Monday, August 2, 2021 | **4:00 PM** | **Amherst Municipal Building**

I. PLEDGE OF ALLEGIANCE

II. ROLL CALL:

4:00 PM Meeting called to order on August 2, 2021 at Amherst Municipal Building, 5583 Main Street, Williamsville, NY.

Attendee Name	Organization	Title	Status	Arrived
Brian J. Kulpa	Town of Amherst	Supervisor	Present	
Jacqualine Berger	Town of Amherst	Deputy Supervisor	Present	
Deborah Bruch Bucki	Town of Amherst	Councilmember	Present	
Shawn Lavin	Town of Amherst	Councilmember	Present	
Michael Szukala	Town of Amherst	Councilmember	Present	
Francina J. Spoth	Town of Amherst	Town Clerk	Present	
Timothy Koller	Town of Amherst	Deputy Town Clerk	Present	
Stanley J. Sliwa	Town of Amherst	Town Attorney	Present	

III. DEPARTMENT HEAD RESOLUTIONS AND REPORTS

A. TOWN ATTORNEY:

1. Resolution 2021-677

Settlement of Tax Certiorari Matters - J. C. Penney Corporation, Inc., J. C. Penney Properties, Inc. V. TOA Et Al. J. C. Penney Corporation, Inc., J. C. Penney Properties, Inc. and Penney Property Sub Holdings, LLC V. TOA Et Al.

SPECIAL MEETING AGENDA ITEM : AUGUST 2ND, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **July 30, 2021**

RE: **Settlement of Tax Certiorari Matters**
J. C. Penney Corporation, Inc., J. C. Penney Properties, Inc. v. Town of Amherst, et al.

J. C. Penney Corporation, Inc., J. C. Penney Properties, Inc. and Penney Property Sub Holdings LLC v. Town of Amherst, et al.

Kindly adopt the following resolution with respect to the above matter:

WHEREAS, proceedings were commenced pursuant to Article 7 of the Real Property Tax Law by J.C. Penney Corporation, Inc., J.C. Penney Properties, Inc. and Penney Property Sub Holdings LLC challenging the assessment by the Town of Amherst for property located at 3891 Maple Road, Amherst, New York, bearing SBL #54.03-1-14 seeking reimbursement for overpayment of taxes paid in 2019, 2020 and 2021; and

WHEREAS, the County of Erie and the Sweet Home Central School District intervened in these pending proceedings which bear Index Nos. 809031/2019, 806884/2020 and 809240/2021; and

WHEREAS, the Assessor for the Town of Amherst and the Town Attorney have reviewed, agreed to and approved the contents of the Stipulation and Consent Order attached hereto; and

BE IT RESOLVED that the Town Board determines that the proposed settlement is reasonable and appropriate and that the terms of the same are reasonable; and

BE IT FURTHER RESOLVED that resolution and settlement of this matter along the lines stated is in the best interest of the Town of Amherst; and

BE IT FURTHER RESOLVED that the Town Attorney and the Town Assessor are hereby authorized and directed to execute the attached Stipulation and Consent Order and take all other necessary steps needed to implement this settlement.

SJS:lcg
Attachment
c: Kathy Cooper, Deputy Town Clerk
(*w/attachment*, **Special Meeting Agenda Item : August 2nd, 2021**)
David Marrano, Town Assessor (*w/attachment*)

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

IV. ADJOURNMENT

There being no further business to come before the Town Board, Supervisor Kulpa moved to adjourn, seconded by Councilmember Bucki and unanimously approved 5-0. The Town Board special meeting of August 2, 2021 was adjourned at 4:01 PM.

Amherst Town Board
5583 Main Street
Williamsville, NY 14221
www.amherst.ny.us

Francina J. Spoth
Town Clerk

Meeting: 08/02/21 04:00 PM
Department: Town Attorney
Initiated by: **Stanley J. Sliwa**
Co-Sponsored by:

DOC ID: 24588 **RESOLUTION 2021-677** **ADOPTED**

Settlement of Tax Certiorari Matters - J. C. Penney Corporation, Inc., J. C. Penney Properties, Inc. V. TOA Et Al. J. C. Penney Corporation, Inc., J. C. Penney Properties, Inc. and Penney Property Sub Holdings, LLC V. TOA Et Al.

SPECIAL MEETING AGENDA ITEM : AUGUST 2ND, 2021

TO: **Town Board**

FROM: **Stanley J. Sliwa, Esq., Town Attorney**

DATE: **July 30, 2021**

RE: **Settlement of Tax Certiorari Matters**
J. C. Penney Corporation, Inc., J. C. Penney Properties, Inc.
v. Town of Amherst, et al.

J. C. Penney Corporation, Inc., J. C. Penney Properties, Inc.
and Penney Property Sub Holdings LLC v. Town of Amherst,
et al.

Kindly adopt the following resolution with respect to the above matter:

WHEREAS, proceedings were commenced pursuant to Article 7 of the Real Property Tax Law by J.C. Penney Corporation, Inc., J.C. Penney Properties, Inc. and Penney Property Sub Holdings LLC challenging the assessment by the Town of Amherst for property located at 3891 Maple Road, Amherst, New York, bearing SBL #54.03-1-14 seeking reimbursement for overpayment of taxes paid in 2019, 2020 and 2021; and

WHEREAS, the County of Erie and the Sweet Home Central School District intervened in these pending proceedings which bear Index Nos. 809031/2019, 806884/2020 and 809240/2021; and

WHEREAS, the Assessor for the Town of Amherst and the Town Attorney have reviewed, agreed to and approved the contents of the Stipulation and Consent Order attached hereto; and

BE IT RESOLVED that the Town Board determines that the proposed settlement is reasonable and appropriate and that the terms of the same are reasonable; and

BE IT FURTHER RESOLVED that resolution and settlement of this matter along the lines stated is in the best interest of the Town of Amherst; and

BE IT FURTHER RESOLVED that the Town Attorney and the Town Assessor are hereby authorized and directed to execute the attached Stipulation and Consent Order and take all other necessary steps needed to implement this settlement.

SJS:lcg
Attachment
c: Kathy Cooper, Deputy Town Clerk
(*w/attachment*, **Special Meeting Agenda Item : August 2nd, 2021**)
David Marrano, Town Assessor (*w/attachment*)

FINANCIAL IMPACT:

Assessment

RESULT:	**ADOPTED [UNANIMOUS]**
MOVER:	Brian J. Kulpa, Supervisor
SECONDER:	Jacqualine Berger, Deputy Supervisor
AYES:	Kulpa, Berger, Bucki, Lavin, Szukala

STATE OF NEW YORK
SUPREME COURT   COUNTY OF ERIE

In the Matter of the Application of

J. C. Penney Corporation, Inc., J.C. Penney Properties, Inc.

Petitioner,

vs.

Town of Amherst Board of Assessment Review,
the Assessor of the Town of Amherst, and
the Town of Amherst, Erie County, New York,

Respondents.

For review of a Tax Assessment under Article 7
of the Real Property Tax Law.

STIPULATION AND CONSENT ORDER

Index Nos.: 809031/2019, 806884/2020

Tax Years: 2019 & 2020

Judge: Hon. Deborah Chimes

STATE OF NEW YORK
SUPREME COURT   COUNTY OF ERIE

In the Matter of the Application of

J. C. Penney Corporation, Inc., J.C. Penney Properties, Inc.
and Penney Property Sub Holdings LLC,

Petitioner,

vs.

Town of Amherst Board of Assessment Review,
the Assessor of the Town of Amherst, and
the Town of Amherst, Erie County, New York,

Respondents.

For review of a Tax Assessment under Article 7
of the Real Property Tax Law.

STIPULATION AND CONSENT ORDER

Index Nos.: 809240/2021

Tax Years: 2021

Judge: Hon. Deborah Chimes

Property Description:

Property	Tax ID Number	
3891 Maple Rd	54.03-1-14	
Tax Year	**Taxable Status Date**	**Index Numbers**

AD

2019	March 1, 2019	809031/2019
2020	March 1, 2020	806884/2020
2021	March 1, 2021	809240/2021

WHEREAS, tax certiorari proceedings were commenced by the above-named petitioner(s) ("Petitioner") for the above described property ("Property") located in the Town of Amherst ("Respondent") to recover overpaid real property taxes paid for the tax year(s) relating to the taxable status dates set forth herein (hereinafter Tax Year(s)") and said proceedings are now pending ("Pending Proceedings"), and;

WHEREAS, negotiations for settlement were entered into regarding said proceedings; and

WHEREAS, the Sweet Home Central School District and the County of Erie intervened in the Pending Proceedings; and

NOW, THEREFORE, it is hereby stipulated, consented, and agreed by and between the attorneys and the respective parties that the above-captioned Pending Proceedings shall be settled and that an Order and Judgment to that effect may be entered without further notice to either party on the following terms:

1. The Pending Proceedings shall be settled by changing the prior assessment ("Prior Assessment") to the revised assessment for the Tax Year(s) set forth below ("Revised Assessment"):

Property Address	3891 Maple Rd		
Tax ID Number	54.03-1-14		
Tax Year	**Taxable Status Date**	**Prior Assessment**	**Revised Assessment**
2019	March 1, 2019	$7,500,000	No Change.
2020	March 1, 2020	$7,500,000	No Change.
2021	March 1, 2021	$7,500,000	$2,806,813

The full value used to determine the Revised Assessment is as follows:

Property Address	3891 Maple Rd		
Tax ID Number	54.03-1-14		
Tax Year	Equalization Rate	Prior Assessment at Full Value	Revised Assessment at Full Value
2019	95%	$7,894,736	No Change.
2020	91%	$8,241,758	No Change.
2021	88%	$8,522,727	$3,189,560

If any tax bills which are based on the 2021 Tax Year are not timely corrected to reflect the Revised Assessment for that tax year, the Petitioner herein shall be paid the sum equal to the difference between the real property taxes paid, or to be paid, and the taxes that would have been paid if the tax bills had been corrected to the Revised Assessment for that tax year. Interest on the above payments shall be waived, except that interest shall be paid at the legal rate for real property tax assessment refunds to the extent amounts required to be paid hereunder are not paid within sixty (60) days of the service of this order upon the entity responsible for making such payment, until the same is so paid.

2. In consideration hereof, the parties agree that all Pending Proceedings shall be discontinued, and that the final assessment of the Property shall be set at the Revised Assessment for the 2021 Tax Year ("Moratorium Assessment"), and for a period of three (3) tax years following the close of the rolls for the 2021 Tax Year pursuant to RPTL §727 (i.e., affecting the succeeding 2022, 2023, and 2024 Final Tax Assessment Rolls) (hereinafter the "Moratorium Period") subject to the conditions set forth herein. In the event the assessment on the tentative or final tax assessment roll filed for any Tax Year during the Moratorium Period exceeds the Moratorium Assessment, Petitioner shall not be restrained from commencing such additional and further proceedings as Petitioner shall be deemed appropriate challenging those assessments.

Notwithstanding the foregoing, the parties agree that the Assessor may change the assessment, and the Petitioner may challenge the assessment, either after expiration of the Moratorium Period, or for any tax year after any of the events set forth in RPTL §727(2) (c), (d), (e), (f), (g), (h) and (i) shall occur.

The parties agree that the exceptions in RPTL §727(2) (a) and (b) shall not apply to this settlement agreement. In the event the municipality completes a revaluation or update of all real property on the assessment roll for any tax year during the Moratorium Period, the new assessment for such year shall be the Revised Full Value Assessment for the 2021 Tax Year. The Petitioner only shall have the right to challenge the assessment for any tax year when, on or before the taxable status date, the business now located on the Property is closed, or the Property is no longer used as a Department Store.

3. The parties further agree that the discontinuance of all Pending Proceedings shall be contingent upon and subject to the assessment of the Property being set at the Revised Assessment for the 2022, 2023, and 2024 Tax Years, unless changes are permitted under this section of the agreement.

4. That sums heretofore specified to be paid in this Stipulation and Consent Order are all inclusive and statutory costs and disbursements are waived.

5. Any payments hereunder shall be made to the Jacobson Law Firm, P.C. as attorney for the Petitioner herein.

6. Counsel for the Petitioner herein represents that the approvals for this settlement have been obtained from the Petitioner herein.

7. Counsel for the Respondent herein represents that approvals required for this settlement have been obtained from any and all necessary parties and entities, and Respondent Town of Amherst has concluded the settlement to be in the best interest of the Town.

8. Counsel for the Intervenor-Respondent(s) herein represents that approvals required for this settlement have been obtained from all necessary parties and Intervenor-Respondent(s) have concluded the settlement to be in the best interest of said Intervenor-Respondent(s).

This Stipulation and Consent Order shall be governed by the provisions of Section 727 of the Real Property Tax Law, except as otherwise provided for herein. The parties hereto shall have the right to seek specific performance of any of the terms and provisions herein. The Petitioner shall have the right to reinstate and restore these proceedings, and commence new proceedings seeking the same relief as provided for herein, and for any subsequent Tax Year affected by this Stipulation and Consent Order, to the extent that the Respondents do not comply with any of the terms and provisions herein. In the event Respondents do not comply with the terms and provisions herein and Petitioner attempts to reinstate and restore the Pending Proceedings or commence a new proceeding seeking the same relief, Respondents waive any applicable statute of limitations, and the provisions of RPTL §718 regarding abandonment shall not apply.

Petitioner:

Dated: 7-27-2021

Aaron H. Jacobson, Esq.
Attorney for Petitioner
J. C. PENNEY CORPORATION, INC., J.C. PENNEY PROPERTIES, INC. AND PENNEY PROPERTY SUB HOLDINGS LLC
Jacobson Law Firm, P.C.
1080 Pittsford-Victor Road, Suite 304
Pittsford, New York 14534
Telephone: (585) 218-6290

Respondents:

Dated: ____________

Stanley J. Sliwa, Esq.
Attorney for Respondent
TOWN OF AMHERST
Town Attorney
Town of Amherst, 5583 Main Street
Williamsville, NY 14221
Telephone: (716) 631-7037

Dated: ____________________

____
David Marrano
Assessor
Town of Amherst
5583 Main Street
Williamsville, NY 14221

Dated: 7-28-21

____
John K. Rottaris, Esq.
Attorney for Intervenor-Respondent
SWEET HOME CENTRAL SCHOOL DISTRICT
Gross Shuman P.C.
465 Main Street, Suite 600
Buffalo, NY 14203
Telephone: (716) 854-4300

Dated: 7/28/21

Amanda C. Townsend
Amanda C. Townsend, Esq.
Attorney for Intervenor-Respondent
COUNTY OF ERIE
Bengart & DeMarco, LLP
2655 Sheridan Drive
Tonawanda, NY 14150
Telephone: (716) 838-4600

Upon reading and filing the annexed stipulation ("Settlement Stipulation"), it is hereby

ORDERED, ADJUDGED, AND DETERMINED, that the Settlement Stipulation of the parties be, and the same hereby is, determined to be reasonable, just and in the best interests of the parties herein, and the same be and is approved; and it is further,

ORDERED, ADJUDGED, AND DETERMINED, that the parties shall and hereby are directed to comply with the terms and conditions of said Settlement Stipulation; and it is further,

ORDERED, ADJUDGED, AND DETERMINED, that in the event that the Town of Amherst fails to set the assessment of the Property as provided for in the Settlement Stipulation for any Tax Year during the Moratorium Period, the proceedings herein, upon Petitioner's application, shall be restored to the Court's calendar, and the Petitioner shall have the right to enforce the terms of the Settlement Stipulation and this Court shall retain jurisdiction with respect to same; and it is further,

ORDERED, ADJUDGED, AND DETERMINED, that the real property tax assessment for the Property located in the Town of Amherst be revised as follows:

Property Address	3891 Maple Rd		
Tax ID Number	54.03-1-14		
Tax Year	**Taxable Status Date**	**Prior Assessment**	**Revised Assessment**
2019	March 1, 2019	$7,500,000	No Change.
2020	March 1, 2020	$7,500,000	No Change.
2021	March 1, 2021	$7,500,000	$2,806,813

and that the tax assessment rolls for said year shall be so modified; and it is further,

ORDERED, ADJUDGED, AND DETERMINED, that the Assessor of the Town of Amherst shall make or cause to be made upon the proper books and records and on the tax assessment rolls of said Town, the entries, changes and corrections necessary to conform said assessment to such corrected and reduced valuation; and it is further,

ORDERED, ADJUDGED, AND DETERMINED, if any tax bills relating to the 2021 Tax Year(s) are not timely corrected to reflect the Revised Assessment, there shall be audited and allowed paid to the Petitioner by the Town of Amherst, County of Erie, Sweet Home Central School District, and any other applicable taxing authority or entity that bases its payments on said assessment, the amount, if any, paid by said Petitioner in excess of what would have been paid had the assessment been based on the Revised Assessment, without interest, except that interest shall be paid at the legal rate for real property tax assessment refunds to the extent that amounts required to be paid hereunder are not paid within sixty (60) days of the entry of this Stipulation and Consent Order and service of this order upon the entity responsible for making such payment until the same is so paid as determined by the Settlement Stipulation; and it is further,

ORDERED, ADJUDGED, AND DETERMINED, that any parties and attorneys signing this Stipulation and Consent Order, by doing so, represent that they have necessary authority to do so, that said party has duly agreed to this settlement, taken the necessary action to do so and are the duly authorized and empowered persons to do so; and it is further,

ORDERED, ADJUDGED, AND DETERMINED, that these proceedings are hereby discontinued subject to and provided the Respondents comply with all the terms and conditions of this Stipulation and Consent Order; and it is further,

ORDERED, ADJUDGED, AND DETERMINED, that these proceedings shall be governed by §727 of the Real Property Tax Law of the State of New York regarding to changes in assessment following litigation, subject to the terms of the parties' stipulation above, for a period of three (3) years following the 2021 Tax Year (i.e., affecting the 2022, 2023, and 2024 Tax Year(s)), where 2022 shall be considered the first year so affected, and the provisions of §718 of the Real Property Tax Law of the State of New York shall not apply to the terms of this Stipulation and Consent Order.

DATED: ______________________

______________________, New York

____
Hon. Deborah Chimes
Supreme Court Justice

JCP01-Amherst-2019