course of providing services to the Customer under this User License Agreement (hereinafter, "Confidential Information") shall be subject to the confidentiality and disclosure provisions of all applicable federal and state statutes and regulations, as well as any relevant policies of the Customer. All data and/or records provided by the Customer to Permitium shall be presumed to be Confidential Information subject to the terms of this section unless the Customer specifically indicates in writing that the requirements of this section do not apply to a particular document or group of documents.

Permitium agrees to receive and hold Confidential Information, whether transmitted orally, in writing or in any other form, and whether prepared by a party or its Representatives, in strict confidence, and to use the Confidential Information solely for the purpose of facilitating Customer's use of Permitium's products and services. Except as essential to Permitium's obligations to Customer, Permitium shall not copy any of the Confidential Information, nor shall Permitium remove any Confidential Information or proprietary property or documents from Customer premises without written authorization of the Customer. Permitium acknowledges its understanding that any unauthorized disclosure of Confidential Information may result in penalties and other damages.

10. **Security.** Permitium represents and warrants that all documents and information provided to Permitium by or behalf of the Customer, including but not limited to Confidential Records, shall be stored and maintained by Permitium with the utmost care and in conformity with standards generally accepted in Permitium's industry for the types of records being stored and maintained. Permitium further represents and warrants that any online access to the Customer's records authorized persons pursuant to this User License Agreement shall be safe, secure, and password-protected and provided with the utmost care and in conformity with standards generally accepted in Permitium's industry for the types of records being stored and maintained, and that no person shall be

permitted to obtain unauthorized access to any of the Customer's records. Without limiting the foregoing, Permitium specifically warrants that:

- 10.1. All servers, computers, and computer equipment used to provide services pursuant to this User License Agreement shall be maintained in good working order in compliance with generally accepted industry standards in light of the confidential nature of the documents in question and shall be located in a safe, controlled, and environmentally stable environment (including moisture and temperature controls) and adequately protected against fires, hurricanes, flooding, or similar occurrences;
  - 10.2. Facilities where services are provided shall be secure and access shall be limited to employees trained in security protocols with a legitimate business need to access such facilities (with access removed immediately upon termination of employment) and shall be protected from unauthorized access by commercially reasonable security systems;
  - 10.3. All websites, FTPs, and any other online electronic system used to provide services pursuant to this User License Agreement shall be protected from security breaches by commercially reasonable firewalls and other intrusion detections systems and antivirus software, which shall be kept updated at all times. Access shall be limited to those agents and employees of Permitium assigned to the project and any individuals identified in writing by the Customer or Customer's Designee as authorized to obtain access.
  - 10.4. Permitium have technical controls in place that ensure the security, availability and confidentiality of Customer data.
  - 10.5. All information provided to Permitium pursuant to this User License Agreement shall be encrypted while in transit over an open network.
11. **Standard of Care.** Notwithstanding anything in this User License Agreement to the contrary, Permitium represents and warrants that the services provided by Permitium shall be performed by qualified and skilled individuals in a timely and professional manner with the utmost care and in conformity with standards generally accepted in Permitium's industry for the types of services and records governed by this User License Agreement.
12. **Indemnification.** Permitium shall indemnify the Customer, its agents, and employees, from and against all damages directly arising out of Permitium's breach of this Agreement. This provision shall survive the expiration or termination of this Agreement and remain in full force and effect after such expiration or termination. Notwithstanding the foregoing Permitium's maximum indemnification will be limited to the amount of insurance set forth within section 6.

Customer shall indemnify Permitium, its agents, and employees from and against all damages directly arising out of Customer's breach of this Agreement. This provision shall survive the expiration or termination of this Agreement and remain in full force and effect after such expiration or termination.

- 13. Relationship of Parties.** Permitium shall be an independent contractor of the Customer, and nothing herein shall be construed as creating a partnership or joint venture; nor shall any employee of Permitium be construed as an employee, agent or principal of the Customer.
- 14. Compliance with Applicable Laws.** Permitium shall comply with all applicable laws and regulations in providing services under this User License Agreement. Without limiting the foregoing, Permitium specifically represents that it is aware of and in compliance with the Immigration Reform and Control Act and that it will collect properly verified I-9 forms from each employee providing services under this User License Agreement. Permitium shall not employ any individuals to provide services to the Customer who are not authorized by federal law to work in the United States.
- 15. Applicable Customer Policies.** Permitium specifically acknowledges that it will comply with all applicable Customer policies, all of which are publicly available on the Customer's website.
- 16. Assignment.** Neither party may transfer, assign, or delegate any rights, duties, interest, or obligations under this Contract to any other person or entity without the other party's prior written consent. Notwithstanding the foregoing, Permitium may (without the Customer's consent) assign this agreement and all of its rights, duties, interests and obligations hereunder to any entity into which it merges, has a change in control representing a conveyance of more than 50% of its ownership interests, or to which it sells all or substantially all of its assets. Permitium agrees to notify the Customer within 10 business days of any assignment.
- 17. User License Agreement Modifications.** This User License Agreement may be amended only by written amendments duly executed by and between the Customer and Permitium.
- 18. New York.** New York law will govern the interpretation and construction of the User License Agreement. Any litigation arising out of this User License Agreement shall be filed, if at all, in a court or administrative tribunal located in the State of New York.
- 19. Entire Agreement.** This User License Agreement constitutes and expresses the entire agreement and understanding between the parties concerning the subject matter of this User License Agreement and supersedes all prior and contemporaneous discussions, promises, representations, agreements and understandings relative to the subject matter of this User License Agreement.
- 20. Severability.** If any provision of this User License Agreement shall be declared invalid or unenforceable, the remainder of the User License Agreement shall continue in full force and effect.
- 21. Notices.** Any notice or other communication provided for herein as given to a party

hereto shall be in writing, shall refer to this Agreement by parties and date, and shall be delivered by registered mail, return receipt required, postage prepaid to the person listed below or his successor.

If to: Permitium  
Permitium, LLC  
10617 Southern Loop Blvd.  
Pineville, NC 28134  
Attn: Matt Solomon

If to Customer:  
City of Middletown  
Attn: Vital Statistics  
16 James Street  
Middletown, NY 10940

- 22. Cooperative Procurement.** As additional consideration for this User License Agreement, and pursuant to state and local laws and procurement rules, Permitium agrees to extend an option to purchase products or services covered under this contract at the same prices, and under the same terms and conditions, to other contracting agencies.

Any such purchases shall be between Permitium and the participating agency and shall not impact Permitium's obligations to the Customer under this User License Agreement. Each contracting agency shall execute its own contract with Permitium. Any estimated purchase volumes or user counts listed herein do not include other public agencies and the Customer makes no guarantee as to their participation.

- 23. Authority of Signatories.** The persons executing this User License Agreement hereby represent and warrant that they have full authority and representative capacity to execute the User License Agreement in the capacities indicated below and this User License Agreement constitutes the binding obligation of the parties on whose behalf they signed.

IN WITNESS WHEREOF, the parties have hereunto set their hands and seals the day and year indicated above.

**City of Middletown** <sup>MAYOR</sup> ~~City Clerk~~

**PERMITIUM, LLC**

Signed:

Name:

Title:

Date:

  
Joseph M. DeStefano  
MAYOR  
9-7-22

Signed:

Name:

Title:

Date:

## **STATEMENT OF WORK – EXHIBIT 1**

### **Project Scope**

#### **Permitium's Project Commitment**

- Implement VitalDirector solution, including hospital application if applicable, configured based on VitalDirector's standard options and with input from received from customer team for the implementation
- Up to three virtual recorded training sessions to include:
  - VitalDirector
  - New Mother Hospital Application
  - Walk-in kiosk mode/QR code redirect
- Create QR Code Flyers
  - Hospital Application
  - Lobby flyer
  - K12/School flyer
  - Other agreed upon flyers i.e., DMV
- Create Press Release Template and other agreed upon social media content
- Go live support
- Provide ongoing hosting and support of VitalDirector

#### **Customer's Project Commitment**

- Complete user training for customer staff, with each trained user thereby both contributing to the VitalDirector UAT process as well as demonstrating personal proficiency with the application's final configuration. Each trained user will be expected to process at least 5 'test' orders by transaction type (i.e., processing birth, death and marriage certificates, if applicable) prior to VitalDirector go live
- Customer to place live VitalDirector site links throughout their agency website, with clear instructions directing public usage of VitalDirector as the preferred/recommended method for submitting vital record applications
- Replace and redirect all PDF application forms from customer website within 7 days of VitalDirector go live
- Implement in-office "kiosk mode" processing workflow upon VitalDirector go live, with customer office staff then directing 100% of in-person applications to utilize VitalDirector site from citizens' personal devices or customer-provided IT equipment
- Have local hospitals distribute hospital app QR code flyer to patients within 2 weeks of VitalDirector go live

### **Implementation Plan**

The implementation of the VitalDirector system will follow the phases as outlined below. The phases of this process can run concurrently with the specific project tasks, timelines, and responsible parties to be defined upon the start of the project. The typical implementation timeline is 45 days from the project kick-off and can vary based on configuration requirements, training needs, and the overall number of agency users/processors.

- **Project Kickoff/Planning Call** with Customer stakeholders.
  - Introduce Permitium Project Manager and team
  - Identify Customer stakeholders and responsibilities
  - Review the "Configuration Checklist" for initial VitalDirector setup
  - Provide a general overview of the Implementation Timeline
  - Set reasonably agreed upon benchmarks for project timeline and project success
- **Initial configuration** of the new VitalDirector solution based on the Customer checklist information and standard VitalDirector setup.
- **Configured VitalDirector Walkthrough** with Customer stakeholders and vital records processing team.
  - Walk through the online application
  - Outline the application processing workflow
  - Identify any customer processing requirements
- **Hospital Birth Certificate Application and Walk-in Walkthrough** – with Customer stakeholders and vital records processing team.
  - Review the QR code flyer designs
  - Outline how the flyers are distributed
  - Walkthrough the walk-in application process via the kiosk mode and lobby flyers
- **Customer System Testing** – Customer testing of the VitalDirector system.
  - Each user enters and processes at least 5 'test' orders for each vital record type
  - Confirm all relevant/required fields on application pages
  - Confirm site verbiage on the VitalDirector application pages
  - Review verbiage and directions from VitalDirector outbound notifications (i.e., phone call, text, email notifications)
- **Virtual Training** – up to three virtual training sessions:
  - VitalDirector processing training
  - Walk-in/Hospital application processing training
- **Go Live**
  - Final testing and sign off
  - Introduction to the Permitium Support and Customer Success teams
  - VitalDirector turned to production
  - Place VitalDirector site link on customer website home page on day of go live
  - Customer implements the updates to their website and distributes all flyers as indicated in the Customer Project Commitment under the Project Scope
- **Ongoing Support** - Provide ongoing support and hosting of the **VitalDirector** solution.

## Implementation Team

|                  |                          |                  |                                                                              |
|------------------|--------------------------|------------------|------------------------------------------------------------------------------|
| <b>Permitium</b> | Support Team             | 855-712-PERM     | <a href="mailto:support@permitium.com">support@permitium.com</a>             |
| <b>Customer</b>  | Primary Point of Contact | CUSTOMER CONTACT | CUSTOMER EMAIL ADDRESS                                                       |
| <b>Permitium</b> | Project Manager          | Colin Packert    | <a href="mailto:colin.packert@permitium.com">colin.packert@permitium.com</a> |
| <b>Permitium</b> | Senior Account Executive | Analisa Boza     | <a href="mailto:analisa.boza@permitium.com">analisa.boza@permitium.com</a>   |

## Data and Security

All data collected in the Customer's instance of **VitalDirector** is the property of the Customer. **Permitium** does not own and will not distribute data without the written consent of the Customer. All passwords placed within the system are encrypted and not accessible by the **Permitium** staff.

## Cost of Service

Permitium will charge the consumer/applicant a convenience fee of \$4.00 per transaction for each application submitted for the use of the service and will accept payment of such fees using a valid payment method accepted by Permitium, which may include, without limitation, Visa, MasterCard, Discover Card, or American Express credit cards, as well as major debit cards at Permitium's reasonable discretion. Credit card processing fees at the rate of \$0.30 per transaction plus 3.3% of the transaction total are passed through to the applicant by Permitium along with a \$0.35 VitalVerify fee, when applicable.

Any other services needed by the customer (i.e., digital/data conversions) will be available anytime under this agreement utilizing an existing cooperative purchasing program called the Charlotte Cooperative Purchasing Agreement (CCPA). The CCPA co-op government rates can be found at [www.charlottealliance.org](http://www.charlottealliance.org).

**OFFICE OF THE COMMON COUNCIL CLERK  
CITY OF MIDDLETOWN, NEW YORK**

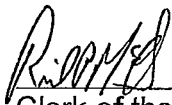
RESOLUTION NUMBER 204-22 LOCAL LAW NUMBER \_\_\_\_\_

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 on

September 6, 2022

And presented to the Office of the Mayor on

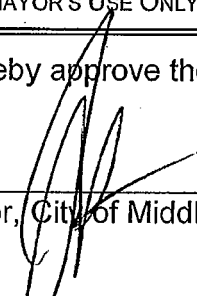
September 7, 2022



\_\_\_\_\_  
Clerk of the Common Council

FOR MAYOR'S USE ONLY:

I hereby approve the attached Resolution/Local Law



\_\_\_\_\_  
Mayor, City of Middletown

Date

9/7/22

I hereby disapprove the attached Resolution/Local Law for the following reason(s):

\_\_\_\_\_  
Mayor, City of Middletown

\_\_\_\_\_  
Date

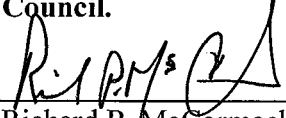


**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

**THE FOLLOWING WAS PRESENTED**

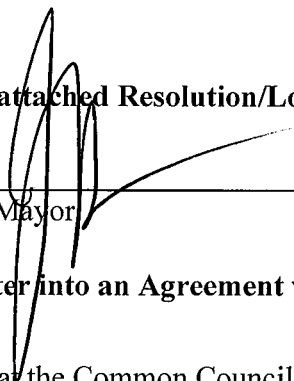
By: Alderman Johnson  
Seconded by: Alderman Green  
Date of Adoption: August 20, 2024  
Index No: 160-24

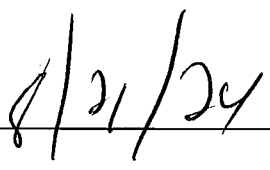
**I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.**

  
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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
Joseph M. DeStefano, Mayor

Date 

**Authorization to enter into an Agreement with Middletown Pistol and Rifle Association**

BE IT RESOLVED; that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes an agreement with Middletown Pistol and Rifle Association for use of their facility by the Middletown Police Department.

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:  
John Ewanciw, Chief of Police

**Attachments:**

|    |                       |
|----|-----------------------|
| 1. | Scan2024-08-12 155701 |
|----|-----------------------|



**KALTER, KAPLAN, ZEIGER & FORMAN**

ATTORNEYS AT LAW

6166 STATE ROUTE 42, P.O. Box 30

WOODBOURNE, NEW YORK 12788

IVAN KALTER  
ivankalter.kkzf@gmail.com

JEFFREY KAPLAN  
jkaplan.kkzf@gmail.com

JAY L. ZEIGER  
jayzeiger.kkzf@gmail.com

TERRY S. FORMAN  
terryforman.kkzf@gmail.com

TEL. (845) 434-4777

FAX (845) 436-8156

ELLENVILLE OFFICE

47 NORTH MAIN STREET, P.O. Box 186

ELLENVILLE, NEW YORK 12428

TEL. (845) 647-4110

FAX (845) 647-6232

Email: jkaplan.kkzf@gmail.com

July 31, 2024

Alex Smith, Esq.  
6 North Street  
Middletown, New York 10940

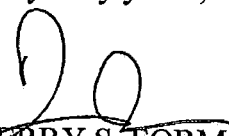
Re: Middletown Pistol and Rifle Association with City of Middletown

Dear Alex:

Enclosed is the extension agreement executed by the lessee, Middletown Pistol and Rifle Association. Kindly review same, and if acceptable present same to the Mayor for execution and provide my office with an executed copy.

Thank you

Very truly yours,

  
TERRY S. FORMAN

TSF:rg  
Enc.

**RECEIVED**

AUG 12 2024

CITY CLERK  
CITY OF MIDDLETOWN

## **AGREEMENT**

Agreement made this     day of April, 2024, by and between the City of Middletown, with a principal office located at 16 James Street, Middletown, New York 10940 ("Landlord"), and Middletown Pistol and Rifle Association, Inc., a non-profit membership corporation, with an office c/o P.O. Box 302, Middletown, New York 10940 ("Tenant").

Whereas, the parties entered into an agreement ("Initial Agreement") regarding the use of premises located on VanDuzer Road in the Town of Wallkill, New York for an indoor range and club house, and

Whereas, the Initial Agreement was signed on September 21, 1972, for a term of thirty (30) years, and

Whereas, the parties entered into a second agreement ("Extension Agreement") on February 12, 1998, extending the Initial Agreement until December 31, 2032, and adding a provision governing disputes, and

Whereas, the parties now wish to extend these agreements until December 31, 2062.

Now, therefore, in consideration of the mutual covenants, promises, representations and conditions contained herein, which the parties agree is adequate consideration for this Agreement, the parties hereto agree as follows:

1. The Initial Agreement and the Extension Agreement are hereby modified by

extending their termination date to December 31, 2062, so that these agreements will expire as of December 31, 2062.

2. The Tenant has performed the following improvements to the subject premises: new roof, new updated backstop steel, new backstop medium, baffles with new and heavier gauge of steel, and new air scrubbers to help ventilation.

3. The Tenant is contemplating the following improvements to be accomplished when and as funds permit:

- A. Repair and update the entire floor, with a more durable finish;
- B. Repair and replace hydraulics as needed;
- C. Repair and update archery range;
- D. Repair and replace external fans for ventilation;
- E. Install new fencing;
- F. Upgrade and increase interior lighting;
- G. Repair the damaged and in parts missing drop ceiling;
- H. Repair and replace insulation in the ceiling to save heat and fuel as well as better absorb sound;
- I. Upgrade and maintain office and range security systems; and
- J. Upgrade ventilation system as needed.

4. None of these improvements will prevent or impair the Middletown police usage of this facility. The parties agree to use best efforts to coordinate the timing of police usage with all renovations.

5. In the course of these improvements and in its maintenance and operation of the building, the Tenant shall comply with all applicable environmental rules, regulations and statutes, including those pertaining to lead and its impact upon the ventilation system.

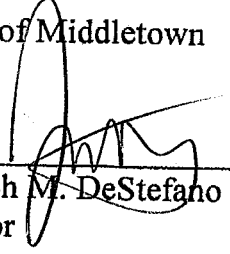
6. The Middletown police will have access to the property outside of the present

building for use as an outdoor range.

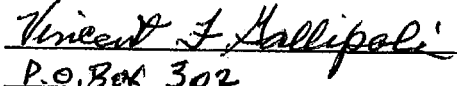
7. In all other respects, the parties hereto republish, reiterate and reaffirm all of the terms contained in the Initial Agreement and the Extension Agreement.

In witness whereof, the parties have set their hands and seals as of the day and year first above written.

City of Middletown  
By:

  
\_\_\_\_\_  
Joseph M. DeStefano  
Mayor

Middletown Pistol and Rifle Association, Inc.  
By:

  
\_\_\_\_\_  
P.O. Box 302  
Middletown, NY 10940

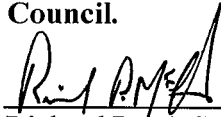


**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

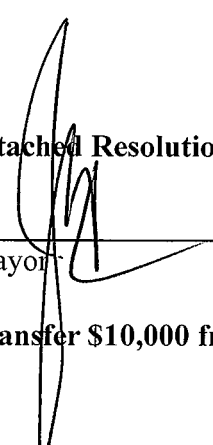
By: Alderman Jean-Francois  
Seconded by: Alderman Green  
Date of Adoption: August 20, 2024  
Index No: 159-24

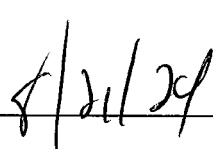
**I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.**

  
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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
Joseph M. DeStefano, Mayor

Date 

**Authorization to Transfer \$10,000 from Fund Balance for a Speed Dampening Pilot Program**

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 a speed-dampening pilot program.

|              |            |          |
|--------------|------------|----------|
| FROM         | TO         | AMOUNT   |
| Fund Balance | A.5110.450 | \$10,000 |

Prepared by:  
Sparrow Tobin, Alderman

**Attachments:**

|    |                       |
|----|-----------------------|
| 1. | Scan2024-08-12 150745 |
|----|-----------------------|

Sparrow Tobin  
16 James Street  
Middletown, NY 10940  
stobin@middletownny.gov  
845 649-8905  
June 6th, 2024

Board of Estimate  
16 James Street  
Middletown, NY 10940

Dear Members of the Board of Estimate,

I am writing to request the allocation of \$10,000 to fund a pilot program aimed at calming traffic in our city through the installation of speed humps. This initiative is designed to address the growing concerns of residents regarding traffic safety and excessive speeding.

The pilot program will be limited to a few selected locations that will be identified as high-risk areas for speeding. These locations will be chosen based on traffic data, resident complaints, and the proximity to schools and parks where pedestrian safety is important.

The primary goals of this pilot program are:

1. Traffic Speed Reduction: To decrease vehicle speeds in residential neighborhoods, enhancing the safety of pedestrians, cyclists, and motorists.
2. Data Collection: To gather comprehensive data on the effectiveness of speed humps in reducing traffic speed and accidents, which will be critical in assessing the success of the program and determining its potential expansion.

The requested funds will be used for the following purposes:

- Installation of Speed Humps: Covering the costs of materials and labor required to install speed humps at the selected locations.
- Signage and Markings: Ensuring that appropriate signage and road markings are in place to alert drivers to the presence of speed humps.

The success of this pilot program will be measured through a combination of data (traffic speeds) and feedback from the community. If the results are positive, it could pave the way for a broader implementation across the city, making our streets safer for everyone.

I believe that this small investment might yield significant benefits in terms of improved traffic safety and enhanced quality of life for our residents. I ask the Board to consider this request favorably and appropriate the necessary funds to support this initiative.

Thank you for your attention and consideration.

Sincerely,

Sparrow Tobin  
Chair, Public Safety Committee



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: Alderman Tobin  
Seconded by: Alderman Johnson  
Date of Adoption: August 20, 2024  
Index No: 161-24

**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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
Joseph M. DeStefano, Mayor

Date

8/21/24

**Authorization to Transfer \$43,000 from within the Corporation Counsel Budget for  
Litigation Invoices**

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 \$43,000 in the following manner to replenish A.1420.489 line to pay unpaid litigation invoices.

| FROM                                     | TO                    | AMOUNT   |
|------------------------------------------|-----------------------|----------|
| A.1420.488-Corporation Counsel Grievance | A.1420.489-Litigation | \$20,000 |
| A.1930.930- Judgments & Claims           | A.1420.489-Litigation | \$20,000 |
| A.1900.991- Appraisal of Property        | A.1420.489-Litigation | \$3,000  |

Prepared by:

**Attachments:**

|    |             |
|----|-------------|
| 1. | BOE 8 15 24 |
|----|-------------|



## DEPARTMENT OF FINANCE

### City Of Middletown

Rosa Tumminia  
Deputy Treasurer  
10940

16 James Street  
Middletown, NY

Tel: (845) 346-4150  
Fax: (845) 343-1101

8/13/24

To: Board of Estimate

Budget transfer is to replenish A.1420.489 line in order to pay unpaid litigation invoices.

| From                          | Amount   | To         |
|-------------------------------|----------|------------|
| A.1420.488                    | \$20,000 | A.1420.489 |
| Corporation Counsel Grievance |          | Litigation |
| A.1930.930                    | \$20,000 | A.1420.489 |
| Judgments & Claims            |          | Litigation |
| A.1900.991                    | \$3,000  | A.1420.489 |
| Appraisal of Property         |          | Litigation |

Sincerely,

Rosa Tumminia



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: Alderman Johnson  
Seconded by: Alderman Jean-Francois  
Date of Adoption: August 20, 2024  
Index No: 162-24

**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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
\_\_\_\_\_  
Joseph M. DeStefano, Mayor  
\_\_\_\_\_  
Date

**Authorization to Award the Bids for Surplus Vehicles Auctioned Off through Auctions International**

BE IT RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and awards the following Bids for Surplus Vehicles Auctioned Off through Auctions International.

2009 Chevy Impala (VIN#2G1WT57N691292859) - \$1,475.00  
2014 Ford Taurus (VIN# 1FAHP2MKXEG182980) - \$1,850.00  
2005 Chevy Silverado (VIN# 1GCHK24U45E283163) - \$1,350.00  
2007 Dodge Charge (VIN# 2B3KA43HX7H779891) - \$1,075.00  
1996 Pierce Fire Truck (VIN# 4P1CT0288TA000515) - \$8,600.00  
**Total= \$14,350**

Prepared by:  
Jacob Tawil

**Attachments:**

|    |                              |
|----|------------------------------|
| 1. | BOE- JULY AUCTION AWARD MEMO |
|----|------------------------------|

# Department of Public Works

## Memorandum

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

**CC:** Richard McCormack-City Clerk and Leonora Liz- Treasurer

**From:** Jacob Tawil, P.E. Commissioner of Public Works



**Date:** August 12, 2024

**Re:** Resolution needed to award bids for surplus vehicles auctioned off through Auctions International

---

I respectfully request a resolution to award the following bids for surplus vehicles auctioned off through Auctions International:

2009 Chevy Impala (VIN# 2G1WT57N691292859) - \$1,475.00

2014 Ford Taurus (VIN# 1FAHP2MKXEG182980) - \$1,850.00

2005 Chevy Silverado (VIN# 1GCHK24U45E283163) - \$1,350.00

2007 Dodge Charge (VIN# 2B3KA43HX7H779891) - \$1,075.00

1996 Pierce Fire Truck (VIN# 4PICT0288TA000515) - \$8,600.00

**Total= \$14,350**

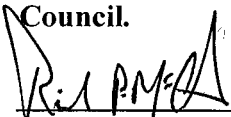


**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

**THE FOLLOWING WAS PRESENTED**

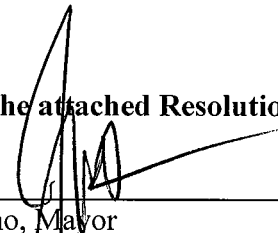
By: Alderman Green  
Seconded by: Alderman Johnson  
Date of Adoption: August 20, 2024  
Index No: 163-24

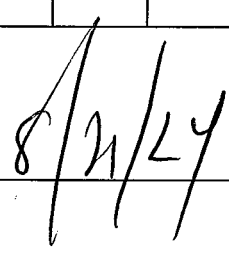
**I hereby certify that the attached is a true copy of a Resolution and/or Local Law adopted by the City of Middletown Common Council.**

  
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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
Joseph M. DeStefano, Mayor

  
Date

**Authorization to Appoint A Bankruptcy Attorney**

BE IT RESOLVED that the Common Council of the City of Middletown, NY, concurs with the Board of Estimate and Apportionment and authorizes the appointment of Michael Leary to assist Corporation Counsel in the matter of Joseph J. Mendinghall Jr. vs. City of Middletown, Charles Tran Property LLC and Cheswold (TL), LLC- a bankruptcy proceeding filed in United States Bankruptcy Court, Southern District of New York.

Prepared by:  
Alex Smith, Corporation Counsel

**Attachments:**

|    |                    |
|----|--------------------|
| 1. | Mendinghall v City |
|----|--------------------|

**UNITED STATES BANKRUPTCY COURT  
Southern District of New York**

In re: Joseph J Mendinghall, Jr

Bankruptcy Case No.: 24-35112-kyp

Joseph J Mendinghall Jr

Plaintiff(s),

—against—

Adversary Proceeding No. 24-09021-kyp

City of Middletown  
Charles Tran Property LLC  
Cheswold (TL), LLC

Defendant(s)

**SUMMONS AND NOTICE OF PRETRIAL CONFERENCE  
IN AN ADVERSARY PROCEEDING**

YOU ARE SUMMONED and required to submit a motion or answer to the complaint which is attached to this summons to the clerk of the bankruptcy court within 30 days after the date of issuance of this summons, except that the United States and its offices and agencies shall submit a motion or answer to the complaint within 35 days, to:

**Address of Clerk:**

Clerk of the Court  
United States Bankruptcy Court  
Southern District of New York  
355 Main Street  
Poughkeepsie, NY 12601

At the same time, you must also serve a copy of the motion or answer upon the plaintiff's attorney.

**Name and Address of Plaintiff's Attorney:**

Tanya Dwyer  
Legal Services of the Hudson Valley  
1 Park Place, Suite 202  
Peekskill, NY 10566

If you make a motion, your time to answer is governed by Fed. R. Bankr. P. 7012.

YOU ARE NOTIFIED that a pretrial conference of the proceeding commenced by the filing of the complaint will be held at the following time and place:

United States Bankruptcy Court  
Southern District of New York  
355 Main Street  
Poughkeepsie, NY 12601

Room: Contact chambers for Zoom Meeting  
ID, and Password, KYP Zoom  
Videoconference

Date and Time: 10/1/24 at 10:00 AM

IF YOU FAIL TO RESPOND TO THIS SUMMONS, YOUR FAILURE WILL BE DEEMED TO BE YOUR  
CONSENT TO ENTRY OF A JUDGMENT BY THE BANKRUPTCY COURT AND JUDGMENT BY DEFAULT  
MAY BE TAKEN AGAINST YOU FOR THE RELIEF DEMANDED IN THE COMPLAINT.

Dated: 8/8/24

Vito Genna

Clerk of the Court

By: /s/ Vanessa Ashmeade

Deputy Clerk

**RECEIVED**

**AUG 13 2024**

**CITY CLERK  
CITY OF MIDDLETOWN**

**UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK**

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In re

JOSEPH MENDINGHALL, JR.,

Case No. 24-bk-35112-kyp  
Chapter 13

Debtor.

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JOSEPH MENDINGHALL, JR.,

Adversary No. \_\_\_\_-ap-\_\_\_\_

Plaintiff,

**COMPLAINT**

vs.

Jury Trial Demanded

CITY OF MIDDLETOWN, CHESWOLD (TL) LLC,  
CHARLES TRAN PROPERTIES LLC,

Defendants.

---

**COMPLAINT**

Plaintiff Joseph Mendinghall, by and through his attorneys, Legal Services of the Hudson Valley, bring this action pursuant to the Takings Clause of the United States and New York Constitutions, and the Excessive Fines Clause of the United States and New York Constitutions, and the Due Process Clause of the United States and New York Constitutions, against defendants City of Middletown, Cheswold LLC, and Charles Tran LLC ("Defendants").

**I. PARTIES**

1. Joseph Mendinghall, Jr. is the Plaintiff in this case. He was the owner of the property located at 14 Amchir Avenue, Middletown, NY 10940. Joseph purchased the property shortly after turning 18 in 2017 with the proceeds of a structured settlement from the wrongful death of his mother during childbirth. He resides at the property with his step-mother and step-aunt. A tax lien was placed on the property by the City of Middletown on October 11, 2019 and sold to

Cheswold LLC. Upon information and belief the lien was sold for less than \$10 despite its face value of \$10,430.18. The Cheswold LLC lien against the property was converted into a deed by operation of law without compensation. The estimated Fair Market Value of the property at the time the lien was converted to a deed was approximately \$387,000.

2. The City of Middletown (“the City” or “Middletown”) is a municipal corporation incorporated under the laws of the State of New York. The City placed a property tax lien on Plaintiff’s home totaling \$8,200. The City subsequently transferred the lien to Cheswold (TL) LLC pursuant to Middletown City Charter Sections 83 and 93.
3. Cheswold (TL) LLC (“Cheswold”) is a limited liability corporation incorporated under the laws of the State of Delaware. Cheswold (TL) LLC is a private entity that in 2019 bulk purchased approximately x number of tax liens in the City of Middletown including the tax lien on Plaintiff’s property, for approximately \$10. Upon information and belief Cheswold LLC is the only private entity to have bulk purchased property tax liens in the City of Middletown since 2014.
4. Charles Tran Properties LLC (“Tran”) is a limited liability corporation incorporated under the laws of the State of New York. Charles Tran Properties LLC is a private corporation that owns a number of properties located in Middletown and the surrounding area. Tran purchased Plaintiff’s property on April 23, 2023 at a judicial foreclosure auction for \$25,000.

## **II. FEDERAL COURT JURISDICTION AND VENUE**

5. This is an adversary proceeding pursuant to FRBP 7001(1) and (9).
6. This court has jurisdiction over the questions raised in and by this matter pursuant to 11 USC Sect. 548, and 28 USC Sects. 157 and 1334.
7. This is a core proceeding pursuant to 28 USC Sect. 157 as this matter concerns questions

of federal law and concerns the property of the bankruptcy estate.

8. Plaintiff has standing to bring this action pursuant to FRBP Rule 6009 and Article III of the United States Constitution.
9. Venue is proper Pursuant to 28 U.S.C. Sect. 1409(a) and Local Rule 1071-1 of the United States Bankruptcy Court for the Southern District of New York.

### **III. STATEMENT OF CLAIMS**

10. On October 11, 2019, the City of Middletown sold a tax lien on Plaintiff's home totally \$10,430.18 to Cheswold (TL) LLC for less than \$10. Pursuant to Middletown Charter Sections 83 and 93 the property was transferred to Cheswold by operation of law on either October 11, 2021 or October 11, 2022.
11. On April 23, 2023, the property was subsequently transferred to Charles Tran LLC pursuant to a foreclosure auction despite the automatic transfer to Cheswold and its ability to sell the property on the open market for full fair market value. Plaintiff is being harmed by the theft of his home equity by the Middletown and Cheswold.

#### **A. Facts**

12. Plaintiff was the sole owner of his home when the city of Middletown sold to Cheswold a lien for unpaid taxes. Plaintiff is a young man who had purchased the property with funds from a structured settlement from his birth mother's wrongful death. He fell behind on his taxes due to limited income caused in part by wage theft by his employer, his lack of experience with financial management and the need to act as a caretaker for his disabled stepmother who resides with him at the property. Plaintiff was unaware of the extent of the debt and the foreclosure until after the foreclosure occurred.
13. The tax lien was placed on the property on October 11, 2019 and subsequently sold to

Cheswold for less than \$10 as part of bulk tax lien sale authorized by the Middletown City Council.

14. Upon information and belief, no notice of the tax lien or sale was ever mailed to Plaintiff and he was never informed of the tax lien or of the purchase of the lien by Cheswold.

15. The City of Middletown opted out of participation in Article 11 of New York's Real Property Tax Law Pursuant to the opt-out provision of RPTL 1104(2).

16. Under the Middletown City Charter, a tax lien may be sold to a private third party, either in an individual sale or in a bulk sale of multiple liens. Upon transfer of the lien, the delinquent property owner has 2 years from the date of the lien in order to redeem the lien by paying off the entirety. This deadline is extended to 3 years under the City Charter if no notice of the lien is subsequently sent.

17. Section 83 (3) of the Middletown City Charter states:

After the expiration of the redemption period as herein defined, if any part of the premises sold shall remain unredeemed, the Common Council shall give to the purchaser, his or her legal representatives or assigns, a conveyance of the premises so remaining unredeemed, which conveyance shall be valid and effectual to convey all the right, title and interest which may have been sold in the manner aforesaid and such conveyance shall be presumptive evidence in all courts and places that the tax assessment for which such lien may have been sold, was legally imposed and that the proceedings to authorize such sale were correct. The grantee named in any such conveyance may obtain possession of the real estate therein described, in the manner prescribed by law in relation to persons holding over demised premises, after the expiration of their terms, without the consent of their landlords, and said grantee, by virtue of such conveyance, shall acquire all the right, title and interest in the real estate therein described, and the right to the possession of the same, and shall have, hold and enjoy such real estate, free and clear from all claims, liens or encumbrances, except such taxes and assessments as may have been charged thereon at the time of

such sale, or at any time thereafter.

18. Section 93 (4) of the City Charter further provides that:

Upon expiration of the redemption period and completion of the procedures required herein, and upon execution by the City of a deed to a tax-delinquent parcel to the City or to a qualifying purchaser of an unpaid tax lien, the City or qualified purchaser shall be seized of an estate in fee simple absolute in such parcel and all persons, including the State, infants, incompetents, absentees and non-residents, except as specifically exempted by law, who may otherwise have had any right, title, interest, claim, lien, or equity of redemption in or upon such parcel shall be barred and forever foreclosed of any such right, title, interest, claim, lien or equity of redemption, and the City or qualified purchaser may hold such parcel for itself or sell or release such parcel as provided by law.

19. Nowhere in the city charter did it make any provision for the procedure for a sale of property itself either by the city or by the lien purchaser. Instead the property automatically become the property of the lien purchaser once the time for the homeowner to redeem had expired. No additional notice beyond the notice of the lien sale was required for said transfer.

20. At the time of the transfer the city of Middletown would sell tax liens either as individual liens or in bulk sales of multiple liens. While each type of sale has different provisions for prior notice of the sale of the lien, the provisions for redemption and subsequent transfer of title are identical in either instance.

21. Cheswold subsequently initiated a tax foreclosure case in the Orange County Supreme Court. Said proceeding was ultimately illusory as title had effectively already been transferred to Cheswold prior to the initiation of the proceeding.

22. Plaintiff was never served with the summons and complaint and a default judgment was entered against him.

23. Defendant Cheswold subsequently arranged via the court for an auction to be held in order

to sell Plaintiff's property. Upon information and belief the auction was held at 2:30 AM and was sold to Tran Properties for \$25,000.

24. Defendants are harming Plaintiff by rejecting his request for just compensation. Plaintiff's home was worth an estimated \$387,000 on the day title was transferred to Cheswold for roughly \$10,000 in unpaid property taxes.

**B. In Rem Surplus Retention Injures Property Owners in Violation of The United States Constitution and The New York Constitution**

25. City of Middletown Charter 83 allow the City of Middletown, in cooperation with private lien purchasers to seize real property for nonpayment of local taxes. The City Charter transfers all rights to the lien purchaser upon the expiration of the redemption period with the lien purchaser not required to bring any foreclosure action to gain title to the property. However, a condemnee's right to the excess equity is a separate property right from the title to the property and necessitates just compensation. "Just compensation" is generally measured by the market value at the time of appropriation, i.e., "the price a willing buyer would have paid a willing seller for the property. The property must be valued based on its highest and best use on that date, whether or not the owner was then using the property to its fullest potential, as legally restricted by all applicable governmental regulations then in effect. The value of the subject property on the day the deed was transferred to Cheswold LLC was an estimated \$X.

26. Furthermore, *in rem* tax foreclosure of the subject property is an excessive fine under the United States Constitution Eighth Amendment and New York Constitution Article 1 Section 5 because it is punitive and grossly disproportionate to the redemption amount. A fine is considered punitive when it is not purely remedial. Like the Minnesota statute at issue in *Tyler v. Hennepin County*, the Middletown City Charter permits the sale of tax liens to private parties who automatically receive the property by operation of law if the

homeowner fails to redeem in a timely manner. The Excessive Fines test should be applied to *in rem* tax foreclosures to prevent government fines from having a disparate impact on homeowners with greater equity by arbitrarily taking more than what is required to satisfy the tax debt.

27. The result of this surplus retention frustrates any plausible remedial purpose, as many property owners, particularly older or disabled ones such as Plaintiff, are at risk of becoming homeless after forfeiture, causing them to increasingly rely on government support that would not have been needed had they been able to retain the equity in their homes.

**IV. First Cause of Action:  
Taking of Private Property Without A Valid Public Use In Violation Of The  
United States Constitution's Takings Clause**

28. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.
29. The cause of action for a taking is brought under 42 U.S.C. § 1983 for violations of the Fifth and Fourteenth Amendments to the United States Constitution.
30. This cause of action is also brought, in addition and in the alternative, if applicable, pursuant to 42 U.S.C. § 1983 for an order directing City of Middletown and Cheswold LLC to comply with the mandates of the Fifth and Fourteenth Amendments to the United States Constitution by paying just compensation to Plaintiff for his property that has been taken without payment of just compensation.
31. When Article 11 of the New York State Real Property Law was adopted in 1993, the City of Middletown opted out of the provision pursuant to RPTL 1101 (2), maintaining its own separate non-judicial tax foreclosure procedure.

32. By taking private property without a public use, the City of Middletown violated the United States Constitution.
33. The City of Middletown place a tax lien on Plaintiff's property as a result of his tax debt. Middletown then sold the lien and with it the right to ownership of the property if unredeemed in two or three years. However, the City of Middletown may not "use the toehold of the tax debt to confiscate more property than was due. By doing so, it effected a "classic taking in which the government directly appropriates private property for its own use." *Geraldine Tyler v. Hennepin County*, 598 U.S. 631 (2023).
34. The takings clause requires that an appropriation of public property occur be for a public purpose and be in relation to said public purpose. While the City of Middletown had a public purpose in placing and selling a tax lien on the property to repay unpaid taxes associated with the property and Cheswold LLC has a contractual right to compensation for the cost of the tax lien, they have no public interest in claiming the portion of the equity that exceeds the tax lien.
35. Cheswold's keeping of the surplus permits a private party to, with the explicit endorsement of the City, take Plaintiff's property for a mere fraction of what it is worth without just compensation.
36. The City of Middletown has no public use to support or justify permitting a private party to keep the surplus or equity when that equity is larger in amount than the taxes and associated charges owed. The United States Constitution precludes such arbitrary exercise of government power.
37. While Cheswold subsequently initiated a foreclosure proceeding in state court in order to arrange for an auction of the property, said proceeding was a legal nullity as the City

Charter neither authorizes nor requires a private tax lien buyer to bring a foreclosure proceeding to sell a property.

38. Just compensation is required by the takings clause and the party subject to the taking "is entitled to be put in as good a position pecuniarily as if his property had not been taken. He must be made whole but is not entitled to more." Plaintiff is entitled to the surplus equity in her property based on the "fair market value" of the property at the time of the taking.

39. Plaintiff faces a threat of great and irreparable harm if, after trial on the merits, a permanent injunction is not granted, in that there is a threat Plaintiff's property rights will continue to be violated by the Defendants.

40. Plaintiff has no adequate legal remedy to protect his property interests from the ongoing unconstitutional and unlawful conduct herein described.

41. Plaintiff has been injured and damaged by the taking of the equity in her property for no public use and is entitled relief as a result.

**V. Second Cause of Action:  
Taking of Private Property Without A Valid Public Use In Violation Of The New  
York Constitution**

42. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

43. The New York Constitution provides at Art. I, § 7, subd. [a]: "Private property shall not be taken for a public use without just compensation." The tax scheme adopted by the City of Middletown requires that any excess proceeds be retained by it. RPTL. § 1136.

44. The tax forfeiture statute permits and requires the taking of Plaintiff's private

property without just compensation, which is a deprivation of Plaintiff's rights secured under the New York Constitution.

45. By taking private property without a public use, the City of Middletown and Cheswold LLC violated the New York Constitution. Just compensation is a requirement to avoid a taking. Under the New York Constitution's takings clause, just compensation requires the property owner be made whole as if the taking never occurred. As noted in *Tyler*, New York "May not extinguish a property interest that it recognizes everywhere else to avoid paying just compensation when it is the one doing the taking. Phillips, 624 U.S. at 167." *Id.*

46. Homeownership is a means to societal advancement; however, local governments in New York may take a potentially significant property, one's home equity wealth, and despoil a fundamental American value by not providing just compensation.

47. Plaintiff has been injured and damaged by the failure to pay just compensation for the loss of her property and is entitled to compensation and other relief as a result.

48. The City of Middletown has no public use to support or justify permitting a private party to keep the surplus or equity when that equity is larger in amount than the taxes and associated charges owed. The New York Constitution precludes such arbitrary exercise of government power.

**VI. Third Cause of Action:  
Excessive Fines Violation of The United States Constitution**

49. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.

50. The Eighth Amendment to the United States Constitution prohibits the imposition of

excessive fines. Confiscating the entire value of Plaintiff's property because of non-payment of smaller amounts of real estate taxes is an excessive fine under the Eighth Amendment to the United States Constitution. The City of Middletown Charter transfers property to private parties without regard to the amount by which the redemption amount exceeds the real estate's market value. The market value of the real estate is not tied to the value of the taxes owed. The value of the taxes owed are a definite amount, whereas the market value of the real estate does not affect the definite amount of the taxes. The taxes owed will remain even if the value of the real estate does not.

51. For the City to transfer all right to Plaintiff's real estate without regard to the amount owed, allows it to retain an amount above and beyond its deserved amount and is definitional in excess or excessive. An 'excessive' fine is one that is 'grossly disproportionate' to the offense. Taking roughly a quarter million dollars from Plaintiff for a fine that was one tenth of that is grossly disproportionate so as to shock the conscience of the average person.

**VII. Sixth Cause of Action:  
Excessive Fines Violation of The New York Constitution**

52. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph.
53. Article I, Section 5 of the New York Constitution prohibits the imposition of excessive fines. Confiscating the entire value of Plaintiff's property because of non-payment of smaller amounts of real estate taxes is an excessive fine under Article I, Section 5 of the New York Constitution.
54. As noted above, Middletown and Cheswold's confiscation of Plaintiff's surplus equity

in his property is an excessive fine to redeeming the tax due. The excessive fines test is applicable to Plaintiff's case and other in rem tax forfeitures because New York's statute is imposing excessive fines because it (1) disregards willfulness of the taxpayer to pay their debt, (2) disregards the taxpayers ability to pay, (3) disregards proportionality of the value of the fine received by the government compared to the value of the tax debt and (4) has arbitrarily harsh consequences to the taxpayer when their homeownership is taken from them. The Excessive fines test is two pronged and looks at whether the amount taken by the government for a violation clearly exceeds the redemption amount and whether the fine has elements of punishment, including retribution and deterrence as applied to in rem tax forfeitures.

55. As alleged in the previous paragraphs, the value of Plaintiff's fair market value of Plaintiff's property is \$387,000 and the property was sold for a little over \$25,000. The difference in property value and debt owed is significant and results in a loss of equity of over \$362,000. Further, the fine has elements of punishment, including homelessness, confiscation of earned equity, mental distress, additional wards of the state and more, with very little deterrence factor.

56. Confiscating Plaintiff's surplus equity is not an effective deterrent for other property owners, since their ability to pay will not change as a result of Plaintiff's punishment by Middletown.

**VIII. SEVENTH CAUSE OF ACTION:  
TURNOVER OF PROPERTY TO BANKRUPTCY ESTATE  
PURSUANT TO 11 USC 542, 547, & 548**

57. The allegations contained in the foregoing paragraphs are incorporated and repeated in this paragraph

58. 11 USC 542 requires all property of a bankruptcy debtor to be turned over to the

bankruptcy estate.

59. In the event any of the debtors property was either voluntarily or involuntarily transferred fraudulently or for less than reasonable market value prior to the bankruptcy then the trustee or the debtor may bring an action in the bankruptcy court in order to void the transfer and return the property to the estate.
60. Under New York State law, the look back period for a fraudulent transfer is 6 years.
61. A subsequent purchaser of fraudulently transferred property may be required to turn over said property to the bankruptcy estate if said transfer is for less than fair market value.
62. The Bankruptcy court may void a transfer made pursuant to a property tax lien as a fraudulent conveyance if said transfer is not for fair market value, see *Gunsalus v. County of Ontario* (insert full cite)
63. Here a tax lien was placed on Plaintiff's property on October 11, 2019 and subsequently sold to Cheswold LLC. Pursuant to the City Charter, when Plaintiff failed redeem after 3 years the property automatically transferred to Cheswold by operation of law on October 11, 2021.
64. Cheswold subsequently sold the property to Charles Tran LLC on April 23, 2023 via auction carried out at 2:30 AM based upon the referee's report of sale. In said auction the property was sold for \$25,000 resulting in the loss of virtually all of Plaintiff's equity.
65. Charles Tran LLC did not take ownership of the property in good faith as it paid significantly less than fair market value for the property. Further Tran had knowledge

of the voidability of the transfer as the transfer was made pursuant to the Middletown City Charter which Tran would have been aware of as the owner of several properties within Middletown.

66. In the same bulk sale purchasing the lien for Plaintiff's property, Cheswold also purchased a number of liens on properties owned by Charles Tran Properties LLC or its members. Upon information and belief, all of said liens were redeemed by Tran establishing his familiarity with the tax foreclosure process in Middletown.

67. Plaintiff seeks to void the transfer to Cheswold LLC and the subsequent transfer to Charles Tran LLC and return his property to the bankruptcy estate to be used for the efficient administration of his debts.

#### **PRAYER FOR RELIEF**

WHEREFORE, Plaintiff requests that:

- a. The Court find and declare that City of Middletown and Cheswold LLC's taking of Plaintiff's property, including all equity therein, for no public purpose is a taking requiring just compensation under the United States and New York Constitutions;
- b. The Court find and declare that the City of Middletown and Cheswold LLC's taking and sale of Plaintiff's property, including all equity therein, was not attended by payment or securing just compensation and as such violates the United States and New York Constitutions;
- c. The Court find and declare that the City of Middletown and Cheswold LLC's appropriation of Plaintiff's real estate equity is an excessive fine in violation of the United States and New York Constitutions;
- d. The Court award Plaintiff damages and/or just compensation, including prejudgment

interest, in an amount to be determined at trial;

- e. The Court award Plaintiff the costs of this suit, including reasonable attorney's fees, as provided by law;
- f. The Court enjoin Defendants from further seizing real estate equity from Plaintiff;
- g. The Court issue a permanent injunction voiding the transfers to Charles Tran LLC and to Cheswold LLC and return Plaintiff's property to the bankruptcy estate; and
- h. The Court grant Plaintiff such other and further relief as the nature of the case may require or as may be deemed just and proper by this Court.

**JURY DEMAND**

Plaintiff demands trial by jury of all issues triable of right by a jury pursuant to FRCP Rule 38.

RESPECTFULLY SUBMITTED,

s/ Tanya Dwyer  
Tanya Dwyer, Esq. (2845)  
Legal Services of the Hudson Valley  
1 Park Place, Suite 202  
Peekskill, NY 10566  
E-mail: TDwyer@LSHV.org  
Phone: 914-368-2489

Doc 1 Filed 08/07/24 Entered 08/07/24 16:10:06 Ma  
Pg 16 of 16

I, JOSEPH MENDINGHALL, am the Plaintiff in the within action. I have read the foregoing  
Complaint and know the contents thereof. The contents of the Complaint are true to my own knowledge,  
except as to those matters therein stated to be alleged upon information and belief, and as to those matters,  
I believe them to be true.

*Joseph Mendinghall*  
JOSEPH MENDINGHALL  
Plaintiff

Subscribed and sworn to before me  
On the 5<sup>th</sup> day of August, 2024

*Michelle De Lillo*  
Notary Public

MICHELLE DE LILLO  
Notary Public, State of New York  
Reg. No. 01088036899  
County of Orange  
Commission Expires 2/14/2026



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: Alderman Johnson  
Seconded by: Alderman Tobin  
Date of Adoption: August 20, 2024  
Index No: 164-24

**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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

  
\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

**Authorization to Repeal a Handicapped Parking Spot in Front of 26 Sproat Street**

BE IT RESOLVED; that the Common Council of the City of Middletown, NY, authorizes the repealing of a handicapped parking spot in front of 26 Sproat Stree.

Prepared by:  
Rick McCormack, City Clerk

**Attachments:**

|    |                       |
|----|-----------------------|
| 1. | Scan2024-08-12_154044 |
|----|-----------------------|

100 Hillside Drive, B-14  
Middletown, NY 10941

RECEIVED  
AUG 12 2024  
CITY CLERK  
CITY OF MIDDLETOWN

Department of Public Works  
City of Middletown  
16 James Street  
Middletown, NY 10940

To Whom It May Concern,

This is to inform you that my father, John Kelleher, who resided at 26 Sproat Street, Middletown, passed away in March of this year.

Therefore, we no longer need the Handicap parking sign placed in front of the home. The home is currently up for sale.

Also enclosed is his parking tag. Please pass that onto the City Clerk.

Do not hesitate to contact me should you need further information or have questions.

Many thanks for your consideration of this matter.

Sincerely,

*Patricia Fairchild*  
Patricia Fairchild, daughter  
845 798-6593

Enclosure



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

**THE FOLLOWING WAS PRESENTED**

By: Alderman Green  
Seconded by: Alderman Kleiner  
Date of Adoption: August 20, 2024  
Index No: 165-24

**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*

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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

*Joseph M. DeStefano*  
Joseph M. DeStefano, Mayor

*8/21/24*  
Date

**Approve an Extension of time of six (6) months for two resolutions dated May 04, 2021, #98-21 and #99-21 for the Presidential Heights Realty Subdivision.**

RESOLVED; that the Common Council of the City of Middletown approves an extension of time in the amount of six (6) months, as per the date on this resolution, for two resolutions dated May 04, 2021, #98-21 and #99-21 for the Presidential Heights Realty Subdivision due to the need that the project has to obtain outside agency approvals for the NYSDEC and OCDOH for water main and sewer main extensions before the map can be filed.

Prepared by:  
Rick McCormack, City Clerk

**Attachments:**

|    |                                   |
|----|-----------------------------------|
| 1. | Presidential Heights Sub Division |
|----|-----------------------------------|

## **Richard McCormack**

---

**From:** asmith22@hvc.rr.com  
**Sent:** Friday, August 9, 2024 9:28 AM  
**To:** Richard McCormack  
**Cc:** jtawil14@yahoo.com  
**Subject:** FW: J & G Builders LLC with City of Middletown Common Council

Rick,

Please put on Council agenda. Thanks,

Alex

---

**From:** Ronald Kossar <rsklaw@frontiernet.net>  
**Sent:** Thursday, August 8, 2024 3:56 PM  
**To:** 'Alex Smith' <asmith22@hvc.rr.com>  
**Cc:** 'Mikel Jeremias' <mikel@allstatedevelopers.com>; John Queenan <jq@lanctully.com>  
**Subject:** J & G Builders LLC with City of Middletown Common Council

Alex,

As you know my office represents J&G Builders LLC in reference to the above-captioned matter.

My client previously requested an extension of time through and including May 4, 2022, thereafter through and including November 4, 2022 and thereafter through and including April 3, 2023 and thereafter through and including November 2, 2023 and thereafter through and including May 2, 2024.

I have been informed by my client that as the City of Middletown Commissioner of Public Works only recently signed off on the revised plans for the Project filed by my client, my client still has to proceed to obtain financing for the construction of the Project and cannot either obtain financing or commence construction until my client has all Site Work Costs in hand (which it anticipates receiving forthwith). As the financing process for the Project at this time of year will also take several months, one (1) last additional six (6) month extension is needed before my client can make application for a Building Permit and commence construction which it anticipates will be starting in the spring of 2024. Therefore, my client has requested my office to make application to the City of Middletown Common Council for an additional extension of time of six (6) months. Could you please process this e-mail as you have done with the prior extension that was requested in my previous e-mail addressed to your office dated April 18, 2023. My client's current extension of time is good through and including May 2, 2024. Could you please process this e-mail with the City of Middletown Common Council to request and obtain an additional extension of time of six (6) months through and including November 2, 2024 (which should be the last extension needed by my client) for the reasons set forth above. Could you please process my request with the City of Middletown Common Council to request and obtain an additional extension of time of six (6) months through and including November 2, 2024 for the reasons set forth above. Please confirm the foregoing with my office.

Thank you for your assistance and attention to this matter.

If you have any questions or wish to further discuss this matter, please do not hesitate to contact my office to discuss.

Thank you.

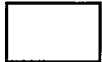
Ron

---

**Ronald S. Kossar Esq.**

402 East Main Street  
Post Office Box 548  
Middletown, NY 10940  
(845) 343-5111  
[rsklaw@frontiernet.net](mailto:rsklaw@frontiernet.net)

NEVER SEND A WIRE TO OUR OFFICE WITHOUT CALLING TO VERIFY. CALL ONLY A KNOWN NUMBER AND PERSON FROM THIS OFFICE, AND DO NOT RELY ONLY ON THE CONTACT INFORMATION ON WIRING INSTRUCTIONS OR IN THIS EMAIL.



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**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: Alderman Johnson  
Seconded by: Alderman Tobin  
Date of Adoption: August 20, 2024  
Index No:

**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              | 6    |      |         | 3      |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

**Resolution Authorizing the Accounts be Audited, Claims Adjusted, and the Treasurer be Authorized to Issue Warrants for their Payment**

Resolution Authorizing the Accounts be Audited, Claims Adjusted, and the Treasurer be Authorized to Issue Warrants for their Payment

Prepared by:

**Attachments:**

None



TO: THE HONORABLE MAYOR AND CITY COUNCIL  
AGENDA: Common Council Meeting  
DATE: September 3, 2024  
ITEM #:  
SUBJECT: Town of Wawayanda Public Hearing Notice: Zoning and  
Subdivision Proposed Local Law

**Recommendation for Action:**

Prepared by:  
Rick McCormack, City Clerk

**Attachments:**

|    |                                                                 |
|----|-----------------------------------------------------------------|
| 1. | Legal Notice Public Hearing Zoning and Subdivision Law 9 5 2024 |
|----|-----------------------------------------------------------------|

**TOWN OF WAWAYANDA  
NOTICE OF HEARING  
INTRODUCTORY LOCAL LAW**

PUBLIC NOTICE is hereby given that there has been introduced before the Town Board of the Town of Wawayanda, New York, on August 8, 2024, a local law titled "Zoning and Subdivision Law Amendments," which local law, among other provisions, would increase the bulk requirements for warehouses, require that warehouses must have vehicular access only to a State or County highway, require construction of the landscaped berm if warehouse loading docks abut a residential zoning district or a residential lot, require warehouses to utilize pollution and noise abatement measures, lower the noise limit during night hours for commercial and industrial uses, require operating permits for hotels and similar establishments, regulate short-term rental properties (including permit requirements, inspections, enforcement and penalties), regulate battery energy storage systems as special uses (including requirements for permitting, safety, noise and decommissioning), regulate commercial production studios and filming as a special permit use, establish a new MC-3 (Mixed Commercial) zoning district and rezone designated commercial parcels to the MC-3 zoning district, provide that new cemeteries are not permitted within 1,000 feet of an existing or proposed cemetery, allow adult-use cannabis retail dispensaries as a special use in the Mixed Commercial zoning districts, and limit extensions on site plan, special use permit and subdivision approvals.

A complete copy of the Introductory Local Law is available for inspection at the Clerk's Office.

NOW, THEREFORE, pursuant to Section 20 of the Municipal Home Rule Law, the Town Board of the Town of Wawayanda, New York, will hold a public hearing on the aforesaid Local Law on September 5, 2024, at 7:00 P.M. or soon thereafter, at the Town Hall, 80 Ridgebury Hill Road, Slate Hill, New York 10973, at which time all persons interested therein shall be heard.

The Town of Wawayanda will make every effort to assure that the hearing is accessible to persons with disabilities. Anyone requiring special assistance and/or reasonable accommodations should

contact the Town Clerk.

Dated: August 26, 2024

BY ORDER OF THE TOWN BOARD OF THE  
TOWN OF WAWAYANDA

KATHRYN A. SHERLOCK, TOWN CLERK



## CITY OF MIDDLETOWN, NEW YORK COMMON COUNCIL RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: None  
Seconded by: None  
Date of Adoption: September 3, 2024  
Index No: 166-24

**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         |      |      |         |        |
| Ald. Jean-Francois |      |      |         |        |
| Ald. Johnson       |      |      |         |        |
| Ald. Wray          |      |      |         |        |
| Ald. Kleiner       |      |      |         |        |
| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

**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.



- 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:

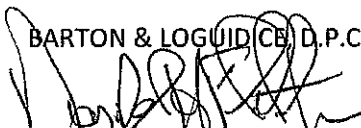
- |                                        |          |
|----------------------------------------|----------|
| • Construction Administration Services | \$28,000 |
| • Construction Observation Services    | \$ 7,000 |

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



**CITY OF MIDDLETOWN, NEW YORK  
COMMON COUNCIL  
RECORD OF VOTE**

THE FOLLOWING WAS PRESENTED

By: None  
Seconded by: None  
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         |      |      |         |        |
| Ald. Jean-Francois |      |      |         |        |
| Ald. Johnson       |      |      |         |        |
| Ald. Wray          |      |      |         |        |
| Ald. Kleiner       |      |      |         |        |
| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

**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: None  
Seconded by: None  
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         |      |      |         |        |
| Ald. Jean-Francois |      |      |         |        |
| Ald. Johnson       |      |      |         |        |
| Ald. Wray          |      |      |         |        |
| Ald. Kleiner       |      |      |         |        |
| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

### **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_-<br>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**

**CORPORATE HEADQUARTERS / ACCOUNTING DEPARTMENT**  
170 OLD COUNTRY ROAD, SUITE 501, MINEOLA, NEW YORK 11501  
PHONE: (516) 248-9777 FAX: (516) 248-9628

**NEW YORK CITY OFFICE**  
420 LEXINGTON AVENUE, SUITE 2154, NEW YORK, NEW YORK 10170  
PHONE: (212) 324-2860 FAX: (516) 248-9628

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

**GOODMAN-MARKS ASSOCIATES, INC.  
REAL ESTATE APPRAISERS AND CONSULTANTS**

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



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



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



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



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Assistant Vice President  
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New York State Certificate #4651008



Luke Postiglione  
Associate  
Goodman-Marks Associates, Inc.

## **SUMMARY OF SALIENT FACTS & CONCLUSIONS**

|                            |                                                                                                                                                                         |
|----------------------------|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| Property Location:         | 89-99 Dolson Avenue<br>City of Middletown<br>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<br><i>City of Middletown</i>                                                                                                            |
| Highest & Best Use:        | <i>As Vacant</i> – Development of a professional office building constructed to the maximum density permitted by zoning.<br><br><i>As Improved</i> – 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        |
| <b>Final Opinion of Market Value:</b> | <b>\$8,300.00</b> |

## **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, subsurface 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**<sup>1</sup>

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**<sup>2</sup>

“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**<sup>3</sup>

“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**<sup>4</sup>

“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**<sup>5</sup>

“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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<sup>1</sup> *The Dictionary of Real Estate Appraisal – Seventh Edition*, Appraisal Institute, Chicago, IL, 2023. p. 31.

<sup>2</sup> *Ibid*, 2022. p. 73.

<sup>3</sup> *Ibid*, 2022. p. 97

<sup>4</sup> *Ibid*, 2022. p. 98

<sup>5</sup> *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.)”<sup>6</sup>

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.”<sup>7</sup>

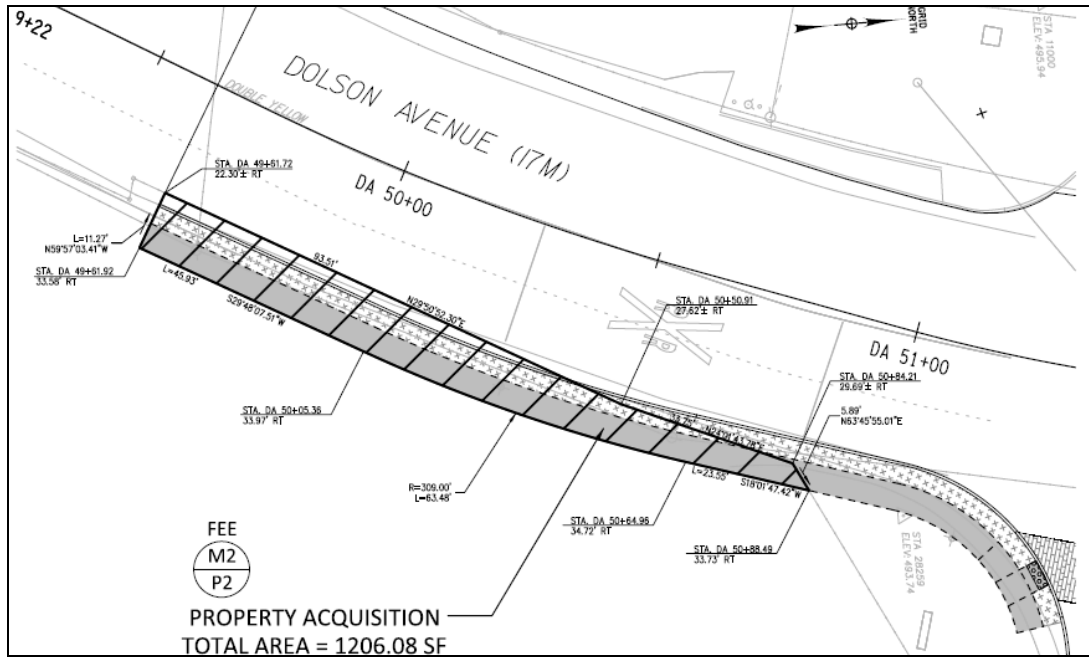
For the reasons stated above, we estimate that the exposure time would have been less than one (1) year.

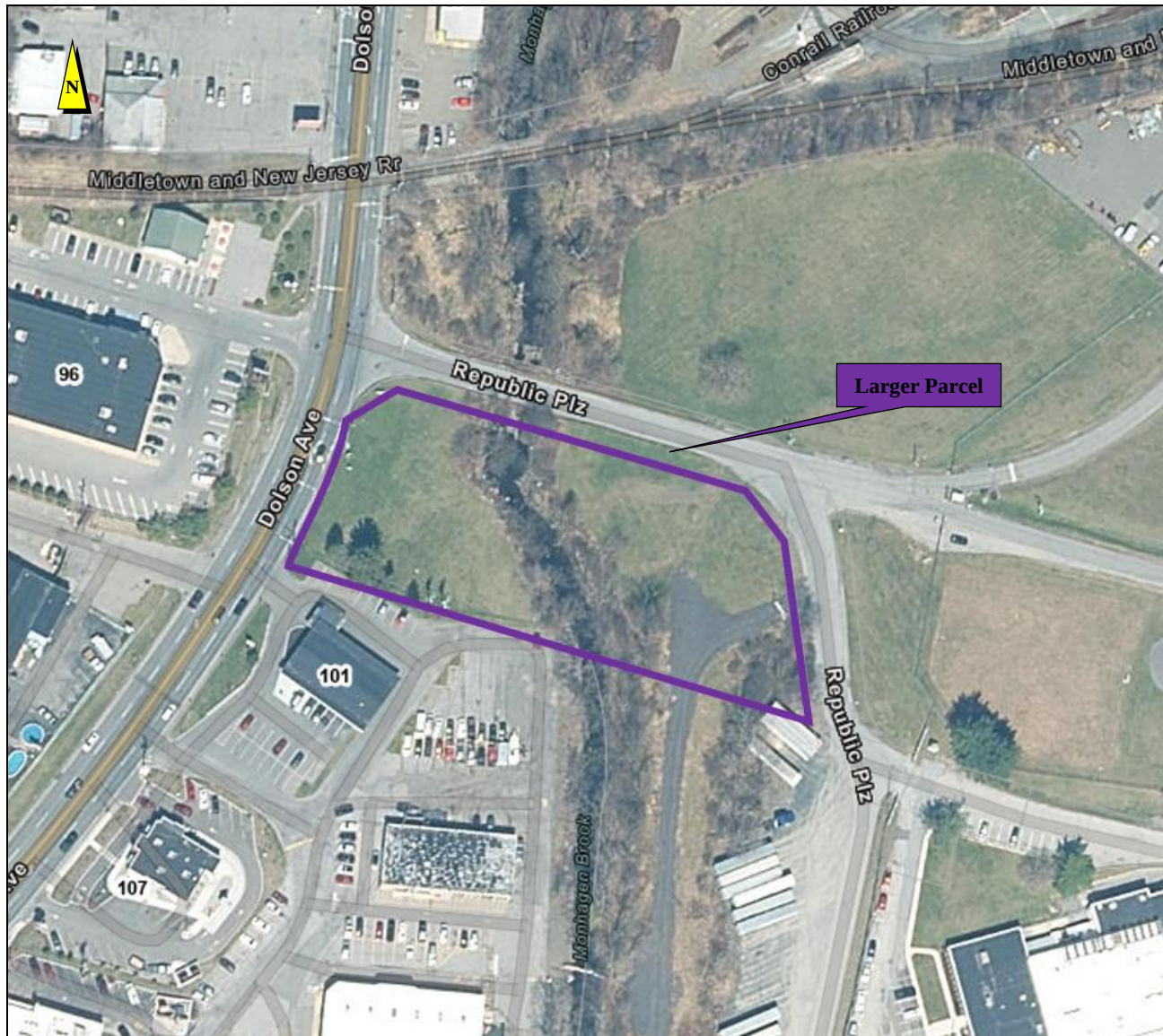
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<sup>6</sup> *The Dictionary of Real Estate Appraisal - Sixth Edition*, Appraisal Institute, Chicago, IL, 2015, p 140

<sup>7</sup> *Ibid.*, p 83.

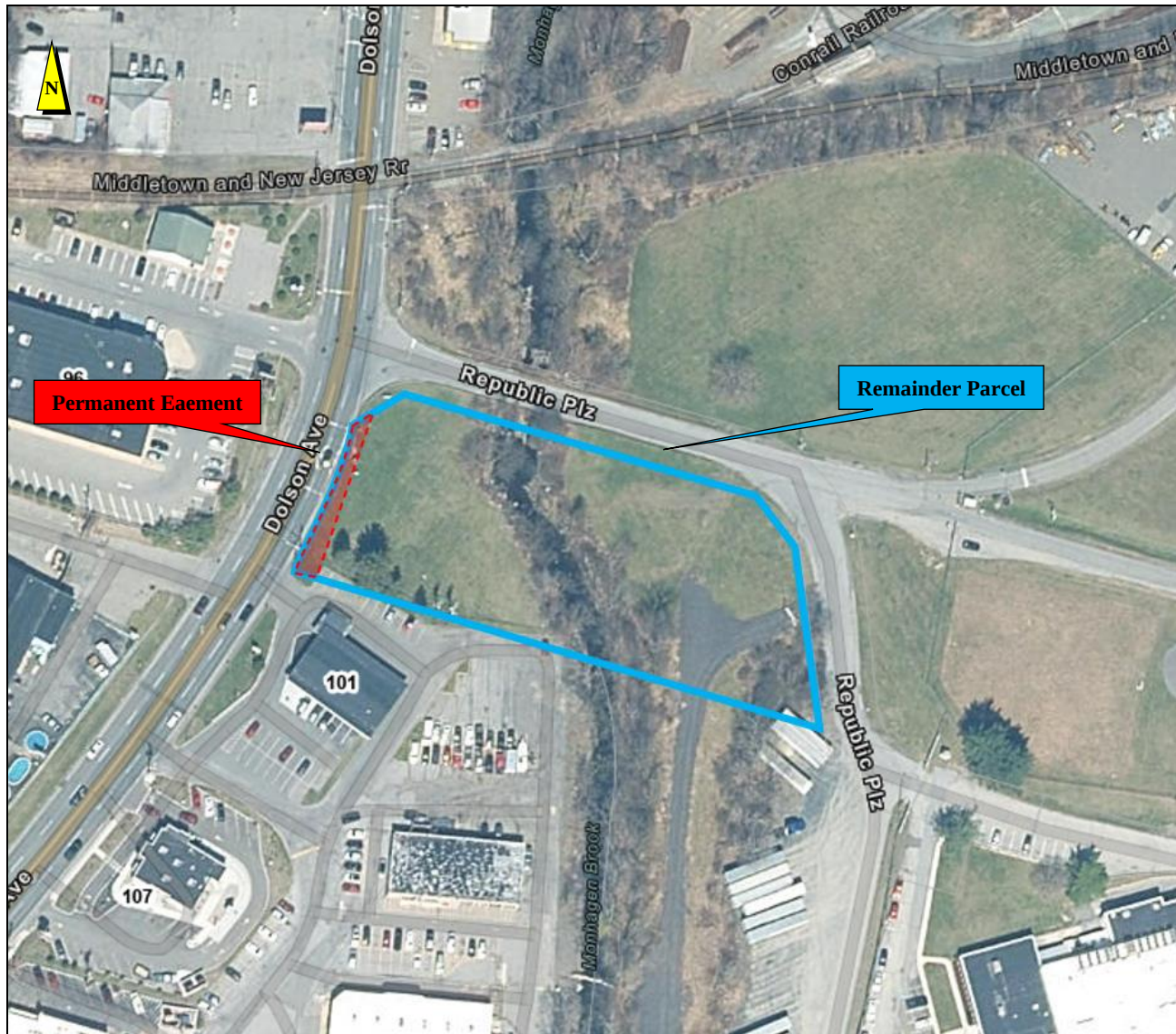
## SURVEY MAP



**AERIAL VIEW<sup>8</sup>**

<sup>8</sup> 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**

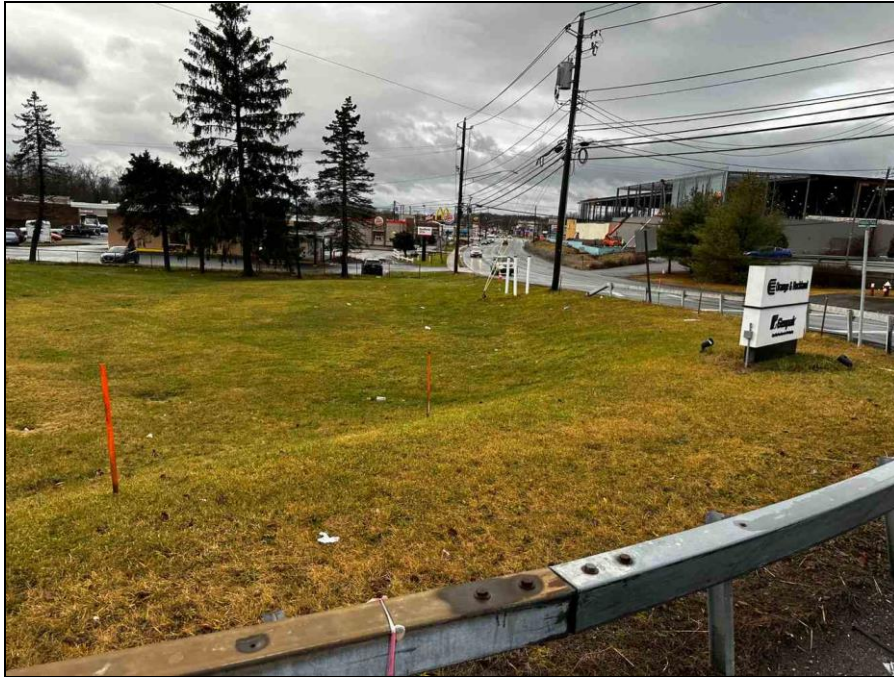


**View E: Larger Parcel from West Side of Dolson Avenue**

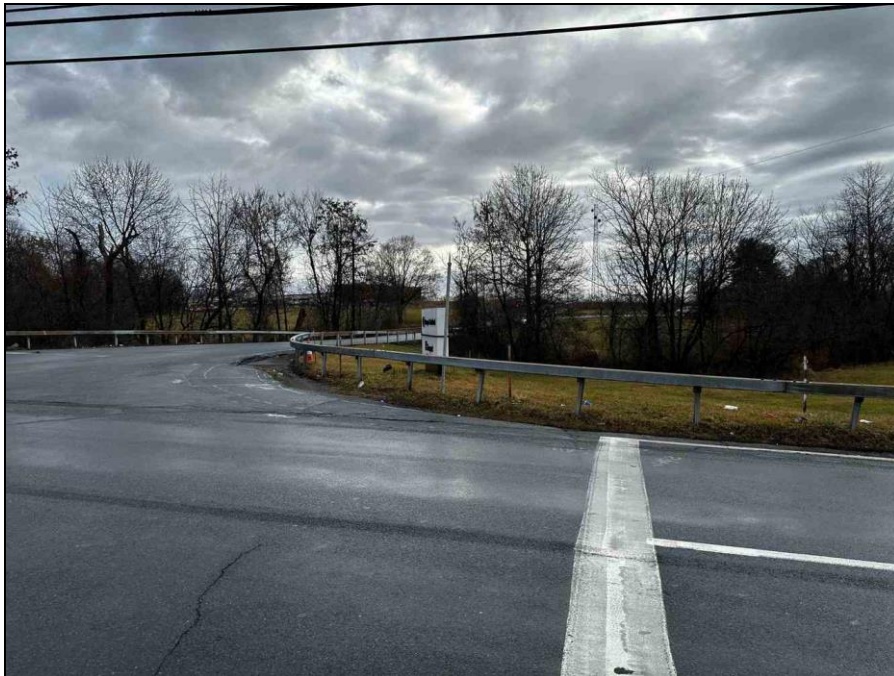


**View N: Permanent Easement from East Side of Dolson Avenue**

**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.

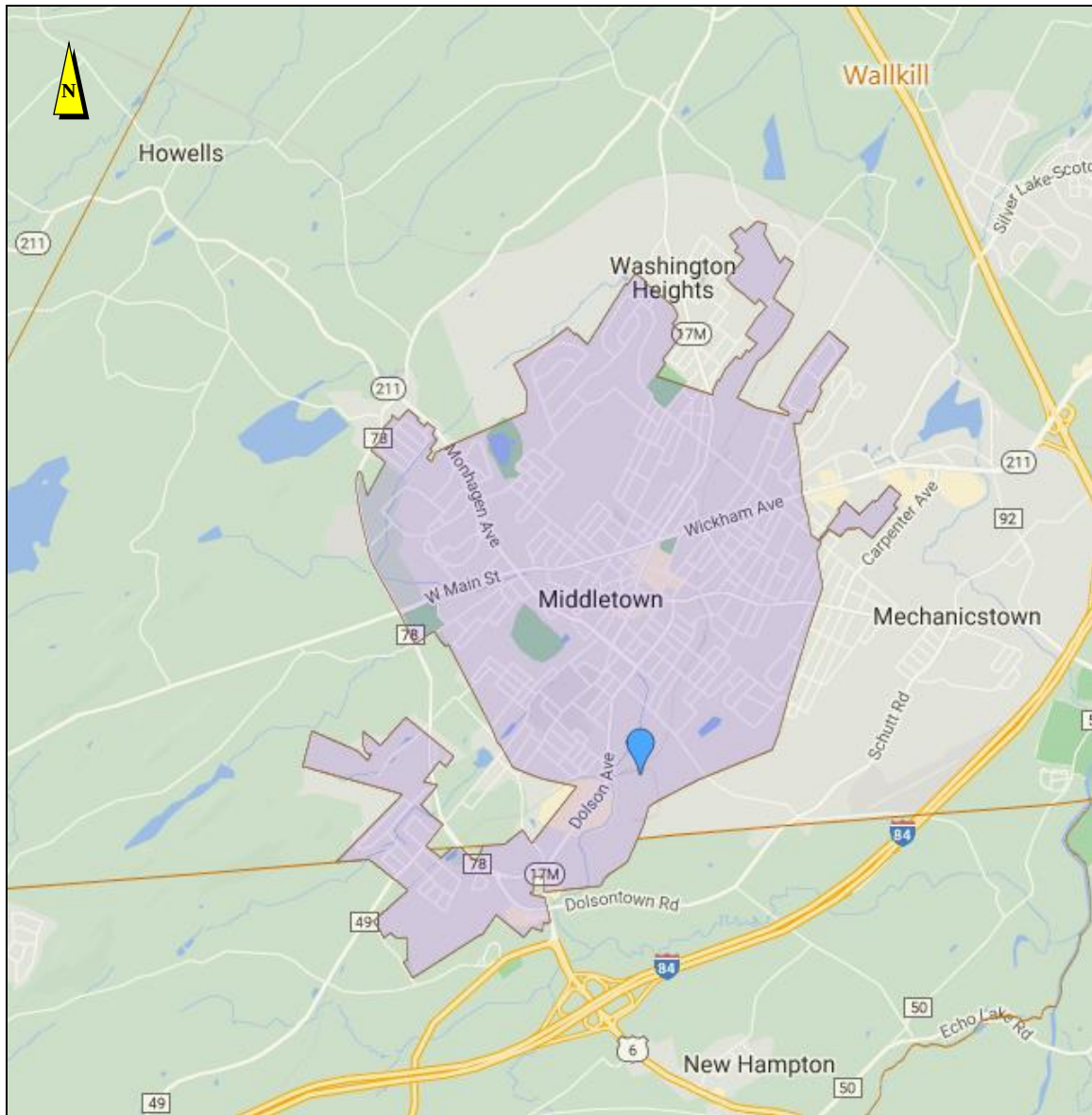
#### Sales Comparison Approach

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.

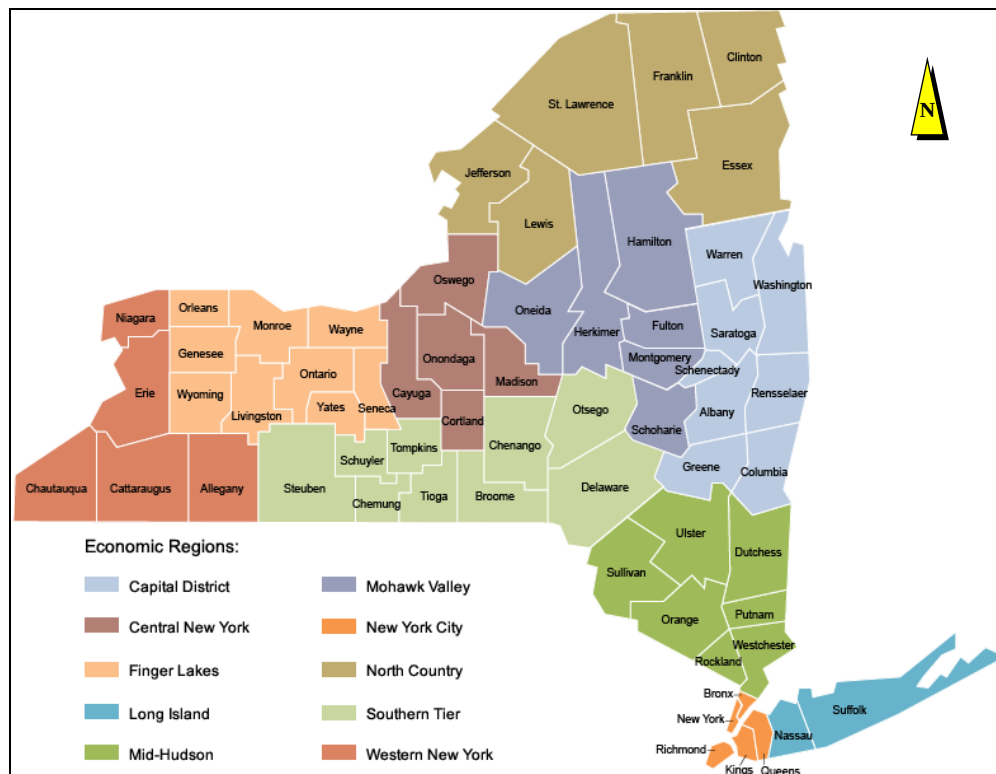
**AREA MAP**



## 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                                |

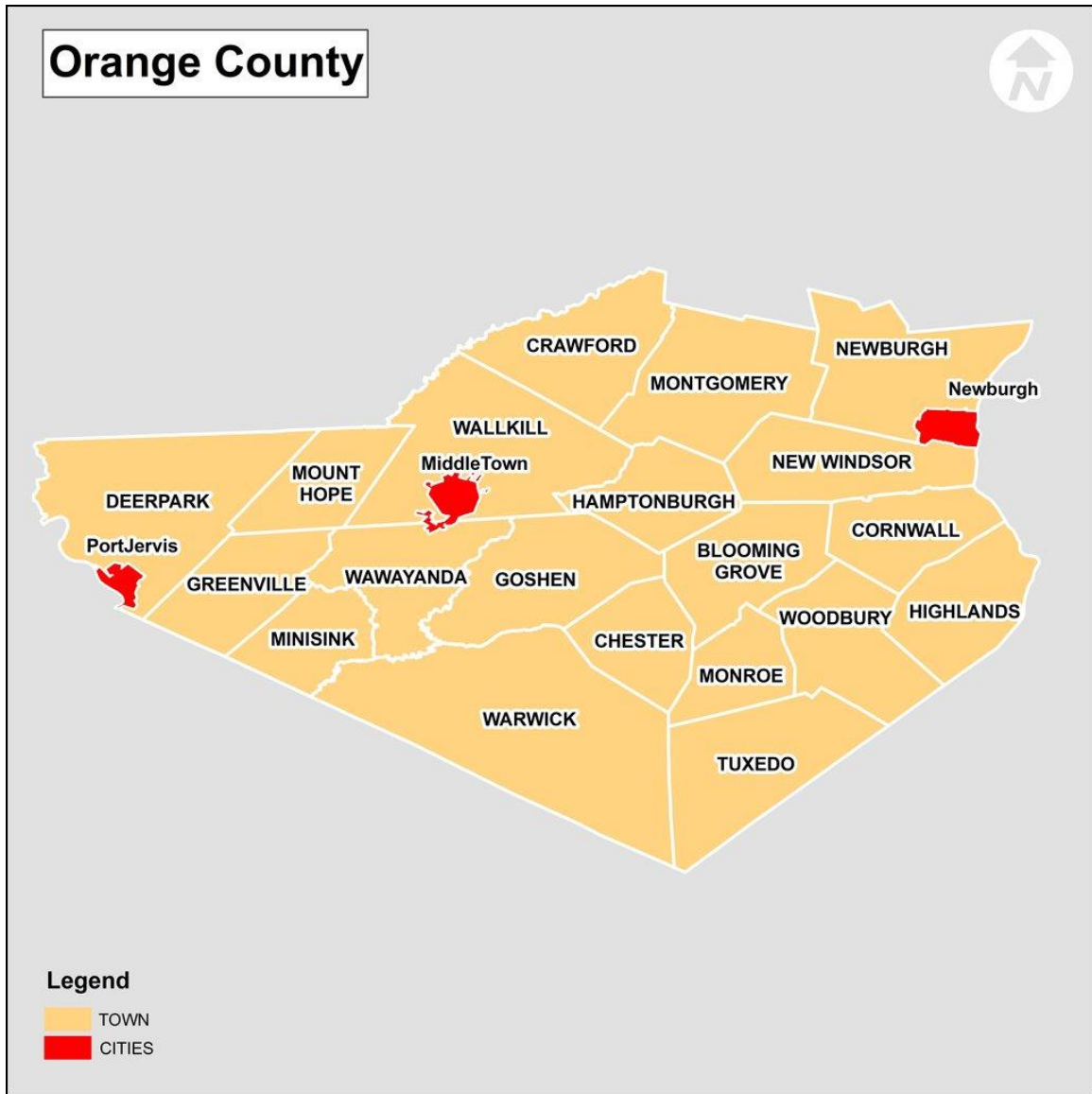
### Orange County

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**

| <b>Towns</b>       |                      |                 |
|--------------------|----------------------|-----------------|
| 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        |
| <b>Villages</b>    |                      |                 |
| 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          |                 |
| <b>Cities</b>      |                      |                 |
| 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



## COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT (Continued)

### Overview

#### Orange County Industrial

12 Mo Deliveries in SF

**1.1M**

12 Mo Net Absorption in SF

**297K**

Vacancy Rate

**7.3%**

12 Mo Asking Rent Growth

**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 \$248 million. The market cap rate for Orange County is 6.9%, moderately above its trailing three-year average of 6.4%.

### KEY INDICATORS

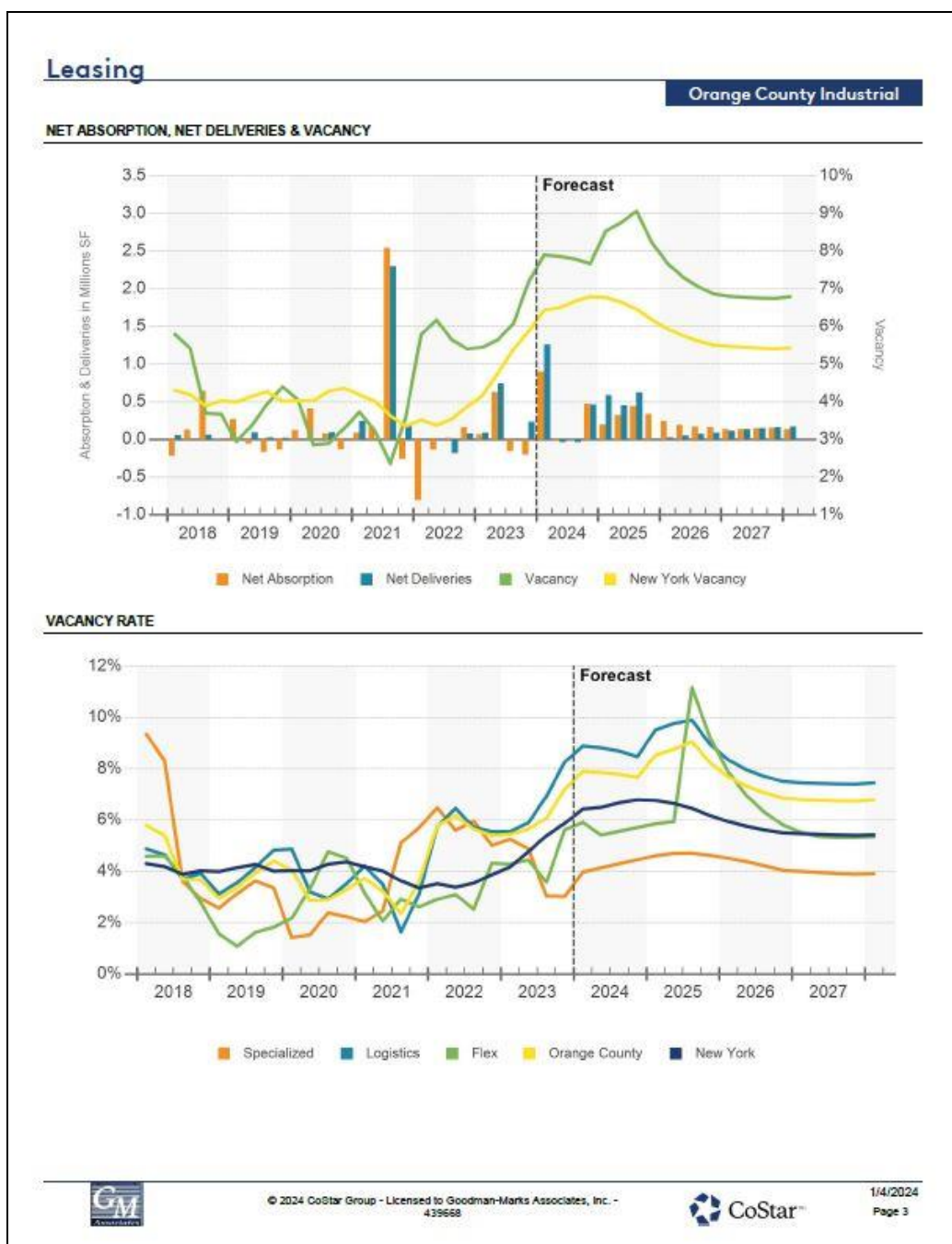
| Current Quarter        | RBA               | Vacancy Rate | Market Asking Rent | Availability Rate | Net Absorption \$F | Deliveries \$F | Under Construction |
|------------------------|-------------------|--------------|--------------------|-------------------|--------------------|----------------|--------------------|
| 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            | 3.8%              | (27,500)           | 0              | 0                  |
| Flex                   | 1,396,966         | 5.6%         | \$15.23            | 6.7%              | 0                  | 0              | 130,000            |
| <b>Submarket</b>       | <b>37,786,908</b> | <b>7.3%</b>  | <b>\$11.86</b>     | <b>9.3%</b>       | <b>(29,100)</b>    | <b>0</b>       | <b>3,562,755</b>   |

| 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 | (1,548,246) | 2003 Q3 |
| Deliveries SF        | 1.1M     | 429,945            | 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 |



## COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT (Continued)

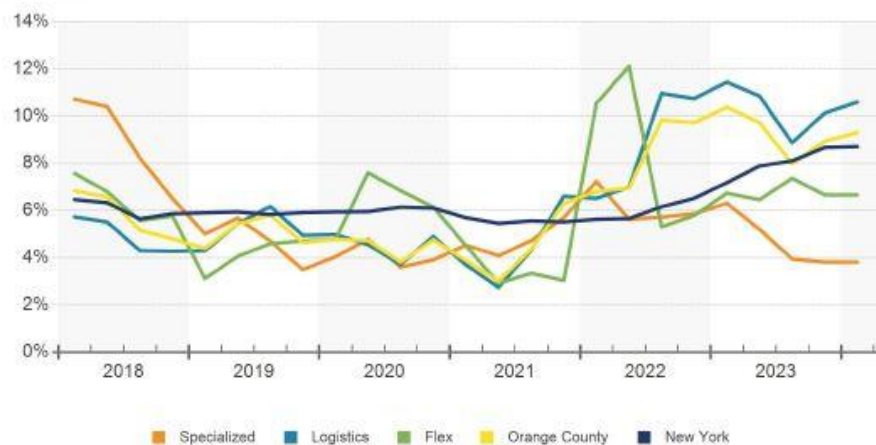


## COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT (Continued)

### 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 Absorb 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%         | 51,845              |
| 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%          | 5,178               |
| 28 Church St                              | ★★★★★  | 141,610 | 1     | 3,800     | 0.5%          | 3,800               |
| 4 Commerce Drive<br>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<br>700 Corporate Blvd | ★★★★★  | 36,000  | 1     | 8,800     | 9.8%          | (8,800)             |



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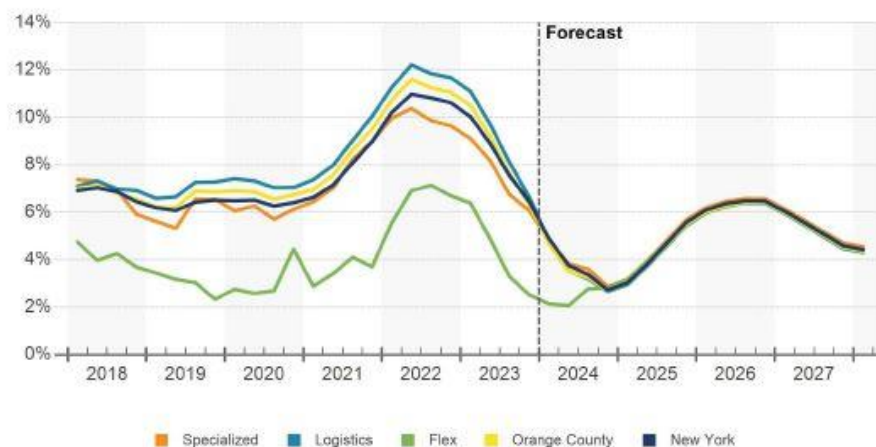
1/4/2024  
Page 5

## COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT (Continued)

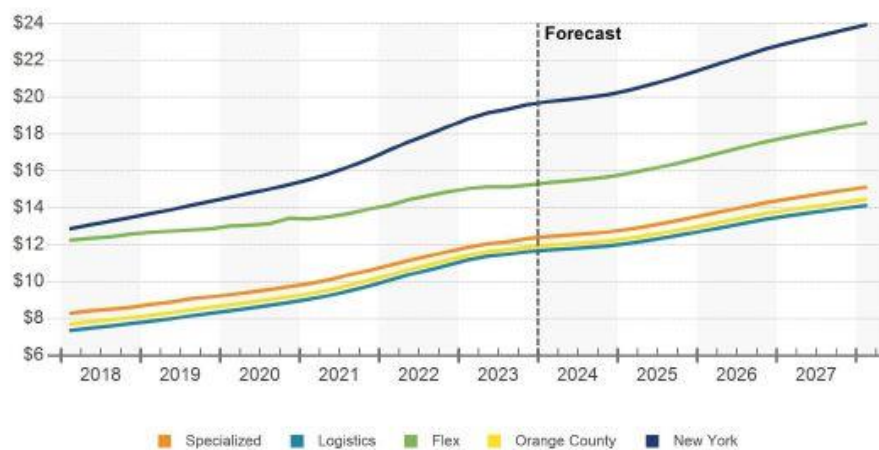
### Rent

Orange County Industrial

#### MARKET ASKING RENT GROWTH (YOY)



#### MARKET ASKING RENT PER SQUARE FEET

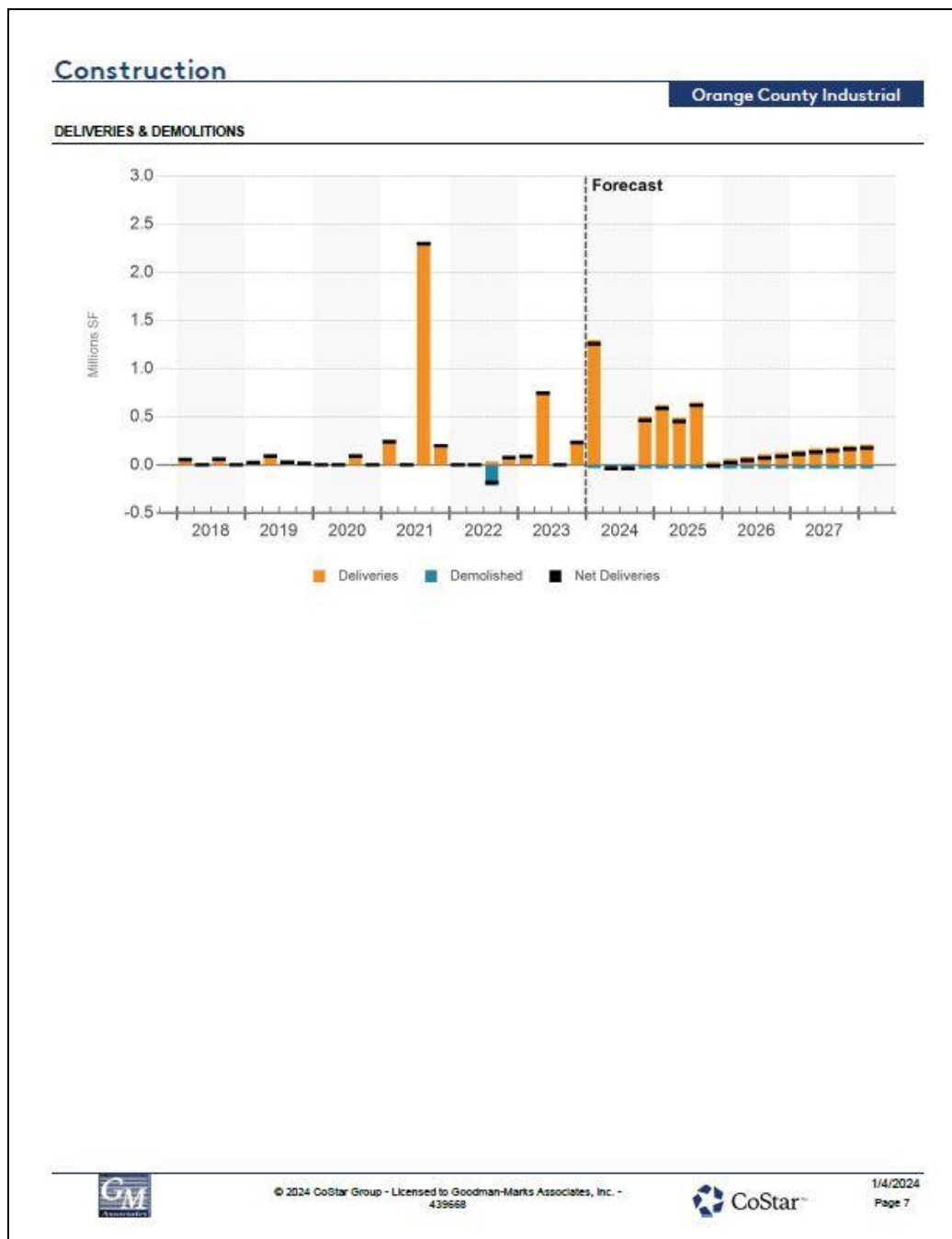


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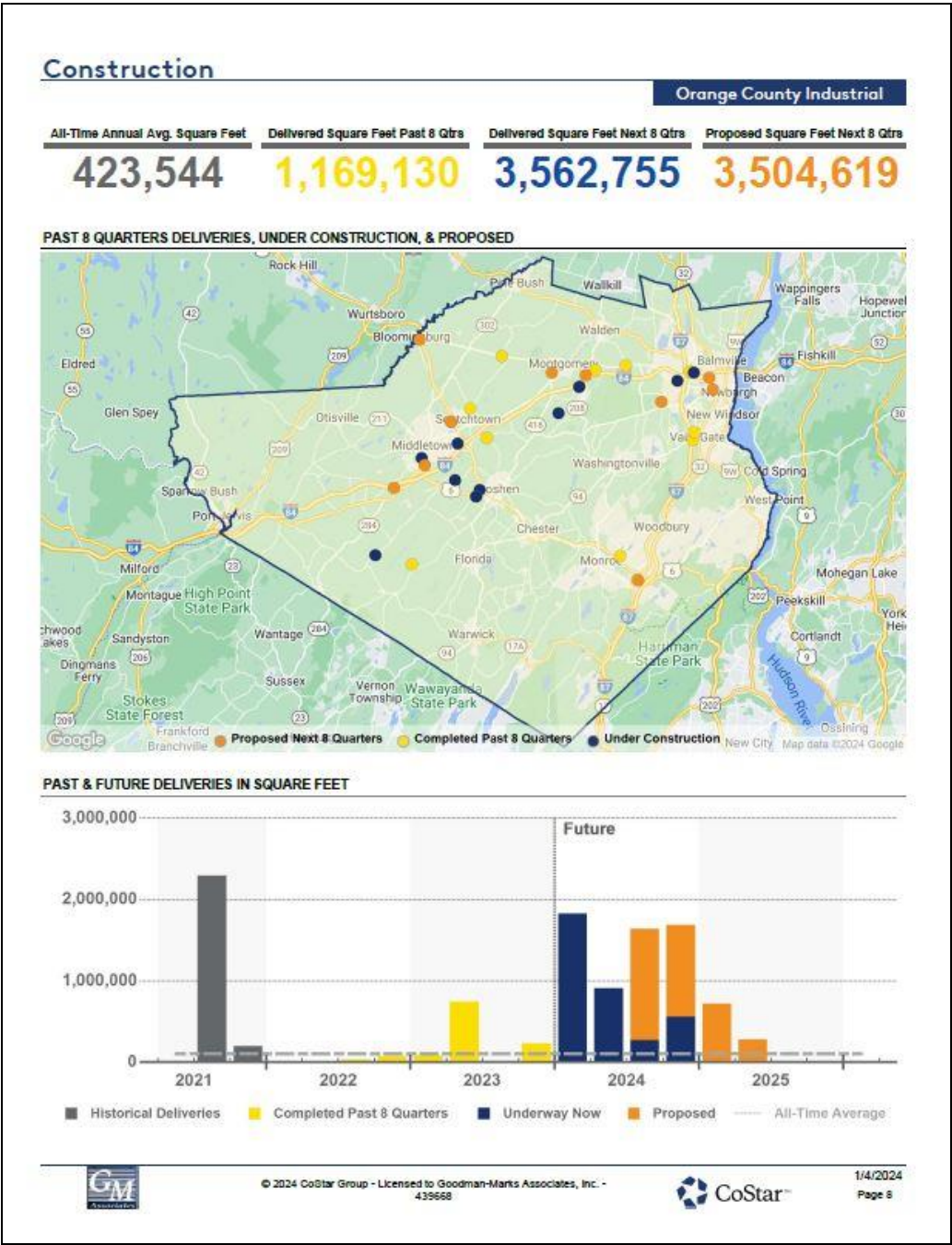


1/4/2024  
Page 6

## COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT (Continued)



**COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT**  
*(Continued)*



**COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT**  
*(Continued)*

**Sales**

**Orange County Industrial**

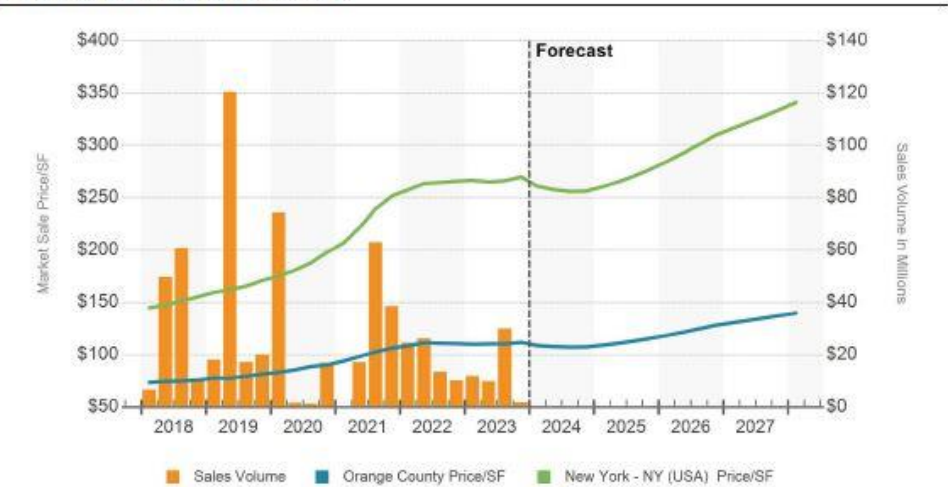
There have been 21 sales over the past year. Sales have averaged \$149/SF, and the estimated value for the market as a whole is \$112/SF.

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

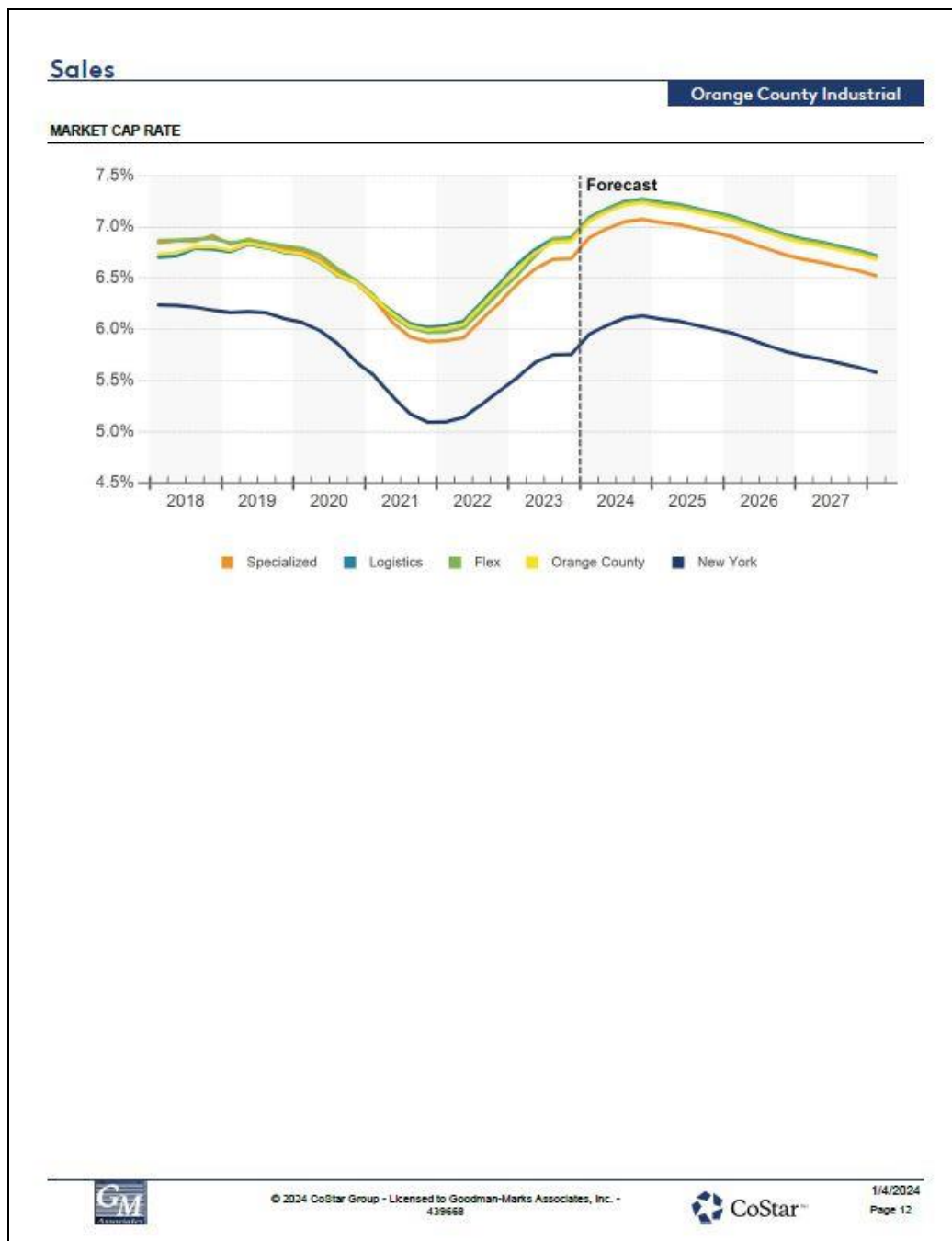
largest in Orange County.

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**



## COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT (Continued)



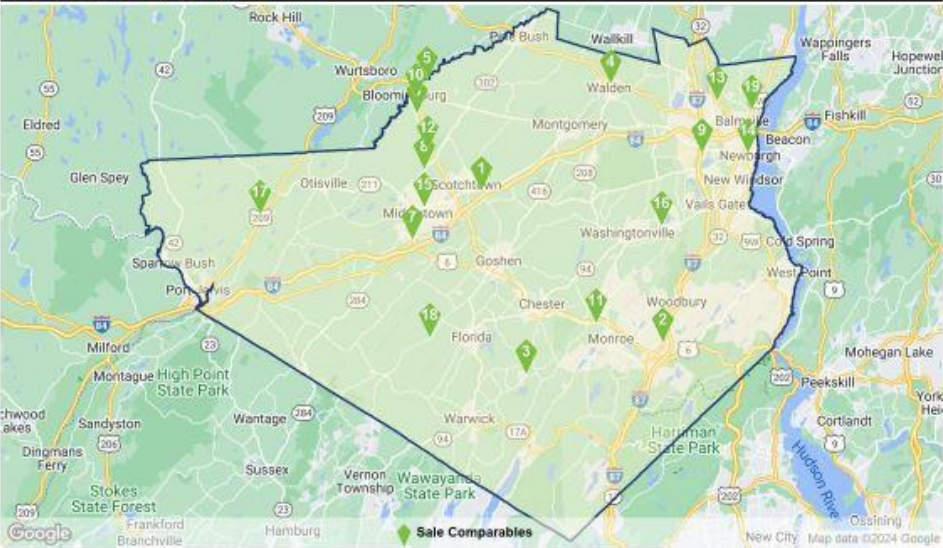
**COSTAR ORANGE COUNTY INDUSTRIAL SUBMARKET REPORT**  
*(Continued)*

**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                | \$166,250 | \$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   | ★★★★★       | ★★★★★       |



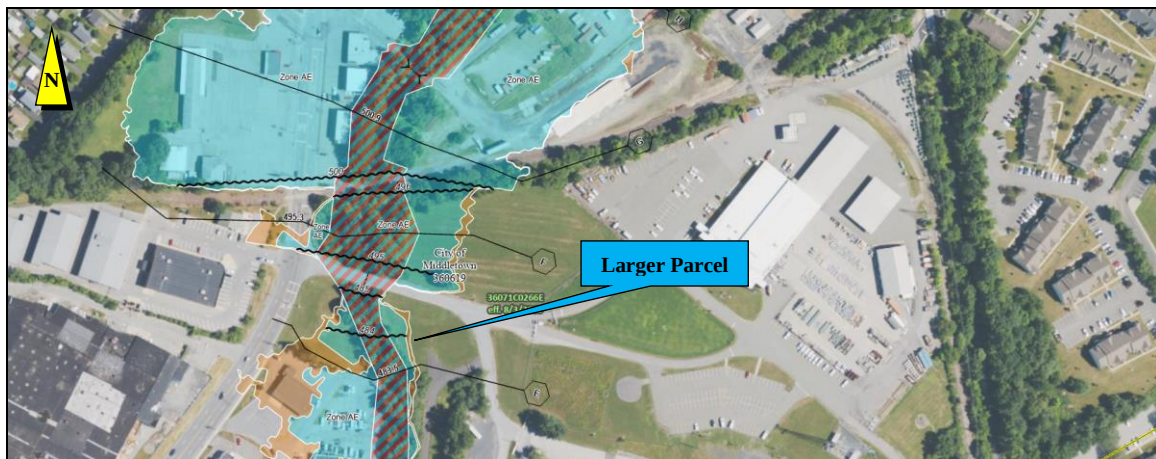
## **DESCRIPTION OF THE SUBJECT PROPERTY**

### **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.

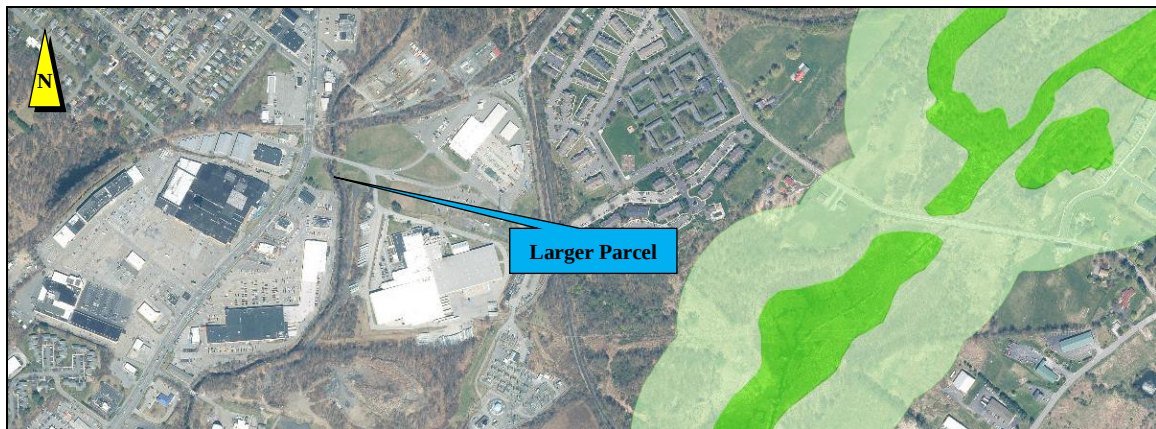
Upon inspection, the site topography of the Larger Parcel was observed to be generally level. It is vacant and is partially forested along a centrally-located waterway known as Monhagen Brook, which runs north-south through the Larger Parcel. Given the presence this waterway, it is indicated by the Federal 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

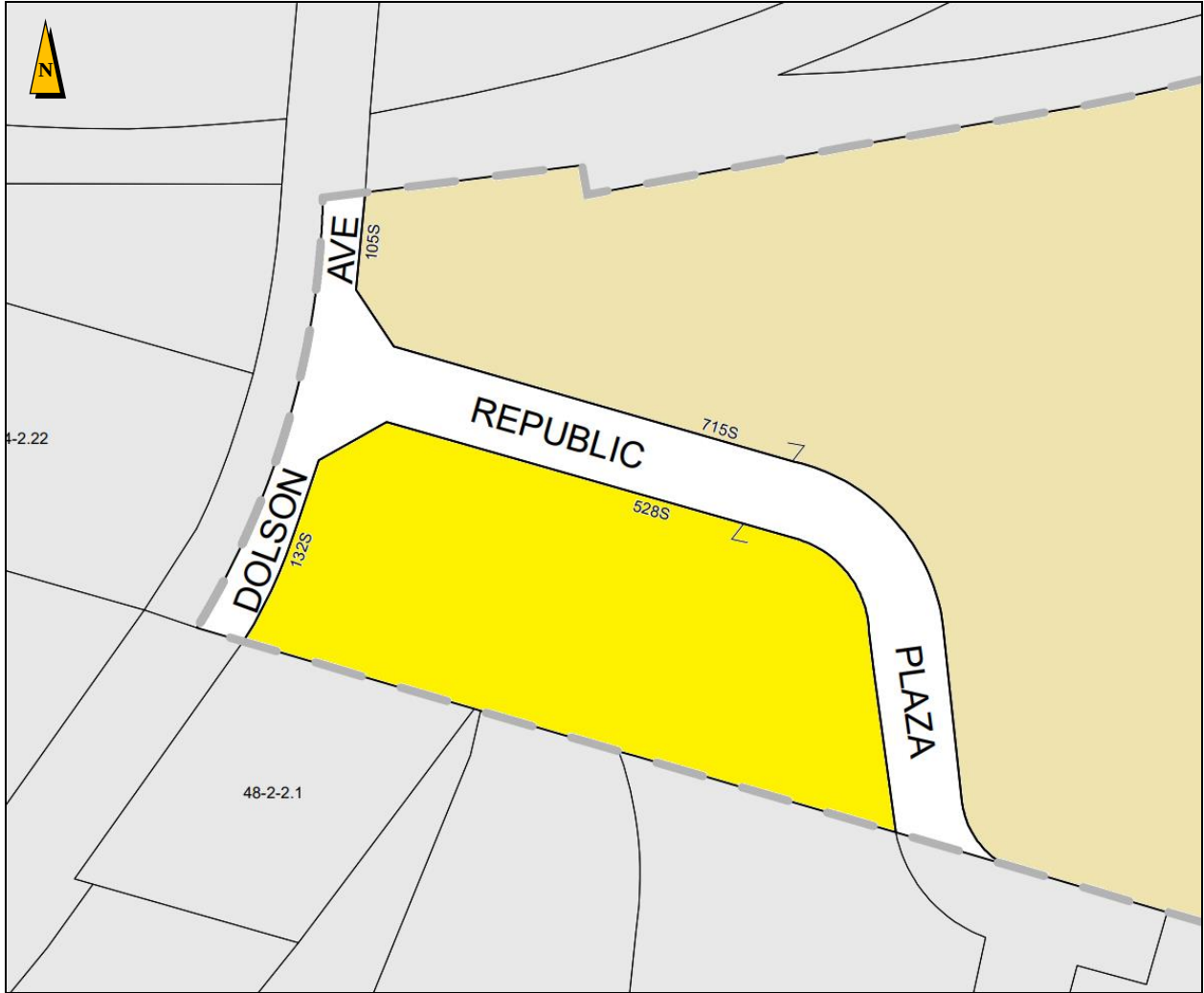
Our research did not reveal any apparent adverse easements, encumbrances or encroachments that would affect the functionality and/or marketability of the Larger Parcel, although the typical utility easements are assumed.

#### **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*

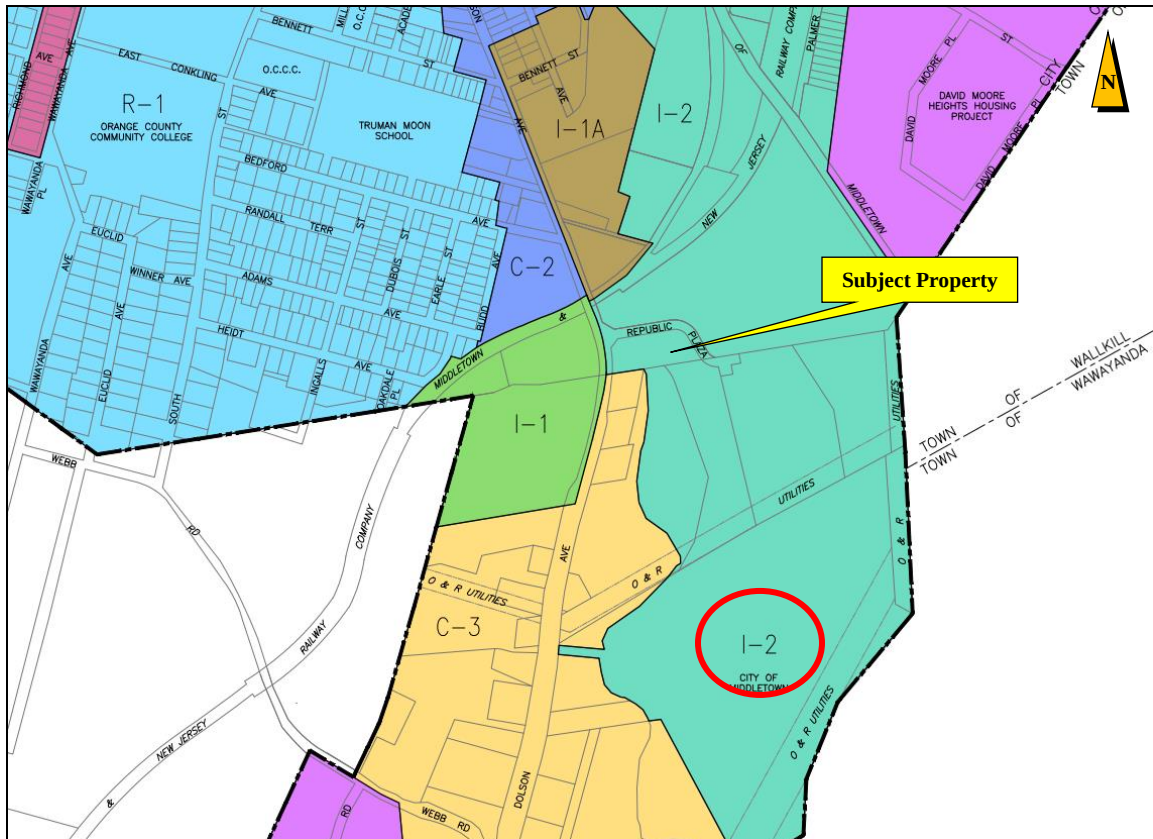


## **ASSESSMENT & REAL ESTATE TAX DATA**

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**

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

**ZONING MAP**

## **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:

|                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <ul style="list-style-type: none"> <li>• Any manufacturing use involving primary production from raw materials, or any use involving the conversion or recycling of materials into other usable products.</li> <li>• Automobile painting, rebuilding or reconditioning (automobile body shops), tire retreading or recapping and battery manufacturing.</li> <li>• Blacksmith shop or machine shop and steel-fabricating shops.</li> <li>• 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.</li> <li>• Bus terminals and taxi stands.</li> <li>• Commercial laundry and general cleaning services, including carpet and rug cleaning.</li> <li>• Contractor equipment storage yard or plant and retail sales of equipment commonly used by contractors.</li> <li>• Distribution plant for retail goods, ice and cold storage plant, or bottling plant.</li> <li>• Executive offices and operating facilities for communication companies, and antenna, antenna accessory structures, towers and buildings used in connection with personal wireless services.</li> <li>• Feed and fuel yards, including the storage of petroleum products.</li> <li>• Freighting or trucking yard or terminal.</li> <li>• Lumberyard and retail sales of lumber materials, including incidental millwork.</li> <li>• Manufacture and maintenance of electric and neon signs, billboards, commercial advertising structures and light sheet-metal products.</li> <li>• Manufacture and maintenance of electrical and electronic equipment, instruments or appliances.</li> <li>• Manufacture of carbonic ice, including its processing and distribution.</li> <li>• 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.</li> <li>• Manufacturing of plastic and plastic products or manufacturing of similar nonferrous products.</li> <li>• 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.</li> <li>• Movie and musical production facilities and similar uses, but excluding nightclubs, bars, theaters and other places of public assembly.</li> <li>• <u>Offices for the following:</u> <ul style="list-style-type: none"> <li>&gt;&gt;&gt; Accountant.</li> <li>&gt;&gt;&gt; Architect.</li> <li>&gt;&gt;&gt; Bond and loan companies.</li> <li>&gt;&gt;&gt; Business offices and offices for philanthropic and charitable institutions.</li> <li>&gt;&gt;&gt; Engineers and surveyors.</li> <li>&gt;&gt;&gt; Insurance.</li> <li>&gt;&gt;&gt; Lawyer.</li> <li>&gt;&gt;&gt; Medical/dental practitioners.</li> <li>&gt;&gt;&gt; Real estate.</li> <li>&gt;&gt;&gt; Stock brokerage companies.</li> </ul> </li> <li>• Photoengraving, lithographers or similar uses requiring offset press.</li> <li>• Plumbing or sheet-metal shop.</li> <li>• Printing plants.</li> <li>• Public garages.</li> <li>• Railroad yards and freight stations.</li> <li>• Small boat building, storage and retail sales.</li> <li>• Stone monument works.</li> <li>• Veterinary offices or dog or cat hospitals and kennels.</li> <li>• Wholesale business, storage buildings and warehouses, but excluding self-storage facilities.</li> </ul> |
|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|

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:

|                                |                        |
|--------------------------------|------------------------|
| <b>Min. Lot Area</b>           | 15,000 square feet     |
| <b>Min. Lot Width</b>          | 100 feet               |
| <b>Min. Front Yard Setback</b> | 20 feet                |
| <b>Min. Rear Yard Setback</b>  | 10 feet                |
| <b>Max. Building Height</b>    | 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**<sup>9</sup>

“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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<sup>9</sup> *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<br>Middletown, NY | 3/7/23    | \$ 630,950*     | 52,553              | 1.21              | I-2    | \$521,446           |
| 2   | 1089 NY-211 E<br>Wallkill, NY          | 5/20/22   | \$4,000,000     | 492,228             | 11.30             | ENT-L  | \$353,982           |
| 3   | Wembly Rd<br>New Windsor, NY           | 3/4/22    | \$1,300,000     | 161,172             | 3.70              | PI     | \$351,351           |
| 4   | 21 Hempstead Rd<br>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**

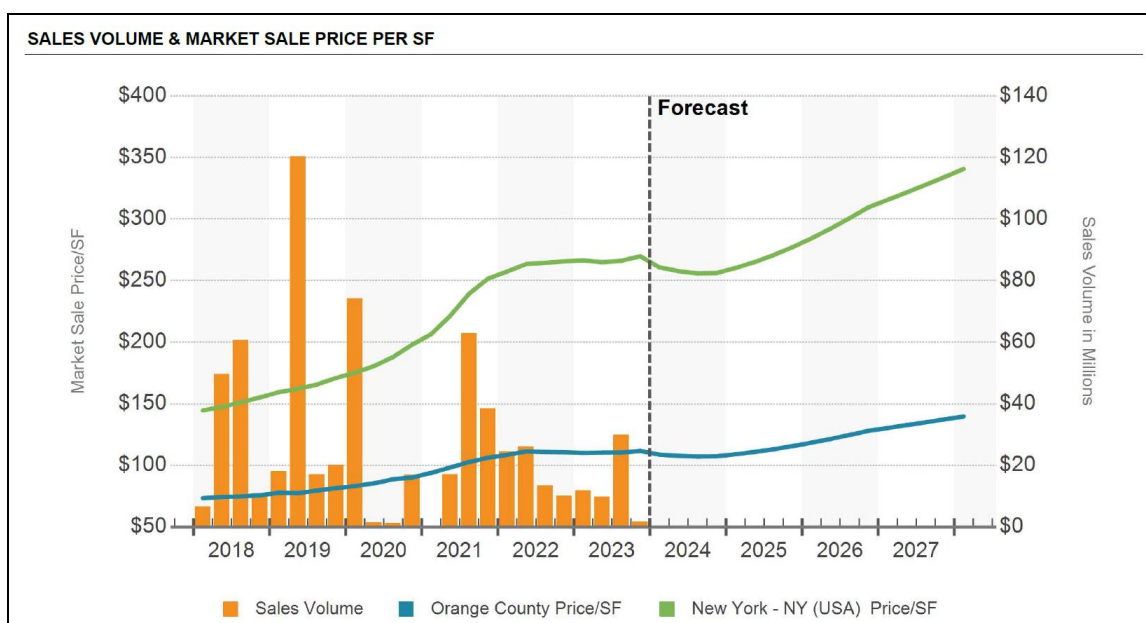
Prior to estimating the land value of the Larger/Remainder Parcel, we considered the presented land sales and the difference between the comparables as they relate to the Larger/Remainder Parcel. On this basis, we applied quantitative adjustments to each of the prices per acre of land area to reflect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

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

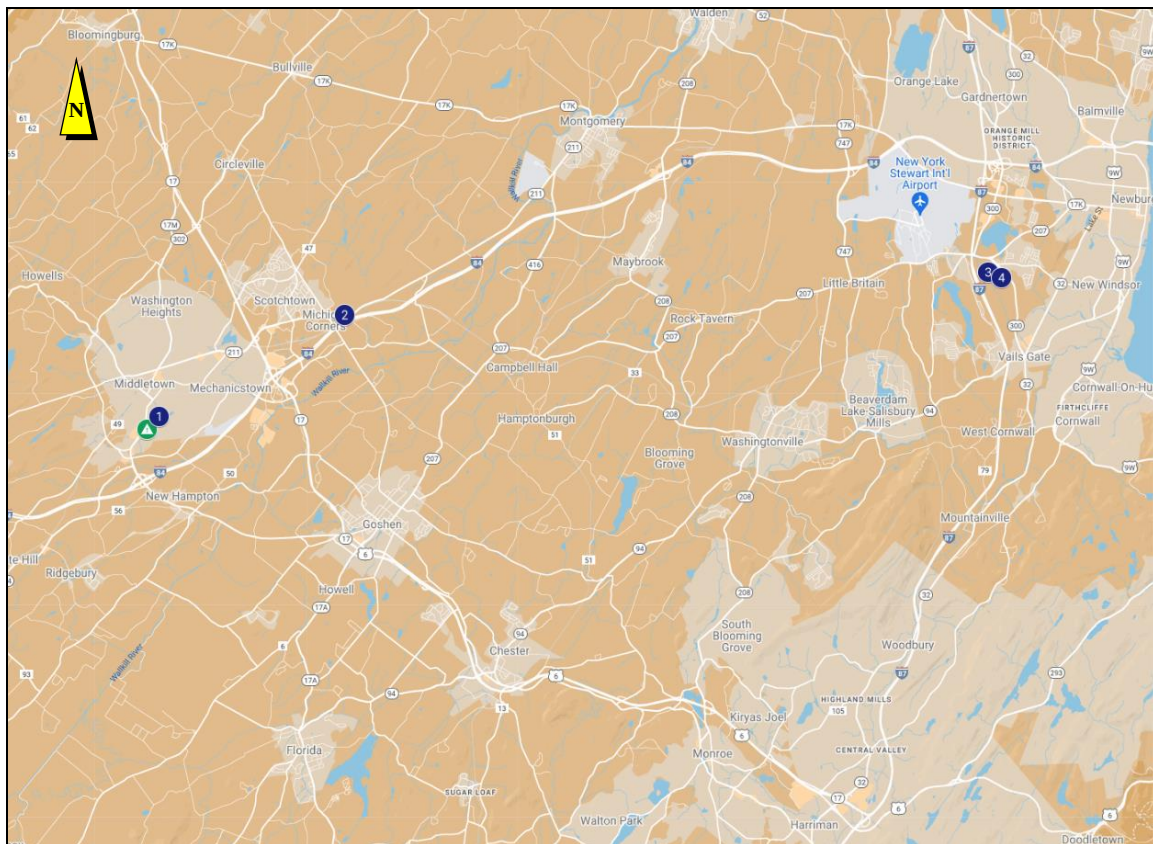
| No. | Location                               | Sale Date | Sale Price per Acre | x | Mkt./ Time Adj. | = | Time-Adj. Price per Sq. Ft. | x | Adjustments |   |      |   |            |   | =      | Total Adj. | =    | Adj. Sale Price per Sq. Ft. |
|-----|----------------------------------------|-----------|---------------------|---|-----------------|---|--------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

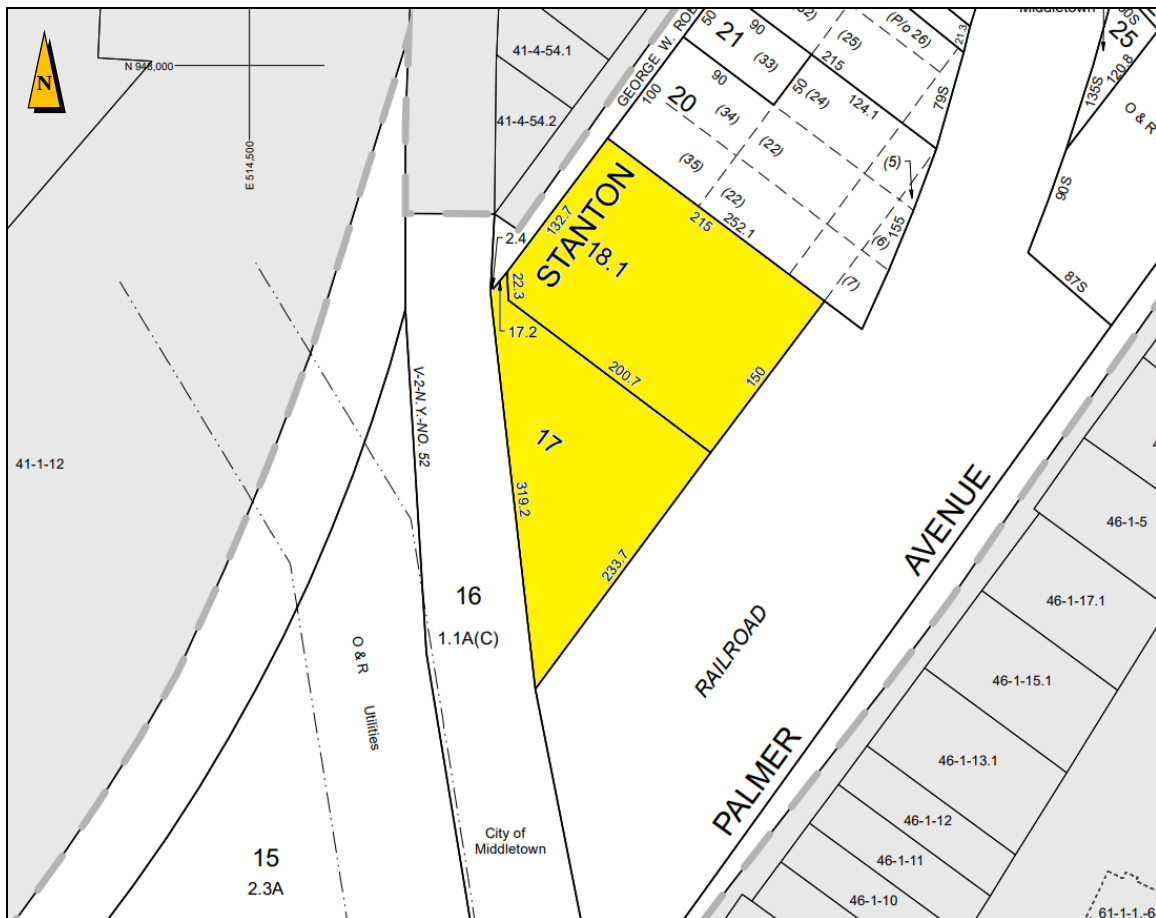
**Land Sale #1**  
**Section 45, Block 4, Lots 17 & 18.1**

**18-22 Stanton Street**  
**Middletown, Orange County, NY**



|                                         |                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                       |
|-----------------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Grantor / Grantee</b>                | Viserta Living Trust / Bobcat Road LLC                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                |
| <b>Date of Sale (Recorded)</b>          | 3/7/23 (3/22/23)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Deed Book-Page</b>                   | 15395-1556                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                            |
| <b>Description</b>                      | 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. |
| <b>Land Area</b>                        | 1.21± acres (52,553± square feet)                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                     |
| <b>Zoning</b>                           | Heavy Industrial (I-2)<br><i>City of Middletown</i>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                   |
| <b>Indicated Sale Price</b>             | \$850,000                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Less: Retained Improvement Value</b> | <u>\$219,050</u>                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                      |
| <b>Adjusted Sale Price</b>              | \$630,950                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |
| <b>Sale Price per Acre</b>              | \$521,446                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                                             |

**TAX MAP – LAND SALE #1**  
**Section 45, Block 4, Lots 17 & 18.1**



**GIS MAP – LAND SALE #1**



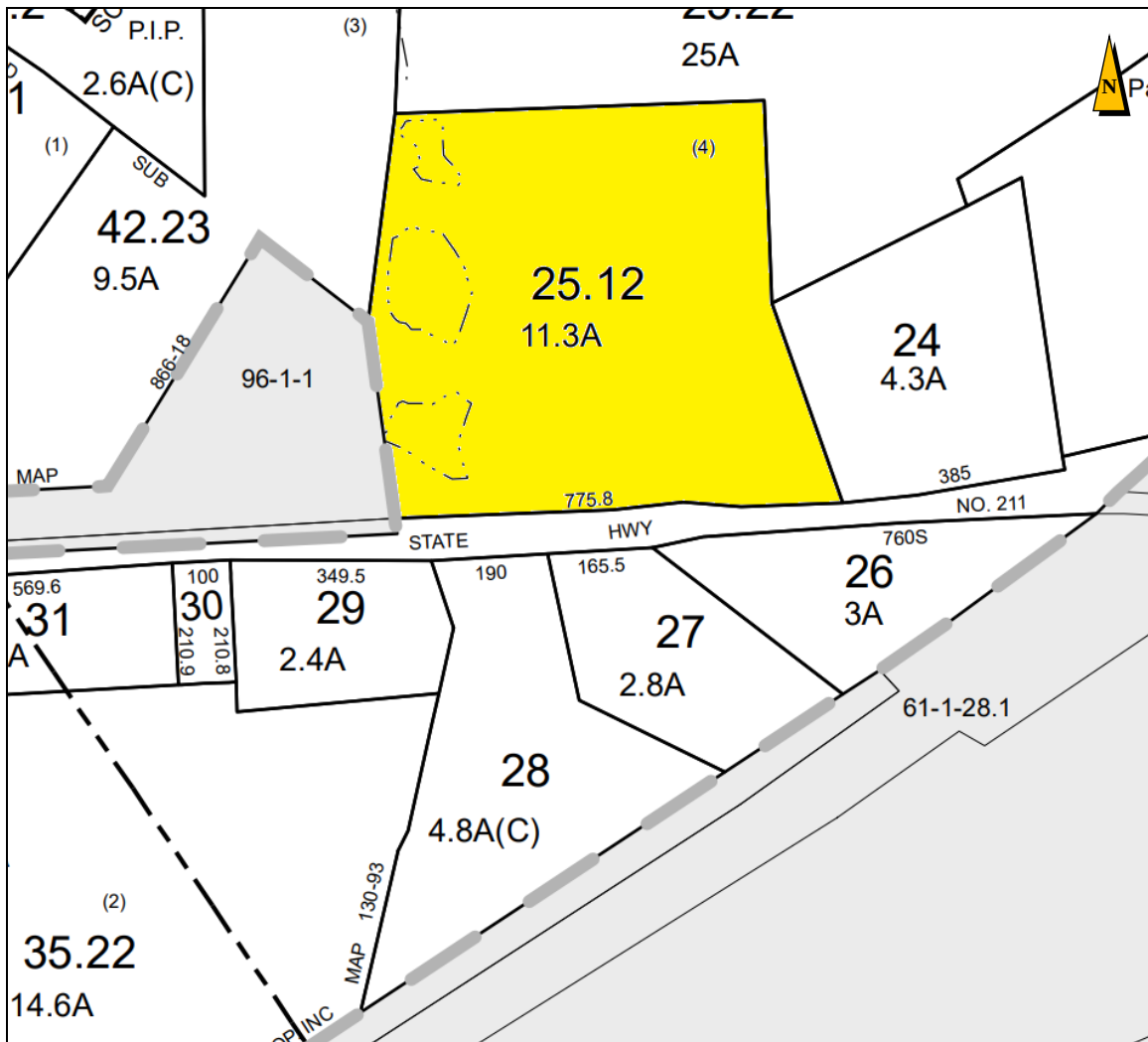
**Land Sale #2**  
**Section 44, Block 1, Lots 25.12**

**1089 NY-211 E**  
**Wallkill, Orange County, NY**



|                                |                                                                                                                                                                                                                                                                                              |
|--------------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Grantor / Grantee</b>       | 211 Middletown Group LLC / 211 Equities LLC                                                                                                                                                                                                                                                  |
| <b>Date of Sale (Recorded)</b> | 5/20/22 (6/3/22)                                                                                                                                                                                                                                                                             |
| <b>Deed Book-Page</b>          | 15245-365                                                                                                                                                                                                                                                                                    |
| <b>Description</b>             | 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. |
| <b>Land Area</b>               | 11.30± acres (492,228± square feet)                                                                                                                                                                                                                                                          |
| <b>Zoning</b>                  | Enterprise, Light Industry (ENT-L)<br><i>Town of Wallkill</i>                                                                                                                                                                                                                                |
| <b>Indicated Sale Price</b>    | \$4,000,000                                                                                                                                                                                                                                                                                  |
| <b>Sale Price per Acre</b>     | \$353,982                                                                                                                                                                                                                                                                                    |

**TAX MAP – LAND SALE #2**  
**Section 44, Block 1, Lots 25.12**





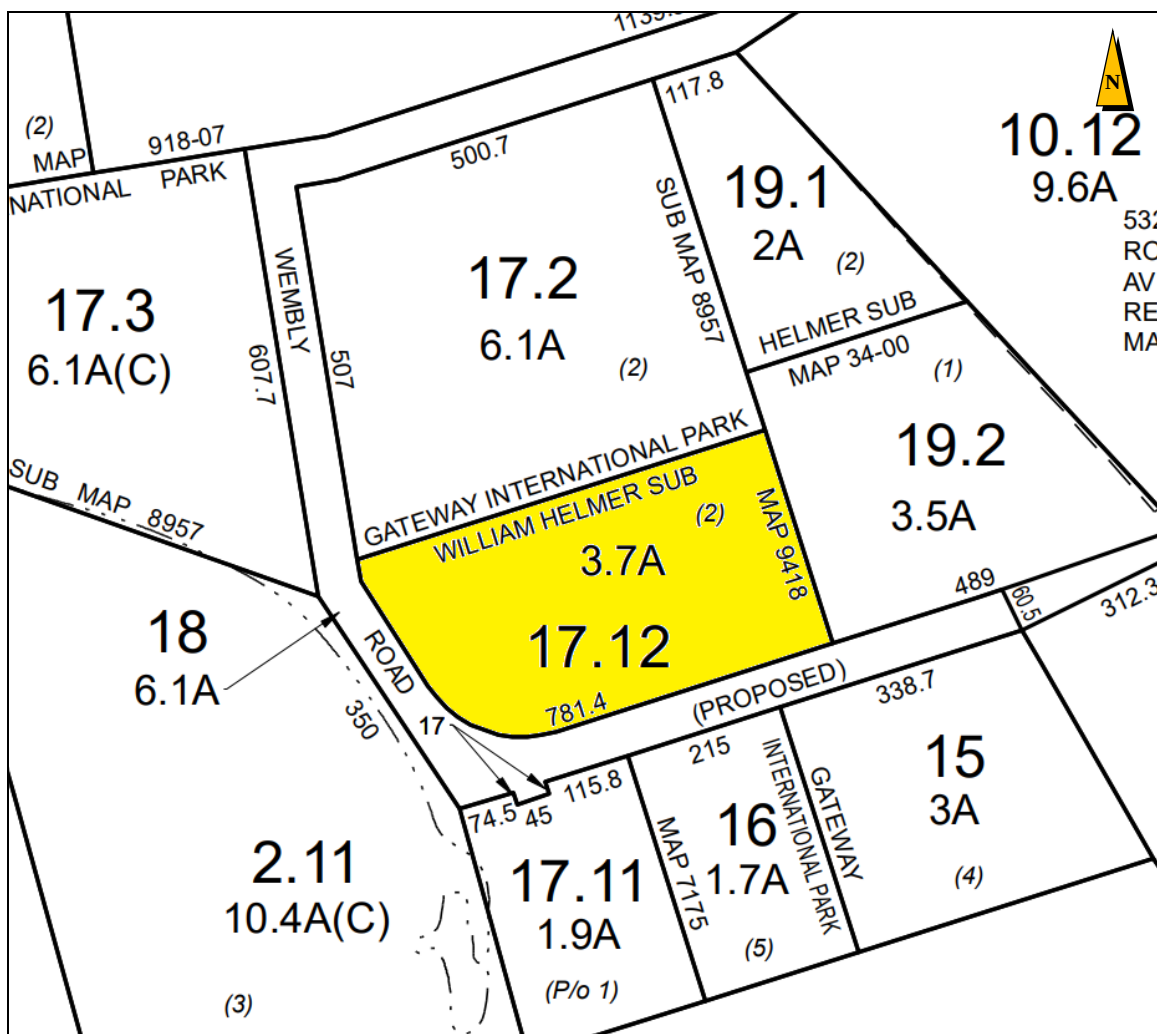
**Land Sale #3**  
**Section 4, Block 3, Lots 17.12**

**Wembly Road**  
**New Windsor, Orange County, NY**



|                                |                                                                                                                                                                                                                                                                                               |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Grantor / Grantee</b>       | LLFNGW Realty LLC / Wembly Road LLC                                                                                                                                                                                                                                                           |
| <b>Date of Sale (Recorded)</b> | 3/4/22 (3/23/22)                                                                                                                                                                                                                                                                              |
| <b>Deed Book-Page</b>          | 15189-297                                                                                                                                                                                                                                                                                     |
| <b>Description</b>             | 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. |
| <b>Land Area</b>               | 3.70± acres (161,172± square feet)                                                                                                                                                                                                                                                            |
| <b>Zoning</b>                  | Planned Industrial (PI)<br><i>Town of New Windsor</i>                                                                                                                                                                                                                                         |
| <b>Indicated Sale Price</b>    | \$1,300,000                                                                                                                                                                                                                                                                                   |
| <b>Sale Price per Acre</b>     | \$351,351                                                                                                                                                                                                                                                                                     |

**TAX MAP – LAND SALE #3**  
*Section 4, Block 3, Lots 17.12*



**DEVELOPMENT RENDERING – LAND SALE #3**



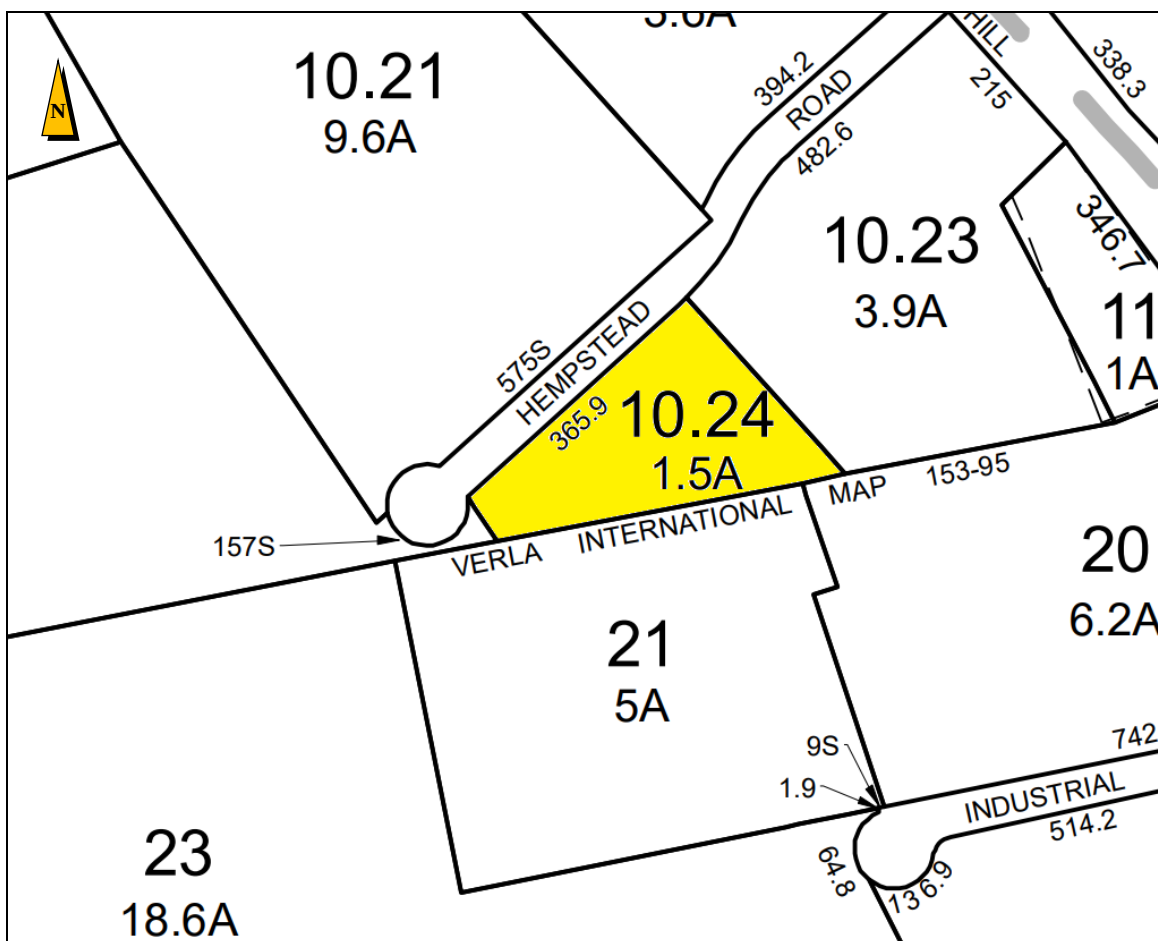
**Land Sale #4**  
**Section 4, Block 3, Lot 10.24**

**21 Hempstead Road**  
**New Windsor, Orange County, NY**



|                                |                                                                                                                                                                                                                                                                                                                                                     |
|--------------------------------|-----------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|
| <b>Grantor / Grantee</b>       | DePaulis & Son Inc / Hempstead LLC                                                                                                                                                                                                                                                                                                                  |
| <b>Date of Sale (Recorded)</b> | 2/19/20 (3/26/20)                                                                                                                                                                                                                                                                                                                                   |
| <b>Book-Page</b>               | 14723-1559                                                                                                                                                                                                                                                                                                                                          |
| <b>Description</b>             | 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. |
| <b>Land Area</b>               | 1.50± acres (65,340± square feet)                                                                                                                                                                                                                                                                                                                   |
| <b>Zoning</b>                  | Planned Industrial (PI)<br><i>Town of New Windsor</i>                                                                                                                                                                                                                                                                                               |
| <b>Indicated Sale Price</b>    | \$850,000                                                                                                                                                                                                                                                                                                                                           |
| <b>Sale Price per Acre</b>     | \$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<sup>10</sup>

| Easement Valuation Matrix |                                                                                                                                                    |                                                                                                            |
|---------------------------|----------------------------------------------------------------------------------------------------------------------------------------------------|------------------------------------------------------------------------------------------------------------|
| Percentage of Fee         | Comments                                                                                                                                           | Potential Types of Easements                                                                               |
| 90% - 100%                | <ul style="list-style-type: none"> <li>Severe impact on surface use</li> <li>Conveyance of future uses</li> </ul>                                  | Overhead electric, flowage easements, railroad right of way, irrigation canals, exclusive access easements |
| 75% - 89%                 | <ul style="list-style-type: none"> <li>Major impact on surface use</li> <li>Conveyance of future uses</li> </ul>                                   | Overhead electric, pipelines, drainage easements, railroad right of way, flowage easements                 |
| 51% - 74%                 | <ul style="list-style-type: none"> <li>Some impact on surface use</li> <li>Conveyance of ingress/egress rights</li> </ul>                          | Pipelines, scenic easements                                                                                |
| 50%                       | <ul style="list-style-type: none"> <li>Balanced use by both owner and easement holder</li> </ul>                                                   | Water or sewer lines, cable lines, telecommunications                                                      |
| 26% - 49%                 | <ul style="list-style-type: none"> <li>Location along a property line</li> <li>location across non-usable land area</li> </ul>                     | Water or sewer line, cable lines                                                                           |
| 11% - 25%                 | <ul style="list-style-type: none"> <li>Subsurface or air rights with minimal effect on use and utility</li> <li>Location with a setback</li> </ul> | Air rights, water or sewer line                                                                            |
| 0% - 10%                  | <ul style="list-style-type: none"> <li>Nominal effect on use and utility</li> </ul>                                                                | Small subsurface easement                                                                                  |

38      RIGHT OF WAY      NOVEMBER/DECEMBER      2014

<sup>10</sup> 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         |
| <b>Indicated Fee Simple Market Value</b>      | <b>\$9,141.48</b> |
| Allocation Factor @ 90.0% of Fee Simple Value | x 90.0%           |
| Overall Damage Value                          | \$8,227.33        |
| <b>(Rd. Up)</b>                               | <b>\$8,300.00</b> |

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**

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

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

**3. Definitions.** 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. Construction Requirements.** 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. Relocation.** 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. Taxes, Assessments and Other Charges.** 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. Insurance.**

(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 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 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. Indemnity.**

(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. Notices.** 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. Amendments.** 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. Counterparts.** 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.**

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Name:

Title:

**GRANTEE:**

**CITY OF MIDDLETOWN**

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Name:

Title:

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]

[illegible]

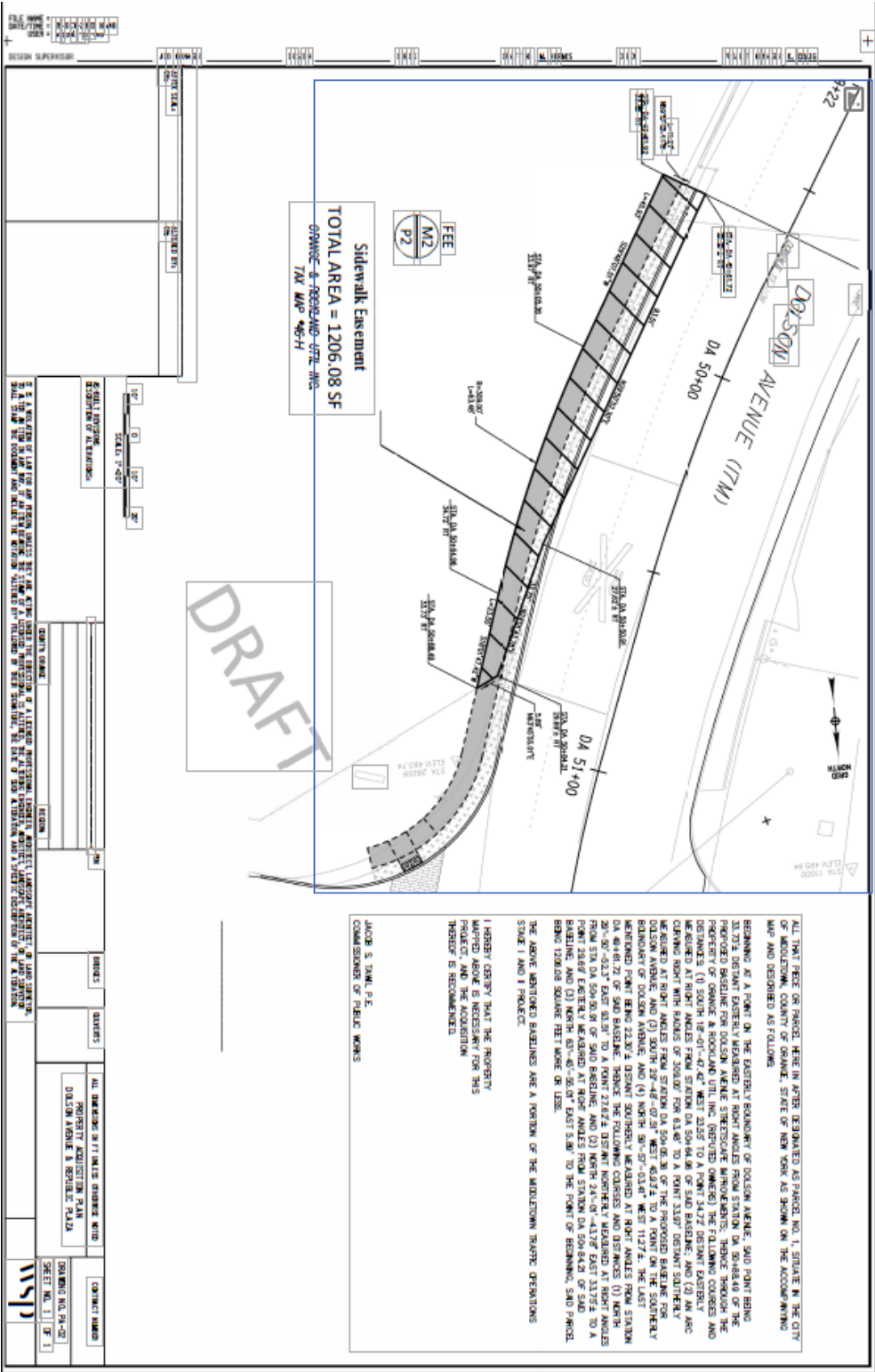
On the \_\_\_\_ day of \_\_\_\_\_, in the year 2024, before me, the undersigned, a Notary Public in and for said State, personally appeared \_\_\_\_\_, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and 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

[Middletown/Grantee]

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:

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**EASEMENT AGREEMENT**

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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. Force Majeure.** 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 \_\_\_\_\_

**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: None  
Seconded by: None  
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         |      |      |         |        |
| Ald. Jean-Francois |      |      |         |        |
| Ald. Johnson       |      |      |         |        |
| Ald. Wray          |      |      |         |        |
| Ald. Kleiner       |      |      |         |        |
| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

### **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

**Attachments:**

|    |          |
|----|----------|
| 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<br>Gas & Oil | \$7,000 | A.3120.433<br>Training         |
| A.3120.417<br>Gas & Oil | \$3,000 | A.3120.479<br>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: None  
Seconded by: None  
Date of Adoption: September 3, 2024  
Index No: 170-24

**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         |      |      |         |        |
| Ald. Jean-Francois |      |      |         |        |
| Ald. Johnson       |      |      |         |        |
| Ald. Wray          |      |      |         |        |
| Ald. Kleiner       |      |      |         |        |
| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

### **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 |
|----|---------------------------------------------|



## CITY OF MIDDLETOWN, NEW YORK COMMON COUNCIL RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: None  
Seconded by: None  
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         |      |      |         |        |
| Ald. Jean-Francois |      |      |         |        |
| Ald. Johnson       |      |      |         |        |
| Ald. Wray          |      |      |         |        |
| Ald. Kleiner       |      |      |         |        |
| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

### **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 |
|----|--------------------------------------------|

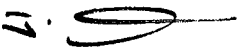
# DEPARTMENT OF PUBLIC WORKS

## 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.



August 27, 2024

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

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

\_\_\_\_\_  
Date

\_\_\_\_\_  
Printed Name

\_\_\_\_\_  
Title

\_\_\_\_\_  
Person to contact for inspection

\_\_\_\_\_  
Phone number



## CITY OF MIDDLETOWN, NEW YORK COMMON COUNCIL RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: None  
Seconded by: None  
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         |      |      |         |        |
| Ald. Jean-Francois |      |      |         |        |
| Ald. Johnson       |      |      |         |        |
| Ald. Wray          |      |      |         |        |
| Ald. Kleiner       |      |      |         |        |
| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

### **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<br>Other Equipment | \$12,467.95 | F.8130.440<br>Repairs to Equipment |

Thank you.

MC



## CITY OF MIDDLETOWN, NEW YORK COMMON COUNCIL RECORD OF VOTE

THE FOLLOWING WAS PRESENTED

By: None  
Seconded by: None  
Date of Adoption: September 3, 2024  
Index No: 173-24

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Richard P. McCormack  
Clerk to the Common Council

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| Ald. Green         |      |      |         |        |
| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

### **Appointment of Johnathan Scarpatti, 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 Scarpatti – 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: None  
Seconded by: None  
Date of Adoption: September 3, 2024  
Index No:

**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 |
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| Ald. Witt          |      |      |         |        |
| Ald. Masi          |      |      |         |        |
| Pres. Rodrigues    |      |      |         |        |
| Total              |      |      |         |        |

**I hereby approve the attached Resolution/Local Law.**

\_\_\_\_\_  
Joseph M. DeStefano, Mayor

\_\_\_\_\_  
Date

**Resolution Authorizing the Accounts be Audited, Claims Adjusted, and the Treasurer be Authorized to Issue Warrants for their Payment**

Resolution Authorizing the Accounts be Audited, Claims Adjusted, and the Treasurer be Authorized to Issue Warrants for their Payment

Prepared by:

**Attachments:**

None