

George Latimer
County Executive

Office of the County Attorney

John M. Nonna
County Attorney

March 11, 2024

Westchester County Board of Legislators
County of Westchester
800 Michaelian Office Building
148 Martine Avenue
White Plains, New York 10601

Re: Request for Authorization to Settle the Lawsuit of Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester, in the amount of \$30,000.00, inclusive of attorneys' fees

Dear Honorable Members of the Board:

Attached for your consideration is an Act, which if enacted by your Board, would authorize the settlement of the lawsuit entitled Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester, Index No. 59940/2022 (Supreme Court of the State of New York, County of Westchester). This matter tentatively settled after a year of settlement negotiations, pending this Board's approval of a settlement in the amount of \$30,000.00, inclusive of attorney's fees.

Yankwitt, LLP are the attorneys for Plaintiffs in this matter.

Plaintiffs Mark Chernis and Michele Chernis are property owners in the Town of Bedford who commenced this action against the above-listed defendants regarding a 140' tower that was constructed on a site commonly referred to as Guard Hill (the "Premises") in the Town of Bedford. The subject property was conveyed to the Town of Bedford in 1981 by Wilhelmiine Kirby Waller subject to certain covenants and restrictions set forth in a Rider to the Deed.

Plaintiffs allege four causes of action in their Complaint: (1) violation of the Public Trust Doctrine seeking declaratory relief relating thereto and enjoining the Town of Bedford from taking any further action with respect to the Premises; (2) violation of the Public Trust Doctrine seeking an order enjoining the Town, County and NYSDOT from taking any further action with respect to the Premises; (3) a declaratory judgment that the agreements with the NYSDOT and County of



Westchester are invalid and ineffective and the restrictive covenants in the deed are valid and enforceable; and (4) an Order that the Plaintiffs are intended beneficiaries of the restrictive covenants of the Deed and requesting a declaratory judgment that the construction of radio towers on the Premises violated the restrictive covenants and enjoining the Town and County from taking any further action.

Following motions to dismiss filed by the Defendants, the Court dismissed Plaintiffs' third and fourth causes of action against the County and the Plaintiffs' fourth cause of action as to the Town, the Town Board and the Bedford Historical Society. The parties have been negotiating settlement terms for nearly a year, prior to engaging in any formal discovery. We have reached a tentative settlement of the matter, pending requisite Board approval.

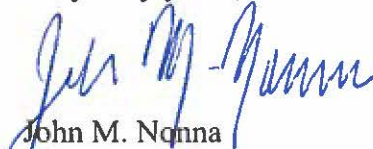
Pursuant to the terms of the settlement, the Town and County affirm that as of the date of the Settlement Agreement: (1) there are no plans to raise the height of the existing radio tower above its current one hundred and forty (140') feet or to take any action with respect to the Premises that would impact the view of the Tower except to the extent necessary to protect human health and safety; and (2) there are no plans to replace the existing Tower with a Tower whose actual structure is wider than the existing Tower.

Additionally, the Town and County agree not to raise the structural height of the Tower above 140' for a 10-year period except in the case of a public emergency (this provision only applies as long as Plaintiffs still own 16 Overlook Drive in Bedford, NY and would no longer be enforceable if Plaintiffs sold the property) and agree to give Plaintiffs written notice if there was a proposal to raise the tower and they had sold their residence. The Town and County retain the right, without notifying Plaintiff, to make maintenance, repair and modifications to the Tower that do not impact its structural height. The Town and County agree to not install lights on the Tower unless required by law, not remove trees south of the Tower that would materially increase the visibility of the Tower or build any additional towers on the Premises.

The Town and County agree to each pay Plaintiffs a collective lump sum payment of \$30,000.00 inclusive of attorneys' fees.

The settlement takes into consideration the uncertainty of litigation and the substantial costs of discovery, the potential costs of trial, subsequent proceedings and potential appeal. The accompanying Act will authorize settlement of the lawsuit entitled Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester, in the amount of \$30,000.00, inclusive of attorney's fees.

Very truly yours,


John M. Nonna
County Attorney

BOARD OF LEGISLATORS
COUNTY OF WESTCHESTER

Your Committee is in receipt of a proposed Act, which if enacted by your Board, would authorize the settlement of the lawsuit of Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester, Index No. 59940/2022 (Supreme Court of the State of New York, County of Westchester) in the amount of Thirty Thousand and 00/100 (\$30,000.00) Dollars.

This matter is pending in the Supreme Court of the State of New York, County of Westchester. The matter tentatively settled pending this Board's approval of a settlement in the amount of \$30,000.00, inclusive of attorney's fees, after lengthy settlement negotiations. Yankwitt, LLP of White Plains, NY is representing Plaintiffs.

Plaintiffs Mark Chernis and Michele Chernis are property owners in the Town of Bedford who commenced this action against the above-listed defendants regarding a 140' tower that was constructed on a site commonly referred to as Guard Hill (the "Premises") in the Town of Bedford. The subject property was conveyed to the Town of Bedford in 1981 by Wilhelmiine Kirby Waller subject to certain covenants and restrictions set forth in a Rider to the Deed.

Plaintiffs allege four causes of action in their Complaint: (1) violation of the Public Trust Doctrine seeking declaratory relief relating thereto and enjoining the Town of Bedford from taking any further action with respect to the Premises; (2) violation of the Public Trust Doctrine seeking an order enjoining the Town, County and NYSDOT from taking any further action with

respect to the Premises; (3) a declaratory judgment that the agreements with the NYSDOT and County of Westchester are invalid and ineffective and the restrictive covenants in the deed are valid and enforceable; and (4) an Order that the Plaintiffs are intended beneficiaries of the restrictive covenants of the Deed and requesting a declaratory judgment that the construction of radio towers on the Premises violated the restrictive covenants and enjoining the Town and County from taking any further action.

Following motions to dismiss filed by the Defendants, the Court dismissed Plaintiffs' third and fourth causes of action against the County and the Plaintiffs' fourth cause of action as to the Town, the Town Board and the Bedford Historical Society. The parties have been negotiating settlement terms for nearly a year, prior to engaging in any formal discovery. We have reached a tentative settlement of the matter, pending requisite Board approval.

Pursuant to the terms of the settlement, the Town and County affirm that as of the date of the Settlement Agreement: (1) there are no plans to raise the height of the existing radio tower above its current one hundred and forty (140') feet or to take any action with respect to the Premises that would impact the view of the Tower except to the extent necessary to protect human health and safety; and (2) there are no plans to replace the existing Tower with a Tower whose actual structure is wider than the existing Tower.

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enforceable if Plaintiffs sold the property) and agree to give Plaintiffs written notice if there was a proposal to raise the tower and they had sold their residence. The Town and County retain the right, without notifying Plaintiff, to make maintenance, repair and modifications to the Tower that do not impact its structural height. The Town and County agree to not install lights on the Tower unless required by law, not remove trees south of the Tower that would materially increase the visibility of the Tower or build any additional towers on the Premises. The Town and County agree to each pay Plaintiffs a collective lump sum payment of \$30,000.00 inclusive of attorneys' fees.

The settlement takes into consideration the uncertainty of litigation and the substantial costs of discovery, the potential costs of trial, subsequent proceedings and potential appeal. The accompanying Act will authorize settlement of the lawsuit entitled Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester, in the amount of \$30,000.00, inclusive of attorney's fees.

Your Committee has carefully considered the subject matter, the settlement proposal, the attached Act and recommends authorizing the County Attorney or his designee to settle the lawsuit entitled Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester, Index No. 59940/2022, in the amount of \$30,000.00, inclusive of attorney's fees. An affirmative vote of a majority of the Board is required to pass this legislation.

Dated: White Plains, New York
March , 2024

ACT NO. 2024

AN ACT authorizing the County of Westchester to settle the lawsuit of Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester, Index No. 59940/2022, in the amount of \$30,000.00, inclusive of attorney's fees

BE IT ENACTED by the Board of Legislators of the County of Westchester as follows:

1. The County Attorney is authorized to settle the lawsuit of Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester, in the amount of \$30,000.00, inclusive of attorney's fees.
2. The County Attorney or his designee is hereby authorized to execute and deliver all documents and take such actions as the County Attorney deems necessary or desirable to accomplish the purpose hereof.
3. This Act shall take effect immediately.

FISCAL IMPACT STATEMENT

SUBJECT: Mark and Michelle Chernis v. Town of NO FISCAL IMPACT PROJECTED

OPERATING BUDGET IMPACT

To Be Completed by Submitting Department and Reviewed by Budget

SECTION A - FUND

GENERAL FUND

AIRPORT FUND

SPECIAL DISTRICTS FUND

SECTION B - EXPENSES AND REVENUES

Total Current Year Expense \$ 30,000

Total Current Year Revenue _____

Source of Funds (check one): Current Appropriations Transfer of Existing Appropriations

Additional Appropriations

Other (explain)

Identify Accounts: 101-16-2500-4070

Potential Related Operating Budget Expenses: Annual Amount \$30,000

Describe: An Act authorizing the County of Westchester to settle the lawsuit of Mark Chernis and Michele Chernis v. Town of Bedford, Town Board of the Town of Bedford, Bedford Historical Society, and County of Westchester.

Potential Related Operating Budget Revenues: Annual Amount _____

Describe: _____

Anticipated Savings to County and/or Impact on Department Operations:

Current Year: _____

Next Four Years: _____

Prepared by: Debra Ogden

Title: Sr. Budget Analyst

Department: Budget Dept.

Date: March 11, 2024

Reviewed By: *Jawana...*

Budget Director

Date: 3/11/24