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IN THE MATTER OF A
NOTICE OF PUBLIC HEARING
RE: LAWRENCE JOHNSON ROAD, LLC

-----X

350 Front Street
Hempstead, New York

January 23, 2017
9:30 a.m.

B E F O R E:

FREDERICK E. PAROLA, Chief Executive Officer

MICHAEL LODATO, Deputy Agency Administrator

ARTHUR J. NASTRE, Board Member

JOHN FERRETTI, Board Member

STEVEN RAISER, Board Member

ALFRED D'AGOSTINO, ESQ.

DANIEL J. BAKER, ESQ.

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

TOWN OF HEMPSTEAD
INDUSTRIAL DEVELOPMENT AGENCY
350 Front Street
Hempstead, New York 11550

CERTILMAN BALIN ADLER & HYMAN, LLP
Attorneys for the Applicant
90 Merrick Avenue
East Meadow, New York 11554
BY: DANIEL J. BAKER, ESQ.

MINERVA & D'AGOSTINO, P.C.
Attorneys for the
Lawrence Free School District
107 South Central Avenue
Valley Stream, New York 11580
BY: ALBERT D'AGOSTINO, ESQ.

1 HEARING OFFICER PAROLA: Good
2 morning. My name is Fred Parola.
3 I'm the executive director of The
4 Town of Hempstead Industrial
5 Development Agency.
6

7 It's 9:30 this 23rd day of
8 January and pursuant to a Notice of
9 Public Hearing, I'm convening the
10 aforementioned hearing with respect
11 to Lawrence Johnson Road, LLC, a New
12 York limited liability company on
13 behalf of itself and/or principals
14 of Lawrence Johnson Road, LLC,
15 basically representing Raymour &
16 Flanigan Furniture Company, Inc.

17 I will submit for inclusion in
18 the formal record the Notice of
19 Public Hearing.

20 I am joined by Michael
21 Lodato...

22 MR. LODATO: Deputy Agency
23 Administrator.

24 HEARING OFFICER PAROLA: Thank
25 you.

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And members of my board.

MR. NASTRE: Arthur Nastre.

MR. RAISER: Steven Raiser.

MR. FERRETTI: John Ferretti.

HEARING OFFICER PAROLA: Notice is hereby given that a public hearing pursuant to Title 1 of Article 18-A of the New York State General Municipal Law will be held by the Town of Hempstead Industrial Development Agency ("the Agency") on the 23rd day of January, 2017, at 9:30 a.m., local time, at 350 Front Street, Room 234-A, Hempstead, New York in connection with the following matters;

Lawrence Johnson Road, LLC, a New York limited liability company, on behalf of itself and/or the principals of Lawrence Johnson Road, LLC and/or an entity formed or to be formed on behalf of the foregoing (the "Company") and Raymour's Furniture Company, Inc., d/b/a

1
2 Raymour & Flanigan Furniture/Mattress,
3 a New York business corporation, on
4 behalf of itself and/or the
5 principals of Raymour's Furniture
6 Company, Inc. and/or an entity
7 formed or to be formed on behalf of
8 the foregoing (the "Sublessee"),
9 have applied to the Town of
10 Hempstead Industrial Development
11 Agency (the "Agency") to enter into
12 a transaction in which the Agency
13 will assist in (a) the acquisition
14 of the approximately 6.81 acre
15 parcel of land located at 55 Johnson
16 Road, Lawrence, New York 11559 (the
17 "Land"), the renovation of an
18 approximately 112, 204 square foot
19 building located thereon (the
20 "Improvements"), and the acquisition
21 and installation therein of certain
22 equipment and personal property, not
23 part of the Equipment (as such term
24 is defined herein) (the "Facility
25 Equipment"); and, together with the

1
2 Land and the Improvements, (the
3 "Company Facility"), which Company
4 Facility will be subleased and
5 subleased by the Agency to the
6 Company, and further subleased by
7 the Company to the Sublessee and
8 (b) the acquisition and installation
9 of certain equipment and personal
10 property (the "Equipment"); and,
11 together with the Company Facility,
12 (the "Facility"), which Equipment is
13 to be leased by the Agency to the
14 Sublessee and Facility will be used
15 by Sublessee as office and warehouse
16 space in its business as a
17 distributor of furniture and home
18 furnishings including home office
19 furniture, accessories, mattresses
20 and box springs. The Facility will
21 be initially owned, operated and/or
22 managed by the Company.

23 The Agency contemplates that it
24 will provide financial assistance to
25 the Company and Sublessee in the

1
2 form of exemptions from mortgage
3 recording taxes in connection with
4 the financing or any subsequent
5 refinancing of the Facility,
6 exemptions from sales and use taxes
7 and abatement of real property
8 taxes, consistent with the policies
9 of the Agency.

10 A representative of the Agency
11 will, at the above-stated time and
12 place, hear and accept written
13 comments from all persons with views
14 in favor of or opposed to either the
15 proposed financial assistance to the
16 Company and Sublessee of the
17 location or nature of the Facility.
18 At the hearing, all persons will
19 have the opportunity to review the
20 application of financial assistance
21 filed by the Company and the
22 Sublessee with the Agency and an
23 analysis of the costs and benefits
24 of the proposed Facility.

25 Dated: January 6, 2016.

1
2 MR. PAROLA: As well as we have
3 a number of guests who are prepared
4 to speak on the issue.

5 I would just say that the pilot
6 that has been proposed would begin
7 taxes where they currently are
8 utilizing our normal methodology and
9 not deviating therefrom.

10 And with that, I would ask
11 anyone wishing to be heard on the
12 matter to please step forward. Al?
13 Mr. D'Agostino from the school
14 district?

15 MR. D'AGOSTINO: Is the
16 applicant making a statement?

17 HEARING OFFICER PAROLA: Only
18 if he's going to respond to you. He
19 did not plan to I understand.

20 (At this time, a brief
21 discussion was held off the record.)

22 MR. D'AGOSTINO: My firm
23 represents Lawrence Union Free
24 School District Number 15, Town of
25 Hempstead, which is known as the

1
2 Lawrence School District. The
3 subject property is within the
4 bounds of the Lawrence School
5 District.

6 The District has directed me to
7 state it's vociferous opposition to
8 the application on the following
9 grounds. Let me give you a little
10 background first.

11 I did have an opportunity to
12 take a look at the file I guess
13 about a week-and-a-half ago. On
14 Friday, I had participated in a
15 conference call with two attorneys
16 who I was told were house counsel to
17 Raymour Flanigan, Mr. Fumarola and I
18 can't remember the other fellow's
19 name.

20 MR. BAKER: Was it Ruby?

21 MR. D'AGOSTINO: It might have
22 been -- along with the board
23 president and myself.

24 The real question comes in on
25 the fair market value of the

1
2 property upon which the pilot is
3 being based. Currently, the
4 property is valued at approximately
5 6.9, just under \$7 million. The
6 documentation submitted to the IDA
7 indicates that this is a \$27 million
8 purchase with approximately -- and
9 this is from memory -- I believe a
10 \$22 million -- subject to a
11 \$22 million mortgage, financing --
12 IDA financing. The total investment
13 in the property was somewhat north
14 of 30 million.

15 I also understand that this
16 property just came off a pilot on
17 12/31/16. I don't have the
18 particulars of that, and I don't
19 know that they really bear on this
20 other than you got a -- if that
21 information is correct, we have a
22 situation where we're looking at a
23 10-year pilot going forward and this
24 just came off -- I'm assuming it was
25 a 10-year pilot, I don't know for

1
2 sure, but we're dealing with a
3 situation where I think the initial
4 purpose of the pilot was well served
5 because the value of the property
6 has been driven up to some
7 \$27 million.

8 Now, starting the taxes, and I
9 believe I was told by the counsel --
10 house counsel to Raymour Flanigan
11 that the current taxes, which are
12 approximately 400-and-change,
13 mid-400s, thereabouts.

14 MR. NASTRE: 377,587.17 are the
15 County taxes.

16 MR. D'AGOSTINO: That's based
17 upon a \$7 million evaluation.
18 Clearly, the property is worth more
19 than \$7 million since it's being
20 sold for 27 million. The value has
21 been driven up, at least in our
22 opinion, by the economic impetus
23 which was given by prior boards --
24 or a prior pilot was granted, prior
25 benefits were granted.

1
2 And we feel very strongly that
3 starting at the \$7 million number,
4 based upon the \$7 million number,
5 and not taking into consideration
6 that this is really starting at a
7 \$27 million basis, is giving a
8 benefit, which I don't think was
9 intended with the first pilot, and
10 it is adversely impacting the
11 taxpayers of the School District.

12 The School District, as you
13 know, takes the major part of tax
14 revenue and the major hit when there
15 are IDA benefits granted. I believe
16 we are somewhere in the vicinity of
17 2/3 of what the tax burden is on
18 this property so that's going to
19 represent a shift of 2/3 less --
20 well, 2/3 is the benefit which is
21 granted, but we also feel that
22 there's a \$20 million gap in the
23 actual value.

24 Now, if the value of this
25 property was driven up by the fact

1
2 that there was a prior pilot, which
3 just concluded less than a month
4 ago --

5 HEARING OFFICER PAROLA: A year
6 ago.

7 MR. D'AGOSTINO: -- a year ago,
8 '15?

9 HEARING OFFICER PAROLA:
10 January 1, 2016, it was back on the
11 tax rolls.

12 MR. D'AGOSTINO: It was back on
13 the tax rolls? Then I stand
14 corrected.

15 So it did not just come off.
16 There's a one-year gap, but that did
17 or something did clearly drive the
18 fair market value of this property
19 up to \$27 million, and that I don't
20 believe that the IDA board could or
21 should ignore the difference of the
22 \$20 million.

23 In granting what is requested,
24 to the magnitude that it's
25 requested, it is creating a massive

1
2 shift, which should not occur, which
3 is going to be borne by the
4 taxpayers of the District.

5 For those of you who are
6 familiar with the Lawrence School
7 District, it is classified by the
8 state as a wealthy district. If you
9 view the socioeconomic gamut of the
10 residents and taxpayers, in reality,
11 the District gets shortchanged from
12 the state in terms of state funding
13 based upon this classification as a
14 wealthy district. There are areas
15 of high wealth and there are many
16 more areas which are not.

17 So the board president -- the
18 board has asked me to convey its
19 vehement opposition based upon the
20 fact that there appears to be a
21 \$20 million gap in the valuation.

22 If you're going to start this
23 at current taxes, start it at
24 current taxes based upon what the
25 valuation is or start it a year

1
2 later after the new valuation comes
3 in.

4 I'm aware that the argument is
5 going to be but for the pilot, this
6 would not be worth \$27 million. So
7 what's happening is the District and
8 District taxpayers are suffering the
9 burden of 60 percent of, I assume,
10 it's 2/3 of that shift. And I'm
11 also aware of the fact that we're
12 dealing with a budget, and our
13 budget does not get reduced or
14 increased, but what happens is the
15 burden gets shifted internally.

16 So that's the -- and by the
17 way, the issue is raised or the
18 question was raised when I had the
19 conference call on Friday with the
20 applicant's house counsel, why we
21 waited so long.

22 Well, the notice was dated
23 January 6th. We are now at the
24 23rd. I was away on vacation last
25 week, so my days are all confused.

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MR. NASTRE: The 23rd.

MR. D'AGOSTINO: As soon as we got the notice, I was contacted by the District, I was contacted by the board president, and we got together whatever information we were able to. And, in fact, the conference call that was held on Friday, I was down in Florida at the time and I was a participant in that. But the District is not happy to say the least.

So with that being said, I'll answer any questions that you might have.

HEARING OFFICER PAROLA: I have one question to start anyway.

What would the taxes be if this deal went belly up and south?

MR. D'AGOSTINO: If it went belly up, and I didn't hear the last two words.

HEARING OFFICER PAROLA: And south, the deal fell apart.

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MR. D'AGOSTINO: This deal?

HEARING OFFICER PAROLA: Yes.

What would the taxes be?

MR. D'AGOSTINO: The taxes would be based upon the \$7 million subject to certiorari.

HEARING OFFICER PAROLA:

Correct.

MR. D'AGOSTINO: I understand that.

HEARING OFFICER PAROLA: You know from your previous association with this board that the board does not take into consideration traditionally as our standard practice in commencing a pilot the sale price. We utilize the lowest level we can as an incentive.

MR. D'AGOSTINO: I understand that.

HEARING OFFICER PAROLA: So this is consistent with what has been a long-standing procedure.

MR. D'AGOSTINO: It is. But

1
2 the long-standing procedure -- let
3 me back up.

4 Assessment, of course, is done
5 at the County level. The benefits
6 come out of this agency.

7 The \$27 million valuation
8 arguably would not come into play
9 without the benefits being granted.
10 So it is -- the value is -- two
11 things are happening.

12 One, the value is being driven
13 up by the benefits; and two, the
14 failure to take into consideration
15 what everybody knows the fair market
16 value is going to be, or some
17 formula based upon that, leads to a
18 potentially massive shift of the
19 burden on this property to the
20 taxpayers.

21 And again, we're talking about
22 the difference between 7 million and
23 27 million. It's not like the
24 difference between 7 million and
25 9 million or 8 million or

1
2 10 million.

3 It's almost four times what the
4 current fair market value is and may
5 be, with the assessor not being part
6 of the process, maybe the assessor
7 should be part the process at least
8 based upon some formula.

9 But it just-- and this is the
10 point that the board president
11 focused on. And he went right to
12 it. Frankly, faster than I did.
13 It's his business.

14 Clearly, the current taxes are
15 377, are nowhere near reflective of
16 current market value. Best
17 determination of current market
18 value is an arm's length sale.
19 That's what you have here.

20 Again, I'm not saying that
21 there wasn't room for discussion.
22 Raymour Flanigan had no interest in
23 discussing with us in the
24 conversation we had on Friday.
25 Basically, see you on Monday.

1
2 Had I known Mr. Baker was
3 involved in this -- there was no
4 indication that he was -- I would
5 have called him. I can only tell
6 you, understanding the process,
7 maybe the process has got to be
8 looked at.

9 But I underline the word
10 "vehement" opposition of the school
11 board. And that's what I've been
12 directed to say.

13 HEARING OFFICER PAROLA: Okay.

14 MR. NASTRE: Mr. Baker, I
15 assume you'd like to be heard at
16 this point?

17 MR. BAKER: Yes. Thank you,
18 Mr. Chairman.

19 Daniel Baker, Certilman Balin,
20 90 Merrick Avenue, East Meadow, New
21 York 11554, On behalf of the
22 applicant and its parent entity,
23 which is, as we were discussing,
24 Raymour Flanigan.

25 A couple of issues that I'll

1 address, maybe not in the exact
2 order that Mr. D'Agostino did, but
3 let's start with this and going back
4 to our last meeting with the board,
5 at which point the project was
6 induced. That was on December 21st
7 of 2016.

8
9 First and foremost, the
10 purchase price of this property is
11 for a property that is to be used
12 by, in essence, the applicant or
13 owner-occupier of the intended use.
14 In this case, while there are
15 different entities, in fact Raymour
16 Flanigan is the parent to the LLC
17 that will own it, and they will use
18 and occupy this property.

19 There are certain premiums that
20 user-owners like this will pay to
21 obtain a certain piece of property.
22 This property is advantageous for
23 their whole company's way of doing
24 business, which was described fully
25 at our last meeting.

1
2 MR. NASTRE: Geographically
3 advantageous, predominantly, right?

4 MR. BAKER: It is. And that
5 gets to the essence of the whole IDA
6 deal, which, in our mind, is a
7 textbook deal.

8 They can utilize this property
9 for their purposes or, as was stated
10 on record, they will have to look
11 elsewhere, whether it be New Jersey
12 or Suffolk County or Queens or
13 wherever it might be, which is less
14 than ideal here. And the only way
15 this project can work for them is
16 if, in fact, they have the benefits
17 that were in essence agreed upon and
18 induced in December.

19 The taxes are what they are.
20 Raymour Flanigan is not seeking to
21 reduce those taxes. The starting
22 point would be as shown in the pilot
23 schedule and then will increase at a
24 rate consistent with typical IDA
25 deals.

1
2 The bottom line is that if
3 these benefits are not in place,
4 then Raymour & Flanigan will not be
5 able to proceed with the deal, and
6 that was something that we did state
7 on the record.

8 They do have a contract. The
9 contract was negotiated before the
10 IDA benefits were in place.

11 MR. NASTRE: I was just going
12 to ask that.

13 MR. BAKER: In terms of the
14 purchase price, that is what they
15 are willing to pay to utilize this,
16 but only in such a way that they
17 have certain other factors in place,
18 including the taxes.

19 So they come in, they look at
20 the taxes as they are and determine
21 we can handle a tax load like that
22 and an increase based on the pilot
23 the way it has been preliminarily
24 improved or induced by the board.

25 They are ready to move forward

1
2 with that. They have a due
3 diligence period that is going to
4 end quickly. And I think we
5 mentioned this to the board when we
6 met that we were intent on moving
7 forward to a public hearing after
8 the December hearing, and then
9 hopefully having our final
10 authorizing resolution in January
11 because we could not wait any
12 longer. We could not wait until
13 February because of the contract
14 provisions.

15 So this is going to determine
16 whether or not they go forward and
17 close their deal. If they don't
18 because of any change in the
19 benefits, then the deal will in fact
20 die. I can't say what will happen
21 with this property.

22 I was not involved in the
23 negotiation or acquisition
24 discussions with the seller. I
25 don't know what the history is in

1
2 the sense that there have been a lot
3 of people looking for it. But from
4 what I gather, this is something
5 Raymour & Flanigan can use and it's
6 not going to be picked up any time
7 quickly. So the taxes are going to
8 stay where they are.

9 In fact, if the building goes
10 vacant, as we all know, it has the
11 potential to run down, lose value
12 and have a negative effect on taxes.

13 So to put this user in here, to
14 get the pilot going, to have the
15 benefit of now an improved,
16 productive building with creation of
17 jobs, which again we discussed at
18 the meeting, is a creation of jobs
19 in its purest sense.

20 These are going to be new jobs.
21 They're not coming from anywhere
22 else. We're talking about 50 after
23 a year, and then I think it's 70
24 after the second year of a spectrum
25 of jobs.

1
2 They're not just menial
3 labor-type jobs. There are mid and
4 even a couple of upper level
5 management positions here, so you're
6 really getting a swath of employment
7 creation that is going to be
8 beneficial to this area.

9 As they mentioned -- my clients
10 mentioned at the meeting, they
11 traditionally hire people from the
12 local community. They are a
13 family-oriented company, and they're
14 going to be a great use here.

15 So it is our position, again,
16 consistently with what we proposed
17 in December, that this is a good
18 project. The pilot has, as already
19 agreed upon, is going to make this
20 project fly and allow this property
21 to be improved, redeveloped and used
22 for a good purpose.

23 So with that, any questions
24 from the board I'll be happy to
25 answer.

1
2 MR. NASTRE: I have a question
3 for Fred.

4 Do we by any chance have the --
5 available to us what the pilot --
6 the prior pilot was in the
7 10th year?

8 MR. LODATO: I'd have to pull
9 that. Give me a moment.

10 MR. NASTRE: I want to make
11 sure that the current taxes are the
12 full taxation and not the 10th year
13 of the last pilot.

14 HEARING OFFICER PAROLA: I
15 think January 16th is when the pilot
16 ended. I think it's been vacant
17 since then, that company left. It's
18 certainly vacant now.

19 MR. NASTRE: Mr. Baker, do you
20 have any prior knowledge of any
21 prior sale prices of the building?
22 Any history?

23 MR. BAKER: I don't.

24 MR. NASTRE: Because it does
25 seem to be a large gulf between the

1 assessed value and the sale price.
2
3 No doubt. And I can understand that
4 you attribute a lot of it to the
5 fact that they are going to be the
6 end user of the property, and it's
7 geographically favorable to their
8 operation. But it's not usually the
9 case where the value versus -- the
10 assessed value versus the purchase
11 price is such a large difference.

12 MR. BAKER: I do not any
13 have prior --

14 MR. NASTRE: As you said, it
15 was negotiated before the pilot.

16 MR. BAKER: That is correct.

17 MR. NASTRE: Do you take issue
18 with the fact that Mr. D'Agostino
19 says that the value -- the purchase
20 price is based on the pilot? You
21 did not even know you were going to
22 get a pilot. You can't assume
23 you're going to get one.

24 MR. BAKER: I can't say that
25 it's based on this pilot or the

1
2 last. I can only say that one of
3 the factors would have been the
4 current taxes. And, you know, the
5 commonplace practice here in Nassau
6 County, certainly from my
7 experience, is you've got an
8 assessed value. That assessed value
9 is going to remain.

10 So even if there were no pilot
11 in place, I would not expect
12 necessarily that the County assessor
13 would automatically increase the
14 taxes here or increase the
15 assessment based on the purchase
16 price or anything else. That is
17 just not the practice. I've
18 conferred with others in the tax
19 world. That is not something that
20 would happen.

21 Is it possible there could be a
22 countywide revaluation or look at
23 all properties that might change it?
24 There could.

25 MR. NASTRE: There's supposed

1
2 to be in January of '19 I think. I
3 don't know.

4 MR. BAKER: But we've heard
5 that many times before also. So
6 there is no indication that anything
7 would happen here, and all we can do
8 is base on the current taxes, which,
9 again, is the process by which we
10 typically move forward with the
11 pilot.

12 MR. FERRETTI: So is what
13 you're saying is that you would not
14 anticipate that the County assessor
15 would increase the assessed value?

16 MR. BAKER: No, I wouldn't.

17 MR. FERRETTI: Then what's the
18 point of the pilot? Because the
19 pilot is starting at the taxes.

20 MR. BAKER: It could happen --
21 it could happen based on
22 improvements that were done, but not
23 on the purchase price.

24 MR. FERRETTI: But you are
25 doing improvements.

1
2 MR. BAKER: That's right. And
3 that's where we're taking into
4 account the increases here.

5 MR. FERRETTI: Wouldn't the
6 increases that are built in just be
7 the standard 2 percent that's
8 generally increased every year?
9 That's what's built into that pilot.

10 MR. BAKER: That could happen
11 through tax rate increases. There
12 could be assessment increases as a
13 result of improvements made, but,
14 again, it wouldn't necessarily --

15 MR. NASTRE: Wouldn't be
16 necessarily based upon the purchase
17 price.

18 MR. BAKER: -- the purchase
19 price. It might be --

20 MR. NASTRE: And I don't
21 believe they can raise an assessment
22 more than 6 percent --

23 HEARING OFFICER PAROLA: Six
24 percent.

25 MR. NASTRE: -- in one year.

1
2 MR. BAKER: That's absolutely
3 correct.

4 HEARING OFFICER PAROLA: And
5 here you're getting a pilot that the
6 benefit is that we're are freezing
7 three years so they have certainty,
8 and we're going up between
9 one-and-a-half and whatever we ended
10 with two-and-change.

11 MR. BAKER: I think the point
12 is, though, if we had a normal
13 process without a pilot and there
14 were increases due to the
15 improvements and they were only the
16 allowable percentages under law,
17 that would be too much of an
18 increase to justify the deal here.

19 MR. RAISER: How long do you
20 anticipate --

21 MR. BAKER: Therefore, we --
22 I'm sorry. Just to finish.

23 -- therefore, the application
24 to the agency for the benefits. And
25 again, without the benefits, this

1
2 project goes somewhere else, to
3 another jurisdiction or a different
4 state.

5 MR. RAISER: But you basically
6 have a freeze here for ten years in
7 essence is what you have, not three.
8 And --

9 MR. BAKER: I would not
10 characterize it like that.

11 MR. NASTRE: It's not a freeze.
12 Well, it does go up, but --

13 MR. RAISER: Yeah. But it's
14 basically a freeze. When you're
15 talking about a \$7 million valuation
16 turning into a \$27 million valuation
17 where at the end of 10 years you're
18 still at the current tax rate based
19 on a minimal percentage increase
20 based on what you would normally
21 expect the taxes to do, whether
22 there are renovations involved or
23 not.

24 So my question to you is the
25 renovations are going to take how

1
2 long?

3 MR. BAKER: The renovation
4 should probably be done within a
5 year.

6 MR. RAISER: In a year. So you
7 basically have a freeze for the
8 first three years, a complete
9 freeze, and then a graduated freeze
10 we'd call it for ten years.

11 At the end of that 10 years --
12 or let's say the 11th year, your
13 building would be valuated at likely
14 \$27 million. What would be the
15 estimated taxes on that?

16 HEARING OFFICER PAROLA: No.
17 It wouldn't be that.

18 MR. BAKER: I don't know the
19 answer but why would we assume now
20 that it's going to be worth
21 \$27 million then? We don't know
22 that.

23 We're not saying we know it's
24 worth 27 million now. That just
25 happens to be what the applicant is

1
2 willing to pay for it because it is
3 a unique building for their use.

4 So again, there was talk
5 earlier about arm's-length
6 transaction. This is arm's length
7 in the sense that it's a buyer and
8 seller that are not connected or
9 tied to one another.

10 But I would not necessarily
11 characterize this as a true
12 arm's-length transaction in the
13 sense that this is what anybody
14 would pay for this, and this might
15 be the market value if you had an
16 appraisal done.

17 This is what this specific user
18 will pay for this specific property
19 because it is important to them. It
20 is geographically desirable. It is
21 all the things that they need to
22 satisfy their business model.

23 But again, they can do that by
24 going to New Jersey or somewhere
25 else. It will just mean that the

1
2 variables will change in terms of
3 what they pay and how they function
4 in terms of moving their trucks,
5 moving their loads and additional
6 costs that they will have to pay for
7 the inconvenience of not being in
8 the same location.

9 HEARING OFFICER PAROLA: The
10 realty of what the assessor has done
11 countywide and the Mangano
12 administration is that they don't
13 use market value per se. If you
14 look at any commercial property in
15 this regard, you see that their
16 motivation is primarily based upon
17 the fact that they lose every case
18 virtually in certioraris or
19 challenges to existing taxes and,
20 therefore, because the County under
21 the law is responsible for paying
22 back the School District and the
23 other jurisdictions if there is a
24 village as well as the County
25 portion, or the general tax portion,

1
2 their prevailing motivation is to
3 keep taxes dramatically lower than
4 the market value per se.

5 And while I would state, yes,
6 this is lower than most, I know that
7 from what we've observed and my
8 conversations with that department,
9 I mean properties are going for half
10 on the market than what they are
11 being taxed for the most part.

12 MR. FERRETTI: But what we're
13 doing is as a board operating under
14 the -- we're assuming too much and
15 we're assuming things that just
16 because the Mangano administration
17 and the assessor under Mangano
18 basically is way behind in
19 reassessing property. And I work in
20 the County Clerk's Office. Twice a
21 month we send up a deed report to
22 the assessor --

23 HEARING OFFICER PAROLA: Right.

24 MR. FERRETTI: -- for the
25 purpose of reassessing properties

1
2 when there is a change in title.

3 HEARING OFFICER PAROLA: Right.

4 MR. FERRETTI: That's what they
5 are supposed to do. Now, they may
6 be years behind doing that. You
7 know, that's what happened in 2009
8 and they haven't done it.

9 But that's the -- that's what
10 is supposed to be done and I would
11 assume in this 10 years it's going
12 to be done on this property at some
13 point during this 10-year period.

14 But it's not reflected in the
15 pilot. I think that's part of what
16 Mr. D'Agostino is saying.

17 HEARING OFFICER PAROLA: Yeah.
18 That's his contention to an extent,
19 yeah.

20 MR. D'AGOSTINO: My contention
21 is more than that, but I'll wait
22 until you're finished with the
23 questions of the applicant's
24 counsel.

25 MR. NASTRE: Incidentally, in

1
2 the tenth year of the prior pilot
3 they were paid \$420,000, which was
4 more by almost \$50,000, than what
5 the taxes were at the time. They
6 overpaid, in other words, in the
7 tenth year of the pilot. Not that
8 it's all that relevant, but I was
9 curious myself.

10 MR. D'AGOSTINO: If I may, if
11 Mr. Baker is finished.

12 HEARING OFFICER PAROLA:
13 Please.

14 MR. D'AGOSTINO: The definition
15 of an arm's-length transaction is a
16 willing buyer and a willing seller.
17 Properties are unique. We learned
18 that in the first year of law
19 school. There are certain
20 properties that are uniquely suited
21 to particular businesses, particular
22 operations.

23 My understanding is that, yes,
24 at one point Raymour Flanigan was
25 looking at another property in

1
2 Suffolk County. They focused on
3 this one and I believe -- and I
4 stress I believe what I heard in our
5 conversation on Friday -- was that
6 that property was sold and they had
7 looked at this one and, obviously,
8 to them it was a better deal.

9 So you had the willing seller
10 and the willing purchaser definition
11 of arm's-length transaction. And
12 traditionally that's viewed as the
13 best basis of value.

14 Yes, there are certain factors.
15 For example, if a property is next
16 door to a current use and a property
17 owner wants to acquire the property
18 next door, at least in the almost
19 50 years I've been practicing law,
20 the traditional numbers that I've
21 heard bandied about is for an
22 adjacent owner it's worth 10 to
23 15 percent more. Not four times.

24 This isn't adjacent. This is
25 suited to their use. There are

1
2 geographic considerations.

3 One question and I'll ask. I'm
4 pretty sure I know the answer, but I
5 just want to ask it for the record.

6 There was reference to the
7 pilot already being agreed upon.
8 Yes, there was an inducement
9 resolution. I understand that and I
10 hear this morning that it was
11 December 21st.

12 I don't believe, and I could be
13 wrong, and -- but I don't believe
14 that the notice of the inducement
15 resolution will go to the taxing
16 authorities. It may or may not. So
17 we --

18 MR. NASTRE: Notice of the
19 board meeting did.

20 MR. D'AGOSTINO: There is a
21 notice of a board meeting that --

22 MR. NASTRE: With the agenda.

23 MR. D'AGOSTINO: But that did
24 not come to the -- or did it? As
25 far as I know, it did not come to

1
2 the School District.

3 So the first notice that we had
4 of this was January 6th. I'm not
5 faulting the process. I'm just
6 stating the facts as I understand
7 them.

8 MR. RAISER: Is that the
9 process?

10 MR. NASTRE: I thought the
11 School District did get notice.

12 MR. LODATO: The staff did not
13 send out notice of the agenda to the
14 school districts.

15 MR. RAISER: Just notice of the
16 meeting.

17 MR. LODATO: We put it on our
18 website. We then -- the State has
19 mandated that we now front load the
20 pilot to go in with the inducement
21 and not the authorizer. So we've
22 now developed the pilots ahead of
23 time, presented those to the board
24 at the inducement, which is what
25 we've been doing for the past year

1
2 maybe, and then, after those are
3 looked at and vetted by the board,
4 we then hold the hearing. And
5 that's when the School District --

6 MR. FERRETTI: So
7 Mr. D'Agostino is correct that the
8 School District was not notified of
9 the board meeting.

10 MR. LODATO: Unless he looked
11 at our website or Newsday gave him
12 that, because we send every
13 notification to Newsday as well.

14 MR. D'AGOSTINO: I can assure
15 you that Newsday doesn't call me.

16 MR. LODATO: In the pavilion
17 and it would be posted outside as
18 well --

19 MR. D'AGOSTINO: And if they
20 did, I would hang up on them.

21 MR. LODATO: -- so those are
22 the three places we put the notices
23 in.

24 MR. D'AGOSTINO: I received the
25 notice of this meeting from the

1 clerk immediately upon her receipt
2 of it.
3

4 So -- and I'm not faulting the
5 process. I'm just trying to
6 understand and make it clear on the
7 record -- so when you say the pilot
8 was already agreed upon, it was
9 discussed and I understand that. I
10 sat through many --

11 MR. NASTRE: As a matter of
12 fact, I think we -- didn't we tweak
13 this pilot at the inducement
14 hearing? We raised the -- I think
15 you guys agreed to certain
16 increases.

17 MR. BAKER: Yes. I think the
18 initial --

19 MR. RAISER: Yes.

20 MR. BAKER: -- proposed pilot
21 actually would have asked for a
22 reduction in the taxes. But --

23 MR. NASTRE: Right.

24 MR. BAKER: -- based upon
25 discussions prior to the board

1
2 meeting.

3 This was just with staff and
4 I'm not sure I was even -- this was
5 when I was becoming involved in the
6 project. Raymour & Flanigan went
7 back and did its own analysis and
8 obtained -- not an appraisal or any
9 written report, but, as far as I
10 know, went out and had a review of
11 this project and the area done to
12 obtain comparables, to get a better
13 idea of where things were at.

14 In fact, those numbers
15 indicated that the taxes as they are
16 would be a fair starting point
17 rather than seeking a reduction.
18 The reduction I think was based upon
19 what they normally would pay in
20 taxes to carry the load of a
21 property like this; meaning the cost
22 analysis of the property, what kind
23 of income they can derive from it,
24 the expenses and so forth. What we
25 call an income analysis.

1
2 But looking more towards the
3 market, they saw that the value was
4 more in line with the taxes as they
5 are and decided that that would be
6 their revised proposed pilot. So it
7 was not something that was
8 necessarily asked of my client, but
9 they came back and said, You know
10 what? This does seem like a fairer
11 starting point, so we have no issue
12 with that.

13 And in thinking about that,
14 it's important also to note that an
15 income analysis is ultimately what
16 is going to determine value here.
17 Yes, acquisition costs play a role
18 and can be an indicator of market
19 value. But for commercial property
20 in Nassau County and throughout the
21 state, ultimately determinations of
22 value will typically come through an
23 income analysis and that will happen
24 at a -- whether it's a tax
25 certiorari proceeding in court or

1
2 negotiations with the County
3 assessor. But for commercial
4 property, that seems to be the
5 standard.

6 And I'm not -- not to suggest
7 that an arm's-length purchase price
8 is not an indicator of value. It
9 is.

10 It just seems to be that the
11 income analysis, which will look at
12 market rents and expenses and other
13 things like that, might be a better
14 determine of value. And I think
15 that was what was in mind here.

16 MR. NASTRE: Putting everything
17 else aside, if the assessor in some
18 way, shape or form decided to raise
19 your assessment 6 percent a year for
20 the next 10 years, in other words a
21 60 percent increase, the value would
22 still be at 11,200,000. It still
23 would not be anywhere near
24 27 million.

25 So I think, you know, their

1
2 willingness to pay this amount is
3 strictly a business decision on
4 their part. If they are overpaying,
5 they know they are overpaying. If
6 they are underpaying, I doubt it.

7 But be that as it may, it's
8 very hard for this board to say,
9 Let's start a pilot on what we think
10 the building is going to be worth
11 after it's completed and fully
12 occupied because we don't know. We
13 don't know what it would be. The
14 pilot would be starting at more --
15 way more than the current taxes if
16 we did that.

17 One of the things that we're
18 thinking of doing is asking for an
19 appraisal from applicants of what
20 they think the value of the property
21 would be as improved.

22 MR. RAISER: We still have the
23 freeze though, right? The first
24 three years, there would still be a
25 freeze --

1
2 MR. NASTRE: Yeah. But we've
3 also made it a practice not to start
4 them below the current taxes. To
5 start them at the current taxes and
6 not below.

7 MR. RAISER: Right.

8 MR. NASTRE: We've raised a
9 few -- more than a few I guess since
10 we've been here doing this
11 two-and-a-half-odd months. That's
12 to make sure they started at the
13 current taxes.

14 To start it based on a value of
15 27 million because the purchase
16 price is 27 million seems to me to
17 be unrealistic.

18 MR. RAISER: You still
19 wouldn't -- you still wouldn't start
20 it that, though, right? You would
21 start it the current value for three
22 year, right? And then you would --

23 MR. NASTRE: And then increase
24 it accordingly. Maybe in years
25 eight, nine and ten it would go up

1
2 considerably.

3 MR. RAISER: Right.

4 MR. FERRETTI: It doesn't sound
5 like the school district's position
6 is that the pilot should be -- But
7 it doesn't sound like the position
8 of the School District says it
9 should start at 27 million. It's
10 that 27 million verses 7 is so out
11 of whack --

12 MR. RAISER: Whack. That's
13 correct.

14 MR. FERRETTI: -- that it reeks
15 of -- you know, just over -- the
16 pilot would be too -- unfairly.

17 My question to Mr. Baker is
18 there any, that you know of, any
19 latitude here that your client would
20 be willing to increase these pilot
21 payments?

22 MR. BAKER: I don't at this
23 time. That's not a discussion that
24 we've had, and I don't know that
25 there is any latitude. Again,

1
2 because of the dynamics of the deal
3 and the ultimate calculus of how
4 they can acquire this property,
5 utilize it, function, you know, the
6 way they need, putting the money
7 they need into it.

8 I understand certainly the
9 question and the idea behind the
10 question, but at the end of the day,
11 I fall back to the underlying test
12 that we use to come to agreements
13 with IDA deals and pilots.

14 And the issue that we'll have
15 here is that if the benefits are not
16 in line with what the applicant
17 needs in order to go forward, they
18 will not go forward and that will
19 leave a vacant building that will
20 not have any more taxes than it does
21 now for who knows for how long, and
22 that does not help the School
23 District in any way either.

24 MR. D'AGOSTINO: That's
25 somewhat speculative because it

1
2 would have to be weighed against the
3 benefits of the geographic location,
4 et cetera.

5 I will tell you that in the
6 course of the conversation that we
7 had on Friday my suggestion was
8 adjourning this and giving the
9 applicant and the School District an
10 opportunity to meet and discuss it.
11 Because the first conversation that
12 I had with anybody was on Friday and
13 I understand that there are some
14 contractual issues, and I assume
15 that the contract is a public
16 document and is attached to the
17 application. So if anybody wanted
18 to review the contract, that would
19 be available for that purpose.

20 That's an assumption. Bad word
21 to use, but if it is, that might be
22 something that Murray Foreman,
23 president of the board, would want
24 to take a look at. But he's very
25 willing to have a meeting and

1
2 discuss it.

3 And I think going back to
4 Mr. Ferretti's comments, you know,
5 when I make these comparisons if the
6 school District's point, I don't
7 think that it passes the fairness
8 test. Considering that in terms of
9 taxing entities, we are the major
10 stakeholder and the only
11 conversation that we've had and the
12 only communications were notice -- a
13 communication -- telephone
14 communication on Friday, and we were
15 basically told we're in a very short
16 time frame here and we've got to get
17 this done and we have to go ahead on
18 Monday.

19 My suggestion would be if it
20 were adjourned for a few days, I
21 can't guarantee what Murray Foreman
22 is going to say.

23 MR. NASTRE: What was adjourned
24 for a few days? The authorization
25 hearing or this hearing?

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MR. D'AGOSTINO: This hearing.

MR. NASTRE: The authorization date is scheduled for this Thursday. So you have from Monday to Thursday to possibly put together some kind of a meeting.

But I know that they would undoubtedly oppose an adjournment of Thursday's date because they have closing issues.

MR. D'AGOSTINO: I would assume that the closing on a \$27 million number can't be adjourned. I don't know that it can. I don't know that it can't.

MR. NASTRE: I don't know either. But I know that usually these things are time of the essence when they get to this point. Maybe they are. Maybe they aren't.

MR. D'AGOSTINO: That would also assume that there is another buyer in the wings for at least something close to 27 million. In

1
2 any event, that's the applicant's
3 issue and, as I said, I would
4 have -- had hoped that there would
5 have been some outreach prior to the
6 discussion this morning.

7 Now, the -- in terms of what
8 the assessor is or is not obligated
9 to do as opposed to what the
10 assessor does, there's an obligation
11 to base taxes on a standard.
12 Current market value or income
13 approach is another approach.

14 Income approach is probably the
15 least reliable when you're dealing
16 with an owner-occupied property
17 because the owner can control the
18 income. And there are many reasons
19 for that to be done or not to be
20 done.

21 So again, for the record, as I
22 said, the District is vehemently
23 opposed. We are very willing to
24 have a discussion with the
25 applicant.

1
2 I'd be ready, willing and able
3 to do that at the earliest possible
4 date. And I would encourage my
5 board president to make himself
6 available before -- you said
7 Thursday is the...

8 MR. NASTRE: Thursday morning.

9 MR. D'AGOSTINO: Thursday
10 morning.

11 -- before Thursday morning.

12 And one other thing just for
13 the record.

14 We refer to the fact that my
15 having an honest board previously.
16 I left the board in 2006, so it's a
17 long time ago. I just want that on
18 the record. And that's the
19 District's position.

20 HEARING OFFICER PAROLA: From a
21 staff perspective, I, per se, have
22 no dog in this fight, so I do what
23 my board tells me to do.

24 But one of the key aspects to
25 what IDAs do in providing benefits

1
2 is consistency. And you say you're
3 off the board more than ten years
4 now. Well, even prior to that time,
5 we have --

6 MR. LODATO: It's not 10 years.

7 HEARING OFFICER PAROLA: What
8 is it?

9 MR. LODATO: 2012.

10 MR. D'AGOSTINO: I went on in
11 2006. It was 2012.

12 HEARING OFFICER PAROLA: I'll
13 correct that. So we're talking
14 five years. But long before that,
15 we have consistently utilized this
16 approach because that is what IDAs
17 do. And it's not just the approach
18 of this IDA. It's universally done
19 in Nassau and Suffolk by all of the
20 IDAs, save Babylon for the most part
21 and sometimes Hauppauge area where
22 they will reduce taxes dramatically.
23 They have industrial parks, so they
24 will cut taxes in half.

25 We have always prided ourselves

1 Proceedings- Lawrence Johnson Road 58
2 on the fact that we don't pull a rug
3 out from under an entity, whether
4 it's a village which is the most
5 impacted and school districts which
6 is close behind, can be close
7 behind, to cause them to now have to
8 find extra dollars that they were
9 anticipating going forward because
10 the IDA did, you now, cut the taxes
11 a third, for example.

12 So consistency is very
13 important here. And again, it's at
14 least 12 years that we have
15 consistently followed this approach
16 in what we've done in terms of
17 valuations and not looked at the
18 market value and nor does the
19 assessor from our understanding.

20 And the IDA is reconsidering
21 these matters, but my concern will
22 be that we will price ourselves out
23 of existence because we have a
24 County IDA that certainly is going
25 to give the benefit if we don't, and

1
2 we have Suffolk County that is
3 hungry for anything they can pick up
4 from us.

5 For the record, I just want
6 to -- before I forget, so allow me
7 to do it now.

8 I'm putting the pilot and our
9 financial considerations into the
10 record for inclusion of that which
11 is for that aforementioned record.

12 MR. D'AGOSTINO: Again, if --
13 I'm sure those are the documents
14 that I reviewed. I did not take
15 copies.

16 HEARING OFFICER PAROLA: There
17 has been no change.

18 MR. D'AGOSTINO: If I can
19 obtain copies and if I can get a
20 copy of the contract. The faster I
21 can get that over to Murray Foreman,
22 the faster he will be available.

23 I would like very much --
24 Again, this is the sound of one hand
25 clapping. As I said on Friday, I

1
2 would urge that the parties sit down
3 and discuss this. I think we all
4 understand the benefits, and I
5 understand the benefits -- the
6 philosophical benefits of the
7 existence of IDAs, but the devil's
8 in the details and this is just one
9 of the details that I think has to
10 be talked about.

11 And, but as I said, barring
12 some satisfactory discussion between
13 the parties directly, my directions
14 are to just state that the District
15 vociferously opposes this as it
16 stands.

17 MR. FERRETTI: Mike, do you
18 have the numbers on the mortgage
19 break and the sales tax, what those
20 are?

21 MR. LODATO: Sure. Give me one
22 second.

23 MR. NASTRE: I have the
24 cost-benefit analysis here. Is
25 that...

1
2 MR. LODATO: Yeah, it's on
3 there, but I can read it to you.

4 The mortgage is 21.6 --

5 MR. FERRETTI: I'm sorry. The
6 mortgage...

7 MR. LODATO: 21,600,000. And
8 the sales tax benefit is they're
9 spending 6 million and saving around
10 \$517,500,000.

11 MR. FERRETTI: 517.5?

12 MR. LODATO: Correct.

13 MR. FERRETTI: I'm sorry, what
14 was the savings?

15 MR. LODATO: Sales tax, they
16 are spending is 6 million. If you
17 multiply that by the sales tax
18 amount, they get \$517,500,000.

19 MR. FERRETTI: What's the
20 mortgage tax? 1-point --

21 MR. LODATO: 1.01 but they've
22 now lowered that.

23 HEARING OFFICER PAROLA: But
24 it's less now.

25 MR. FERRETTI: So .71.

1
2 MR. LODATO: Right. I think
3 that's what it is.

4 HEARING OFFICER PAROLA: For
5 the record, we can't negotiate -- We
6 don't have a quorum so we can't
7 discuss --

8 MR. NASTRE: We're not.

9 HEARING OFFICER PAROLA: Okay,
10 for the record.

11 MR. NASTRE: We're not
12 discussing any options.

13 MR. D'AGOSTINO: Who would I
14 get a copy of this contract from?
15 From the applicant or from you?

16 MR. LODATO: I think the
17 applicant.

18 HEARING OFFICER PAROLA: I
19 think the applicant.

20 MR. BAKER: I think it's part
21 of the application, I believe. But
22 I'll --

23 MR. NASTRE: I think normally
24 it's part of the application, isn't
25 it? I haven't seen it. I might

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have had it.

MR. BAKER: I don't know if we need any kind of redaction.

MR. NASTRE: Maybe the inducement. We Might have had it as part of our file.

MR. BAKER: I think it was part of the application.

MR. NASTRE: I think it was too.

MR. D'AGOSTINO: I prefer to get a copy that is part of the application because if there are things that are not redacted, they are part of the public record as opposed to things the applicant may wish to redact now.

But I think in fairness we should get a copy that was submitted to the IDA. And, as I said, as quickly as I can get those, If the applicant is willing to sit down and discuss it with the District, I'll endeavor to make at least Murray

1
2 Foreman available, who is the key
3 individual.

4 MR. BAKER: Of course I'll be
5 reporting back to my clients and
6 we'll get back to you.

7 MR. D'AGOSTINO: It's
8 consistent with what I suggested to
9 them on Friday with the
10 understanding that they have a time
11 issue, that those discussions would
12 have to occur within a very short
13 period of time.

14 MR. NASTRE: I guess either
15 this afternoon, tomorrow or
16 Wednesday.

17 MR. D'AGOSTINO: Right. Okay.
18 I want to thank the board and the
19 staff for making themselves
20 available -- the staff making itself
21 available when I came in here
22 virtually unannounced right before I
23 left to go to Florida.

24 HEARING OFFICER PAROLA: Is
25 there anyone else that wishes to be

1
2 heard?

3 Observing that it is 10:24, I'm
4 adjourning this hearing sine die.

5 (Time noted: 10:24 a.m.)
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CERTIFICATION

I, DOLLY FEVOLA, a Notary Public in
and for the State of New York, do hereby certify:

THAT the within transcript is a true record
of these proceedings.

I further certify that I am not related,
either by blood or marriage, to any of the parties
to this action; and

THAT I am in no way interested in
the outcome of this matter.

IN WITNESS WHEREOF, I have hereunto
set my hand this 25th day of January, 2017.

DOLLY FEVOLA

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