

July 15, 2021

The City Council  
Niagara Falls, New York

RE: Request that Council approve settlement of ten years of Real Property Tax Law Article 7 tax assessment review proceedings commenced against the City of Niagara Falls by Eleventh Street Properties, L.L.C., relative to 220 Memorial Parkway (SBL: 159.10-1-3), and thereby authorize this Department to execute the attached Consent Order.

**Nature of Litigation:** Petitioner, Eleventh Street Properties, L.L.C., is the owner of 220 Memorial Parkway (SBL: 159.10-1-3). This is commercial property consisting of two acres and a warehouse that had been previously used for light manufacturing, cold storage and as a distribution warehouse, all before 2011. Starting with the 2011-2012 tax year, the owner challenged the parcel's assessed value of \$365,900.00 on the grounds that it was excessive for a property that had no tenants and which was not being used for any of the purposes noted above. Unable to secure a reduction in assessed value through the administrative review process, the owner commenced an Article 7 tax assessment review proceeding for the 2011-2012 tax year, with new filings made for each succeeding tax year to present. All such pending cases are currently assigned to the Honorable Matthew J. Murphy, J.S.C., for expedited resolution either by settlement or a trial to be scheduled this year.

**Proposed Settlement:** Following the completion of discovery and numerous pre-trial conferences conducted by the Court, and additional settlement discussions between the attorneys for the respective parties, including the intervenors, the County of Niagara and the Niagara Falls City School District, a tentative settlement has been reached that is now recommended by the City Assessor and Corporation Counsel. The proposed settlement calls for the property's assessed value to be reduced to \$100,000.00 for each tax year at issue. If approved, this would result in the City and the two intervenors each being required to pay refunds to the Petitioner for its overpayment of taxes to date, measured from the 2011-2012 tax year. For the City of Niagara Falls, the settlement, if approved by Council and then subsequently approved by Judge Murphy, will require a total refund payment in the amount of \$85,434.78, not including the addition of statutory interest that the City Controller will need to calculate up to the date of payment.

Recommendation/Reason: Both the City Assessor and this Department recommend settlement of these cases as being in the best interest of the City. Council approval will further authorize this Department to sign the attached Consent Order, which is a necessary step before Court approval of the settlement may be requested.

Amount to be Paid: \$85,434.78, plus the statutory interest that will need to be calculated and added to the settlement draft by the City Controller once the settlement has been finalized by the Court.

Check Writing Details: Make payable to "Wolfgang & Weinmann, as attorneys for NFR Gateway, L.L.C."

Conditions: The City's settlement draft for \$85,434.78, plus statutory interest as calculated by the City Controller, may not be issued unless and until the settlement has been finalized by the complete execution, Court approval and filing of the attached Consent Order with the Niagara County Clerk's Office.

It is the recommendation of this Department that the above settlement be paid under the terms set forth above. Will the Council so approve?

Respectfully submitted,

CHRISTOPHER M. MAZUR  
Corporation Counsel

Attachment