

SUSPENSION

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February 19, 2013

Erie County Legislature
Attn: Finance & Management Committee
92 Franklin Street, 4th Floor
Buffalo, New York 14202

Re: Lien Purchase – 70 Meadowbrook Elma, NY

Dear Legislators:

As a follow up to my last meeting with each of you on Thursday, February 14, 2013 and the meeting prior thereto on November 1, 2013 when the Finance and Management Committee unanimously approved the above tax lien purchase, it has come to my attention that members of your committee now had *more* questions after giving its approval on November 1, 2013. I have also been informed that members of your committee have personal opinions on the sale of this lien.

As requested by Legislator Betty Jean Grant (whom is not a member of your committee, but who met with Legislator Hogues privately before the committee meeting) on February 14, 2013, she asked that this matter be tabled yet again until the next meeting on Thursday, February 21, 2013. Legislator Grant wanted to know if this tax lien sale would set precedence. To assist your committee in answering this question, the Answer is: **NO**.

The County of Erie has previously made such tax lien sales in the past through Expand (paid less than 100%) and even individual sales whereby the County received 100% of the total property taxes due. Attached hereto is a March 14, 2012 tax sale from the County of Erie to Bankruptcy Exchange, Inc for the 2007, 2008, 2009, 2010 and 2011 tax years for a property in Orchard Park, NY that was recorded in the Erie County Clerk's Office under Deed Book 11219 Page 3655. There are also other similar sales recorded in 2011 and 2012 on file in the Erie County Clerk's Office. My proposal seeks a similar tax lien purchase that pays the County 100% that is due and owing. Thus, the County of Erie will be made whole and will have no further stake in this property, nor can it have more than the full amount of the tax lien owed.

To respond to the comment made by Legislator Thomas Loughran on February 14, 2013, the size of the property has no bearing whatsoever on whether the County is being made whole. As properly articulated by Legislator John Mills, the County cannot receive anything more than 100% of what is owed to the County on a tax lien. Thus the County has no reason to delay this process any longer but should act already. Any excess proceeds from a foreclosure sale must be paid over to the remaining lien holders in order of priority

(first judgments filed first), not to the County. Thus, anyone who knows anything about Federal Income Tax Liens and Federal Criminal Judgments that do exist on this property and total \$640,000.00 **CANNOT** be extinguished with a tax lien foreclosure. Under 28 USC 2410, et seq. and 26 USC 7425, et seq., the U.S. Government has an automatic right of redemption, which means that it can seek 100% of the monies own to U.S. Government even after a foreclosure sale, because its lien **IS NOT** extinguished. Furthermore, foreclosure does not extinguish the judgments of secured creditors that exist on this property.

I was left with the impression that Legislator Thomas Loughran was inferring that there was some unfair advantage to someone purchasing the County of Erie tax lien, which is not accurate. The tax lien purchase is but one step in a long process necessary to purchase title to a property that will need a great deal of work and financial contributions to repair a fire damaged home.

Legislator Kevin Hardwick further stated he did not know why this process is taking so long. This should otherwise be a simple process of a proposal being made and a sale transaction being approved. Clearly, the questions now being raised only now after approval has already been given but has not been removed from your Committee and the information I have been told throughout this unusually lengthy process demonstrates that one or more of the members of your committee may have a motive to delay this process. The County's sole interest should be to obtain payment of 100% of the debts owed to it for the benefit of the people of Erie County, not personal reasons. Delaying this process only delays payment and prevents the County to put another property on the foreclosure list that will save the additional \$1,400 necessary to foreclose on this property and the \$30,000-\$50,000 that the County will forego collecting on an additional property not listed.

I cannot see why this Legislature is refusing to accept 100% due to it in back taxes since the October 1, 2012 proposal was made to purchase this tax lien when the Elected Officials in Erie County are routinely in the media claiming financial hardship and only recently did away with a Control Board. Delaying this tax sale is only going to deny the County the ability to bring in additional funds by not listing another property for foreclosure. There are plenty of other properties with \$30,000-\$50,000 tax liens that the County is foregoing collection of. This would be a **HUGE** financial mistake and political mistake seeing that each of the members of this committee are up for re-election this year. Media reporters would surely question why members of this committee are not accepting the \$57,212.47 due on this property and giving up an additional \$30,000-\$50,000 from another collection effort.

Please note that I will be sending another attorney from my office in my absence to attend the Finance and Management Committee meeting schedule for Thursday, February 21, 2013. If there are any questions in the meantime, please feel free to contact me at 861-9287.

Sincerely,

David W. Polak, Esq.