

SUPREME COURT OF THE STATE OF NEW YORK  
COUNTY OF ORANGE

-----X  
In the Matter of the Application of

THE ENLARGED CITY SCHOOL DISTRICT OF  
MIDDLETOWN

Petitioner,

**AFFIRMATION IN RESPONSE  
OF ALEX SMITH**

-against-

Orange Index # 10-7804

THE CITY OF MIDDLETOWN,

JOSEPH M. DeSTEFANO, in his capacity as MAYOR;

J. MIGUEL RODRIGUES, in his capacity as MIDDLETOWN  
COMMON COUNCIL PRESIDENT and member of the  
MIDDLETOWN COMMON COUNCIL;

JOSEPH G. MASI, THOMAS BURR, SCOTT A. SMITH,  
ASHOK SABNIS, RAYMOND DEPEW, BILL HIMARAS,  
JOEL SIERRA, and C. LEE GEROW, in their capacities as  
members of the MIDDLETOWN COMMON COUNCIL;

THE MIDDLETOWN COMMON COUNCIL;

THE MIDDLETOWN DEPARTMENT OF PUBLIC WORKS;  
and

JACOB TAWIL, in his capacity as MIDDLETOWN  
DEPARTMENT OF PUBLIC WORKS COMMISSIONER,

Respondents.

For a Judgment under Article 78 of the Civil Practice  
Law and Rules.

-----X

ALEX SMTH, an attorney duly licensed in the State of New York, hereby affirms,  
under penalties of perjury, that the following is true to the best of his knowledge,

information and belief:

1. I am the duly appointed Assistant Corporation Counsel of the City of Middletown, and I make this Affirmation in Response to the Petition and Complaint.

2. After an introductory telephone call from the District's counsel in which was briefly discussed the impending subdivision application to build a new elementary school at the Chorley site, the City's Corporation Counsel was provided with Part I only of a SEQRA long-form Environmental Assessment Form. The only mention of sewer capacity or needs in Part I was a reference to the necessity for connection to the City's sewer system. No mention was made of the numbers of students or staff, and the only reference to water needs was an anticipated daily usage of 10,000 gallons per day. The District confirmed that only Part I was sent to the City in September, 2008 when District landscape architect, Tim Bonaparte, stated such in a School Board meeting on May 6, 2010 during a discussion of the District's version of the chronology of this issue. I recently listened to a videotape of that May 6<sup>th</sup> Board meeting, and I confirmed that Bonaparte made that comment.

3. On pages 6-7 in Petitioner's Memorandum of Law, the District contends the City was aware in September, 2008 of the District's assertion that the sewer line could handle the needs of the new school, Although of relatively little importance, the City was not made aware of this contention in September, 2008; this assertion was contained in another part of the EAF which was received after that month by the City.

4. The District also contends on page 7 of its Memorandum that the City's only disagreement with the EAF was the need for a traffic study. This statement is misleading

because it is incomplete. First, as of October, 2008, the City only had 10 pages of a Part 1 EAF. The balance of the EAF as supplemented by plans and engineering reports were not received by the City until December, 2009. Secondly, in my letter of October 9, 2008 (responding to the 10-page Part 1 EAF), request was made of the District to provide the amount of additional water needed by the new school; this letter is Petitioner's Exhibit 4.

5. At the May 6, 2010 School Board meeting, Mr. Bonaparte further stated that the District did most of their design and engineering calculations between October, 2008 and December, 2008. However, Bonaparte also admitted that this information, in the form of water and sanitary engineering reports, was not sent to the City until December, 2009. I confirmed these comments during my recent review of the videotape of that meeting. Neither Mr. Bonaparte, nor any District official, has ever explained why the District waited over a year to send this important information to the City.

6. The District's contentions, explicit and implicit, that the City conducted some sort of searching, in-depth review of the District's proposal in late 2008 is thus belied by the significant lack of information provided to the City in that time period. It is further belied by the minutes of the public hearing conducted on the District's 2-lot subdivision application by the Middletown Common Council on February 17, 2009; a copy of the minutes of that hearing are annexed hereto as Exhibit A. During that hearing, then Common Council President (now City Judge) Robert Moson explained:

It sounds as if what you are suggesting is more of a safety issue that more appropriately would go to the school board itself and how they plan to go forward with the project rather than the actual subdivision that is now under consideration by the Council. Technically, or procedurally, the only thing that is before us is the application for a subdivision. We are not voting on

anything directly with what the school board plans to do with the property.

A few minutes later, during a discussion of traffic issues, Alderman Gerry Kleiner stated:

I just wanted to make sure that the public is aware that it is not an after the fact – that it still has some impact – that it is a real public hearing. I mean people’s concerns, I would think, on whether that subdivision was allowed would be on eventual traffic patterns which would be explained, egress and access to the land. I’m not sure what else the decision would be made on.

No issues regarding water and sewer were brought up during the hearing.

The District’s papers to this Court minimize, if not altogether ignore, the fact that the only reason the City was reviewing this proposal in late 2008 – early 2009 was the need for a simple subdivision. Indeed, the very resolution of subdivision approval voted that same night conditions the approval upon “[f]ield approvals by the Commissioner of Public Works.”

7. The District’s contentions that it is prohibited by law to contribute to the cost of a new sewer line off school property is belied by just such a contribution 12 years ago. A new middle school was constructed just outside the City boundary on County Route 78. New water and sewer lines were constructed, parts of which were off school property. The District and City signed an agreement (annexed hereto as Exhibit N) to divide the cost of construction. The total cost of construction was \$570,510; the City contributed \$125,917 and the District contributed \$444,593. These figures are verified by an invoice submitted by the City to the District; this invoice is annexed hereto as Exhibit O. The District’s share was paid in part (\$361,000) by a conveyance of real properties, and the balance in cash in the amount of \$83,593; the payment is verified in a letter by Corporation Counsel Richard Guertin, dated April 20, 1998 and annexed hereto as Exhibit P. The

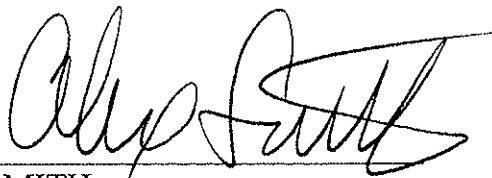
District's argument to this Court that it cannot contribute to off-school-property sewer line construction because it will benefit City residents is directly contradicted by the actions the District took in 1998 to benefit a large number of non-school users. The District in 1998 was a partner with the City in recognizing the long term benefits of an enlarged line to future growth in the City and in the Towns of Wallkill and Wawayanda.

8. The District's complaints that the City should have alerted them about the sewer line prior to the referendum are disingenuous for another reason: given the District's equally loud insistence that it is constitutionally and statutorily prohibited from contributing to the new line, had the District been advised in September, 2008 about the inadequacy of the present line, it would have presumably raised the same phony obstacles.

9. The April, 2006 developments near Dolson Avenue were in various stages of approvals, some already having been given City approvals. Documentation of the developers' agreement is annexed hereto as Exhibit Q.

WHEREFORE, it is respectfully requested that the Petition and Complaint be dismissed, and that this Court grant such other and further relief as may be deemed just and necessary.

Dated: Middletown, New York  
August 23, 2010



ALEX SMITH

**City of Middletown  
Common Council  
Public Hearing and Special Meeting  
February 17, 2009**

A special meeting of the Common Council was held on Tuesday, February 17, 2009, 16 James Street, Middletown, NY, in the Council Chambers, President Moson presiding.

The City Clerk read the following special meeting notice:

NOTICE IS HEREBY GIVEN, that the Common Council of the City of Middletown will hold a SPECIAL MEETING on Tuesday February 17, 2009 beginning at 8:00 PM, in the Common Council Chambers, City Hall, 16 James Street, Middletown, NY. This Special Meeting is called for the following purposes:

- to hold a public hearing on a proposed 2-lot subdivision, known as Enlarged City School District of Middletown/Alta East, at 57 Clemson Avenue/49 Clemson Avenue
- authorization of a memorandum of understanding with Empire Management Services, Inc.
- authorization to bond for two fire trucks
- consider a resolution in opposition of the MTA Employer Mobility Tax

By Order of the Mayor, City of Middletown

Signed,

Alicia E. Olsen  
Clerk of the Common Council

The Clerk acknowledged that an affidavit of service has been received and filed.

**Roll Call**

Present: Ald. Sierra, Meyer, Burr, VanderVoort, Kleiner, Rodrigues, Depew, Pres. Moson – 8.  
Absent: Ald. Kitson – 1.

**Public Hearing**

The City Clerk read the following Public Hearing Notice:

Notice is hereby given that the Common Council of the City of Middletown will hold a public hearing on Tuesday, February 17, 2009, on or as near to 8:00 p.m. as possible, Common Council Chambers, 2<sup>nd</sup> floor, 16 James Street, to hear any and all persons wishing to be heard on a proposed 2-lot subdivision, known as Enlarged City School District of Middletown/Alta East, at 57 Clemson Avenue/49 Clemson Avenue, tax parcels Section 15, Block 1, Lots 7 and 9.

Any and all persons wishing to be heard will be given an opportunity to speak either for or against the proposed subdivision.

Pres. Moson: I hereby declare the Public Hearing open. Any members of the community having any comments regarding this proposal, please come forward and state your name and address.

Evelyn Isseks: Is this about that one piece of land that is at the end of Prospect?

Exhibit A

Pres. Moson: I believe it is; yes, it is part of it.

Mrs. Isseks: When I voted to have the school at this property I didn't realize that they wanted a subdivision of this land. I feel that this is a very important section, and when I voted yes I thought it was part of the school property. I don't know whether there is any other way in and out outside of Roosevelt Avenue. In case of emergency -- whether fire trucks, ambulances or police -- the school is going to be very close to where the condominiums are and the fire trucks, police and ambulances would have to go all the way down to Roosevelt to get in and out of the school. I am very concerned in case of emergencies that is quite a long distance away.

Pres. Moson: It sounds as if what you are suggesting is more of a safety issue that more appropriately would go to the school board itself and how they plan to go forward with the project rather than the actual subdivision that is now under consideration by the Council. Technically, or procedurally, the only thing that is before us is the application for a subdivision. We are not voting on anything directly with what the school board plans to do with the property.

Mrs. Isseks: This property was not supposed to be part of the property we are buying. We would not be able to have this road. In other words, there would not be a way to get into the property except around Roosevelt.

Pres. Moson: We had a presentation about this matter by a representative from the School District, Mr. Scott, and that was not what was presented to us. Essentially, I do not want to characterize it as a surplus piece of property, but the piece that they want to dispose of is not necessary for what they plan to do. They want to divest it.

Mrs. Isseks: It is important to get into the property easily to be near the school.

Pres. Moson: Again, that is an issue that should be brought up with the school board regarding what they do with it.

Mrs. Isseks: But right now you are deciding whether the school board could have this property. You are talking about making a street out of it, closing it off so that the school can't use it.

Pres. Moson: I don't know if that's what . . .

Ald. Meyer: Is Mr. Scott here? I have a map. I don't know if representatives of the School District want to come up?

Mrs. Isseks: Is it the land on Prospect Street that was part of the original plan?

Ald. Meyer: I believe it is a driveway that we are subdividing.

Mrs. Isseks: But originally it was on the property that we had approved for the school.

Pres. Moson: Part of that parcel, yes.

Ald. Meyer: Abandoned.

Judy Malie: I am the attorney with Donoghue, Thomas, Auslander & Drohan and we represent the Enlarged City School District of Middletown. As part of the application that was submitted before you, you will note that it is a driveway that we are subdividing out and it was actually part of the contract of sale between the District and Alta East in that they had required that they retain the right to use that parcel of property and that it be subdivided from the parcel that the District is purchasing. And I think that at the time we were here before the Planning Board for Middletown just to explain the project to them, there were neighbors who were residents of Prospect Street

who were concerned that the District might use that portion of the road to access the property and shared their concerns not only with us but with the Planning Board that it would be quite an impact on that community for having school buses and any other traffic using Prospect Street to enter into Chorley or any building from that area. And we had represented that as part of the purchase that was going out to public voters which was approved by the Board of Education and approved by the voters that that portion of the property where there is a current easement or natural right of way for the School District would be deleted or subdivided from the parcel the School District is buying unless Alta East and the School District would not retain an easement over that property to get onto Prospect. So that's what is before you tonight.

Ald. Kleiner: I just want to be clear that the contract of sale has actually been executed.

Ms. Malie: The contract of sale has been executed. It was subject to voter approval which the District received in December 2008 and it was also subject to a number of conditions, one of which was getting subdivision approval from the Common Council.

Ald. Kleiner: That's the point that I wanted to make clear – so the sale is actually dependent on this subdivision going through.

Ms. Malie: That is only one of the particular provisions that is on the agreement of the contract of sale.

Ald. Kleiner: So if at this public hearing it would be determined that the Council didn't let this subdivision go through that would affect the contract of sale, that it would void the contract of sale?

Ms. Malie: I can't tell you that it would void it; it would certainly have an impact on it. As I indicated, the Board of Education received the contract of sale all negotiated before it even went out for voter approval and when it was presented for voter approval showing that that portion of property that went out after it was subdivided was not included in the purchase of the property.

Ald. Kleiner: I just wanted to make sure that the public is aware that it is not an after the fact – that it still has some impact – that it is a real public hearing. I mean people's concerns, I would think, on whether that subdivision was allowed would be on eventual traffic patterns which would be explained, egress and access to the land. I'm not sure what else the decision would be made on.

Ms. Malie: My understanding is that that property on Prospect Street would really not be a good access point to use for the School District.

Ald. Meyer: Just as a reminder, when Mr. Scott and I think Mr. Petigrow came to present the map this was explained to us when the committee voted to pass it forward to a public hearing that that piece was always meant to be subdivided but they needed to do the referendum first, if I remember correctly. There was a procedure that they had to follow and they followed their procedure – the School Board voted, then there was a referendum, then it came to our committee and then it came forward to a public hearing. Our committee voted to pass it to the public hearing with approval and I believe it was our recommendation to do a full traffic study for the area. Has that been done? Or is that being done? Or when will that be done? And that is not for us. That's really for the planning.

Thomas Scott, Superintendent of Buildings and Grounds for the School District: That was completed as far as the SEQRA process prior to the vote.

Ald. Meyer: O.k., so if there was a problem with this piece we would have learned that through the study.

Mr. Scott: This is correct.

Ald. Depew: Pres. Moson, would it be possible to do a little bit of a clarification that any past lawsuit issues that we had with this that Mr. Smith was dealing with to kind of clear up the fact that those are not going to be an issue going forward with this project.

Pres. Moson: I am not certain what you are getting at, but if you want to ask Mr. Smith the question, feel free.

Ald. Depew: Entrance wise, in the past, turned out to be an issue with this parcel. So how are the entrances different now than they were before?

Alex Smith: They're really not. Nothing has really changed. If you recall, we examined the possibility of using that driveway which is now going to be sectioned off by the subdivision -- we examined the possibility of using that driveway to either provide access to the Porto subdivision from Cantrell or to Prospect and both were rejected and as I recall the Prospect one was rejected for a couple of reasons, one being we would need consent of the owners along Prospect to widen it into being a public street. Certainly, there would be no way for school buses to go on Prospect as it is now. Legally that would probably be impossible if not impractical. As far as Jay Street goes, there is really nothing in the subdivision that impacts Jay Street. The School District is going to hold those parcels. They are going to inherit the rights that the previous owners had to those parcels and they would have the right of ingress and egress through Jay Street if they desire. Now we have been presented that they would not be using Jay Street as everyday ingress and egress, that it would be used for emergencies only, possibly graded or not even fully blacktopped; it would just have some kind of planting there.

Faust Pugliese: First I want to thank you for some of your comments; not just sitting here, really doing your job. We voted for you people to represent us so I am glad to hear what I heard. Did anybody inquire about getting grants for the fire trucks? Before you do anything, remember it's tough times for taxpayers. As long as you don't burden them with taxes -- think of that first.

Susan Cleaver: I live in Goshen. The reason I am here is because I looked at this application for Chorley School. When I looked at the application I noticed all the fields they have planned -- I think there's two full sized fields and two baseball fields, possibly. And I don't see that accounted for. I imagine if they were our fields they would be put to use. I don't see that accounted for in your traffic studies. I live in Goshen relatively close to a park with a lot of activity and when it lets loose everything is at a standstill because there is so much traffic. And if it hasn't been accounted for, I suggest that you do because chances are it's going to be used -- kids like to play sports -- and you could run into the same problem here and you are in even tighter quarters. I just wanted to bring this to your attention and I think it should be part of a full traffic study.

Jeff Brain: I have a question about what the plans currently are for the Jay Street Extension. It was previously mentioned about a possible emergency egress, but I would like to hear what the actual plans are at this stage for that stretch.

Judy Malie: There really hasn't been any determination made on Jay Street. They are taking into consideration potentially using that as a limited access for emergency vehicles only. They wouldn't even be putting in a permanent driving surface, but some kind of surface that would let grass grow through but still allow access for the emergency vehicles. It would not be used for an alternate access for people coming in and out of the site.

Jeff Brain: Thank you. For a long time there has been a lot of discussion about Jay Street because I own the property immediately adjacent to that. If Jay Street was extended all the way through it would be five feet from my house, so there was a lot of legal discussion. In terms of your plans, if that goes forward, what are your intentions about interfacing with the neighbors that are severely impacted by anything that you do on that property. I have been maintaining that

property for eighteen years now by the owner's permission, snow shoveling, raking leaves, cutting grass, putting plants in – it's a beautiful piece of property. What are the School District's intentions on working collaboratively with the neighbors on that?

Thomas Scott: I really can't answer that yet, except that the School District (not intelligible)

Jeff Brain: Thank you. The fact that I have been a caretaker of that property at my own expense, planting, putting massive amounts of bushes in, two hours every Saturday, there has been a lot of blood, sweat and effort to maintain that property, so that would be very much appreciated. We are very much in support of the development of the school. We would like to be sure that you keep in touch with the residents.

Ms. Malie: I am sure the District would like to keep that open dialogue. They are very mindful of the aesthetic as well as other factors that the school would have on the community and they want to keep those concerns down to a minimum as best possible. All those are very valid concerns.

Evelyn Isseks: Think of all the traffic that would be on this property. Roosevelt is not any wider than Prospect and that would be the only way to get in and out of the new school and the new school is going to be nearer Prospect than it is to Roosevelt Avenue. I really hope that you will give it a lot of thought before you give out this property as you are planning to do tonight.

There being no others who asked to be heard, Pres. Moson closed the public hearing at 8:20 p.m.

### **New Business**

#### **32.09 Resolution issuing Negative Declaration of Environmental Impact for Enlarged City School District of Middletown/Alta East**

On motion of Ald. Meyer and seconded by Ald. VanderVoort

Whereas, the Common Council of the City of Middletown has declared itself Lead Agency in connection with an application for a 2-lot subdivision of a parcel with tax map designation Section 15, Block 1, Lots 7 and 9, which is known as Enlarged City School District of Middletown/Alta East, located at 57 Clemson Avenue/49 Clemson Avenue,

Whereas, no other potential involved agencies have contested the Common Council's intention to declare itself Lead Agency, and

Whereas, the Common Council has determined that the project is an Unlisted Action as defined under Part 617 of the SEQRA regulations and is subject to the SEQRA review process, and

Whereas, the Common Council and Department of Public Works have considered and reviewed the project,

Now, therefore be it resolved, that the Common Council hereby finds and declares that there are no significant adverse environmental impacts to be associated with this application, and is, by this resolution, issuing a Negative Declaration of Environmental Impact as that term is defined in the Environmental Conservation Law and in Part 617 of the New York SEQRA regulations, and further directs that this resolution be filed and made available in accordance with the requirements of Part 617.

Roll Call: Ayes: Ald. Sierra, Meyer, Burr, VanderVoort, Kleiner, Rodrigues, Depew, Pres. Moson – 8. Absent: Ald. Kitson – 1.

#### **33.09 Resolution Granting Preliminary and Final Subdivision Approval for Enlarged City School District of Middletown/Alta East Project**

On motion of Ald. Meyer and seconded by Ald. VanderVoort

Whereas, the Common Council of the City of Middletown has declared itself Lead Agency in connection with an application for a 2-lot subdivision of a parcel with tax map designation Section 15, Block 1, Lots 7 and 9, which is known as Enlarged City School District of Middletown/Alta East, located at 57 Clemson Avenue/49 Clemson Avenue,

Whereas, a public hearing on the proposed subdivision was held on February 17, 2009, and

Whereas, the Common Council has issued a Negative Declaration of Environmental Impact with respect to this proposal, and

Whereas, the Common Council and Department of Public Works have considered and reviewed the project,

Now, therefore be it resolved by the Common Council of the City of Middletown that preliminary and final subdivision approval be and hereby is granted to the project known as Enlarged City School District of Middletown/Alta East, for property located at 57 Clemson Avenue/49 Clemson Avenue, with tax map designation Section 15, Block 1, Lots 7 and 9, as shown on map entitled "Lands of Alta, East, Inc." prepared by Bolton Land Surveying, P.C., dated January 23, 2009, and filed in the Office of the Middletown Council Clerk, subject to the following conditions:

1. Field approvals by the Commissioner of Public Works

Roll Call: Ayes: Ald. Sierra, Meyer, Burr, VanderVoort, Kleiner, Rodrigues, Depew, Pres. Moson – 8. Absent: Ald. Kitson – 1.

**34.09 Resolution authorizing Mayor to sign Memorandum of Understanding and Escrow Agreement with Empire Management Services, Inc.**

On motion of Ald. Meyer and seconded by Ald. VanderVoort

RESOLVED, that the Common Council of the City of Middletown authorizes the Mayor to sign the attached Memorandum of Understanding and Escrow Agreement with Empire Management Services, Inc, 4 Municipal Plaza, Spring Valley, New York.

Roll Call: Ayes: Ald. Sierra, Meyer, Burr, VanderVoort, Kleiner, Pres. Moson – 6. Noes: Rodrigues, Depew – 2. Absent: Ald. Kitson – 1.

**35.09 Resolution authorizing the issuance of \$1,100,000 Serial Bonds of the City of Middletown to pay the cost of the purchase of fire trucks, including apparatus**

On motion of Ald. Burr and seconded by Ald. VanderVoort

Resolution authorizing the issuance of \$1,100,000 Serial Bonds of the City of Middletown to pay the cost of the purchase of fire trucks, including apparatus (as per the attached bond resolution dated February 17, 2009)

Roll Call: Ayes: Ald. Sierra, Meyer, Burr, VanderVoort, Kleiner, Depew, Pres. Moson – 7. Abstain: Rodrigues – 1. Absent: Ald. Kitson – 1.



WHEREAS the parties are desirous of having the City provide water and sewer service to the property which the School District intends to contract to purchase and purchase

NOW, THE PARTIES THEREFORE AGREE, in exchange for good and valuable consideration, as follows:

1. The City shall provide to the School District all necessary water and sewer service for the property (and all structures, improvements, and facilities located thereon or subsequently constructed thereon), for so long as that the property is used for educational purposes. The costs for such service shall be based upon the District's use and shall be commensurate with those charged by the City to other users of its water and sewer service.

2. The City shall waive all fees which it usually and customarily charges for hook-up to its water and sewer service in the area in which the property is located.

3. The construction costs to obtain a hook-up to the City's water supply and sewer service (including installation of water mains) shall be shared between the parties as follows: The City shall be responsible for the lesser of (i) sixty percent (60%) of the total construction costs to obtain a hook-up or (ii) \$60,000, and the School District shall be responsible for the balance of such costs. However, the City's share of the hook-up costs pursuant to this paragraph shall be limited to the reasonable value

*[Handwritten signature]*  
*[Handwritten initials]*

of "in kind" services including but not limited to labor and supervision, and the use of City equipment (together with insurance charges for the use of such equipment), and shall specifically exclude the costs of materials, rental of privately owned equipment, and other out-of-pocket expenses. For purposes of determining the value of labor and supervision to be provided by the City, presently existing CSEA rates and charges shall be employed.

4. Upon the commencement of construction referred to in paragraph 3 of this Agreement, parcels 48-1-5, 64-1-2, 64-1-4.1, 69-1-15, 999-1-24, 999-1-25, 999-1-28, 999-1-19, and 999-1-22 on the Tax Map of the Town of Wallkill shall become exempt from the payment of school taxes to the School District, and remain so exempt for so long as (a) said parcels are used by the City exclusively as a water plant, reservoir, or necessary connections and appurtenances thereto, and for no other purpose, and (b) the city is obligated to and does provide water and sewer service to the School District pursuant to Paragraph 1 of this Agreement.

THE CITY OF MIDDLETOWN

By: 

Joseph M. Destefano, Mayor

THE ENLARGED CITY SCHOOL DISTRICT  
OF MIDDLETOWN

By: 

Dr. Paul Johnson, President,  
Board of Education

*PKS*

DEPARTMENT OF PUBLIC WORKS  
CITY OF MIDDLETOWN, N.Y.

COPY

COMMISSIONER  
ALFRED A. FUSCO, JR., P.E.  
TEL. (914) 343-3169  
FAX. (914) 343-4014

CITY HALL - 16 JAMES STREET  
MIDDLETOWN, NEW YORK 10940-1587

September 5th, 1997

Mr. Tim Conway, Assistant  
Superintendent for Business  
Board of Education  
223 Wisner Avenue  
Middletown, New York 10940

Dear Tim:

This letter shall serve as an invoice for the installation of water and sewer to the schools on County Route 78. I have enclosed documentation of billing. The summary is as follows:

Water Line	\$ 458,758.50
Sewer Line	111,752.40
Sub Total	<u>\$ 570,510.90</u>
Minus City Share Difference in Pipe Size	65,917.50
Minus City Contractual Share	<u>60,000.00</u>
TOTAL DUE	\$ 444,593.40

The city is willing to take a credit on the purchase of the Board of Education buildings as bid. This would amount to \$360,000.00, leaving a balance due to the city of 384,593.40.

Thank you for your attention to this matter.

Cordially,

Alfred A. Fusco, Jr., P.E.  
COMMISSIONER OF PUBLIC WORKS

AAF:mco  
cc:  
Mayor Jos. M. DeStefano  
City Clerk & Treasurer, R. Russo  
encls.

Exhibit 0

DEPARTMENT OF PUBLIC WORKS  
CITY OF MIDDLETOWN, N.Y.

COMMISSIONER  
ALFRED A. FUSCO, JR., P.E.  
TEL. (914) 343-3169  
FAX. (914) 343-4014

CITY HALL - 16 JAMES STREET  
MIDDLETOWN, NEW YORK 10940-1587

SUMMARY - WATER LINE  
NEW SCHOOL

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Labor - DPW	\$ 32,616.95
Benefits	14,025.28
Equipment - DPW	77,120.00
Equipment - Rental	86,750.00
Materials	227,596.81
Engineers	20,649.46
	<hr/>
	\$ 458,758.50

DEPARTMENT OF PUBLIC WORKS  
CITY OF MIDDLETOWN, N.Y.

COMMISSIONER  
ALFRED A. FUSCO, JR., P.E.  
TEL. (914) 343-3169  
FAX. (914) 343-4014

CITY HALL - 16 JAMES STREET  
MIDDLETOWN, NEW YORK 10940-1587

SUMMARY - SEWER LINE

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Labor - DPW	\$ 14,690.99
Benefits	6,317.12
Equipment - DPW	38,812.50
Equipment - Rental	29,730.00
Materials	22,201.79
	<hr/>
	\$111,752.40

**OFFICE OF CORPORATION COUNSEL  
CITY OF MIDDLETOWN**

16 JAMES STREET, BOX 3

MIDDLETOWN, NEW YORK 10940

**Richard J. Guertin**  
Corporation Counsel  
(914) 346-4140 • Fax (914) 346-4146

**Alex Smith**  
Assistant Corporation Counsel  
(914) 343-2101 • Fax (914) 343-2120

April 20, 1998

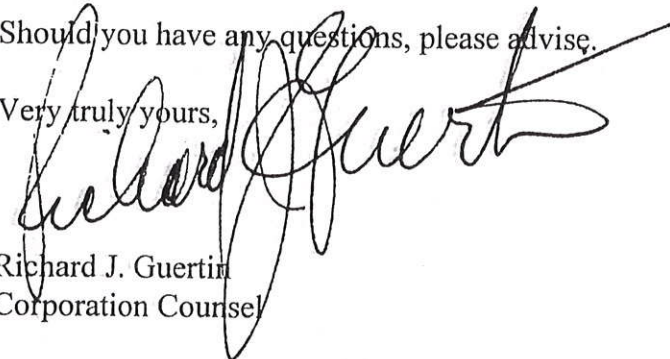
Daniel Petigrow, Esq.  
Donoghue, Thomas, Auslander & Drohan  
2 Summit Court, Suite 104D  
Fishkill, New York 12524

Dear Mr. Petigrow:

This is to acknowledge that the City of Middletown has received payment of \$361,00.00 owed to the City by the Board of Education with respect to the installation of sewer and water lines for the Elementary and Middle Schools on County Road 78, Middletown, NY. The payment was made by a conveyance to the City of the properties known as Albert Street School, Liberty Street School and the Ross Building on Orchard Street.

Should you have any questions, please advise.

Very truly yours,

  
Richard J. Guertin  
Corporation Counsel

RJG:dal

cc: Hon. Joseph M. DeStefano, Mayor  
Alfred Fusco, Commissioner of Public Works

Exhibit P

Principals:  
Archie D. Fellenzer Jr., P.E.  
Mark D. Fellenzer, P.E.  
John D. Fellenzer, P.E.  
Robert E. Curtis Jr., P.E.  
Eric D. Fellenzer, P.E.

April 5, 2006

Alex Smith, Esq.  
Corporation Counsel  
City of Middletown  
16 James Street  
Middletown, NY 10940

RE: Fountains at Southgate; Amchir Point; Middlecrest Crossing  
KP Development; Monhagen Estates; Sutton Hills

Dear Alex:

In connection with the City's existing sewer problem on County Route 78, the referenced projects have agreed to contribute \$500,000 according to the following distribution:

Fountains at Southgate	\$97,167
Amchir Point	93,334
Middlecrest Crossing	73,333
KP Development	73,333
Monhagen Estates	93,333
Sutton Hill	<u>69,500</u>
	\$500,000

This distribution is not based on sewer flows or any other formula. It is an equitable distribution agreed to by the developers involved.

In consideration of these payments, the City has agreed to issue the enclosed letters allowing the projects to proceed and to receive unconditional building permits and certificates of occupancy. The letters for the projects that are fully approved (Fountains at Southgate, Amchir Point, Middlecrest Crossing) differ from the letters for the other projects that are still in the approval process (KP Development, Monhagen Estates).

Please have Jacob place these letters on the City's letterhead and sign them. For your convenience, enclosed is a computer disk containing electronic copies of the letters. Once the letters have been signed, please let me know so that I can pick them up and disburse them to the developers.

Exhibit Q

Alex Smith, Esq.  
April 5, 2006

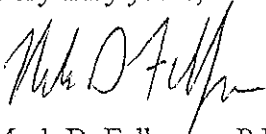
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Within five (5) business days after I pick up the signed letters, the developers will sign and deliver to you the enclosed Releases requested by the City along with checks in the agreed-upon amounts.

The enclosed letters and Releases are on behalf of all of the projects except for Sutton Hills. As to Sutton Hills, Gene Grillo plans to coordinate with you regarding the documents to be used for his client's project.

Should you have any questions, feel free to call me. Thank you for your assistance in finalizing this matter.

Very truly yours,



Mark D. Fellenzer, P.E.  
Principal

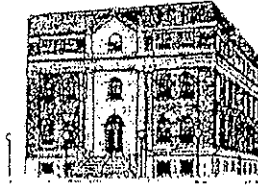
MDF/st

Enclosures

cc: Jacob Tawil, P.E., Commissioner of Public Works (w/encl)  
John Fellenzer, P.E., Fountains at Southgate (w/encl)  
Howard Loewenthal, Middlecrest Crossing (w/encl)  
Chetan Patel, KP Development (w/encl)  
Paul Faver, Amchir Point/Monhagen Estates (w/encl)  
Gene Grillo, Esq., Sutton Hills (w/encl)

Department of Public Works  
City of Middletown

Jacob S. Tawil, P.E.  
Commissioner of Public Works



April 7, 2006

*Address  
not  
disclosed J.T.*

In connection with the City's existing sewer disposal problem on County Route 78, we have agreed that you will pay \$93,333 on behalf of Monhagen Estates. You will make the funds payable to the City of Middletown. Your agreement to pay this amount fully relieves your project of any further conditions with the exception of all obligations and requirements imposed by the New York State Uniform Fire Prevention and Building Code and the City of Middletown Building and Zoning Codes. This confirms that, once you complete the City's approval process and receive the relevant state regulatory approvals, construction of ~~Monhagen Estates~~ can proceed, unconditional building permits can be issued, and certificates of occupancy can be issued for each of the 104 units.

Very truly yours,

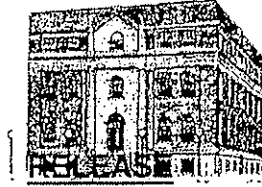
A handwritten signature in cursive script, appearing to read 'Jacob Tawil'.

Jacob Tawil, P.E.  
Commissioner of Public Works

cc: Honorable Mayor Marlinda Duncanson  
Tom DePuy, P.E.  
Alex Smith, Esquire, Corporation Counsel  
Laurence Risdal, Planning Board Chairman

Department of Public Works  
City of Middletown

Jacob S. Tawil, P.E.  
Commissioner of Public Works



KNOW ALL MEN BY THESE PRESENTS that ~~First Falcon Realty, Inc.~~, on behalf of itself and its partners, associates, employees, agents, successors, and assigns, does hereby fully remise, release, acquit, and forever discharge the City of Middletown and its employees from any and all claims, lawsuits, damages, and causes of action based upon (1) a denial of any approvals requested from the New York State Department of Environmental Conservation or other state regulatory agencies relative to the Fountains at Southgate and (2) any contingency, occurrence or circumstance beyond the control of the City of Middletown that prevents the issuance of building permits and/or certificates of occupancy for the project.

IN WITNESS WHEREOF, the undersigned have hereunto set his name and seal this \_\_\_\_\_ day of April, 2006.

WITNESSES:

\_\_\_\_\_  
\_\_\_\_\_

~~First Falcon Realty, Inc.~~, INC.

\_\_\_\_\_  
As its: President