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JUDSON K. SIEBERT
Principal Member

March 20, 2017

Mr. Anthony Ruggiero
City Administrator
City of Beacon
1 Municipal Plaza
Beacon, New York 12508

Re: *JP Morgan Chase Bank v.*
Assessor of the City of Beacon, et al.
(Sup. Ct. Dutchess Co. Index Nos. 15-51259 and 16-51654) –
Settlement of 2015 and 2016 Tax Certiorari Proceedings

Dear Anthony:

The above-referenced tax certiorari litigation is the subject of a proposed settlement, which will entail the payment of City tax refunds in the amount of \$2,640,00. This settlement is subject to the approval of the City Council and, accordingly, I submit this letter to explain the rationale underlying its terms.

This case involves the 2015 and 2016 assessments of three tax parcels comprising the site of the JP Morgan Chase bank on Main Street. These lots are identified as Parcel Nos. 6054-29-044784 (404 Main Street), 6054-29-039788 (402 Main Street) and 6054-29-049789 (8 Schenck Avenue) on the Tax Map of the City of Beacon. The three parcels are improved and utilized for a common economic purpose. The 404 Main Street parcel contains the two-story, 5,568 square foot bank building. The 402 Main Street and 8 Schenck Avenue lots provide off-street patron parking.

JP Morgan Chase previously contested these assessments in litigation that concluded in 2011. In 2011, the combined assessment of these three parcels equaled \$1,683,000. Under a settlement reached at that time, the combined assessments were reduced to a total of \$1,200,000. This was an advantageous resolution because (1) JP Morgan Chase paid \$976,950 to acquire these parcels in 2006, and a sale price is treated by courts as the best evidence of a property's value in tax certiorari proceedings, (2) JP Morgan Chase provided an appraisal prepared by Cushman & Wakefield that placed a \$975,000 value on these premises and (3) the late Donald McGrath, MAI, had

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confidentially advised the City that a finding of value ranging between \$975,000 and \$1,230,000 was a likely outcome.

Following this settlement, JP Morgan Chase did not pursue tax certiorari proceedings in 2012, 2013 and 2014. It did, however, contest the 2015 and 2016 assessments of the three parcels.

The combined assessment of these parcels continued to equal \$1,200,000 in 2015 and 2016. After commencing litigation challenging these assessments, the attorney for JP Morgan Chase provided an internal valuation workup – based upon an analysis of reported sales of other commercial properties on Main Street – that placed a value of \$779,520 on the combined parcels. If this value was accepted for assessment purposes, it would give rise to City tax refunds of \$11,100.67.

The submission of this workup coincided with efforts then underway in litigation involving another bank property on Main Street, entitled *RBS Citizens, N.A. v. City of Beacon*. Appraisal guidance provided with regard to that case led to a settlement based upon a value of \$1,350,000 for the RBS Citizens Bank property.

Kathy Martin and I conferred regarding JP Morgan Chase's position, and agreed that its valuation analysis was flawed. However, by comparing the RBS Bank property to the JP Morgan Chase Bank parcels (including their respective street access, age and functional capability), we agreed a modest reduction of the combined \$1,200,000 assessment of the three parcels was supported.

In addition, this case was placed on the calendar of Justice James V. Brands, J.S.C., who advised that, absent a settlement, the parties would be directed to prepare and submit trial appraisals (the cost of which would be several thousands of dollars). Faced with trial preparation tasks, both sides engaged in settlement discussions. As a result, JP Morgan Chase agreed to accept a cumulative assessment of \$1,100,000 for purposes of resolving this case.

The attorney for JP Morgan Chase has provided my firm with a draft Stipulation and Order giving effect to a settlement along these lines. An analysis of the proposed settlement is as follows:

<u>Year</u>	<u>Ass't</u>	<u>Revised Ass't</u>	<u>Reduction</u>	<u>City Tax Rate</u>	<u>Refund</u>
2015	\$1,200,000	\$1,100,000	\$100,000	\$ 13.23	\$1,323.00
2016	\$1,200,000	\$1,100,000	\$100,000	\$ 13.17	\$1,317.00
Total:					\$2,640.00

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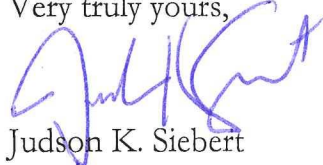
This settlement is prudent and supported by practical and economic considerations. First, the City faces exposure in this case because there is no guarantee that the combined \$1,200,000 assessment of the JP Morgan Chase properties will be sustained at trial. Second, it is certain the City will incur substantial cost (in appraisal and attorney's fees) should this matter proceed to trial. In contrast, the refunds to be paid under the settlement are a fraction of this cost. Third, the settlement value of \$1,100,000 remains within the range of value previously presented by Mr. McGrath, and correlates roughly with the value used to settle the *RBS Citizens, N.A. v. City of Beacon* case. Fourth, if assessment reductions were awarded by the court, the City would be liable for both tax refunds and interest on these refunds. Under the settlement terms, interest on the refunds to be paid will be waived provided they are paid within sixty (60) days from the date the final Order (giving effect to the settlement terms) is served upon the City.

Finally, upon the disposition of this case and the *Manufacturers & Traders Trust Co. v. City of Beacon* proceedings (which is addressed in a separate letter), the City will have a single tax certiorari proceeding – limited to one year – pending against it.

Consequently, I recommend that the City Council approve the foregoing settlement terms. I have attached a proposed approving Resolution for its consideration.

Please contact me if you have any questions regarding this matter.

Very truly yours,



Judson K. Siebert

JKS/sj

Enclosure(s)

cc: Ms. Kathy Martin, Assessor
Nicholas M. Ward-Willis, Esq.

**RESOLUTION RE: CERTIORARI SETTLEMENT -
Mtr. of JP Morgan Chase Bank v. Assessor of the City of Beacon, et al.
(Sup. Ct. Dutchess Co. Index Nos. 15-51259 and 16-51654) -
SETTLEMENT OF TAX CERTIORARI LITIGATION**

WHEREAS, there are tax certiorari proceedings, entitled *Mtr. of JP Morgan Chase Bank v. Assessor of the City of Beacon, et al.* (Sup. Ct. Dutchess Cty. Index Nos. 15-51259 and 16-51654), pending before the Supreme Court, Dutchess County (Hon. James V. Brands, J.S.C., presiding); and

WHEREAS, these proceedings challenge the real property tax assessment of premises located at 402 Main Street, 404 Main Street and 8 Schenck Avenue, which are identified as Tax Lot Nos. 6054-29-044784, 6054-29-039788 and 6054-29-049789 on the Tax Map of the City of Beacon; and

WHEREAS, by virtue of these proceedings, the assessments established by the City of Beacon with respect to said parcels has been contested in 2015 and 2016; and

WHEREAS, a settlement has been reached by and between Petitioner JP Morgan Chase Bank and the City of Beacon providing for a disposition of these proceedings; and

WHEREAS, a proposed Stipulation of Settlement and Order of Settlement effectuating these settlement terms has been prepared, subject to the approval of the City of Beacon; and

WHEREAS, the City of Beacon has obtained the advice and assistance of its counsel, Keane & Beane, P.C., with respect to the settlement terms, the proposed Stipulation of Settlement and Order of Settlement and has duly considered same; and

WHEREAS, under the settlement terms, the City will be liable for City tax refunds that equal Two Thousand Six Hundred Forty and 00/100 (\$2,640.00) Dollars;

NOW, THEREFORE, BE IT RESOLVED that the City Council accepts the settlement of these proceedings so that the following adjustments are made to the assessment of the aforementioned premises:

<u>Year</u>	<u>Assessment</u>	<u>Revised Assessment</u>	<u>Reduction</u>
2015	\$1,200,000	\$100,000	\$1,323.00
2016	\$1,200,000	\$100,000	\$1,317.00
Total:			\$2,640.00

BE IT FURTHER RESOLVED, that counsel for the City of Beacon, Keane & Beane, P.C., together with the City Administration, is hereby authorized to undertake such actions as are necessary to confirm and effectuate this settlement, including execution of the Stipulation of Settlement and Order of Settlement incorporating the settlement terms.