



CITY OF NEWBURGH  
COUNCIL MEETING AGENDA  
*SESION GENERAL DEL CONSEJAL*  
December 15, 2014  
7:00 p.m.

Mayor: /Alcaldesa

1. Prayer/ *Oración*
2. Pledge of Allegiance/ *Juramento a la Alianza*

City Clerk: / Secretaria de la ciudad:

3. Roll Call/ *Lista de asistencia*

Communications: / Comunicaciones:

4. Approval of the minutes of the meeting of November 24, 2014  
*Aprobación del acta de la reunión del 24 Noviembre de 2014*

Presentations/ Presentaciones:

5. A Certificate of Achievement will be presented to the Newburgh Free Academy Goldbacks Varsity Football Team and to Head Coach Bill Bianco and Asst. Coaches for making it to the New York State Class AA Championship game.

*Un Certificado de Reconocimiento va a ser presentado al grupo deportivo futbol de Goldbacks de la Newburgh Free Academy y a su entrenador Bill Bianco por haber llegado al juego de Campeonato AA del estado de Nueva York.*

6. A Certificate of Recognition will be presented to the City of Newburgh Police Officers who were involved in the rescue of the two children trapped in the snowbank.

*Un Certificado de Reconocimiento va a ser presentado a los Oficiales de la Policia que estuvieron envueltos en el rescate de dos ninos atrapados en una banco de nieve.*

7. A presentation will be given by Peter Smith and Deirdre Glenn regarding a Land Trust Proposal.

*Habrá una Presentación por Peter Smith y Deirdre Glenn en referente a la Propuesta del Patronato de Terreno.*

8. A presentation by Edward Weinstein Architecture on the redesign of the Newburgh Landing Pier with an opportunity of public input and comment.

*Habr  una presentaci n por la firma de arquitectura Edward Weinstein en el redise o del desembarcadero o muelle de Newburgh.*

Public Hearing

9. A Public Hearing is scheduled for December 15, 2014 to hear public comment concerning a Local Law adding Chapter 276 entitled "Tobacco" to the code of ordinances of the City of Newburgh.

Una Audiencia P blica est  planificada para diciembre 15,2014 para escuchar el comentario p blico con referencia a una Lay local a adiendo el cap tulo 276 titulado "Tabaco" al c digo de decretos de la Ciudad de Newburgh.

Comments from the public regarding the agenda:  
Comentarios del p blico con respecto a la agenda:

Comments from the Council regarding the agenda:  
Comentarios del Consejo con respecto a la agenda:

Comptroller's Report:/Reporte del Contralor:

10. Monthly Financial Summary/*Resumen Mensual Financiero*

City Manager's Report: / Informe del Gerente de la Ciudad:

11. Resolution No. 300 -2014  
A resolution authorizing approval of various insurance policies for the period of January 1, 2015 to December 31, 2015.

12. Resolution No. 301-2014  
A resolution amending Resolution No. 25-2014 of February 10, 2014 to accept an additional grant award in an amount not to exceed \$3,024.00 from the County of Orange for the City of Newburgh's participation in the Stop-DWI Crackdown Enforcement Program.

*Una resoluci n enmendando resoluci n Nu. 25-2014 de febrero 10 del 2014 para aceptar una beca adicional en la cantidad a no exceder \$3,024.00 del Condado de*

*Orange por la participación de la Ciudad de Newburgh en el Programa de Ejecución Forzosa para Detener cuando se guía mientras está intoxicado.*

13. Resolution No. 302-2014

A resolution authorizing the City Manager to execute a proposal and an agreement with McLaren Engineering Group in connection with structural engineering services for City Hall at a cost of \$7,400.

*Una resolución autorizando al Gerente de la Ciudad a llevar a cabo una proposición y un acuerdo con el Grupo de Ingeniería de McLaren en conexión con los servicios de ingeniería de estructura del Municipio al costo de \$7,400.*

Resolution No. 303-2014

A resolution authorizing the city manager to execute an agreement with Access Geographic, Inc. to perform work to upgrade the orthorectified digital aerial imagery for a cost of \$12,820.00 and amending resolution no: 247 - 2013, the 2014 budget for the City of Newburgh, New York to transfer \$12,820.00 from Conservation Advisory Council other services to GIS and engineering software maintenance.

14. Resolution No. 304-2014

A resolution of the City Council of the City of Newburgh supporting the application of Orange County for an Environmental Protection Agency Brownfield Assessment Grant to fund a Phase II assessment of the property known as the Diamond Candle factory site located in the town of New Windsor.

*Una resolución del Concejal de la Ciudad apoyando la aplicación del Condado de Orange para una valoración de la Beca de la Agencia de Protección Ambiental de Brownfield para financiar la segunda fase de valoración de la propiedad conocida como Diamond Candle Factory localizada en el pueblo de New Windsor.*

15. Resolution No. 305-2014

A resolution authorizing the City Manager to execute an agreement for vendor services with the County of Orange affirming the City of Newburgh's commitment to actively participate as a local government entity in the NYSERDA Cleaner, Greener Communities (CGC) Program, Phase II: Category II grant, which has been awarded to the County of Orange.

*Una resolución autorizando al Gerente de la Ciudad a llevar a cabo un acuerdo para servicios de un proveedor con el Condado de Orange ratificando el compromiso de la Ciudad de Newburgh para participar activamente como entidad del gobierno local en el NYSERDA, el Programa de Comunidades Ecológicas, Fase II: beca de Categoría 2, que ha sido otorgado a el Condado de Orange.*

16. Resolution No. 306-2014

A resolution approving the consent judgment and authorizing the City Manager to sign such consent judgment in connection with the tax certiorari proceedings against the City of Newburgh in the Orange County Supreme Court bearing Orange County Index No. 2014-5610 involving Section 36, Block 4, Lots 3.1, 4, 19 and 20 (AFSW Realty LLC)

17. Resolution No. 307-2014

A resolution approving the consent judgments and authorizing the City Manager to sign such consent judgments in connection with the tax certiorari proceedings against the City of Newburgh in the Orange County Supreme Court bearing Orange County Index nos. 2009-8392, 2010-8354, 2011-7340, 2012-6545, 2013-6202 and 2014-5939, involving Section 30, Block 4, Lot 22, Section 11, block 4, Lot 29, Section 46, Block 3, Lot 8.1, Section 46, block 2, Lot 12, and Section 46, block 5, Lot 5 (k-c Newburgh, Inc., RH Campbell, Inc., RHK Enterprises, Inc., Cer Enterprises, Inc. and Camco Properties, Inc.);

Orange County Index Nos. 2009-8393, 2010-8356, 2011-7344, 2012-6544, 2013-6203 and 2014-5942, involving Section 46, Block 5, Lot 6.1, Section 46, Block 2, Lot 9 and Section 46, Block 2, Lot 8 (CER Enterprises, Inc.);

Orange County Index Nos. 2009-8394, 2010-8358, 2011-7341, 2012-6543, 2013-6205 and 2014-5943, involving Section 38, Block 2, Lot 16 (campbell Residential Properties, Inc.); and

Orange County Index Nos. 2009-8395, 2010-8359, 2011-7342, 2012-6542, 2013-6207 and 2014-5944, involving Section 14, Block 3, Lot 60 (Richard H. Campbell, SR., Irene Campbell, Trustee)

18. Resolution No. 308-2014

Resolution authorizing the City Manager to execute an additional six month extension to the first amended agreement of lease with Memorare Realty Holding Corp. for the continued lease of approximately 3.65 acres of vacant real property situated on the Hudson River known as Section 31, Block 5, Lots 13.2 and 14 for the purpose of providing parking for users of the Newburgh-Beacon Ferry and other parkers during non-commuting hours.

19. Resolution No. 309-2014

A resolution to authorize the discontinuance of Tax Certiorari proceedings in the Orange County Supreme Court bearing Orange County Index Nos. 7560-2011, 6473-2012, 6365-2013 and 5951-2014 involving City of Newburgh water supply located in the Town of New Windsor.

20. Resolution No. 310-2014

A resolution authorizing the City Manager to execute a payment of claim with Allstate Insurance Company A/S/O Craig Bevier in the amount of \$9,494.72

Old Business: / Asuntos Pendientes:

New Business: / Nuevos Negocios:

Public Comments Regarding General Matters of City Business: / Comentarios del público sobre asuntos generales de la Ciudad:

Further Comments from the Council: / Nuevas observaciones del Consejo:

Adjournment: / Aplazamiento:

RESOLUTION NO.: 295 - 2014

OF

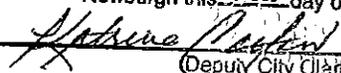
NOVEMBER 24, 2014

RESOLUTION SCHEDULING A PUBLIC HEARING  
FOR DECEMBER 15, 2014 TO HEAR PUBLIC COMMENT  
CONCERNING A LOCAL LAW ADDING CHAPTER 276 ENTITLED  
"TOBACCO" TO THE CODE OF ORDINANCES  
OF THE CITY OF NEWBURGH

NOW, THEREFORE, BE IT RESOLVED, by the Council of the City of Newburgh, New York, that there is hereby scheduled a public hearing to receive comments concerning "A Local Law Adding Chapter 276 entitled 'Tobacco' and Enacting Article I entitled 'Tobacco Retail License' and Article II entitled 'Sale to Persons under Age 19' to the Code of Ordinances of the City of Newburgh"; and that such public hearing be and hereby is duly set for the next regular meeting of the Council to be held at 7:00 p.m. on the 15<sup>th</sup> day of December, 2014, in the 3<sup>rd</sup> Floor Council Chambers, 83 Broadway, City Hall, Newburgh, New York.

I, Katrina Cotten, Deputy City Clerk of the City of Newburgh  
hereby certify that I have compared the foregoing with the  
original resolution adopted by the Council of the City of  
Newburgh at a regular meeting held Nov. 24, 2014  
and that it is a true and correct copy of such original.

Witness my hand and seal of the City of  
Newburgh this 25th day of Nov., 2014

  
Deputy City Clerk

LOCAL LAW NO.: \_\_\_\_\_ - 2014

OF

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**A LOCAL LAW ADDING CHAPTER 276 OF THE CODE OF ORDINANCES  
OF THE CITY OF NEWBURGH ENTITLED “TOBACCO” AND ENACTING ARTICLE I  
ENTITLED “TOBACCO RETAIL LICENSE” AND ARTICLE II ENTITLED “SALE TO  
PERSONS UNDER AGE 19”**

**BE IT ENACTED**, by the Council of the City of Newburgh, New York that Chapter 276 “Tobacco” be and is hereby added as follows:

**SECTION 1 - TITLE**

This Local Law shall be referred to as “A Local Law Adding Chapter 276 entitled ‘Tobacco’ and Enacting Article I entitled ‘Tobacco Retail License’ and Article II entitled ‘Sale to Persons under Age 19’ to the Code of Ordinances of the City of Newburgh”.

**SECTION 2 - PURPOSE AND INTENT**

**WHEREAS**, tobacco use is the foremost preventable cause of premature death in the United States, and according to the 2014 Surgeon General Report, causes over 480,000 deaths in the United States each year; and

**WHEREAS**, tobacco companies sell products that are addictive and inherently dangerous, causing cancer, heart disease, and other serious illnesses; and

**WHEREAS**, the City of Newburgh has a substantial interest in reducing the number of individuals of all ages who use cigarettes and other tobacco products, and a particular interest in protecting adolescents from tobacco dependence and the illnesses and premature death associated with tobacco use; and

**WHEREAS**, an overwhelming majority of Americans who use tobacco products begin using such products while they are adolescents and become addicted to those products before reaching the age of 18 and the 2014 Surgeon General Report states that more than 3,200 young people under the age of 19 smoke their first cigarette each day in the United States; and

**WHEREAS**, the prevention of adolescent tobacco product use is detailed in Article 13-F of the New York State Public Health Law, known as the Adolescent Tobacco Use Prevention Act (ATUPA) which expressly prohibits the sale of tobacco products to minors; and

**WHEREAS**, although it is unlawful to sell tobacco products to minors, New York State Department of Health, The New York Youth Tobacco Survey 2008 finds that 8.4% middle school and 28% of high school students in the Hudson Valley Area who use cigarettes report that they usually purchase their cigarettes from a retail store; and

**WHEREAS**, research has found that higher tobacco retail outlet density is significantly associated with higher rates of youth smoking initiation and experimentation; and

**WHEREAS**, The New York State Tobacco Control Evaluation Program Tobacco Retail Outlet Density by Proximity to Schools and in Low Income Areas Orange County, New York Findings, a report by the Department of Health Behavior, Division of Cancer Prevention and Population Sciences, at Roswell Park Cancer Institute found that in 2012 of the 319 validated tobacco retail outlets located in Orange County, 110 or 34.5% are located in the Newburgh area and in Orange County, 16.3% (n=52 of 319) are located within a distance of 1,000 feet of a school; and

**WHEREAS**, research shows that a high concentration of tobacco outlets near schools provides our most vulnerable populations with ready access to tobacco and increases their exposure to tobacco retail marketing, which may increase their uptake of tobacco usage and creates an environment that promotes the social acceptability of tobacco use; and

**WHEREAS**, City of Newburgh has a substantial and important interest in reducing the illegal sale of tobacco products to minors; and

**WHEREAS**, studies have found a higher prevalence of current smoking at schools with more tobacco outlets within walking distance, and researchers suggest that limiting the proximity of tobacco outlets to schools may be an effective strategy to reduce youth smoking rates; and

**WHEREAS**, licensing laws in other communities have been effective in reducing the number of illegal tobacco sales to minors; and

**WHEREAS**, restricting the number and the location of tobacco retailers and the associated marketing of tobacco products within those retail stores in the City is necessary to protect the public health, safety, and welfare of our youth; and

**WHEREAS**, a local licensing system for tobacco retailers is necessary and appropriate to protect the public health, safety, and welfare of our residents, particularly children, and will help ensure that retailers comply with the ATUPA, other tobacco control laws, and the business standards of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED THAT**, it is the intent of the City of Newburgh to implement effective measures through this Chapter to reduce the number of its tobacco retail outlets, regulate the location of its tobacco retail outlets, stop the sale of tobacco products to its youth, prevent the sale or distribution of contraband tobacco products in Newburgh, and facilitate the enforcement of tax laws and other applicable laws relating to tobacco products.

### SECTION 3 - AMENDMENT

The Code of Ordinances of the City of Newburgh is hereby amended to add new Chapter 276 entitled “Tobacco”, Article I entitled “Tobacco License” and Article II entitled “Sale to Persons under Age 19” to read as follows:

#### ARTICLE I. TOBACCO LICENSE

##### **§ 276-1 Definitions.**

As used in this Chapter, the following terms shall have the meanings indicated:

ADMINISTRATIVE HEARING means a hearing by the City Manager or his designee.

ADULT-ONLY ESTABLISHMENT means a facility where the operator ensures or has a reasonable basis to believe (such as checking identification of any person appearing to be under the age of 26) that no person under the age of 21 is permitted entrance.

AGE-VERIFIED CUSTOMER means any individual who has presented a driver’s license or other photographic identification card issued by a government entity or educational institution indicating that the individual is of Legal Age. Such identification need not be required of any individual who reasonably appears to be at least twenty-five years of age, provided however that such appearance shall not constitute a defense in any proceeding alleging a violation of this Chapter. It shall be an affirmative defense to a violation of this Chapter that the Tobacco Retailer successfully performed a Transaction Scan of an individual’s identification as defined by New York Public Health Law Section 1399-cc and that a Tobacco Product or Tobacco-Related Product was provided to such individual in reasonable reliance upon such identification and transaction scan.

APPLICANT means an individual, partnership, limited liability company, corporation, or other business entity seeking a Tobacco Retail License.

CITY CLERK means the City Clerk or Deputy City Clerk.

FIRE DEPARTMENT means the City of Newburgh Fire Department including the Bureau of Fire Prevention and the Bureau of Code Compliance

LEGAL AGE means the minimum age at which individuals are permitted to legally purchase tobacco products or tobacco-related products in the City of Newburgh.

NEW TOBACCO RETAIL LICENSE means any Tobacco Retail License that is not a Renewed Tobacco Retail License.

PERSON means any natural person, company, corporation, firm, partnership, business, organization, or other legal entity.

POLICE DEPARTMENT means the City of Newburgh Police Department.

RENEWED TOBACCO RETAIL LICENSE means a Tobacco Retail License issued to an Applicant for the same location at which the Applicant possessed a valid Tobacco Retail License during the previous year.

SCHOOL means a public or private pre-kindergarten, kindergarten, elementary, middle, junior high or high school or alternative school.

TOBACCO PRODUCT or TOBACCO-RELATED PRODUCT means any manufactured product containing tobacco or nicotine, including but not limited to cigarettes, cigars, pipe tobacco, snuff, chewing tobacco, dipping tobacco, bidis, snus, shisha, powdered and/or dissolvable tobacco products, liquid nicotine and electronic cigarette cartridges, whether packaged or not; any packaging that indicates it might contain any substance containing tobacco or nicotine; or any object utilized for the purpose of smoking or inhaling tobacco or nicotine products. However, "Tobacco Product" or "Tobacco-Related Product" does not include any product that has been approved by the U.S. Food and Drug Administration, pursuant to its authority over drugs and devices, for sale as a tobacco use cessation product or for other medical purposes and is being marketed and sold solely for that approved purpose.

TOBACCO RETAILER means any Person who sells or offers for sale any Tobacco Product or Tobacco-Related Product or any employee of such a Person.

TOBACCO RETAIL LICENSE means a license issued by the City Clerk to a Person to engage in the retail sale of Tobacco Products or Tobacco-Related Products in the City of Newburgh.

#### **§ 276-2 Tobacco Retail License**

A. Starting March 1, 2015, no Person shall sell, offer for sale, or permit the sale of Tobacco Products or Tobacco-Related Products to consumers in the City of Newburgh, without a valid Tobacco Retail License issued by the City Clerk. A Tobacco Retail License is not required for a wholesale dealer who sells Tobacco Products or Tobacco-Related Products to retail dealers for the purpose of resale only and does not sell any Tobacco Products or Tobacco-Related Products directly to consumers.

B. All Tobacco Retail Licenses issued pursuant to this section are nontransferable and non-assignable and are valid only for the Applicant and the specific address indicated on the Tobacco Retail License. A separate Tobacco Retail License is required for each address at which Tobacco and Tobacco-Related Products are sold or offered for sale. Any change in business ownership or business address requires a new Tobacco Retail License.

C. All Tobacco Retail Licenses issued pursuant to this section are valid for no more than one year and expire on February 28 following the effective date of the Tobacco Retail License. As set forth in Section 276-8, a Tobacco Retail License may be revoked by the Police Department prior to its expiration date for cause.

D. Applications for a New Tobacco Retail License shall be made on a form specified by the City Clerk, at least 30 days prior to March 1, 2015. The City Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

E. Applications for a Renewed Tobacco Retail License shall be made on a form specified by the City Clerk at least 30 days prior to the expiration of the current license. The City Clerk may require such forms to be signed and verified by the Applicant or an authorized agent thereof.

F. Applications for a new or renewed Tobacco Retail License shall be accompanied by the fee set forth in Section 276-7.

G. The issuance of any Tobacco Retail License pursuant to this Chapter is done in the discretion of the City of Newburgh and shall not confer upon licensee any property rights in the continued possession of such a license.

### **§ 276-3 Issuance of Licenses**

A. Upon the receipt of a completed application for a New or Renewed Tobacco Retail License and the fee required by Section 276-7, the Police Department and the Fire Department upon the showing of proper credentials and in the discharge of his duties, may enter to inspect the location at which tobacco sales are to be permitted. The Police Department also may ask the Applicant to provide additional information that is reasonably related to the determination of whether a license may issue.

B. At the request of the Fire Department, the Corporation Counsel is authorized to make application to the City Court of the City of Newburgh or any other court of competent jurisdiction for the issuance of a search warrant to be executed by a police officer in order to conduct an inspection of any premises believed to be subject to this chapter. The municipal officer may seek a search warrant whenever the owner, managing agent, or occupant fails to allow inspections of any dwelling unit contained in the rental property where there is a reasonable cause to believe that there is a violation of this chapter, the New York Uniformed Fire Prevention Building Code Act, or of any code of the City of Newburgh or any applicable fire code.

C. No Tobacco Retail License shall be issued by the City Clerk to an Applicant if one or more of the following bases for denial exists:

- (1) The information presented in the application is incomplete, inaccurate, false, or misleading;
- (2) The fee for the application has not been paid as required;

- (3) The Applicant does not possess a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance at the location for which an application is requested;
- (4) The Applicant seeks a New Tobacco Retail License at a location for which this Chapter prohibits the issuance of a New Tobacco Retail License;
- (5) The Applicant has previously had a Tobacco Retail License issued under this Chapter revoked;
- (6) A Tobacco Retail License issued under this Chapter for the same address or location previously has been revoked;
- (7) The Applicant has been found by a court of law or administrative body to have violated any federal, state or local laws pertaining to (a) trafficking in contraband Tobacco Products or illegal drugs; (b) the payment or collection of taxes on Tobacco Products; (c) the display of Tobacco Products or of health warnings pertaining to Tobacco Products; or (d) the sale of Tobacco Products;
- (8) The Applicant is not in compliance with all applicable New York State Uniform Building Code, Fire Prevention Code, Property Maintenance Code, Electrical Code and Plumbing Code and the Code of Ordinances of the City of Newburgh; and
- (9) The Applicant has not paid to the City of Newburgh outstanding fees, fines, penalties, or other charges owed to the City of Newburgh.

**§ 276-4      Limitation on Number of Licenses Issued**

A. In the first year subsequent to the effective date of this Chapter, a Tobacco Retail License shall only be issued to an Applicant for the same location at which the Applicant possessed a valid certificate of registration as a tobacco retail dealer from the New York State Department of Taxation and Finance 180 days prior to the effective date of this Chapter.

B. Except for the first year subsequent to the effective date of this Chapter, the total number of New and Renewed Tobacco Retail Licenses issued by the City Clerk in a given year shall not exceed the number of Tobacco Retail Licenses that were issued in the previous year.

C. Starting on March 1, 2016, the City Clerk shall issue only one New Tobacco Retail License for every two Tobacco Retail Licenses that were revoked during the previous year or for which no renewal application was submitted.

D. Whenever the number of valid applications for a New Tobacco Retail License exceeds the number of New Tobacco Retail Licenses that may be issued under this Section, licenses shall be granted using the following priorities:

- (1) New Tobacco Retail Licenses shall be granted, first, to any Applicant who will sell Tobacco Products or Tobacco-Related Products at an Adult-Only Facility.
- (2) New Tobacco Retail Licenses shall be granted, second, to any Applicant that held a valid Tobacco Retail License in the prior year for an establishment within 1,000 feet of the nearest property line of a school and who is not seeking renewal of that license. If there are more valid applications from such Applicants for New Tobacco Retail Licenses than the number of available New Tobacco Retail Licenses, the New Tobacco Retail Licenses shall be granted to those Applicants by lottery.
- (3) Any remaining available New Tobacco Retail Licenses shall be granted to eligible Applicants by lottery.

**§ 276-5            Certain Locations**

- A. No Tobacco Retail License shall be issued to any seller of tobacco products or tobacco-related products that is not in a fixed, permanent location.
- B. With the exception of the first year subsequent to effective date of this Local Law, no New Tobacco Retail License shall be issued to any establishment within 1,000 feet of the nearest point of the property line of a School.

**§ 276-6            Required License Display**

- A. Any Tobacco Retail License issued pursuant to this Local Law shall be displayed prominently at the location where the Tobacco Products or Tobacco-Related Products are sold so that it is readily visible to customers.
- B. Selling, offering for sale, or permitting the sale of any Tobacco Product or Tobacco-Related Product without a valid Tobacco Retail License displayed in accordance with Section 276-6(A) constitutes a violation of this Local Law.

**§ 276-7            Required Fee**

- A. Each application for a New or Renewed Tobacco Retail License shall be accompanied by a fee as set forth in Chapter 163 “Fees” of the Code of Ordinances of the City of Newburgh.
- B. Starting two years after the effective date of this Chapter, the City Council may, on an annual basis, modify the fee required pursuant to Section 276-7(A). The fee shall be calculated so as to recover the cost of administration and enforcement of this Chapter, including, for example, issuing a license, administering the license program, retailer education, retailer inspection and compliance checks, documentation of violations, and prosecution of violators, but shall not exceed the cost of the regulatory program authorized by this Chapter. All fees and interest upon proceeds of fees shall be used exclusively to fund the program. Fees are nonrefundable except as may be required by law.

**§ 276-8 Revocation or Suspension of Licenses**

Any Person who is found to be in violation of the terms and conditions of this Local Law or for violation of any federal, state, or local law or regulation pertaining to (a) the display of Tobacco Products or Tobacco-Related Products or of health warnings pertaining to Tobacco Products or Tobacco-Related Products, or (b) the sale of Tobacco Products or Tobacco-Related Products shall have their City of Newburgh License suspended for up to 3 months for a first offense, 6 months for a second offense, or revoked for a third offense, after notice and an opportunity to be heard at an administrative hearing before the City Manager or his designee.

**§ 276-9 Violations and Enforcement**

A. The Police Department shall enforce the provisions of this Chapter. The Police Department and the Fire Department may conduct periodic inspections in order to ensure compliance with this Chapter. Nothing in this Chapter shall preclude the Fire Department and its Bureau of Fire Prevention and Bureau of Code Compliance from enforcing the New York State Uniform Fire Prevention and Building Code in accordance with all other New York State and local laws, rules and regulations.

B. In addition to the penalties provided for in Section 276-8, any Person found to be in violation of this Chapter shall be guilty, upon conviction, of an offense punishable by a fine of not less than \$500.00 for the first violation; not more than \$1,000 for a second violation; and not more than \$2,000.00 for the third and each subsequent violation within a two-year period or by imprisonment for a period not exceeding 1 year, or by both such fine and imprisonment. Each day on which a violation occurs shall be considered a separate and distinct violation.

**ARTICLE II. SALE TO PERSONS UNDER AGE 19**

**§ 276-10 Prohibitions and proof of age**

A. Any person operating a place of business wherein tobacco or tobacco-related products are sold or offered for sale is prohibited from selling such tobacco or tobacco-related products to individuals under nineteen (19) years of age.

B. Sale of such tobacco or tobacco-related products in such places shall be made only to an individual who demonstrates, through a driver's license or other photographic identification card issued by a government entity or educational institution that the individual is at least nineteen (19) years of age. Such identification need not be required of any individual who reasonably appears to be at least twenty (26) years of age, provided, however, that such appearance shall not constitute a defense in any proceeding alleging the sale of tobacco or tobacco-related products to an individual under nineteen (19) years of age.

**§ 276-11 Posting of sign**

Any person operating a place of business wherein tobacco or tobacco products are sold or offered for sale shall post in a conspicuous place, a sign upon which there shall be imprinted the following statement:

SALE OF CIGARETTES, CIGARS, PIPE TOBACCO, SNUFF, CHEWING TOBACCO, DIPPING TOBACCO, BIDIS, SNUS, SHISHA, POWDERED AND/OR DISSOLVABLE TOBACCO PRODUCTS, LIQUID NICOTINE AND ELECTRONIC CIGARETTE CARTRIDGES TO PERSONS UNDER 19 YEARS OF AGE IS PROHIBITED UNDER PENALTY OF LAW.

Such sign shall be printed on a white card in red capital letters at least  $\frac{3}{4}$  inch in height.

**§ 276-12 Enforcement; penalties for offenses**

A. Any person who shall violate any of the provisions of this Article or fail to comply therewith or who shall violate or fail to comply with any order made thereunder shall be punished as provided in § 276-9 for violation of this Chapter of the Code of Ordinances of the City of Newburgh.

B. The imposition of one penalty for any violation shall not excuse the violation or permit it to continue, and all such persons shall be required to correct or remedy such violations or defects. Each day that prohibited conditions exist shall constitute a separate offense.

C. The application of the above penalty shall not be held to prevent the enforced removal of prohibited conditions.

**§ 276-13 Severability**

The provisions of this Local Law are declared to be severable, and if any section or subsection of this Chapter is held to be invalid, such invalidity shall not affect the other provisions of this Chapter that can be given effect without the invalidated provision.

**SECTION 4 - VALIDITY**

The invalidity of any provision of this Local Law shall not affect the validity of any other provision of this Local Law that can be given effect without such invalid provision.

**SECTION 5 - EFFECTIVE DATE**

This Local Law and shall be effective on March 1, 2015 and upon the filing in the Office of the New York State Secretary of State in accordance with the provisions of New York State Municipal Home Rule Law.

DRAFT

RESOLUTION NO.: 300 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING APPROVAL OF VARIOUS INSURANCE  
POLICIES FOR THE PERIOD OF  
JANUARY 1, 2015 TO DECEMBER 31, 2015**

**WHEREAS**, the City of Newburgh has solicited proposals for insurance coverage for the fiscal year 2015; and

**WHEREAS**, Arthur J. Gallagher of New York, Inc. and Gallagher Bassett Services, Inc. have recommended a package of insurance coverage for property and liability insurance coverage for Fiscal Year 2015;

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the City of Newburgh, New York hereby approves the insurance coverage for the term beginning January 1, 2015 through December 31, 2015 with the self-insured retention amounts and premium rates as set forth in the attached Insurance Quotation; and

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager be and he is hereby authorized and directed to execute agreements with Arthur J. Gallagher of New York, Inc. and Gallagher Bassett Services, Inc. to provide for insurance coverage and third-party claims administration services, respectively, for the period of January 1, 2015 to December 31, 2015.



**Premium Summary**

Coverages	2012	2013	2014	2015
Excess Liability	240,969	238,121	237,725	236,655
Property Package	57,928	69,182	80,661	83,065
Boiler & Machinery	Included	Included	5,618	5,354
TPA Services	67,421	57,377	60,948	65,559
Total	\$366,318	\$364,680	\$384,952	\$390,633

Gallagher is responsible for the placement of the following lines of coverage:

Excess Liability, Boiler & Machinery, Property, Auto PD and TPA

It is understood that any other type of exposure/coverage is either self-insured or placed by another brokerage firm other than Gallagher. If you need help in placing other lines of coverage or covering other types of exposures, please contact your Gallagher representative.

**Quote is valid until 01/01/15**

**Options:**

**Lower SIR of \$250,000 on Law Enforcement \$256,655**

RESOLUTION NO. 301 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AMENDING RESOLUTION NO. 25-2014 OF  
FEBRUARY 10, 2014 TO ACCEPT AN ADDITIONAL GRANT AWARD  
IN AN AMOUNT NOT TO EXCEED \$3,024.00 FROM THE COUNTY OF ORANGE  
FOR THE CITY OF NEWBURGH'S PARTICIPATION IN THE  
STOP-DWI CRACKDOWN ENFORCEMENT PROGRAM**

**WHEREAS**, by Resolution 25-2014 of February 10, 2014 the City Council authorized the Interim City Manager or the Chief of Police as Manager's designee to execute an Inter-Municipal Agreement with the County of Orange confirming the City's participation in the STOP-DWI Program for the enforcement period of January 30, 2014 through January 1, 2015 and provided the City of Newburgh with an award not to exceed \$2,959.00 covering 60 man-hours for the First Enforcement Period of 2014 (March 13, 2014 - May 31, 2014), and for a total award in an amount not to exceed \$5,544.00 for the STOP-DWI Crackdown Enforcement; and

**WHEREAS**, the City of Newburgh has been notified of an additional grant award not to exceed \$3,024.00 to support the following two (2) Crackdown Campaigns which include Thanksgiving (November 26, 2014 through November 30, 2014) and the Holiday Season National (December 12, 2014 through January 1, 2015); and

**WHEREAS**, this Council has determined that accepting of such additional funds is in the best interests of the City of Newburgh and its residents;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to receive an additional grant award in an amount not to exceed \$3,024.00 from the County of Orange under the terms of the STOP-DWI Program and under the terms and conditions of the Inter-Municipal Agreement, for the provision of Special Police Overtime STOP-DWI Patrols for a total grant award of \$8,568.00; and to execute all such further contracts and documentation and take such further actions as may be appropriate and necessary to accept such grant and administer the programs funded thereby.

RESOLUTION NO.: 302 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A PROPOSAL AND AN AGREEMENT WITH  
McLAREN ENGINEERING GROUP IN CONNECTION WITH STRUCTURAL  
ENGINEERING SERVICES FOR CITY HALL AT A COST OF \$7,400.00**

**WHEREAS**, the City of Newburgh wishes to accept a proposal and execute an agreement with McLaren Engineering Group in connection with a structural investigation, egress study and ADA compliance evaluation for City Hall; and

**WHEREAS**, the proposal includes investigation, reporting, and recommendations for remediation; and

**WHEREAS**, the cost for these services will be \$7,400.00, which shall be derived from A.1440.0455, Engineering Consultants Services; and

**WHEREAS**, the City Council has reviewed the annexed proposal, terms and conditions, and has determined that retaining such engineering services would be in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute a proposal and an agreement, subject to terms and conditions as may be required by the City Engineer and Corporation Counsel, with McLaren Engineering Group in connection with structural engineering services for City Hall at a cost of \$7,400.00.



bridge, highway & rail engineering  
entertainment engineering  
subaqueous investigation  
civil & site engineering  
structural design  
marine facilities  
geotechnics  
surveying  
forensics

December 9, 2014

City of Newburgh  
City Engineer  
83 Broadway  
Newburgh, New York 12550

Attn: Jason C. Morris, P.E.

Email: [jmorris@cityofnewburgh-ny.gov](mailto:jmorris@cityofnewburgh-ny.gov)

Re: Newburgh City Hall - 2014 Renovation  
Newburgh, New York

PROPOSAL NO. 140898 (Rev. 01)

McLaren Engineering Group (MEG) is pleased to submit our proposal to provide structural engineering investigation services for Newburgh City Hall located at 83 Broadway in Newburgh, New York.

## DESCRIPTION

The City of Newburgh is interested in retaining a Structural Consultant to conduct an investigation into the origin of a sagging second and third floors in City Hall. Additionally, code compliance regarding the existing means of egress and ADA compliance is to be investigated. We will prepare a report on the causes of the sagging floor and a code compliance report of the egress issues as well as options for remediating these deficiencies including budgetary construction cost estimates. From this report, the Town will direct MEG as to options to be developed in Phase 2 - Design Services. A proposal for Phase 2 scope and fee will be prepared under separate cover.

The City Hall Building is a four story masonry building approximately 85 feet by 52 feet with additions to the south and west sides.

## PHASE 1 - Inspection and Report

1. Site visit to meet with City representatives to review existing documents, to discuss access into confined spaces (ceilings, etc.) and to map and measure code egress issues.

Offices: New York, Maryland, Florida, Connecticut, California

Licensed in:

Alabama • Arizona • Arkansas • California • Colorado • Connecticut • Delaware • District of Columbia • Florida • Georgia • Hawaii • Idaho • Illinois • Indiana • Kansas • Kentucky • Louisiana • Maine • Maryland • Massachusetts • Michigan • Minnesota • Mississippi • Missouri • Nebraska • Nevada • New Hampshire • New Jersey • New Mexico • New York • North Carolina • Ohio • Oklahoma • Oregon • Pennsylvania • Rhode Island • South Carolina • Tennessee • Texas • Trinidad & Tobago • Utah • USVI • Vermont • Virginia • Washington • West Virginia • Wisconsin • Wyoming

**M. G. McLAREN, P.C.**

100 Snake Hill Road  
West Nyack, New York 10994

Phone (845) 353-6400

Fax (845) 353-6509

e-mail: [mgmclaren@mgmclaren.com](mailto:mgmclaren@mgmclaren.com)

On the web: [www.mgmclaren.com](http://www.mgmclaren.com)

2. Additional site visit by staff Engineers to perform a more rigorous investigation of conditions, including accessing the ceilings and floors to understand the nature of the deficiencies.
3. Assessment of conditions as they affect structural capacity/serviceability and determine the egress capacity and code compliance issues.
4. Preparation of a report of our findings and recommendations with anticipated budgetary costs to remediate.

**FEE FOR PHASE 1**

**\$ 7,400**

**PHASE 2 - Construction Documents**

1. To be provided after Phase 1 is completed and the scope of services is better defined.

**HOURLY RATES**

Productive Principal	\$245/hr	Sr. CAD Operator	\$125/hr
Associate Principal	\$215/hr	CAD Operator	\$100/hr
Associate	\$185/hr	Jr. CAD Operator	\$ 75/hr
Associate Land Surveyor	\$155/hr	Chief of Field Operations	\$120/hr
Senior Engineer III/IV	\$165/hr	Diver	\$155/hr
Senior Engineer I/II	\$140/hr	Tender	\$130/hr
Technical Design Mgr.	\$155/hr	Sr. Technician	\$120/hr
Sr. Technical Designer	\$135/hr	Jr. Technician	\$ 80/hr
Staff Engineer II/III	\$120/hr	Principal Survey Technician	\$ 90/hr
Staff Engineer I	\$110/hr	Intern	\$ 58/hr
Junior Engineer	\$100/hr	Technical Typist	\$ 85/hr
Chief CAD Operator	\$135/hr		

**EXCLUSIONS**

Specifically excluded from this proposal and billable at the hourly rates defined above are the following:

1. Building probes will be performed by the City of Newburgh. Probe locations will be by MEG.



2. Corrective revisions due to errors in fabrication or placement of structural items by the Contractor or his subcontractors.
3. Substantial revisions due to scope of services.
4. Special inspection of construction.
5. Review and advice on the disposition of Contractor's change orders, created by the Owner, Architect or Contractor.
6. Written, description of changes to drawings (narratives), specifics, etc. when issuing drawing revisions.
7. MEG excludes all environmental testing, permitting and inspection, and asbestos remediation unless noted otherwise above.

#### **REIMBURSABLE EXPENSES**

The following expenses shall be reimbursed at 1.0 times our cost:

1. Reproduction, mailing and courier costs associated with the execution of this contract.
2. Travel costs for site visits.
3. Laboratory testing of soils, concrete cylinders, steel welds or other items requiring such testing.

#### **INFORMATION REQUIRED**

It shall be incumbent upon the Architect to provide us with the following:

1. Title and edition of Building Code in force, and identification of any amendments in effect.
2. Architectural plans, details, and specifications.
3. A compilation of structural design requirements if different than building code requirements.
4. Timely provision of drawings for all trades, including mechanical and electrical gravity loads, location of openings and chases.

This proposal is subject to the terms and conditions which follow and shall remain valid only until December 31, 2014 unless it is accepted as a contract. Hourly rates defined above are subject to annual revision January 1.

Should you find this proposal acceptable, kindly sign and return one copy to serve as our contract. Work shall commence upon receipt of signed contract.

Very truly yours,

The Office of  
**M. G. McLAREN, P.C.**  
d/b/a McLaren Engineering Group



Thomas W. Broderick, P.E., LEED AP  
Division Chief Structures Division

TWB/bes

cc: RLW/DFB, WJM, MGM – Internal, Proposal File

ACCEPTED:

---

For City of Newburgh

Title

Date

## TERMS AND CONDITIONS

1. **SERVICES TO BE PROVIDED.** M.G. McLaren, P.C.d/b/a McLaren Engineering Group (MEG), through and by its officers, employees and subcontractors, (hereinafter MEG) is an independent consultant and agrees to provide Owner, for its sole benefit and exclusive use, consulting services set forth in our proposal. No third party beneficiaries are intended by this agreement.
2. **PAYMENT TERMS.** Owner agrees to pay MEG's invoice upon receipt. If payment is not received within 30 days from the Owner's receipt of MEG's invoice, Owner agrees to pay a service charge on the past due amount at the greater of 1% per month or the allowable legal rate, including reasonable attorney's fees and expenses if collected through an attorney. No deduction shall be made from MEG's invoice on account of liquidated damages unless expressly included in the Agreement. Owner receipt of invoice will be presumed three days after mailing by MEG first class, with adequate postage attached. Time is of the essence for this provision.
3. **TERMINATION.** Either party may terminate this Agreement without cause upon 30 days prior written notice. This Agreement will terminate automatically upon the insolvency of Owner. In the event Owner requests termination prior to completion of the proposed services, Owner agrees to pay MEG for all reasonable charges incurred to date and associated with termination of the work, plus a termination fee of 10% of the total fee under this agreement.

If the Project is suspended for more than thirty consecutive days, for reasons other than MEG's fault, MEG shall be compensated for services performed prior to such suspension. When the project is resumed, our compensation shall be equitably adjusted.

If Owner abandons the Project for more than ninety consecutive days, MEG may terminate this Agreement by giving written notice. MEG shall be compensated for all services performed prior to such abandonment, plus 10% of MEG total fee under this Agreement, together with reimbursables then due.

4. **STANDARD OF CARE.** MEG will perform its services using that degree of care and skill ordinarily exercised under similar conditions by reputable members of MEG's profession practicing in the same or similar locality at the time of service. No other warranty, express or implied, is made or intended by MEG's proposal or by its oral or written reports.
5. **INSURANCE.** MEG will effect and maintain insurance to protect themselves from claims arising out of the performance of professional services under this Agreement and caused by any error, omission or negligent act for which we are legally liable. MEG will maintain this insurance in force, if available, after the completion of professional services under this Agreement until the expiration of any applicable statutes of limitation. In the event there is no such statute specifically applicable to design and construction of improvements to real property, this insurance, if available, shall be maintained in force for a period of six (6) years after the date of substantial completion of the Project as agreed to.

Unless otherwise agreed, MEG will effect and maintain insurance to protect ourselves from claims under workers' or workmen's compensation acts; from claims for damages because of bodily injury, including personal injury, sickness, disease, or death of any employees or of any other person; from claims for damages because of injury to or destruction of property including loss of use resulting therefrom; and from damage to or destruction of property including valuable papers and records coverage and including loss of use resulting therefrom.

The insurance required above shall be as provided below. MEG will file certificates of insurance for each type and amount upon request:

Professional Liability Insurance (Errors & Omissions), with a limit of \$2,000,000 for each claim and \$2,000,000 in the aggregate.

Comprehensive General Liability - \$1,000,000 per occurrence, \$2,000,000 Aggregate Bodily Injury and Property Damage; Blanket Contractual All Operations Completed Operations; \$1,000,000 Personal Injury A.B.C., plus \$5,000,000 Excess Liability Umbrella.

Worker's Compensation/Coverage A - Statutory/Coverage B - \$1,000,000

6. **SITE OPERATIONS.** Owner will arrange for right-of-entry with safe access to the property for the purpose of performing project management, studies, tests and evaluations pursuant to the agreed services.

MEG will take reasonable precautions to minimize damage to the property caused by its operations. Unless otherwise stated in MEG's proposal, the Contract Sum does not include cost of restoration due to any related damage, unless such damage results directly from MEG's negligent actions. If Owner requests MEG to repair such damage, it will be done at an appropriate additional cost to be paid by Owner.

MEG shall not have control over, charge of, or responsibility for the construction means, methods, techniques, sequences or procedures, or for safety precautions and programs in connection with the work of the contractor (Work), nor shall MEG be responsible for the Contractor's failure to perform the Work in accordance with the requirements of the Contract Documents.

7. **UNFORESEEN CONDITIONS OR OCCURRENCES.** It is possible that unforeseen conditions or occurrences may be encountered at the site which could substantially alter the necessary services or the risks involved in completing MEG's services. If this occurs, MEG will promptly notify and consult with Owner, but will act based on MEG's sole judgment where risk to MEG's personnel is involved. Possible actions could include:

- a. Complete the original Scope of Services in accordance with the procedures originally intended in this Agreement, if practicable in MEG's judgment;
- b. Agree with Owner to modify the Scope of Services and the estimate of charges to include study of the unforeseen conditions or occurrences, with such revision agreed to in writing;
- c. Terminate the services effective on the date specified by MEG in writing.

8. **DOCUMENTS.** MEG will furnish Owner the agreed upon number of written reports and supporting documents. These instruments of service are furnished for Owner's exclusive internal use and reliance, use of Owner's counsel and for regulatory submittal in connection with the project provided for in this Agreement, but not for advertising or other type of distribution, and are subject to the following:

- a. All documents including paper documents and electronic files generated by MEG under this Agreement shall remain the sole property of MEG. Any unauthorized use or distribution of MEG's work shall be at Owner's sole risk and without liability to MEG.
- b. If Owner desires to release, or for MEG to provide, our documents to a third party not described above for that party's reliance, MEG will agree to such release provided MEG receives written acceptance from such third party to be bound by acceptable terms and conditions similar to this Agreement. Documents provided for disclosure of information only will not require separate agreement. Owner acknowledges and agrees to inform such third party that MEG's documents reflects conditions only at the time of the study and may not reflect conditions at a later time. Owner further acknowledges that such request creates potential conflict of interest for MEG and by this request Owner waives any such claim if MEG complies with the request.
- c. Owner agrees that all documents furnished to Owner or Owner's agents or designees, if not paid for will be returned upon demand and will not be used by Owner or any other entity for any purpose whatsoever. Owner further agrees that documents produced by MEG pursuant to this Agreement

will not be used for any project not expressly provided for in this Agreement without MEG's prior written approval.

- d. Owner shall furnish documents or information reasonably within Owner's control and deemed necessary by MEG for proper performance of our services. MEG may rely upon Owner-provided documents in performing the services required under this Agreement; however, MEG assumes no responsibility or liability for their accuracy. Owner-provided documents will remain the property of Owner, but MEG may retain one confidential file copy as needed to support our report.
9. **CLAIMS.** The parties agree to attempt to resolve any dispute without resort to litigation, including use of mediation, prior to filing of any suit. However, in the event a claim results in litigation, and the claimant does not prevail at trial, then the claimant shall pay all costs incurred in pursuing and defending the claim, including reasonable attorney's fees.
10. **OPINIONS OF COST.** If included in our scope of services, MEG will use its best efforts and experience on similar projects to provide realistic opinions of costs for remediation or construction as appropriate based on reasonably available data, MEG's designs or MEG's recommendations. However, such opinions are intended primarily to provide information on the order of magnitude or scale of such costs and are not intended for use in firm budgeting or negotiation. Owner understands actual costs of such work depend on regional economics, local construction practices, material availability, site conditions, weather conditions, contractor skills, and many other factors beyond MEG's control.
11. **TESTIMONY.** Should MEG or any MEG employee be compelled by law to provide testimony or other evidence by any party, whether at deposition, hearing or trial, in relation to services provided under this Agreement, and MEG is not a party in the dispute, then MEG shall be compensated by Owner for the associated reasonable expenses and labor for MEG's preparations and testimony at appropriate unit rates. To the extent the party compelling the testimony ultimately provides MEG such compensation, Owner will receive a credit or refund on any related double payments to MEG.
12. **CONFIDENTIALITY.** MEG will maintain as confidential any documents or information provided by Owner and will not release, distribute or publish same to any third party without prior permission from Owner, unless compelled by law or order of a court or regulatory body of competent jurisdiction. Such release will occur only after prior notice to Owner.
13. **PRIORITY OVER FORM AGREEMENTS/PURCHASE ORDERS.** The Parties agree that the provisions of these terms and conditions shall control over and govern as to any form writings signed by the Parties, such as Owner Purchase Orders, Work Orders, etc., and that such forms may be issued by Owner to MEG as a matter of convenience to the Parties without altering any of the terms or provisions hereof.
14. **SURVIVAL.** All provisions of this Agreement for indemnity or allocation of responsibility or liability between Owner and MEG shall survive the completion of the services and the termination of this Agreement.
15. **SEVERABILITY.** In the event that any provision of this Agreement is found to be unenforceable under law, the remaining provisions shall continue in full force and effect.
16. **ASSIGNMENT.** This Agreement may not be assigned by either party without the prior permission of the other.
17. **INTEGRATION.** This agreement, the attached documents and those incorporated herein constitute the entire Agreement between the parties and cannot be changed except by a written instrument signed by both parties.

**18. LIMIT OF LIABILITY**

- A. In the event Owner consents to, allows, authorizes or approves of changes to any plans, specifications or other construction documents, and these changes are not approved in writing by MEG, the Owner recognizes that such changes and the results thereof are not the responsibility of MEG. Therefore, the Owner agrees to release MEG from any liability arising from the construction, use or result of such changes. In addition, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold the design Professional and all his employees, officers, and directors harmless from any damage, liability or cost (including reasonable attorneys' fees and costs of defense) arising from such changes, except only those damages, liabilities and costs arising from the sole negligence or willful misconduct of MEG or its employees, officers or directors.
- B. Nothing contained in this Agreement shall create a contractual relationship with or a cause of action in favor of a third party against either the Owner or MEG. MEG's services under this Agreement are being performed solely for the Owner's benefit, and no other entity shall have any claim against MEG because of this Agreement or the performance or nonperformance of services hereunder. The Owner agrees to include a provision in all contracts with contractors and other entities involved in this project to carry out the intent of this paragraph.
- C. The Owner agrees to limit MEG's liability and his or her consultants to the Owner and to all Construction Contractors and Subcontractors on the project, due to MEG's negligent acts, errors, or omissions, such that the total aggregate liability of MEG to all those named, including legal fees and costs, shall not exceed \$10,000.

The Owner shall make no claim for professional negligence, either directly or in a third party claim, against MEG unless the Owner has first provided MEG with a written certification executed by an independent design professional currently practicing in the same discipline as MEG and licensed in the State of this project. This certification shall: a) contain the name and license number of the certifier; b) specify each and every act or omission that the certifier contends is a violation of the standard of care expected of an Engineer performing professional services under similar circumstances; and c) state in complete detail the basis for the certifier's opinion that each such act or omission constitutes such a violation. This certificate shall be provided to MEG not less than thirty (30) calendar days prior to the presentation of any claim or the institution of any mediation or judicial proceeding.

- D. The Owner shall promptly report to MEG any defects or suspected defects in MEG's work or services of which the Owner becomes aware, so that MEG may take measures to minimize the consequences of such a defect. Failure by the Owner, and the Contractors or Subcontractors to notify MEG, shall relieve MEG of the costs of remedying the defects above the sum such remedy would have cost had prompt notification been given.
- E. Payments to MEG shall not be withheld, postponed or made contingent on the construction, completion or success of the project or upon receipt by the Owner of offsetting reimbursement or credit from other parties causing Additional Services or expenses. No withholdings, deductions or offsets shall be made from MEG's compensation for any reason unless MEG has been found to be legally liable for such amounts.
- F. If, due to MEG's error, any required item or component of the project is omitted from MEG's construction documents, MEG shall not be responsible for paying the cost to add such item or component to the extent that such item or component would have been otherwise necessary to the project or otherwise adds value or betterment to the project. In no event will MEG be responsible for any cost or expense that provides betterment, upgrade or enhancement of the project.

- G. All legal actions by either party against the other arising out of or in any way connected with the services to be performed hereunder shall be barred and under no circumstances shall any such claim be initiated by either party after three (3) years have passed from the date MEG concluded rendering professional services, issuance of the Certificate of Completion or Certificate of Occupancy, whichever is sooner, unless MEG's services shall be terminated earlier, in which case the date of termination of this Agreement shall be used.
- H. It is intended by the parties to this Agreement that MEG's services in connection with the project shall not subject MEG's individual employees, officers or directors to any personal legal exposure for the risks associated with this project. Therefore, and notwithstanding anything to the contrary contained herein, the Owner agrees that as the Owner's sole and exclusive remedy, any claim, demand or suit shall be directed and/or asserted only against MEG, a New York corporation, and not against any of MEG's employees, officers or directors.
- I. Notwithstanding any other provision of this Agreement, and to the fullest extent permitted by law, neither the Owner nor the Consultant, their respective officers, directors, partners, employees, contractors or subconsultants shall be liable to the other or shall make any claim for any incidental, indirect or consequential damages arising out of or connected in any way to the Project or to this Agreement. This mutual waiver of damages shall include, but is not limited to, loss of use, loss of profit, loss of business, loss of income, loss of reputation or any other incidental, indirect, or consequential damages that either party may have incurred from any cause of action including negligence, strict liability, breach of contract and breach of implied warranty. Both the Owner and the Consultant shall require similar waivers of consequential damages protecting all the entities or persons named herein in all contracts and subcontracts with others involved in this project.
- J. Because evaluation of the existing structure requires that certain assumptions be made regarding existing conditions, and because some of these assumptions cannot be verified without expending additional sums of money or destroying otherwise adequate or serviceable portions of a structure, the Owner agrees, to the fullest extent permitted by law, to indemnify and hold MEG harmless from and against any and all damage, liability and cost, including reasonable attorneys' fees and defense costs, arising or allegedly arising out of the professional services under this Agreement, except for the sole negligence or willful misconduct of MEG.

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RESOLUTION NO.: 303 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT WITH ACCESS GEOGRAPHIC, INC. TO PERFORM WORK TO UPGRADE THE ORTHORECTIFIED DIGITAL AERIAL IMAGERY FOR A COST OF \$12,820.00 AND AMENDING RESOLUTION NO: 247 - 2013, THE 2014 BUDGET FOR THE CITY OF NEWBURGH, NEW YORK TO TRANSFER \$12,820.00 FROM CONSERVATION ADVISORY COUNCIL OTHER SERVICES TO GIS AND ENGINEERING SOFTWARE MAINTENANCE**

**WHEREAS**, on February 4, 2008, the City of Newburgh executed an agreement with the Office of Cyber Security and Critical Infrastructure Coordination for upgraded Geographic Information Systems Digital Orthoimagery Data; and

**WHEREAS**, the City of Newburgh GIS and Engineering Department have requested to enter into an agreement with Access Geographic, Inc. to perform work to upgrade the orthorectified digital aerial imagery to a higher resolution and upgrade the date of the imagery from 2007 to 2014; and

**WHEREAS**, the cost for such imagery is Twelve Thousand Eight Hundred Twenty (\$12,820.00) Dollars and shall be derived from budget line A.1440.0448; and

**WHEREAS**, this Council has determined that entering into the annexed agreement is in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager be and he is hereby authorized to execute the annexed agreement with Access Geographic, Inc. to perform work to upgrade the orthorectified digital aerial imagery for a cost of \$12,820.00; and

**BE IT FURTHER RESOLVED**, by the Council of the City of Newburgh, that Resolution No: 247-2013, the 2014 Budget of the City of Newburgh, is hereby amended as follows for the upgrade of the orthorectified digital aerial imagery:

	<u>Decrease</u>	<u>Increase</u>
A.1440.0448 GIS and Engineering Software Maintenance		\$12,820.00
A.7129.0448.0001.0000 Conservation Advisory Council - Other Services	\$12,820.00	
	<u>Total</u>	\$12,820.00

RESOLUTION NO. 304 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION OF THE CITY COUNCIL OF THE CITY OF NEWBURGH  
SUPPORTING THE APPLICATION OF ORANGE COUNTY FOR AN  
ENVIRONMENTAL PROTECTION AGENCY BROWNFIELD ASSESSMENT GRANT TO  
FUND A PHASE II ASSESSMENT OF THE PROPERTY KNOWN AS THE DIAMOND  
CANDLE FACTORY SITE LOCATED IN THE TOWN OF NEW WINDSOR**

**WHEREAS**, the United States Environmental Protection Agency's ("EPA") Brownfields Program is designed to empower states, communities and other stakeholders to work together in a timely manner to prevent, assess, safely clean up, and sustainably reuse brownfields sites; and

**WHEREAS**, the EPA provides technical and financial assistance for brownfields activities through an approach based on four main goals, which include protecting human health and the environment, sustaining reuse, promoting partnerships, and strengthening the marketplace; and

**WHEREAS**, state and local governments are eligible to apply for EPA Brownfields Assessment Grants to provide funding through a revolving loan fund that provides loans and sub-grants to carry out cleanup investigations and activities at brownfields sites; and

**WHEREAS**, the County of Orange has advised of its desire to make an application for EPA grant funding with hopes that the grant could fully fund their proposal to prepare a Phase II Environmental Assessment of the property known as the Diamond Candle Factory, located in the Town of New Windsor, at an approximate cost of \$26,000.00; and

**WHEREAS**, the County of Orange has requested that the City Council of the City of Newburgh, New York express its support of such application and its commitment to assisting with the implementation of their Community Involvement Plan by providing space for public meetings and posting notices in City Hall for the purposes of public outreach; and

**WHEREAS**, the City of Newburgh seeks to construct a pedestrian nature trail along the northern bank of the Quassaick Creek at some point in the future, and the County's Diamond Candle Factory site is essential to providing future public access and parking for this future trail; and

**WHEREAS**, this Council has determined that such support and commitment is in the best interests of the City of Newburgh, Town of New Windsor, County of Orange for the future development to provide public access to the Quassaick Creek corridor and future Quassaick Creek trail;

**NOW, THEREFORE, BE IT RESOLVED**, that the City Council of the City of Newburgh, New York, hereby supports the application of Orange County for an Environmental Protection Agency Brownfield Assessment Grant to fund a Phase II assessment of the property known -as the Diamond Candle Factory Site located in the Town of New Windsor; and

**BE IT FURTHER RESOLVED**, that this Council further expresses its commitment to assisting with the implementation of the County's Community Involvement Plan by providing space for public meetings and posting notices in City Hall.

***Phase I Environmental Site  
Assessment***

**TCC Parcel 34 Site  
(Diamond Candle Factory Property)  
City of Newburgh and  
Town of New Windsor,  
Orange County, New York**

**April 2002**

**Prepared for:**

Mid Hudson Patterns For Progress  
Desmond Campus  
6 Albany Post Road  
Newburgh, New York 12550

***Phase I Environmental Site  
Assessment***

**TCC Parcel 34 Site  
(Diamond Candle Factory Property)  
City of Newburgh and  
Town of New Windsor,  
Orange County, New York**

April 2002



Prepared by:

***The Chazen Companies***

*Capital District Office:*  
20 Gurley Avenue  
Troy, NY 12182

*Poughkeepsie Office:*  
229B Page Park, Manchester Road  
Poughkeepsie, NY 12603

*Newburgh Office:*  
263 Route 17K  
Newburgh, NY 12550

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## APPENDICES

APPENDIX A: Site Visit Photographs

APPENDIX B: Environmental Database Report

## 1.0 EXECUTIVE SUMMARY

The Chazen Companies have completed a Phase I Environmental Site Assessment of the Former Diamond Candle property, located north of John Street in the Town of New Windsor and north of the Quassaick Creek in the City of Newburgh, Orange County, New York. For the purposes of this report, the subject site is known as the TCC-34 parcel.

The subject properties contain approximately 8.28 acres of wooded land that is bisected by the Quassaick Creek. The subject property is currently vacant, however, the ruins of at least one building remain. There was substantial evidence of other demolished or abandoned structures including a chimney, foundations, drains and others remain on the subject parcel.

Based on the investigation performed, The Chazen Companies has identified recognized environmental conditions (as defined in ASTM E 1527-00) associated with the subject site property. The recognized environmental conditions are identified as follows:

- The historical use of the subject property by paper and woolen mills included the use of dyes and other chemicals as part of operations. These industrial users of the subject property date back to the 18<sup>th</sup> and 19<sup>th</sup> centuries. The chemicals, processes and business practices used by the historic industries have the potential to have impacted subsurface soil and groundwater quality. No direct evidence of discharges were observed but given the age and history of the facility, this is not unexpected.
- Coal ash and slag was identified at many locations around the subject property. The southern bank of the Quassaick Creek west of the Route 9W Bridge appears to be made up of a significant quantity of this material. This area rises approximately 50 feet from the Creek bed. The presence of ash and slag in these areas could result in elevated concentrations of organic compounds and heavy metals in the soil and or groundwater.
- Numerous pipes were observed that appear to be connected to the former factory locations. The pipes apparently discharged directly into the Quassaick Creek. There may have been numerous waste and or wastewater discharges when the facilities were operating. Impacts to the surface water and sediments of the Creek may have resulted from these discharges, particularly in areas of slack water and upstream of the dam locations.

- A number of piles of junk and miscellaneous debris litter the property. In the vicinity of the ruins and old foundations, there are piles of construction and demolition debris and, in areas accessible by the public, there has been a lot of convenience dumping. Discarded materials observed included tires, rims, refrigerators, wood, rusted drums, an automobile, scrap metal, old machinery, and construction. Inappropriate disposal of the aforementioned items could have had an impact to soil and or groundwater quality.

The following issues are not defined in ASTM E 1527-00 as recognized environmental conditions, but were identified during the course of this investigation as potential environmental concerns.

- There are ruins of the old buildings and foundations on the subject property. Many of these areas include subterranean openings and basements. The poor condition of the structures has resulted in hazardous safety situations at many locations on the subject property.
- Because of the age of the site structures it is possible that building materials could contain asbestos.
- Because of the age of the site structures it is possible that some of the painted surfaces may contain lead-based paint.

## 2.0 INTRODUCTION

In the Spring of 1998, businesses, governments, environmental and civic organizations came together to form the Mid-Hudson Land Revitalization Partnership (MHLRP). The mission of the MHLRP is to “contribute to the ongoing renaissance of the cities of the Mid-Hudson region by returning to productive use the abandoned or underutilized industrial or commercial properties with actual or perceived contamination”. In October of 1998, Ulster County, on behalf of the MHLRP, was awarded a grant from the U.S. Environmental Protection Agency (EPA) to study the redevelopment potential of properties in several cities belonging to the MHLRP. The MHLRP identified key properties or groups of properties in the Cities of Middletown, Newburgh, Poughkeepsie and Kingston that were candidates for environmental assessment based on redevelopment potential.

Mid-Hudson Pattern for Progress is a regional not for profit planning, research and public policy organization and has been instrumental in implementing the vision of the MHLRP. Pattern for Progress is the grant administrator for this project and in that capacity retained The Chazen Companies (TCC) to conduct Phase I Environmental Site Assessments (ESA's) at 83 properties identified by the MHLRP as having tremendous redevelopment potential. Pattern for Progress has provided oversight and assistance towards accomplishing the goals of the project. The mission of the MHLRP is to return to productive use, abandoned or underutilized commercial or industrial properties in the cities of the Mid-Hudson Valley that are perceived to be, or actually are, impacted by the historic use of the facility or surrounding properties.

The specific goal of the Phase I Environmental Site Assessment project was to evaluate the parcels individually and/or collectively for environmental liability. The purpose of the site assessment is to reasonably identify potential or known sources of hazardous waste, hazardous substances, and petroleum or chemical contamination, which may significantly impact the environmental quality of the site.

The site assessment included a site visit/observation, a review of existing documents and environmental lists, and background research on the previous uses and practices at the subject site as reported and documented by site contacts and Local, State, and County officials known to be responsible for regulating and enforcing site area environmental conditions. This site assessment has been performed in conformance with the scope and limitations as outlined in ASTM E 1527-00, Standard practice for Environmental Site Assessments: Phase I Environmental Site Assessment Process.

This report presents the findings of a Phase I Environmental Site Assessment conducted at the Parcel TCC-34 Site (former Diamond Candle property), located in the City of Newburgh, Orange County, New York.

### 3.0 SITE DESCRIPTION

#### 3.1 Site Location

The former Diamond Candle Factory property, as it is commonly known, (TCC-34) is located north of John Street in the Town of New Windsor and north of the Quassaick Creek in the City of Newburgh , Orange County, New York, as indicated in Figure 1. The subject property is vacant and access to the subject parcel is limited. The subject property is described in the City of Newburgh tax records as Section 43, Block 1, Lots 28 and 29.2, Section 47, Block 2, Lot 10.2, and in the Town of New Windsor tax record as Section 9, Block 1, Lot 68.2.

<b>Tax Parcel Number (SBL)</b>	<b>Address</b>	<b>Acreage</b>
47-2-10.2	Newburgh	1.7
43-1-28	Newburgh	0.63
43-1-29.2	Newburgh	0.85
9-1-68.2	New Windsor	5.1

#### 3.2 Property/Business Owner

The parcels on the north side of the Quassaick Creek that make up the portion of the subject property located within the City of Newburgh are owned by the City of Newburgh. The parcel located on the south side of the Creek in the Town of New Windsor is owned by Orange County.

#### 3.3 Current Site Uses

The subject property is currently vacant, although it is apparent that people use the area for loitering. Evidence that children play in and around the Quassaick Creek was also observed. Dense vegetation and rubble (concrete, bricks, pipes, ect.) are located throughout the site. Photographs of the subject property are included in Appendix A.

### **3.4 Total Site Area and Topographic Description**

The subject property is an 8.28-acre land parcel located on both sides of the Quassaick Creek. According to the United States Geological Survey Topographic Map Quadrangle for Cornwall, New York, the elevation of the streambed of the Quassaick Creek ranges from 20 feet above mean sea level (msl) at the eastern edge and 80 feet msl at the western end. Land surface elevations on either side of the creek rise to approximately 60 to 80 feet msl at the eastern edge of the property to 100 to 120 feet msl at the west end of the property.

### **3.5 Site Geology**

Bedrock in the area has been mapped as Paleozoic aged rocks of the Trenton Group and Metamorphic equivalents consisting of undifferentiated carbonate rocks adjacent to a tectonic thrust fault located to the west of the subject property. The Orange County Soil Conservation Survey (OCSCS) lists three soil series as being present on the subject property. These soils are described as Mardin gravelly silt loam (MdB), Mardin gravelly silt loam (MdD), and Hoosic gravelly sandy loam (HoB).

MdB soils are described as deep, moderately well drained, gently sloping soil formed in glacial till deposits derived from sandstone, shale, and slate. Buildings, streets, and other impervious structures predominantly cover the Mardin soils at the subject site and in the surrounding area. MdD soils are described as deep, moderately well drained, moderately steep sloping soil formed in glacial till deposits derived from sandstone, shale, and slate. The soil is poorly suited to most urban uses because of slope, seasonal wetness, and slow permeability. HoB soils are described as deep, somewhat excessively drained, sloping soil formed in glacial outwash deposits that have a high content of sand and gravel. Pollution of the water table by septic effluent is a hazard because of the very rapidly permeable soil conditions.

### **3.6 Roadways or Driveways on or Adjoining the Site**

Bridges carry Mill Street and State Route 9W over the subject property. There are no functioning roads that provide direct access to the property, however, there is one driveway that enables access to the parcel from the Town of New Windsor from John Street. This driveway is apparently a paved entrance to the former Diamond Candle facility. The driveway is overgrown and apparently has not been accessed in years. The driveway is also on an easement through an adjacent property. There is another abandoned drive that runs west from the Candle Factory driveway. This former roadway extends to the west end of the property along the southern portion of the subject site.

### 3.7 Site Building(s) and Structure(s)

Evidence of a number of former structures (ie: foundations, brick, blocks, iron pipe) was observed on the subject property. Most of the remains of the structures are on the south side of the Quassaick Creek, although a few of the ruins are located north of the Creek.

There is an abandoned structure located on the south side of the Creek just east of the Route 9W overpass on the western portion of the subject site. This building is a wooden structure observed to be in extremely poor condition with a collapsing roof. Within the building are a number of pressure tanks. The use of the building or the pressure tanks is not known and could not be determined from the evidence on hand.

A second structure located east of the south end of the Mill Street Bridge was identified. This structure consists of the remains of a foundation and retaining wall. Within the foundation were 2 tanks whose use was not readily apparent. Immediately under the Mill Street Bridge overpass is a large cooling tower that may have been related to this structure or the former Diamond Candle Factory operations. Also under the Bridge is a garage building in which a number of empty drums in poor condition were found.

The remains of two structures located south of the Creek and east of the Mill Street Bridge was also identified. These structures consist of a chimney and the remains of what was the Diamond Candle Factory. Concrete debris, bricks, a variety of iron piping, and subsurface structures are located throughout the area of the former Candle Factory.

At the eastern end of the property is the foundation of a small building on the north side of the Creek. Within this old foundation were bricks and at least several inches of ash.

Other structures on the property included a small brick arched bridge in poor condition and a dam across the Quassaick Creek at the eastern end of the property. A small concrete building just east of the dam on the south side of the creek appears to be related to a water delivery conduit to a location downstream of the subject property. Many portions of the Creek are lined with retaining walls constructed of stone, boulders, or concrete. The remnants of 2 additional dams on the property are located in the Creek between the Mill Street and Route 9W Bridges and east of the Mill Street Bridge.

### 3.7.1 Heating/Cooling Systems

There are no active cooling or heating systems located on the subject property. A large cooling unit was identified west of the former Candle Factory under the Route 9W overpass on the south side of the Quassaick Creek.

### 3.8 Rights-of-Way and/or Easements (On-site and Adjacent)

Two easements are known to exist on the subject property. A 20-foot wide drainage easement is located across the northeast portion of the property to the Quassaick Creek. There is a 100-foot wide easement across the property for the Route 9W Bridge.

The southern portion of the abandoned driveway to the Diamond Candle Factory facility from John Street is an easement for ingress and egress to the subject site that crosses the adjacent property. The adjacent property to the south is currently occupied by Torr Industries.

### 3.9 Surrounding Land Uses

The surrounding land uses, as identified during the site visit, are described for the site property lots as follows:

- North – A vacant wooded parcel of land is located north of the eastern portion of the subject property. Abandoned railroad tracks owned by the CSX Corporation are located to the north of the subject property west of Mill Street.
- South – American Felt and Filter is located to the south of the east end of the subject property. Torr Industries and residential properties are located to the south of the remainder of the subject property.
- West – The Federal Block Corporation and the Cornwall Paper Mill ruins/property are located to the west of the property.
- East – American Felt and Filter and the abandoned rail property owned by the CSX Corporation are located to the east of the subject property.

## **4.0 SITE AND SURROUNDING AREA HISTORIC REVIEW**

### **4.1 Historic Land Use**

#### **4.1.1 Subject Property**

The subject parcel has a long history of industrial activity that dates back to the late 1700's and early 1800's. Historically, the Quassaick Creek corridor was the site of numerous industrial facilities located along the Creek to take advantage of the water for power and use in manufacturing. The industries on the subject property predominantly included paper mills, woolen mills, and a candle factory. With the exception of the numerous foundations and ruins observed on the property, none of these industrial facilities remain.

#### **4.1.2 Adjoining Properties**

Properties surrounding the subject parcel historically were also occupied paper and woolen mill operations. The properties to the south in New Windsor have been a mix of industrial, commercial, and residential uses. American Felt and Filter has been located to the southeast of the subject property. Railroad tracks have been located on the adjacent property to the north since the 1800's.

### **4.2 Title Search Information**

According to the Orange County Real Property Tax Office, the City of Newburgh has owned 2 of the parcels that make up the subject property (Section 47, Block 2, Lot 10.2 and Section 43, Block 1, Lot 29.2) since 1997. Prior to this, the Twin Bridge Group, Inc. had purchased the properties in 1994. Candle Properties, Inc., formerly Diamond Candle Co. Inc., had owned the properties since 1987. Prior to Diamond Candle, Salvatore Schismo had owned the property since 1956. Newburgh Bleachery owned the property between 1914 and 1956.

The County Tax Office records indicate that the City of Newburgh has owned Section 43, Block 1, Lot 28 since 1995. Prior to Newburgh, P&T Realty had purchased the property in 1993 from Hilmar Kusmierz, who had purchased it 1991 from H.C. Boiler Works. H.C. Boiler Works had purchased the parcel in 1987 from Cornwall Paper Mills. Cornwall Paper Mills purchased the property in 1974 from San Giacomo Paper Co. who had purchased the property in 1971 from Ross Paper Machinery. Prior to Ross Paper, National Gypsum Co. had owned the property since 1941.

The remaining portion of the subject property, Section 9, Block 1, Lot 68.2 located in the Town of New Windsor is documented in the Orange County Real Property Tax Office as being owned by Orange County since 1998. The parcel was purchased from Twin Bridge Group, Inc. who had purchased it in 1994. Candle Properties, Inc., (Diamond Candle) had owned the properties since 1987. Prior to Diamond Candle, Salvatore Schismo had owned the property since 1956. Newburgh Bleachery owned the property between 1914 and 1956.

### **4.3 Sanborn Fire Insurance Map Review**

Environmental Data Resources Inc provided Sanborn Fire Insurance Maps, providing coverage of the subject site for the years 1884, 1890, 1913, 1957, and 1965. Copies of the Sanborn Maps are attached to Appendix B.

The 1884 Sanborn Map indicates that there were two woolen mills on the New Windsor parcel east of the Mill Street Bridge. The mills, Windsor Woolen Mill (at the location of the Diamond Candle Factory) and Valley Woolen Mill, each included a large main building and several smaller satellite buildings. Several buildings are identified as being used for dyeing. The map shows a dam that is no longer present and the small bridge that was observed during the site inspection crossing the Quassaick Creek. This dam provided water to the Valley Woolen Mill. The 1884 Sanborn map indicates that water from the Creek was diverted to both of the Mill's main buildings. Three buildings are also shown to be present in the vicinity of the bridge on the north side of the Creek. One of the buildings is identified as storage. The use of the others could not be determined. There are no indications of ASTs or USTs located on the property.

The 1890 Sanborn Map indicates that the Windsor Woolen Mill had burned down in December 1889. According to the Map, the building was expected to be rebuilt. Several of the surrounding buildings located to the ruins of the Windsor Woolen Mills are shown to be vacant. The former Valley Woolen Mill, which was located to the east of the Windsor mill is identified as Saxony Woolen Mills in 1890 Sanborn Map. Five structures on the south side and one structure on the north side of the Creek are identified as dwellings.

The 1913 map indicates that the Saxony Woolen Mill is no longer there and it is shown as ruins. The dam that had supplied the Saxony Woolen Mill with water had also been removed by 1913. However, the 1913 map indicates that a mill labeled as the Hudson River Woolen Mills occupied the location previously occupied by the Windsor Woolen Mill facility. The map indicates that a coal-burning furnace heated the building. Hudson River Woolen Mills is shown to have 6 additional structures west of the Mill Street Bridge that are mostly identified as warehouse space. A dam supplying water to the Hudson River Woolen Mill is shown in the vicinity of

these structures. The dwellings on the south side of the Quassaick Creek identified shown in 1890 are no longer present. While the dwelling on the north side of the Creek was still present, the storage building is shown to be in ruins. New to the site is the Holden Paper Company Paper Mill is shown on the adjacent property to the west.

The 1957 Sanborn Map identifies the former Hudson River Woolen Mills facility as being occupied by the Diamond Candle Company. Changes to the factory indicate additions had been constructed since 1913. The map identifies a machine shop and boiler room within the facility. The map indicates that the boiler burned coal. The Route 9W bridge is present on the 1957 Sanborn and the buildings are also identified as part of Diamond Candle. The Holden Paper Company mill to the west is now identified as the National Gypsum Company Paper Mill. The dwelling on the property shown in the 1913 map on the north side of the Creek is no longer shown on the map.

With the exception of the removal of the dam between the Mill Street and Route 9W Bridges, the 1965 Sanborn Map shows no changes to the subject parcel or adjacent properties. None of the buildings identified in any of the Sanborn Maps remains today other than remnants.

#### **4.4 Area Photograph Review**

Aerial photographs of the subject site for the years 1964 and 1990 were reviewed at the Orange County Planning Department in Goshen, New York.

The 1964 aerial photograph depicts the property with a building that appears to be the Diamond Candle Company structure depicted on the 1965 Sanborn Map. This Diamond Candle building is not present in the 1990 aerial photograph. The remainder of the property appears vacant in both of the photographs.

#### **4.5 Information From Current or Former Property Owner(s)**

No information has been provided from the current and former property owners.

#### **4.6 Information From Other Sources**

Information on the historic industrial use of the property presented in Section 4.1 was obtained from the map of “Quassaick Creek Historic Industries” (Orange County Water Authority) provided by the Newburgh City Engineers Office. No other information has been provided from other sources.

#### **4.7 Previous Environmental Investigations**

No previous environmental investigations were identified.

## 5.0 REGULATORY AGENCY RECORDS REVIEW

### 5.1 Environmental ASTM Database Review (Federal/State)

ASTM standard and referenced databases were searched for the subject site and the subject site area, according to the ASTM E 1527-00 recommended distances for each database. Database search information was provided to The Chazen Companies by Environmental Data Resources, Inc. (EDR). A copy of the EDR report is provided in Appendix B. The Federal and State databases searched and the search radius for each database are presented in the table below:

Database	Radius Search (miles)
National Priorities List (NPL) Hazardous Waste Sites	1.0
Proposed NPL Sites	1.0
CERCLIS Hazardous Waste Site	0.5
CERCLIS No Further Remedial Action Planned (CERC-NFRAP)	0.25
RCRA Corrective Action Treatment, Storage And Disposal Facilities List (Corracts TSD)	1.0
RCRA Non-Corrective Action Treatment, Storage And Disposal Facilities List (Non-Corracts TSD)	0.5
RCRIS Hazardous Waste Generator List	Site and adjoining properties
Emergency Response And Notification System List (ERNS)	Site
NYSDEC Inactive Hazardous Waste Site List	1.0
NYSDEC Spills List, including Leaking Underground Storage Tank (LUST) incidents	0.5
NYSDEC Registered Underground Storage Tank (UST) Listing	Site and adjoining properties
NYSDEC Solid Waste Disposal Facilities List	0.5

Databases and search distances per ASTM E 1527-00 Standard Practice for Environmental Site Assessments

### 5.1.1 Listed Hazardous Waste Sites

The subject site was not identified (listed) as a NPL, Proposed NPL, CERCLIS CERC-NFRAP, or New York State Department of Environmental Conservation (NYSDEC) Hazardous Waste site. No NPL, Proposed NPL, or NYSDEC Inactive Hazardous Waste sites were identified within 1-mile of the subject site. No CERC-NFRAP sites were identified within a 0.25-mile radius of the subject site.

The Provan Transport Corporation is identified as a CERCLIS Hazardous Waste site located within a 0.5-mile radius of the subject site. The site is identified as a hazardous waste transporter

American Felt and Filter is identified on the NYSDEC Inactive Hazardous Waste database as a State Hazardous Waste Site (SHWS). This property is within 1-mile of the subject property. The database indicates that the soil, groundwater, and the Quassaick Creek are contaminated with 1,1,1-trichloroethane from the American Felt and Filter site. American Felt and Filter has entered into a consent order with NYSDEC to remediate the site. While the American Felt and Filter facility is on the adjacent property to the east, it is likely to be downgradient of the subject property and not likely to have a direct impact on it.

### 5.1.2 ERNS Listing Report

The subject site was not identified on the Emergency Response Notification System (ERNS) listing report. The ERNS listing is a federal database of EPA emergency response actions.

### 5.1.3 Petroleum and Chemical Spill Information

The NYSDEC Spills database was reviewed to determine if spill incidents have occurred on the site property, on adjoining sites or within 0.5-mile of the subject site. The subject site was not identified on the NYSDEC Spills database. None of the adjoining properties were identified on the NSYDEC Spills database.

Based on a review of the environmental spills database, 25 NYSDEC documented spill incidents were listed as having occurred within a 0.5-mile radius of the subject site. Three of these spill incidents were identified as having occurred within approximately 0.10-miles from the subject site. Details pertaining to the NYSDEC documented spills within a 0.10-mile radius of the subject site are summarized as Table 1. The remaining spills are described in the EDR Report presented in Appendix B.

Table 1: NYSDEC Spill Incidents Within 0.10-Mile From The Subject Site

Spill Site	Spill Date	Distance & Direction From Site	Quantities & Materials Spilled	Status
Lease Realtors 35 John St.	3/30/97	<1/8 mile south southwest	Unknown quantity of No. 2 fuel oil.	Closed
Roadway 106 John St.	7/14/95	<1/8 mile west	0.25-gallons of non-PCB oil from electrical transformer.	Closed
Windsor Mech. Mill St. Bridge	12/6/89	<1/8 mile north	Unknown quantity of gasoline in sewer.	Closed

#### 5.1.4 Registered Underground Storage Tank (UST) Listing

The subject site was not identified on the NYSDEC registered underground storage tanks (UST) database. No adjoining properties were identified on the UST database.

The subject site was not identified as a Leaking Underground Storage Tank (LUST) facility. No adjoining properties were identified as LUST facilities. Based on a review of the environmental database, 6 were identified as leaking tank (LTANK) sites within a 0.5-mile radius of the subject site. Two of the LTANK sites listed in the database report are identified as LUST sites.

#### 5.1.5 RCRA Listing Reports

The subject site was not identified as a Resource Conservation and Recovery Act (RCRA) hazardous waste generator. No adjoining parcels were identified as RCRA generator sites. A review of the list of RCRA large quantity generators (LQGs) revealed that there are 2 LQGs within approximately 0.25-mile of the site property. The site was not identified as a RCRA treatment, storage and disposal (TSD) facility. No TSD facilities were identified within 0.5-mile of the subject site. The site was not identified as a RCRA Corrective Action (RCRA Corraacts) site. No RCRA Corraacts sites were identified within 1-mile of the subject site.

#### 5.1.6 Registered New York State Solid Waste Facilities

The subject site was not identified as a registered NYS Solid Waste Facility (landfill). No NYS Solid Waste Facilities were identified within a 0.5-mile radius of the subject site.

### 5.1.7 Related Environmental Violations, Warnings and Fines

No environmental violations, warnings or fines were identified for the subject site.

### 5.2 Information From Health Department Official(s)

The Orange County Department of Health (DOH) was contacted for information pertaining to soil quality, groundwater quality and any environmental investigations performed on the subject site. In response to the FOIL request, the OCDOH informed TCC that there are two inactive hazardous waste sites in the vicinity of the subject parcel. Each of these locations is approximately 0.25 miles downgradient of the subject parcel. No other information was available regarding the subject parcel.

### 5.3 Information From Town and/or County Official(s)

City of Newburgh and Town of New Windsor Officials were contacted for information pertaining to the subject site. Information provided by the City of Newburgh Office of Assessment, Clerks Office, and the Office of the City Engineer is presented in Sections 3.0, 4.1, and 4.2 of this report. No additional information was available.

### 5.4 Information From Local Historian

The City of Newburgh Historian, Kevin Barrett, was contacted for historical records pertaining to the subject site. No information has been provided as of yet.

## **6.0 SITE VISIT**

### **6.1 Conditions of Visit**

#### **6.1.1 Site Contact(s)**

The City of Newburgh provided access to the subject site.

#### **6.1.2 Date of Visit**

The subject site was visited on September 6, 2001 by Mr. Richard Calogero and Mr. Scott Schmidt of The Chazen Companies. A second visit was conducted September 18, 2001 by Mr. Calogero and Mr. David Tompkins of The Chazen Companies.

#### **6.1.3 General Weather Condition**

On both days, the skies were clear with and an ambient air temperature of approximately 80°F.

#### **6.1.4 Ground Cover**

The site is vacant, wooded, and covered by heavy vegetation. In several areas there are remnants of foundations, bricks, rubble, and iron works associated with former industrial buildings. The Quassaick Creek flows through the center of the subject parcels.

#### **6.1.5 Areas Observed**

Much of the subject property is densely vegetated with poison ivy and multiflora rose making access quite difficult. As much of the subject site was observed during the site inspection as possible.

### **6.2 Uses of Site Buildings and Structures**

The site is vacant and the remaining structures, slabs, and foundations are in poor condition and may represent significant safety hazards.

### **6.3 Site Utilities**

No gas or electric service was observed on the subject parcel. There is no municipal water or sanitary sewer service on the site since the property is vacant; however, municipal utilities are available in the vicinity oil of the Candle Factory.

#### **6.4 Hazardous Substances Associated with Identified Uses**

No hazardous substances are currently used on the subject property. The property had a history of woolen, paper, and candle industry use for over 150 years, and hazardous substances associated with these uses may have been utilized on the subject property. Several abandoned and rusted drums and tanks were observed at various locations on the subject property. All appeared to be empty.

#### **6.5 Raw Product Drums/Containers**

Several old rusted drums/tanks/vessels identified on the subject property on the south side of the Quassaick Creek.

#### **6.6 Waste Product Drums/Containers**

Several old rusted drums/tanks/vessels identified on the subject property on the south side of the Quassaick Creek.

#### **6.7 Transformers/Capacitors (Liquid Filled Only)**

No Transformers were observed on the subject parcel.

#### **6.8 Petroleum and Chemical Storage Tanks**

Two tank-like structures were observed west of the Mill Street Bridge on the south side of the subject property adjacent to an old foundation. Three pressure vessels are located within the ruins of the wooden building beneath the east side of the Route 9W Bridge. A 2,000-gallon steel tank was found among debris and rubble below the east side of the Route 9W Bridge. Based on observations made during the site visit it did not appear that the tank contains anything at the present time.

#### **6.9 Site Subsurface and/or Water Well Data**

No wells are located on the subject property. No subsurface or water well data was identified for the subject site.

#### **6.10 Site Surface Water Bodies/Areas**

The Quassaick Creek flows west to east through the subject parcel and drains approximately 0.5 mile to the east to the Hudson River.

## **6.11 Nearby Surface Water Bodies and Water Supply Wells**

The Hudson River is located approximately 0.5 mile east of the subject site. There are no municipal water supply wells located near subject site. No potable water wells were identified on the subject site.

## **6.12 Site Drainage**

### **6.12.1 Site Catch Basins and Discharge Location(s)**

No catch basins were observed on the subject property. Numerous discharge pipes were observed along the Quassaick Creek that are related to the former industrial facilities on the site. No information was available regarding the pipes.

### **6.12.2 Building Floor Drains and Discharge Location(s)**

No floor drains were observed within the remains of any of the abandoned structures. A number of discharge pipe locations, as well as water pipes and sluices, were observed along the Quassaick Creek. Most of the ruins and piping associated with them are located on the south side of the Creek.

### **6.12.3 Dry Wells and Sumps**

No dry wells or sumps were observed during the site walk. Basement areas of the building ruins on the south side of the Creek could not be inspected due to safety concerns.

### **6.12.4 Site Septic Systems**

The City of Newburgh services the area with a municipal sanitary sewer system. No septic systems are known to exist on the site.

## **6.13 Site Waste Profile**

### **6.13.1 Solid Wastes/General Trash (Generation/Storage/Disposal)**

No solid waste or trash is currently generated at the subject site. Trash and debris was observed at a number of locations on both sides of the Quassaick Creek, as well as in the Creek itself. Much of the trash and debris appears to have been washed down stream or thrown from the bridges that cross over the site. The ruins of the structures on the property, and a large pile of wax emanating from a drainage pipe beneath it are all solid waste. Much of the property is littered with rusted equipment, rubble, steel, an automobile, and other debris associated with convenience dumping, particularly from the tops of slopes on both sides of the Creek.

Substantial quantities of ash and slag were observed on the property. Much of the steep bank of the Quassaick Creek west of the Route 9W Bridge seems to be made up of coal ash and slag. It appears that this material was the result of on-site disposal of this material.

#### 6.13.2 Sludge (Generation/Storage/Disposal)

There are no sludge generation, storage, and disposal activities located on the subject parcel.

#### 6.13.3 Liquids (Generation/Storage/Disposal)

There are no liquids currently generated, stored, or disposed of on the subject property. Based on the presence of the discharge pipes observed along the Quassaick Creek throughout the site, it appears likely that the Creek received historical discharges along its course.

#### 6.13.4 Wastewater Discharges

Wastewater is not currently discharged from this property at this time. Based on the presence of the discharge pipes observed along the Quassaick Creek throughout the site, it appears likely that the Creek received historical discharges along its course.

#### 6.13.5 Waste Lagoons or Disposal Pits (Current and Historic)

No waste lagoons or disposal pits were observed on the subject property.

## **7.0 POTENTIAL OR KNOWN SITE CONTAMINATION**

### **7.1 Evidence of Soil Contamination**

No direct evidence of soil contamination such as discolored soil or stressed vegetation was observed during the site inspection, although a thorough inspection of the site was limited due to terrain and dense vegetation. However, ash and slag were observed in a number of locations, including on the south bank of the Quassaick Creek west of the Route 9W Bridge and within the ruins of a foundation on the north side of the Creek, indicating that surface disposal did occur on the property.

### **7.2 Evidence of Liquid Discharges**

Historical evidence of liquid discharges was observed on the property during the site visit based on the presence of discharge pipes at numerous locations along the Quassaick Creek. Due to the historical use of the property by paper and woolen mills, the potential exists for subsurface soil and groundwater contamination from historical discharges of dye's and other chemical wastes.

### **7.3 Evidence of Soil or Surface Disturbances**

The ground surface in many areas contains large amounts of ash and slag. Indications are that disposal of this material occurred while the mills operating on the subject property burned coal. Other areas where soil disturbance was observed during the site inspection included ruins and debris associated with the former structures.

### **7.4 Evidence of Waste Deposits (Piles/Pits/Landfills/Lagoons)**

As noted previously, ash and slag was found in a number of locations on the property including a large quantity that appears to make up much of the south bank of the Quassaick Creek west of the Route 9W Bridge. Convenience dumping has occurred in a number of areas where access by the public, particularly where vehicles could be brought close to the edge of a steep embankment. Discarded materials observed included tires, rims, appliances, wood, scrap metal, old machinery, and construction debris appeared to be the result of convenience dumping and is not related to the historical industrial activities on the property.

## **7.5 Evidence of Underground or Above Ground Storage Tanks**

Two tank-like structures were observed west of the Mill Street Bridge on the south side of the subject property adjacent to an old foundation. Three pressure vessels are located within the ruins of the wooden building beneath the east side of the Route 9W Bridge on the south side of the Quassaick Creek. The remains of a 2,000-gallon tank were observed in the ruins of the Diamond Candle Factory. Piping in the debris around the smoke stack adjacent to the location of the Diamond Candle boiler room may be related to a tank.

## **7.6 Evidence of Asbestos Containing Materials (ACM)**

No evidence of asbestos containing materials was observed during the site inspection. Based on the age of the ruins of the buildings on the subject property, there is the potential for building materials to contain asbestos. An ACM survey was not performed as a function of this Phase I Environmental Site Assessment.

## **7.7 Radon**

According to the Screening Results Short Term Data Report (NYSDOH, December 1999), the average indoor radon air concentration in the City of Newburgh is 5.5-pico curies/Liter (pCi/L) of air. This concentration is based on a survey of 251 residential basements in the City of Newburgh.

Based on a review of the US Environmental Protection Agency (USEPA) Radon Map of New York, Orange County is mapped as a Zone 1 area, indicating that properties located within Orange County have a high potential for indoor air radon concentrations to be 4.0 pCi/L or greater. The EPA has set an indoor air radon action level of 4.0 pCi/L for residential dwellings. Radon testing would be necessary to determine actual radon levels in site buildings. Radon testing was not performed as a function of this assessment.

## **7.8 Lead Based Paint/Lead In Drinking Water**

Because of the age of the structures around the subject property, the potential exists that painted surfaces may contain lead based paint. There are no drinking water sources on the subject property.

## 8.0 SUMMARY AND CONCLUSIONS

The Chazen Companies have completed a Phase I Environmental Site Assessment at the TCC Parcel 34 Site (former Diamond Candle Company property), located in the City of Newburgh and the Town of New Windsor, Orange County, New York.

The site is an abandoned parcel that encompasses 8.28-acres straddling the City of Newburgh and Town of New Windsor border. The subject property is bisected by the Quassaick Creek and has a history of at least 150 years of industrial use, including numerous paper and woolen mills. The foundations and ruins of many of these structures are located throughout the property, along with discarded equipment and debris from these facilities. Numerous pipes along the Creek indicate historical discharges from the former factories.

Based on the investigation performed, The Chazen Companies has identified recognized environmental conditions (as defined in ASTM E 1527-00) associated with the subject property. The following recognized environmental conditions might exist on the property.

The historical use of the subject property by paper and woolen mills included the use of dyes and other chemicals as part of operations. These industrial users of the subject property date back to the 18<sup>th</sup> and 19<sup>th</sup> centuries. The chemicals, processes, and business practices used by the historic industries have the potential to have impacted subsurface soil and groundwater quality. No direct evidence of discharges were observed but given the age and history of the facility, this is not unexpected.

Coal ash and slag was identified at many locations around the subject property. The southern bank of the Quassaick Creek west of the Route 9W Bridge appears to be made up of a significant quantity of this material. This area rises approximately 50 feet from the Creek bed. The presence of ash and slag in these areas could result in elevated concentrations of organic compounds and heavy metals in the soil and or groundwater.

Numerous pipes were observed that appear to be connected to the former factory locations. The pipes apparently discharged directly into the Quassaick Creek. There may have been numerous waste and or wastewater discharges when the facilities were operating. Impacts to the surface water and sediments of the Creek may have resulted from these discharges, particularly in areas of slack water and upstream of the dam locations.

A number of piles of junk and miscellaneous debris litter the property. In the vicinity of the ruins and old foundations, there are piles of construction and

demolition debris and, in areas accessible by the public, there has been a lot of convenience dumping. Discarded materials observed included tires, rims, refrigerators, wood, rusted drums, an automobile, scrap metal, old machinery, and construction. Inappropriate disposal of the aforementioned items could have had an impact to soil and or groundwater quality.

The following issues are not defined in ASTM E 1527-00 as recognized environmental conditions, but were identified during the course of this investigation as potential environmental concerns.

There are ruins of the old buildings and foundations on the subject property. Many of these areas include subterranean openings and basements. The poor condition of the structures has resulted in hazardous safety situations at many locations on the subject property.

Because of the age of the site structures it is possible that building materials could contain asbestos and some of the painted surfaces may contain lead-based paint.

The information presented in this report is limited to the investigation conducted and described, and is not necessarily all inclusive of conditions present at the subject site.

If you have any questions regarding this report, please contact The Chazen Companies, Newburgh, New York office at (845) 567-1133.

## **LIST OF PEOPLE AND AGENCIES CONTACTED**

1. New York State Department of Environmental Conservation
2. New York State Department of Health
3. Orange County Department of Health
4. Mr. David Barrett – City of Newburgh Historian
5. Ms. Elizabeth McKeon – City of Newburgh, Engineering Aid
6. Ms. Sharon Hyder – City of Newburgh Properties Manager
7. Town Clerks Office – Town of New Windsor

## **DOCUMENTS REVIEWED**

1. Aerial Photographs for the years: 1964 and 1990 were reviewed at the Orange County Planning Department.
2. Department of Labor, Mines Master Index File. August 1998.
3. EPA CERCLA Information System Sites Detail Report. March 2001.
4. EPA Federal Superfund Liens. October 1991.
5. EPA PCB Activity Database System. December 2000.
6. EPA CERCLIS-NFRAPA No Further Remedial Action Planned, March 2001.
7. EPA RCRA Administrative Action Tracking System. April 1995.
8. EPA Toxic Chemical Release Inventory System. December 1998.
9. EPA Toxic Substance Control Act. December 1998.
10. EPA FIFRA/TSCA Tracking System. Office of Prevention, Pesticides and Toxic Substances, Federal Insecticides, Fungicide, and Rodenticide Act. August 2000.
11. EPA Corrective Action Report. April 2000.
12. EPA National Priority List Deletions. January 2001.
13. EPA Emergency Response Notifications Listing Report. August 2000.
14. EPA Facility Index System/Facility Identification Initiative Program Summary Report. July 2000.
15. EPA RCRA Hazardous Waste Registration Listing Report. June 2000.
16. EPA RCRA Corrective Action Listing Report. June 2000.
17. EPA Resource Conservation and Recovery Information System. June 2000.

**DOCUMENTS REVIEWED  
(continued)**

18. EPA National Priority List Sites. January 2001.
19. EPA/NTIS Biennial Reporting System. December 1997.
20. Fire Insurance Maps from the Sanborn Map Company Archives. Late 19<sup>th</sup> Century to 1990: New York University Publications of America. Bethesda, Maryland, provided by Environmental Data Resources, Inc.
21. NTIS Record of Decision. September 1999.
22. New York Active Solid Waste Facilities Listing Report. December 1999.
23. New York State Department of Environmental Conservation List of Registered Underground Storage Tanks. January 2001.
24. New York State Department of Environmental Conservation Region 3 List of active and closed spill files. List covering spills and LUST incidents through January 2001.
25. New York State Department of Environmental Conservation, Division of Hazardous Waste Remediation Quarterly Status Report of Inactive Hazardous Waste Disposal Sites. January 2001.
26. New York State Department of Environmental Conservation, Division of Hazardous Waste Remediation "Inactive Hazardous Waste Disposal Sites in New York State, " Region 3. April 2001.
27. New York State Department of Environmental Conservation, Facility Register. December 2000.
28. New York State Department of Environmental Conservation, Chemical Bulk Storage. January 2001.
29. New York State Department of Environmental Conservation, Major Oil Storage Facilities. January 2001.

**DOCUMENTS REVIEWED  
(continued)**

30. New York State Department of Environmental Conservation, Voluntary Cleanup Agreements. March 2001.
31. Nuclear Regulatory Commission. Material Licensing Commission, January 2001.
32. Quassaick Creek Historic Industries. Orange County Water Authority.
33. Geologic Map of New York State, Hudson Mohawk Sheet. 1970, revised to 1995.
34. Surficial Geologic Map of New York State, Hudson Mohawk Sheet, 1987.
35. US Department of Transportation Hazardous Materials Information Reporting System. November 2000.
36. New York State Department of Health, Basement Screening Results By County, Short Term Data, NYSDOH Radon Program. December 1999.

## Figures

**Figure 1**  
**Site Location Map**

**Figure 2**  
**Site Layout Map**

## **APPENDIX A**

### **Site Visit Photographs**

## **APPENDIX B**

### **Environmental Database Report**

## **SCHEDULE A**

### **SCOPE OF WORK**

As per grant award from New York State Energy Research and Development Authority (NYSERDA), Orange County plans to implement the Mid-Hudson Regional Sustainability Plan recommendations at the local government level, using the County, the Village and Town of Warwick, and the City of Newburgh as leading examples. With assistance from staff of the Orange County Department of Planning, the Regional Plan Association, and the US Green Building Council, the City of Newburgh will complete draft and final comprehensive plan amendments or related policy documents, draft and final code – notably zoning code - and policy amendments for same, and environmental assessments forms for the same, as well as conduct relevant public information meetings or hearings and advance adoption of acceptable plans, codes and policy amendments by the municipality. The City of Newburgh will be reimbursed for relevant staff time and/or expenses consistent with all terms of the Agreement including this Schedule A and B. The scope of work for this contract covers:

Task 1 – Contract Management

Task 2 - Mid-Hudson Sustainability and Smart Growth Resource Kit Development

Task 3 - Audit Existing Policies, Plans, Regulations and Documents for Conformance with Best Practices to Achieve Smart Growth and Sustainability

Task 4 – Draft Updated Documents and Procedures

Task 5 – Outreach and Education

Task 6 – Adoption

Invoices can be submitted to the Orange County Planning Department based upon projects identified in Schedule B. The percentage of each task completed should be identified and the payments will be prorated to that percentage.

The Agreement shall include the following document which is attached and incorporated by reference as Exhibit A:

Agreement Number 39522 issued by New York State Energy Research and Development Authority (NYSERDA) (Grantor) for the Cleaner, Greener Communities (CGC) Program, Phase II: Category 2 – Orange County Updates to Municipal Comprehensive Plans and Best Practices Guidance CFA#28315

Vendor shall comply with all terms and conditions, including those incorporated directly or by reference, into Exhibit A, as may be amended by the Grantor and/or amendments, statutes, regulations or agency guidelines applicable through Exhibit A.

In the event of any conflict or inconsistency between the Agreement itself and any requirement in Exhibit A, the conflict shall be resolved by giving precedence to the requirement of Exhibit A over the Agreement.



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**Hudson Valley Office**

21 Fox St., Poughkeepsie, NY 12601  
P: (845) 454-3980 F: (845) 454-4026  
[www.chazencompanies.com](http://www.chazencompanies.com)

Capital District Office (518) 273-0055  
North Country Office (518) 812-0513

December 2, 2014

Kelly Dobbins, AICP  
Senior Planner/Project Manager  
Orange County Planning Dept/OCWA  
124 Main St  
Goshen, NY 10924  
sent via email [kdobbins@orangecountygov.com](mailto:kdobbins@orangecountygov.com)

*Re: Proposal for Professional Services – Brownfields Cleanup Program Eligibility Investigation  
Quassaick Creek Project, City of Newburgh and Town of New Windsor, New York  
Chazen Proposal # PM14-116*

Dear Ms. Dobbins,

The Chazen Companies (Chazen) thank you for the opportunity to provide you this proposal for professional services to conduct a Brownfields Cleanup Program (BCP) eligibility investigation at the above-referenced site. We have helped numerous clients get accepted into the program, and successfully navigate through the BCP to closure. Chazen's 2001 Phase I Environmental Site Assessment (ESA) and related proposal identified areas for additional investigation based on client goals at the time. We have revised our proposal specifically to meet your current goal to determine whether the site is eligible for the NYSDEC Brownfields Cleanup Program (BCP). Our scope and fee are presented below.

**Recommended BCP Eligibility Investigation Scope**

We have focused on soil data collection, for the most diagnostic information, with a few groundwater samples. Sediment sampling is not included, as it likely contains material from upstream locations, and off-site sources are not sufficient for a site to be considered eligible for the program. We note that NYSDEC may request additional sampling, and that site conditions may have changed since 2001 that may warrant additional investigation. We recommend that a pre-application meeting be attended with NYSDEC, to get NYSDEC input on likelihood of eligibility and discuss the proposed sampling approach at that time.

Our selected laboratory is a Minority Business Enterprise (MBE/WBE).

***Task 1 – Test Pit Investigation***

A test pit program will use an excavator to install up to 15 test pits to characterize the nature of site soil and fill material. Test pits will be dug down to native soil or bedrock refusal, or the limits of the

excavator reach, whichever comes first. A Chazen geologist will physically characterize the soil and fill material encountered, observe for visual and olfactory evidence of contamination, and screen soils for volatile organic compounds (VOCs) using a photoionization detector (PID). Test pit logs will be prepared for each test pit, and locations documented using Global Positioning System (GPS).

Up to 10 representative samples of soil or fill material will be collected for laboratory analysis. Samples will be analyzed for target compound list (TCL) VOCs via EPA method 8260, TCL semi-volatile organic compounds (SVOCs) via EPA method 8270, RCRA Metals via EPA Methods 6010 and 7471, and polychlorinated biphenyls (PCBs) via EPA method 8082. Quality control (QC) samples will include one field duplicate, up to four field blanks (one per day), and one matrix spike/matrix spike (MS/MSD). An ASP-B data package will be provided by the laboratory.

Our budget estimate includes up to three days for this effort, although it could be less. This task assumes that the areas are accessible and do not require extensive clearing of vegetation, debris, or snow.

While this task will help characterize the nature of site soil and fill material, it is not expected to delineate the extent of impacts, if they are identified.

### ***Task 2 –Groundwater Investigation***

As a preliminary investigation of groundwater quality on the site, four temporary groundwater sampling points (TGSPs) will be located between the Route 9 and Mill Street bridges, with two on each side of the Quassaick Creek. The locations will be finalized after the test pit investigation is complete, and adjusted to areas of identified contamination, if encountered.

A Geoprobe direct push rig will be used to install the TGSPs and a Chazen geologist will physically characterize the soil during TGSP installation and observe for visual and olfactory evidence of contamination, and screen soils for VOCs using a PID. Boring/well construction logs will be prepared for each location.

Grab groundwater samples will be collected from the three TGSPs and analyzed for TCL VOCs, TCL SVOCs, RCRA Metals, and PCBs. QC samples will include one field duplicate, one field blank (one per day), one trip blank, and one MS/MSD. An ASP-B data package will be provided by the laboratory.

Chazen estimates that this effort can be completed within one day, and assumes that the TGSP locations are accessible without needing to be cleared of vegetation, debris, or snow, and that groundwater is present in overburden. The TGSP locations will be documented using GPS.

### ***Task 3 –Reporting***

Following completion of field work and receipt of laboratory data, a summary report will be prepared to document the investigation findings. Documentation will summarize field activities and it will be ready within three weeks of receipt of laboratory data. The report will include sample data, test pit/boring/well construction logs, sample location maps, and descriptions of the Site conditions. If necessary, recommendations for additional investigations and/or site remedial actions will be presented

as a separate document. An electronic copy of the report will be submitted in portable digital format (pdf).

Our approach is to gather data useful at this eligibility determination stage and that can also be incorporated into later reports.

As a separate task, Chazen can prepare a pre-application BCP worksheet for the site and attend a pre-application meeting with you and NYSDEC.

#### **Assumptions and Limitations**

This proposal includes the cost for only those specific services delineated above. Additional items not addressed as part of this proposal include:

- The preparation of supplemental or additional reports or correspondence which may be requested or required by you, your representatives or consultants, or governmental agencies, including a work plan/field sampling plan, health and safety plan (HASp), quality assurance project plan (QAPP), community air monitoring program (CAMP), a data usability summary report (DUSR), Remedial Investigation Report, or Remedial Action Work Plan.
- Costs associated with any delays in getting access to site test pitting or drilling locations.
- Disposal of investigation-derived wastes or impacted soil.
- Site restoration beyond refilling test boring holes with soil or gravel.
- Excavating or drilling in conditions more difficult than those stated/anticipated.
- Prior to subsurface testing, our excavation and drilling subcontractors will ensure that the New York Underground Facilities Protection Organization (UFPO) has been contacted and underground utilities marked out on public lands adjacent to the Site, as warranted under New York State law. However, the public UFPO process does not include on-site buried utility mark-outs. If you are uncertain about the locations of any on-site underground utilities in the proposed investigation areas, Chazen recommends that a private on-site utility markout also be conducted. Chazen can provide costs for a private utility locator at an additional cost, if requested. If no on-site utility mark-out is completed, Chazen cannot be held responsible or assume any liability for damage, harm or costs associated with any penetration or disturbing of features or utilities contacted as a result of our investigation.

We will work diligently to complete the project within the budget and schedule. The above investigation is intended to be reasonably comprehensive and the cost estimate is based on the scope of work and schedule described herein. Circumstances, including actual site geologic conditions, may arise that are outside of our control so additional days or samples may be required.

#### **Client Responsibilities**

- It is the responsibility of the client to obtain permission for Chazen and its subcontractors to access the property to conduct this work. The client is responsible for identifying subsurface utilities within the investigation areas.
- If conditions are encountered that require notification of a petroleum spill to an appropriate regulatory agency, the Site owner and any knowledgeable party will be obligated to report the release under existing New York State law. If reporting is required, Chazen will notify you

immediately to discuss the findings, consequences and time requirements for reporting. Reporting of an identified petroleum release is required within two hours of discovery in the State of New York, and Chazen may be obligated to report a spill if identified during drilling.

**Professional Services Fee Schedule**

Chazen proposes to bill each task as indicated in the following Fee and Time Schedule Summary. Invoices will be issued monthly for all services performed during that month, and are payable upon receipt. Time and Materials tasks will be billed based on the actual hours and reimbursable expenses incurred, at the rates listed in our current Fee Schedule. Fees listed for Time and Materials tasks are estimates only. Chazen will make its best effort to complete each of these tasks within the estimated amounts; however, it is possible that it will be necessary to exceed these amounts in order to complete the scope of services for each task. The proposed schedule is shown and is contingent on obtaining timely access all areas of the site for inspection.

**Fee and Time Schedule Summary**

Tasks		Fee Estimates		Proposed Schedules
Task No.	Task Description	Time and Materials Estimate <sup>(1)</sup>	Sub-Consultant Estimate <sup>(1)</sup>	Projected Start / End Dates <sup>(2)</sup>
1	<b>Test Pit Investigation</b> Up to 3 days, 15 test pits, 10 soil samples, QC samples	\$3,450	\$5,555 excavator \$5,025 lab	Start: Week 1-2 (weather pending) End: Week 3-4
2	<b>Groundwater Investigation</b> One day, 4 TGSPs, 4 groundwater samples, QC samples	\$1,320	\$2,570 driller \$2,510 lab	Start: Week 2-3 End: Week 3-5
4	<b>Reporting</b>	\$5,750 Lump Sum		Start: Following receipt of lab reports End: 2 to 3 weeks
<b>Subtotal</b>		\$10,520	\$15,660	
<b>TOTAL</b>		<b>\$26,180</b>		

<sup>1</sup> Chazen will bill for actual hours spent on the task and reimbursable expenses occurred, but not beyond the not-to-exceed limit that is agreed upon at the start of the work without authorization from the Client. An estimate of services is provided here for planning purposes.

<sup>2</sup> Projected start and end dates are subject to change and are based on date from authorization to proceed and receipt of all information that we require to perform our work. Because certain aspects of the project are outside of Chazen's control, Chazen cannot guarantee completion of the project within these proposed schedules. If any deviation is required, Chazen will immediately notify you of the condition and our revised schedule for your review.

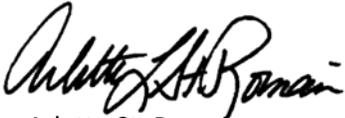
**Agreement**

Receipt of the attached Standard Agreement with your signature will be our authorization to schedule the performance of this work. Please be aware that the projected task start and completion dates are based upon a timely receipt of the signed proposal. A delay in returning the necessary documents may

require modification of the proposed task start and completion dates as described herein. This proposal is valid for 30 days.

Please feel free to contact me at (518) 266-7328 if you have any questions.

Sincerely,

A handwritten signature in black ink, appearing to read "Arlette St. Roman". The signature is fluid and cursive, with the first name "Arlette" being more prominent than the last name "St. Roman".

Arlette St. Roman  
Director, Environmental Services

cc: Chazen Distribution List

**AGREEMENT MADE** this \_\_\_\_\_ day of \_\_\_\_\_ 2014 by and between Chazen Engineering, Land Surveying & Landscape Architecture Co., D.P.C. (CELSLA) or Chazen Environmental Services, Inc. (CES), each existing under the laws of the State of New York, with their principal places of business at 21 Fox Street, Poughkeepsie, New York 12601 (hereafter referred to collectively as "Chazen" ) and Orange County Planning Dept/OCWA, 124 Main Street, Goshen, NY 10924 (hereafter referred to as "Client").

1. **PURPOSE:** Client hereby retains Chazen to perform the services described in the Proposal For Professional Services dated December 2, 2014 which is hereby made a part of this Agreement.

2. **COMPENSATION:** Chazen's compensation for services shall be as stated in the Proposal For Professional Services. Chazen shall submit invoices on or about the tenth day of each month. Invoices shall be payable upon receipt. Invoices not paid within 30 days will be assessed a finance charge of 1.5% per month. At the beginning of each calendar year Chazen reserves the right to adjust its billing rates in accordance with Chazen's new annual fee schedule. Chazen may suspend its performance under this Agreement until all delinquent amounts due for services and expenses have been paid. All amounts due and owed Chazen under this Agreement shall be paid in full at the completion of services. Chazen may refuse to release reports, maps and materials prepared by Chazen for Client until all arrearages are paid in full. If Chazen is required to retain an attorney and/or collection agency to collect amounts due Chazen under this Agreement, Client agrees to pay Chazen's reasonable attorney's and/or collection fees together with the costs and disbursements of any such action.

**A retainer in the amount of \$\_\_\_\_\_ will be required prior to the initiation of services. This retainer will be held until the end of the project and applied to Client's final invoice. Any excess amount will be returned to Client.**

**Final payment will be due upon delivery of the final work product (e.g. report, survey, etc.).**

3. **COOPERATION:** Client agrees to keep Chazen informed of changes to the project scope and schedule, and shall arrange for and provide Chazen entry to property in order to perform the services. Client shall give Chazen prompt notice of any potentially hazardous or injurious conditions Client knows of or has reason to know of which may be present on property Chazen must enter. Client agrees to allow Chazen to display appropriate promotional signage during construction, and to allow Chazen to make a photographic record of the project prior to, during, and subsequent to construction. Client agrees to allow Chazen to use photographic images, along with information about the project and/or a description of the services provided, for promotional purposes without restriction or monetary compensation.

4. **PROJECT DOCUMENTS:**

- A. All Documents which may include, but are not limited to, Plans, Specifications, Survey Plats, Technical Reports and Correspondence are instruments of service with respect to this Project, and Chazen shall retain an ownership and property interest therein, including the right to reuse the Documents. The right to alter the Documents belongs only to Chazen.
- B. Client and Client's contractors or other consultants may rely only upon printed copies (also known as hard copies) of Documents that are signed and sealed by a Licensed Professional employed by Chazen. If there is any discrepancy between printed copies and any electronic copies, the most recent version of the printed and certified copies govern.
- C. Any electronic copies (files) provided will be provided solely as a convenience and shall NOT be considered "Contract Documents," "Construction Documents" or any type of certified document. All documents considered "Contract Documents," "Construction Documents" or any type of certified document shall consist only of printed copies having an original signature and seal of a Licensed Professional employed by Chazen.
- D. Be advised that electronic copies of Documents can deteriorate or be inadvertently modified without Chazen's consent, or may be otherwise corrupted or defective. Accordingly, Client and Client's contractors or other consultants may not rely upon the accuracy of any electronic copies of Documents.

- E. Any use, conclusion or information obtained or derived from electronic copies of Documents by Client or Client's contractors or other consultants will be at Client's sole risk and without liability to Chazen. Client shall defend, indemnify, and hold harmless Chazen and its officers, directors, representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) arising from any use whatsoever or reliance on electronic copies of Documents.
- F. Client understands that Documents are not intended or represented to be suitable for any purpose other than that for which they were created. Any reuse or modification of Documents by Client or Client's contractors or other consultants will be at Client's sole risk and without liability to Chazen. Client shall defend, indemnify, and hold harmless Chazen and its officers, directors, representatives and agents from and against all claims, demands, liabilities, causes of action, suits, judgments, damages, and expenses (including attorneys' fees) arising from any reuse or modification of Documents.
- G. Client understands that it is a violation of New York State Education Law for any person to alter in any way any Document that has been signed and sealed by a Professional Engineer or Land Surveyor, unless he or she is acting under the direction of a licensed Professional Engineer or Land Surveyor and that the altering professional signs and seals the document and describes the alteration.

5. **INDEMNITY & LIMITATION OF LIABILITY:** Client and Chazen have discussed the risks, rewards and benefits of the project and Chazen's fees for services under this Agreement. Client and Chazen have also discussed the allocation of risk associated with their respective duties under this Agreement and agree, to the fullest extent permitted by law:

- A. Chazen shall carry and maintain Workers Compensation, General Liability, Automobile Liability and Professional Liability insurance. Chazen will provide Client certificates of insurance upon request. Chazen agrees to indemnify Client against loss caused by the negligent actions of Chazen, and the employees and subcontractors of Chazen, within the terms and conditions of the insurance coverage maintained by Chazen, subject to the limitation of liability set forth in paragraph 5(C) below. Chazen will not be responsible for any loss or liability, or any violation of law, rule, regulation or decree by Client or the employees, agents, contractors, or consultants of Client.
- B. Chazen agrees that it will not bring hazardous or toxic materials onto Client's property. Client understands that the ordinary course of work performed by Chazen may result in the excavation and relocation of hazardous or toxic materials that were on or under the property before Chazen began its work. Client understands that Client is solely responsible for the cost of investigating, removing, and remediating such materials.
- C. Chazen's liability for claims related to professional services errors or omissions under this Agreement, however arising, shall be limited to the lesser of \$1,000,000 or the total compensation received by Chazen from Client, and Client hereby releases Chazen from any liability or contribution above such amount. This limitation of liability shall include but not be limited to Chazen's negligence, errors, or omissions. In no event shall Chazen be liable for incidental or consequential damages, including loss of profits or revenue resulting from any cause or causes.

6. **TERMINATION:** In the event of substantial failure by either party to perform under this Agreement, the aggrieved party may terminate this Agreement upon seven (7) days written notice. If this Agreement is terminated, Client shall remit all monies due Chazen within 30 days. Chazen at its sole discretion, may terminate this Agreement when it reasonably believes there may be condition(s) which threaten the health and safety of Chazen personnel and subcontractors. Chazen assumes no duty to report hazardous or dangerous conditions not caused by Chazen and shall rely exclusively upon Client to report any such conditions.

7. **SEVERABILITY:** If any provision of this Agreement is held invalid such provision shall have no effect, but all remaining provisions shall continue in full force and effect. Each provision of this Agreement shall be interpreted so as to render it valid.

8. **NOTICES:** All notices shall be in writing and shall be sufficient if sent by first class mail or overnight mail to the addresses of Client and Chazen as shown herein. Notices shall be deemed as received three (3) business days after mailing. Each party hereby agrees to accept all mailed and hand delivered communications.

- 9. **ENTIRE AGREEMENT:** This Agreement and any attachments and exhibits identified herein represent all of the promises, agreements, conditions, understandings, and undertakings between Client and Chazen.
  
- p10. **AMENDMENTS:** This Agreement shall bind Client and Chazen and their successors and assigns. The parties may, by written agreement(s), modify and amend this Agreement. Any such amendment must be in writing and be signed by the party against whom enforcement of the amendment is sought. No breach of any part of this Agreement shall be deemed waived unless expressly waived in writing by the party who might assert such a breach. The failure of any party to insist in any one or more instances upon strict performance of this Agreement shall not be construed as a waiver of the right to insist upon strict performance.
  
- 11. **GOVERNING LAW:** This Agreement shall be governed and construed by the laws of the State of New York. For purposes of any legal action or suit related to or arising out of this Agreement venue shall be Dutchess County, New York.
  
- 12. **COUNTERPARTS:** This Agreement, and any amendments or revisions thereto, may be executed in two or more counterparts each of which shall be deemed an original, but which together shall constitute one and the same instrument(s).
  
- 13. **REPRESENTATIONS:** Client and Chazen state that each has full power and authority to make, execute and perform this Agreement. Signatory for Client states that he is an officer, owner, partner, agent or attorney for Client. Neither Client nor Chazen is bankrupt or have availed themselves of any debtor's remedies nor are currently contemplating such.

CLIENT \_\_\_\_\_

THE CHAZEN COMPANIES

By: \_\_\_\_\_

By: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Printed Name: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

RESOLUTION NO.: 305 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN AGREEMENT FOR VENDOR SERVICES WITH THE COUNTY OF ORANGE AFFIRMING THE CITY OF NEWBURGH'S COMMITMENT TO ACTIVELY PARTICIPATE AS A LOCAL GOVERNMENT ENTITY IN THE NYSERDA CLEANER, GREENER COMMUNITIES (CGC) PROGRAM, PHASE II: CATEGORY 2 GRANT, WHICH HAS BEEN AWARDED TO THE COUNTY OF ORANGE**

WHEREAS, by Resolution No.: 49-2013 of February 25, 2013, the City Council of the City of Newburgh acknowledged its participation in the Mid-Hudson Regional Sustainability Plan and endorsement of vision and implementation strategies of this Plan as prepared for Cleaner, Greener Communities Program of the New York State Energy Research and Development Authority (NYSERDA); and

WHEREAS, such grant for this Plan has been awarded to the County of Orange; and

WHEREAS, the City of Newburgh has been named a participating local government agency, which requires the execution of an agreement for vendor services for the activities associated with such grant; and

WHEREAS, this Council has reviewed the attached agreement and has determined that entering into such agreement is in the best interests of the City of Newburgh and its further development;

NOW, THEREFORE, BE IT RESOLVED, that the Council of the City of Newburgh hereby authorizes the City Manager to execute an Agreement for Vendor Services with the County of Orange affirming the City of Newburgh's commitment to actively participate as a local government entity in the NYSERDA Cleaner, Greener Communities (CGC) Program, Phase II: Category 2 Grant, which has been awarded to the County of Orange; and

BE IT FURTHER RESOLVED, that the Council of the City of Newburgh hereby accepts the terms and conditions of the Grant and authorizes acceptance of all reimbursement funds and in-kind services; and that the City Manager is further authorized to execute all necessary documents to receive and comply with the terms of such grant and to carry out the program funded thereby.

RESOLUTION NO.: 306 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION APPROVING THE CONSENT JUDGMENT AND AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT JUDGMENT IN CONNECTION WITH THE TAX CERTIORARI PROCEEDINGS AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NO. 2014-5610 INVOLVING SECTION 36, BLOCK 4, LOTS 3.1, 4, 19 AND 20 (AFSW REALTY LLC)**

**WHEREAS**, AFSW Realty, LLC has commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2014-2015 tax assessment year bearing Orange County Index No. 2014-5610; and

**WHEREAS**, it appears from the recommendation of the City Assessor, Joanne Majewski, and Paul S. Ernenwein, Esq. of Catania, Mahon, Milligram & Rider, PLLC, Special Counsel for the City of Newburgh in the aforesaid proceedings, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

**WHEREAS**, AFSW Realty, LLC is willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 36-4-3.1 remain at a market value of \$ 19,800.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 36-4-4 be reduced to a market value of \$ 190,000.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 36-4-19 be reduced to a market value of \$ 10,500.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 36-4-20 be reduced to a market value of \$ 9,500.

**NOW, THEREFORE BE IT RESOLVED**, that the proposed settlements as set forth and described above and in the attached Consent Judgment is hereby accepted pursuant to the provisions of the General City Law and other related laws.

**BE IT FURTHER RESOLVED**, that Michael G. Ciaravino, City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; and Paul S. Ernenwein, Esq. on behalf of Catania, Mahon, Milligram & Rider, PLLC, as Special Counsel, be and they hereby are designated as the persons for the City who shall execute the attached Consent Judgment on behalf of the City of Newburgh, and Paul S. Ernenwein, Esq., as Special Counsel, and counsel for the Petitioner shall present such Consent Judgment to the Orange County Supreme Court for approval pursuant to the aforesaid laws.

RESOLUTION NO.: 307 -2014

OF

DECEMBER 15, 2014

A RESOLUTION APPROVING THE CONSENT JUDGMENTS AND AUTHORIZING THE CITY MANAGER TO SIGN SUCH CONSENT JUDGMENTS IN CONNECTION WITH THE TAX CERTIORARI PROCEEDINGS AGAINST THE CITY OF NEWBURGH IN THE ORANGE COUNTY SUPREME COURT BEARING ORANGE COUNTY INDEX NOS. 2009-8392, 2010-8354, 2011-7340, 2012-6545, 2013-6202 AND 2014-5939, INVOLVING SECTION 30, BLOCK 4, LOT 22, SECTION 11, BLOCK 4, LOT 29, SECTION 46, BLOCK 3, LOT 8.1, SECTION 46, BLOCK 2, LOT 12, AND SECTION 46, BLOCK 5, LOT 5 (K-C NEWBURGH, INC., R H CAMPBELL, INC., RHK ENTERPRISES, INC., CER ENTERPRISES, INC. AND CAMCO PROPERTIES, INC.);

ORANGE COUNTY INDEX NOS. 2009-8393, 2010-8356, 2011-7344, 2012-6544, 2013-6203 AND 2014-5942, INVOLVING SECTION 46, BLOCK 5, LOT 6.1, SECTION 46, BLOCK 2, LOT 9 AND SECTION 46, BLOCK 2, LOT 8 (CER ENTERPRISES, INC.);

ORANGE COUNTY INDEX NOS. 2009-8394, 2010-8358, 2011-7341, 2012-6543, 2013-6205 AND 2014-5943, INVOLVING SECTION 38, BLOCK 2, LOT 16 (CAMPBELL RESIDENTIAL PROPERTIES, INC.); AND

ORANGE COUNTY INDEX NOS. 2009-8395, 2010-8359, 2011-7342, 2012-6542, 2013-6207 AND 2014-5944, INVOLVING SECTION 14, BLOCK 3, LOT 60 (RICHARD H. CAMPBELL, SR., IRENE CAMPBELL, TRUSTEE)

WHEREAS, K-C Newburgh, Inc., R H Campbell, Inc., RHK Enterprises, Inc., CER Enterprises, Inc., Camco Properties, Inc., Campbell Residential Properties, Inc., Richard H. Campbell, Sr., and Irene Campbell, Trustee, have commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange; and

WHEREAS, K-C Newburgh, Inc., R H Campbell, Inc., RHK Enterprises, Inc., CER Enterprises, Inc. and Camco Properties, Inc. have commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 tax assessment years bearing Orange County Index Nos. 2009-8392, 2010-8354, 2011-7340, 2012-6545, 2013-6202 and 2014-5939; and

WHEREAS, CER Enterprises, Inc. has commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2009-

2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 tax assessment years bearing Orange County Index Nos. 2009-8393, 2010-8356, 2011-7344, 2012-6544, 2013-6203 and 2014-5942; and

**WHEREAS**, Campbell Residential Properties, Inc. has commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 tax assessment years bearing Orange County Index Nos. 2009-8394, 2010-8358, 2011-7341, 2012-6543, 2013-6205 and 2014-5943; and

**WHEREAS**, Richard H. Campbell, Sr. and Irene Campbell, Trustee have commenced tax certiorari proceedings against the City of Newburgh in the Supreme Court of the State of New York, County of Orange for the 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 tax assessment years bearing Orange County Index Nos. 2009-8395, 2010-8359, 2011-7342, 2012-6542, 2013-6207 and 2014-5944; and

**WHEREAS**, it appears from the recommendation of the City Assessor, Joanne Majewski, and Richard B. Golden, Esq. of Burke, Miele & Golden, LLP, Special Counsel for the City of Newburgh in the aforesaid proceedings, upon a thorough investigation of the claims that further proceedings and litigation by the City would involve considerable expense with the attendant uncertainty of the outcome, and that settlement of the above matters as more fully set forth below is reasonable and in the best interests of the City; and

**WHEREAS**, K-C Newburgh, Inc., R H Campbell, Inc., RHK Enterprises, Inc., CER Enterprises, Inc. and Camco Properties are willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 30-4-22 be reduced to a market value of \$ 216,240.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 30-4-22 be reduced to a market value of \$ 195,200.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 30-4-22 be reduced to a market value of \$ 164,160.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 30-4-22 be reduced to a market value of \$ 154,480.
- 5- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 30-4-22 be reduced to a market value of \$ 127,200.
- 6- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 30-4-22 be reduced to a market value of \$ 127,200.
  
- 7- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 11-4-29 be reduced to a market value of \$ 468,265.
- 8- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 11-4-29 be reduced to a market value of \$ 455,175.

- 9- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 11-4-29 be reduced to a market value of \$ 382,755.
- 10- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 11-4-29 be reduced to a market value of \$ 336,175.
- 11- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 11-4-29 be reduced to a market value of \$ 285,770.
- 12- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 11-4-29 be reduced to a market value of \$ 285,770.
  
- 13- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 46-3-8.1 be reduced to a market value of \$ 484,560.
- 14- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 46-3-8.1 be reduced to a market value of \$ 445,280.
- 15- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 46-3-8.1 be reduced to a market value of \$ 374,400.
- 16- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 46-3-8.1 be reduced to a market value of \$ 374,400.
- 17- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 46-3-8.1 be reduced to a market value of \$ 374,480.
- 18- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 46-3-8.1 be reduced to a market value of \$ 374,480.
  
- 19- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 46-2-12 be reduced to a market value of \$ 740,560.
- 20- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 46-2-12 be reduced to a market value of \$ 600,400.
- 21- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 46-2-12 be reduced to a market value of \$ 504,880.
- 22- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 46-2-12 be reduced to a market value of \$ 504,880.
- 23- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 46-2-12 be reduced to a market value of \$ 504,880.
- 24- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 46-2-12 be reduced to a market value of \$ 504,880.
  
- 25- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 46-5-5 be reduced to a market value of \$ 147,900.
- 26- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 46-5-5 be reduced to a market value of \$ 135,150.
- 27- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 46-5-5 be reduced to a market value of \$ 114,325.
- 28- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 46-5-5 be reduced to a market value of \$ 114,325.

- 29- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 46-5-5 be reduced to a market value of \$ 114,325.
- 30- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 46-5-5 be reduced to a market value of \$ 114,325.

**WHEREAS**, CER Enterprises, Inc. is willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 46-5-6.1 be reduced to a market value of \$ 214,480.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 46-5-6.1 be reduced to a market value of \$ 164,040.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 46-5-6.1 be reduced to a market value of \$ 164,040.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 46-5-6.1 be reduced to a market value of \$ 164,040.
- 5- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 46-5-6.1 be reduced to a market value of \$ 164,040.
- 6- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 46-5-6.1 be reduced to a market value of \$ 164,040.
  
- 7- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 46-2-9 be reduced to a market value of \$ 27,040.
- 8- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 46-2-9 be reduced to a market value of \$ 16,000.
- 9- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 46-2-9 be reduced to a market value of \$ 16,000.
- 10- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 46-2-9 be reduced to a market value of \$ 16,000.
- 11- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 46-2-9 be reduced to a market value of \$ 16,000.
- 12- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 46-2-9 be reduced to a market value of \$ 16,000.
  
- 13- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 46-2-8 be reduced to a market value of \$ 27,040.
- 14- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 46-2-8 be reduced to a market value of \$ 16,000.
- 15- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 46-2-8 be reduced to a market value of \$ 16,000.
- 16- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 46-2-8 be reduced to a market value of \$ 16,000.

- 17- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 46-2-8 be reduced to a market value of \$ 16,000.
- 18- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 46-2-8 be reduced to a market value of \$ 16,000.

**WHEREAS**, Campbell Residential Properties, Inc. is willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 38-2-16 be reduced to a market value of \$ 98,106.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 38-2-16 be reduced to a market value of \$ 93,624.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 38-2-16 be reduced to a market value of \$ 86,569.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 38-2-16 be reduced to a market value of \$ 73,953.
- 5- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 38-2-16 be reduced to a market value of \$ 73,289.
- 6- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 38-2-16 be reduced to a market value of \$ 73,289.

**WHEREAS**, Richard H. Campbell, Sr. and Irene Campbell, Trustee, are willing to settle these proceedings without interest, costs or disbursements, in the following manner:

- 1- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2009-2010 as tax map number 14-3-60 be reduced to a market value of \$ 22,720.
- 2- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2010-2011 as tax map number 14-3-60 be reduced to a market value of \$ 20,080.
- 3- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2011-2012 as tax map number 14-3-60 be reduced to a market value of \$ 20,080.
- 4- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2012-2013 as tax map number 14-3-60 be reduced to a market value of \$ 20,080.
- 5- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2013-2014 as tax map number 14-3-60 be reduced to a market value of \$ 20,080.
- 6- That the real property of Petitioner described on the City of Newburgh tax roll for the tax year 2014-2015 as tax map number 14-3-60 be reduced to a market value of \$ 18,400.

**NOW, THEREFORE BE IT RESOLVED**, that the proposed settlements as set forth and described above and the attached Consent Judgments are hereby accepted pursuant to the provisions of the General City Law and other related laws.

**BE IT FURTHER RESOLVED**, that Michael G. Ciaravino, City Manager of the City of Newburgh; Joanne Majewski, Assessor of the City of Newburgh; and Richard B. Golden, Esq. on behalf of Burke, Miele & Golden, LLP, as Special Counsel, be and they hereby are designated as the persons for the City who shall execute the attached Consent Judgments on behalf of the City of Newburgh, and Richard B. Golden, Esq., as Special Counsel, and counsel for the Petitioners shall present such Consent Judgments to the Orange County Supreme Court for approval pursuant to the aforesaid laws.

SUPREME COURT – STATE OF NEW YORK  
COUNTY OF ORANGE

-----X

In the Matter of the Application of  
CAMPBELL RESIDENTIAL PROPERTIES, INC.,

Petitioner,

**CONSENT JUDGMENT**

- against -

CITY OF NEWBURGH, a Municipal Corporation,  
Its ASSESSOR, and its BOARD OF ASSESSMENT  
REVIEW,

**Index No.      2009-8394  
                         2010-8358  
                         2011-7341  
                         2012-6543  
                         2013-6205  
                         2014-5943**

Respondents.

For review of a Tax Assessment under Article 7  
Of the Real Property Tax Law

-----X

**PRESENT: HON. CATHERINE M. BARTLETT**

**UPON THE CONSENT** attached hereto duly executed by the attorneys for all the parties and by all the parties, it is

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 38-2-16

be reduced in market value from \$118,200.00, \$112,800.00, \$104,300.00, \$89,100.00, \$88,300.00 and \$85,100.00, respectively to market values of \$98,106.00, \$93,624.00, \$86,569.00, \$73,953.00, \$73,289.00 and \$73,289.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the Petitioner’s real property taxes on said parcel above described for the 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 School, County and City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk’s Office; and it is further,

**ORDERED**, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the

assessment roll of said City the entries, changes and corrections necessary to conform such reduced market values; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amounts, if any, paid as City taxes and City Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioners, the amounts, if any, paid as County taxes and County Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein, with the City of Newburgh and County of Orange to determine the amount and method of payment as appropriate; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amounts, if any, paid as School District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be no interest paid or credited in connection with this Consent Judgment provided any refund due is made within sixty (60) days of the service of notice of entry of this Consent Judgment; and it is further,

**ORDERED**, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed:           December \_\_\_\_, 2014  
                      Goshen, New York

**ENTER:**

\_\_\_\_\_  
HON. CATHERINE M. BARTLETT  
SUPREME COURT JUSTICE

**ON CONSENT:**

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Michael G. Ciaravino  
City Manager  
Dated:

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KAREN HAGSTROM, ESQ.  
Attorney for the Petitioner  
Dated:

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Joanne Majewski  
Assessor  
Dated:

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RICHARD B. GOLDEN, ESQ.  
Burke, Miele & Golden, LLP  
Attorney for Respondents  
Dated:

SUPREME COURT – STATE OF NEW YORK  
COUNTY OF ORANGE

-----x  
In the Matter of the Application of  
CER ENTERPRISES, INC.,

Petitioner,

**CONSENT JUDGMENT**

- against -

CITY OF NEWBURGH, a Municipal Corporation,  
Its ASSESSOR, and its BOARD OF ASSESSMENT  
REVIEW,

**Index Nos.    2009-8393  
                      2010-8356  
                      2011-7344  
                      2012-6544  
                      2013-6203  
                      2014-5942**

Respondents.

For review of a Tax Assessment under Article 7  
Of the Real Property Tax Law

-----x  
**PRESENT: HON. CATHERINE M. BARTLETT**

**UPON THE CONSENT** attached hereto duly executed by the attorneys for all the parties and by all the parties, it is

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 46-5-6.1

be reduced in market value from \$268,100.00, \$206,300.00, \$206,300.00, \$206,300.00, \$206,300.00 and \$179,200.00, respectively to market values of \$214,480.00, \$165,040.00, \$165,040.00, \$165,040.00, and \$165,040.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 46-2-9

be reduced in market value from \$33,800.00, \$20,000.00, \$20,000.00, \$20,000.00, \$20,000.00 and \$17,200.00, respectively to market values of \$27,040.00, \$16,000.00, \$16,000.00,

\$16,000.00, \$16,000.00 and \$16,000.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 46-2-8

be reduced in market value from \$33,800.00, \$20,000.00, \$20,000.00, \$20,000.00, \$20,000.00 and \$17,200.00, respectively to market values of \$27,040.00, \$16,000.00, \$16,000.00, \$16,000.00, \$16,000.00 and \$16,000.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the Petitioner's real property taxes on said parcels above described for the 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 School, County and City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk's Office; and it is further,

**ORDERED**, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market values; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amounts, if any, paid as City taxes and City Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioners, the amounts, if any, paid as County taxes and County Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein, with the City of Newburgh and County of Orange to determine the amount and method of payment as appropriate; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amounts, if any, paid as School District taxes against the

original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be no interest paid or credited in connection with this Consent Judgment provided any refund due is made within sixty (60) days of the service of notice of entry of this Consent Judgment; and it is further,

**ORDERED**, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed: December \_\_, 2014  
Goshen, New York

**ENTER:**

\_\_\_\_\_  
HON. CATHERINE M. BARTLETT  
SUPREME COURT JUSTICE

**ON CONSENT:**

\_\_\_\_\_  
Michael G. Ciaravino  
City Manager  
Dated:

\_\_\_\_\_  
KAREN HAGSTROM, ESQ.  
Attorney for the Petitioner  
Dated:

\_\_\_\_\_  
Joanne Majewski  
Assessor  
Dated:

\_\_\_\_\_  
RICHARD B. GOLDEN, ESQ.  
Burke, Miele & Golden, LLP  
Attorney for Respondents  
Dated:

SUPREME COURT – STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
In the Matter of the Application of  
K-C NEWBURGH, INC., R H CAMPBELL INC.,  
RHK ENTERPRISES, INC., CER ENTERPRISES,  
INC. and CAMCO PROPERTIES, INC.

Petitioner,

**CONSENT JUDGMENT**

- against -

CITY OF NEWBURGH, a Municipal Corporation,  
Its ASSESSOR, and its BOARD OF ASSESSMENT  
REVIEW,

**Index Nos. 2009-8392  
2010-8354  
2011-7340  
2012-6545  
2013-6202  
2014-5939**

Respondents.

For review of a Tax Assessment under Article 7  
Of the Real Property Tax Law

-----X  
**PRESENT: HON. CATHERINE M. BARTLETT**

**UPON THE CONSENT** attached hereto duly executed by the attorneys for all the parties and by all the parties, it is

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 30-4-22

be reduced in market value from \$270,300.00, \$244,000.00, \$205,200.00, \$193,100.00, \$159,000.00 and \$156,800.00, respectively to market values of \$216,240.00, \$195,200.00, \$164,160.00, \$154,480.00, \$127,200.00, and \$127,200.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 11-4-29

be reduced in market value from \$550,900.00, \$535,500.00, \$450,300.00, \$395,500.00, \$336,200.00 and \$301,400.00, respectively to market values of \$468,265.00, \$455,175.00, \$382,755.00, \$336,175.00, \$285,770.00 and \$285,770.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 46-3-8.1

be reduced in market value from \$605,700.00, \$556,600.00, \$468,000.00, \$468,000.00, \$468,100.00 and \$411,900.00, respectively to market values of \$484,560.00, \$445,280.00, \$374,400.00, \$374,400.00, \$374,480.00 and \$374,480.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 46-2-12

be reduced in market value from \$925,700.00, \$750,500.00, \$631,100.00, \$631,100.00, \$631,100.00 and \$605,200.00, respectively to market values of \$740,560.00, \$600,400.00, \$504,880.00, \$504,880.00, \$504,880.00 and \$504,880.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 46-5-5

be reduced in market value from \$174,000.00, \$159,000.00, \$134,500.00, \$134,500.00, \$134,500.00 and \$123,300.00, respectively to market values of \$147,900.00, \$135,150.00, \$114,325.00, \$114,325.00, \$114,325.00 and \$114,325.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the Petitioner's real property taxes on said parcels above described for the 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 School, County and

City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk's Office; and it is further,

**ORDERED**, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the assessment roll of said City the entries, changes and corrections necessary to conform such reduced market values; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amounts, if any, paid as City taxes and City Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioners, the amounts, if any, paid as County taxes and County Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein, with the City of Newburgh and County of Orange to determine the amount and method of payment as appropriate; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amounts, if any, paid as School District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be no interest paid or credited in connection with this Consent Judgment provided any refund due is made within sixty (60) days of the service of notice of entry of this Consent Judgment; and it is further,

**ORDERED**, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed: December \_\_\_\_, 2014  
Goshen, New York

**ENTER:**

\_\_\_\_\_  
HON. CATHERINE M. BARTLETT  
SUPREME COURT JUSTICE

**ON CONSENT:**

---

Michael G. Ciaravino  
City Manager  
Dated:

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KAREN HAGSTROM, ESQ.  
Attorney for the Petitioner  
Dated:

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Joanne Majewski  
Assessor  
Dated:

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RICHARD B. GOLDEN, ESQ.  
Burke, Miele & Golden, LLP  
Attorney for Respondents  
Dated:

SUPREME COURT – STATE OF NEW YORK  
COUNTY OF ORANGE

-----x

In the Matter of the Application of  
RICHARD H. CAMPBELL, SR., IRENE  
CAMPBELL, TRUSTEE,

Petitioner,

**CONSENT JUDGMENT**

- against -

CITY OF NEWBURGH, a Municipal Corporation,  
Its ASSESSOR, and its BOARD OF ASSESSMENT  
REVIEW,

Respondents.

**Index Nos.    2009-8395**  
**2010-8359**  
**2011-7342**  
**2012-6542**  
**2013-6207**  
**2014-5944**

For review of a Tax Assessment under Article 7  
Of the Real Property Tax Law

-----x

**PRESENT: HON. CATHERINE M. BARTLETT**

**UPON THE CONSENT** attached hereto duly executed by the attorneys for all the parties and by all the parties, it is

**ORDERED**, that the real property of Petitioner described on the City of Newburgh tax rolls for the tax years 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 as follows:

Tax Map No. 14-3-60

be reduced in market value from \$28,400.00, \$25,100.00, \$25,100.00, \$25,100.00, \$25,100.00 and \$18,400.00, respectively to market values of \$22,720.00, \$20,080.00, \$20,080.00, \$20,080.00, \$20,080.00 and \$18,400.00 respectively, prior to the application of any real property tax exemptions, if any; and it is further,

**ORDERED**, that the Petitioner’s real property taxes on said parcel above described for the 2009-2010, 2010-2011, 2011-2012, 2012-2013, 2013-2014 and 2014-2015 School, County and City taxes be adjusted accordingly and that any overpayment by Petitioner be refunded upon the entering of this Consent Judgment with the Orange County Clerk’s Office; and it is further,

**ORDERED**, that the officer or officers having custody of the aforesaid City of Newburgh assessment rolls shall make or cause to be made upon the proper books and records and upon the

assessment roll of said City the entries, changes and corrections necessary to conform such reduced market values; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner by the City of Newburgh and/or the County Commissioner of Finance, as the case may be, the amounts, if any, paid as City taxes and City Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioners, the amounts, if any, paid as County taxes and County Special District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein, with the City of Newburgh and County of Orange to determine the amount and method of payment as appropriate; and it is further,

**ORDERED**, that there shall be audited, allowed and credited to the Petitioner by the Newburgh City School District, the amounts, if any, paid as School District taxes against the original assessments in excess of what said taxes would have been if the market values had been determined as herein; and it is further,

**ORDERED**, that there shall be no interest paid or credited in connection with this Consent Judgment provided any refund due is made within sixty (60) days of the service of notice of entry of this Consent Judgment; and it is further,

**ORDERED**, that these proceedings are settled without costs or disbursements to either party as against the other.

Signed: December \_\_\_\_, 2014  
Goshen, New York

**ENTER:**

\_\_\_\_\_  
HON. CATHERINE M. BARTLETT  
SUPREME COURT JUSTICE

**ON CONSENT:**

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Michael G. Ciaravino  
City Manager  
Dated:

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KAREN HAGSTROM, ESQ.  
Attorney for the Petitioner  
Dated:

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Joanne Majewski  
Assessor  
Dated:

---

RICHARD B. GOLDEN, ESQ.  
Burke, Miele & Golden, LLP  
Attorney for Respondents  
Dated:

RESOLUTION NO.:       308       - 2014

OF

DECEMBER 15, 2014

**RESOLUTION AUTHORIZING THE CITY MANAGER TO EXECUTE AN ADDITIONAL SIX MONTH EXTENSION TO THE FIRST AMENDED AGREEMENT OF LEASE WITH MEMORARE REALTY HOLDING CORP. FOR THE CONTINUED LEASE OF APPROXIMATELY 3.65 ACRES OF VACANT REAL PROPERTY SITUATED ON THE HUDSON RIVER KNOWN AS SECTION 31, BLOCK 5, LOTS 13.2 AND 14 FOR THE PURPOSE OF PROVIDING PARKING FOR USERS OF THE NEWBURGH-BEACON FERRY AND OTHER PARKERS DURING NON-COMMUTING HOURS**

**WHEREAS**, the City of Newburgh (“City”) and Memorare Realty Holding Corp. (“Memorare”) executed a Lease on July 30, 2004 (“Lease”) for the lease and use of approximately 3.65 acres of vacant real property situated on the Hudson River known as Section 31, Block 5, Lots 13.2 and 14, for the purpose of providing parking for users of the Newburgh-Beacon Ferry and other parkers during non-commuting hours, with the City being reimbursed by New York State for the rental payments and improvements provided under such Lease; and

**WHEREAS**, by Resolution No.: 142 - 2010 of June 14, 2010, the City Council authorized the City Manager to execute a First Amended Agreement of Lease with Memorare to accord with the amended reimbursement agreement with New York State that was effective April 21, 2010; and

**WHEREAS**, by Resolution No.: 169 - 2014 of July 14, 2014, the City Council authorized the City Manager to execute a four month extension to the First Amended Lease for the period of August 1, 2014 to November 30, 2014 in order to review and evaluate the terms and conditions for continuing said lease; and

**WHEREAS**, due to unforeseen circumstances, it is necessary to further extend the First Amended Lease for an additional six month period in order to maintain access to the subject property for City residents, visitors, and all persons wishing to avail themselves of such ferry service; the same being in the best interests of the City of Newburgh;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York that the City Manager on behalf of the City of Newburgh, be and he is hereby authorized to execute an additional six month extension to First Amended Agreement of Lease with Memorare in substantially the same form as annexed hereto with other provisions as Corporation Counsel may require.

SECOND ADDENDUM TO FIRST AMENDED AGREEMENT OF LEASE

THIS SECOND ADDENDUM TO FIRST AMENDED AGREEMENT OF LEASE ("Addendum"), made as of this \_\_\_ day of December, 2014, by and between Memorare Realty Holding Corp., a New York business corporation, having an address of 2 Washington Street, P.O. Box 3231, Newburgh, New York 12550, ("Landlord"), and the City of Newburgh, a New York municipal corporation with principal offices at 83 Broadway, City Hall, Newburgh, New York 12550 ("Tenant").

WITNESSETH:

WHEREAS, the Landlord and Tenant executed a First Amended Agreement of Lease with to accord with the amended reimbursement agreement with New York State that was effective April 21, 2010; and

WHEREAS, the First Amended Lease expired on July 31, 2014 and Tenant desires to continue to lease from Landlord the Premises for use in connection with a project (the "Project") for parking to be used for ferry service between the City of Newburgh and Beacon and uses associated therewith and Landlord desires to lease to Tenant the Premises therefor; and

WHEREAS, the parties agreed to extend the terms of the First Amended Lease for a four month period from August 1, 2014 until November 30, 2014 for the purpose of negotiating a renewal; and

WHEREAS, the parties agree that additional time is necessary to negotiate said renewal and desire to continue the terms of the First Amended Lease for an additional six month period:

NOW, THEREFORE, in consideration of the premises and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties agree as follows:

1. The renewal term set forth in Paragraph 5 of the First Amended Lease and Paragraph 1 of the First Addendum to the First Amended Lease shall be extended for an additional six (6) month term commencing on December 1, 2014 and terminating on May 3, 2015 ("Second Amended Renewal Term").
2. For the balance of the Second Amended Renewal Term, if any, rent payable monthly in advance in equal monthly installments of Twenty-One Thousand Two Hundred Seventy-Eight (\$21,278) Dollars each.
3. All other terms and conditions set forth in the First Amended lease shall remain in full force and effect during the Second Amended Renewal Term.

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RESOLUTION NO.: 309 - 2014

OF

DECEMBER 15, 2014

A RESOLUTION TO AUTHORIZE THE DISCONTINUANCE OF  
TAX CERTIORARI PROCEEDINGS IN THE ORANGE COUNTY SUPREME COURT  
BEARING ORANGE COUNTY INDEX NOS. 7560-2011, 6473-2012, 6365-2013  
AND 5951-2014 INVOLVING CITY OF NEWBURGH WATER SUPPLY LOCATED IN  
THE TOWN OF NEW WINDSOR

**NOW, THEREFORE, BE IT RESOLVED**, that the Council of the City of Newburgh, New York, hereby authorizes the discontinuance of tax certiorari proceedings in the Orange County Supreme Court bearing Index Nos. 7560-2011, 6473-2012, 6365-2013 and 5951-2014 involving the City of Newburgh Water Supply located in the Town of New Windsor.

RESOLUTION NO.: 310 - 2014

OF

DECEMBER 15, 2014

**A RESOLUTION AUTHORIZING THE CITY MANAGER  
TO EXECUTE A PAYMENT OF CLAIM  
WITH ALLSTATE INSURANCE COMPANY a/s/o CRAIG BEVIER  
IN THE AMOUNT OF \$9,494.72**

**WHEREAS**, Allstate Insurance Company a/s/o Craig Bevier brought a claim against the City of Newburgh; and

**WHEREAS**, the parties have reached an agreement for the payment of the claim in the amount of Nine Thousand Four Hundred Ninety-Four and 72/100 Dollars (\$9,494.72) in exchange for a release to resolve all claims among them; and

**WHEREAS**, this Council has determined it to be in the best interests of the City of Newburgh to settle the matter for the amount agreed to by the parties;

**NOW, THEREFORE, BE IT RESOLVED**, by the Council of the City of Newburgh, New York, that the City Manager is hereby authorized to settle the claim of Allstate Insurance Company a/s/o Craig Bevier in the total amount of Nine Thousand Four Hundred Ninety-Four and 72/100 Dollars (\$9,494.72) and that the City Manager be and he hereby is authorized to execute documents as the Corporation Counsel may require to effectuate the settlement as herein described.