

September 9, 2021

The City Council
Niagara Falls, New York

RE: Request that Council approve payment of tax refunds as directed by Court Order of the Hon. Ralph A. Boniello, III, J.S.C., granted on November 12, 2020, relative to ten years of Real Property Tax Law Article 7 tax assessment review proceedings commenced against the City of Niagara Falls by NFR GATEWAY, LLC (NABISCO), concerning its properties at 126 Memorial Parkway (SBL: 159.55-1-1) and 816 Rainbow Boulevard (SBL: 159.09-3-4.1).

Background and Status of Underlying Litigation:

Petitioner, NFR GATEWAY, LLC (NABISCO), is the owner of both parcels in question. The first, 126 Memorial Parkway (SBL: 159.55-1-1), is 5.3 acres and includes a 162,488 square foot warehouse constructed in 1975 and formerly used by Nabisco up until 2001. Once zoned Industrial, it was rezoned after Nabisco ceased operations as Downtown - 'D1-A Near Casino'. For some years since, it has been used as a rental storage facility. The second parcel, 816 Rainbow Boulevard (SBL: 159.09-3-4.1) is 5.26 acres and includes 5 buildings totaling approximately 199,000 square feet and all constructed between 1910 and 1917. Up until Nabisco closed its Niagara Falls plant in 2001, these had served as the Nabisco plant and grain silos. This parcel was similarly rezoned from Industrial to 'D1-A Near Casino', but its use has been further curtailed by the presence of environmental contamination, which the Court found required a significant reduction in assessed value.

Starting with the 2011-2012 tax year, the Petitioner challenged the assessed values for both parcels on the grounds that they were excessive. Unable to secure property tax reductions through the administrative review process, Petitioner commenced an Article 7 tax assessment review proceeding for the 2011-2012 tax year, with new filings made each succeeding tax year up to and including 2020-2021. All such cases were combined for purpose of a bench trial before Judge Boniello, which culminated in a March 2019 Court Decision that significantly reduced the taxable values. However, payment of refunds was delayed at that time by an appeal by the City and intervening School District and County to the Appellate Division Fourth Department, which was ultimately decided in Petitioner's favor on October 2, 2020.

Judge Boniello thereafter issued his November 12, 2020, Court Order directing the City and Intervenors to pay ten years of property tax refunds. This Order now requires payment of refunds with statutory interest following the denial of the City's motion for leave to appeal to the New York State Court of Appeals on April 1, 2021.

Recommendation/Reason for Payment:

Based upon Judge Boniello's November 12, 2020, Court Order, and with no remaining avenues to appeal same, both the City Assessor and this Department recommend that the City pay the required tax refunds to comply with the Order and stop the continued accrual of interest owed to Petitioner. The Assessor has calculated the City's total share of refunds for both parcels to total \$ 771,721.99, before the addition of statutory interest owed to Petitioner. The City Controller will need to separately calculate the statutory interest up to the date of payment so that it may be included in the City's draft.

Amount to be Paid:

\$ 771,721.99 plus the statutory interest that the Controller will calculate, up to the date of payment, for inclusion in the City's draft.

Check Writing Details:

Make draft payable to "Wolfgang & Weinmann, as attorneys and agents for NFR Gateway, LLC"

It is the recommendation of this Department that the Court ordered refunds be paid with statutory interest added to the payment draft by the City Controller.

Respectfully submitted,

CHRISTOPHER M. MAZUR
Corporation Counsel