

Dear Steve,

We'd like to submit a response to the pricing proposal sent last week for the leased land our building is permanently situated on.

You previously informed us that the purchase price is subject to a commercial appraisal and cannot fall below that appraisal's value as per municipal regulations. You also mentioned that direct negotiations would only be possible following the completion of this appraisal. Consequently, we have been in a holding pattern for nearly three months, eager to proceed with the purchase. It is important to draw your attention to the language of the resolution that was adopted during the assembly meeting on August 21, 2023, which reads as follows:

"Borough Code Section 16.16.070, Sale of Tidelands, states:

- 1) In isolated and necessary instances, the Assembly may sell tracts of tide and submerged lands which are not needed for public purposes; and
- 2) **Sales of tide and submerged land shall not be made for consideration less than the assessed full and true value as established by the borough assessor;** and
- 3) The Assembly shall hold a public hearing to consider the disposal of the tidelands; and
- 4) At the hearing, the benefits of sale of the subject tideland that could not be realized through leasing must be clearly demonstrated; and
- 5) An applicant for purchase of tidelands must conclusively demonstrate that outright sale of a tideland, as contrasted with lease of the tideland, is in the Borough's best interests."

When Resolution #2023-11, was put into motion at the August 21st meeting, it was not altered or amended, so the wording stands, that the **Sales of tide and submerged land shall not be made for consideration less than the assessed full and true value as established by the borough assessor.** Nowhere in the resolution is there a stipulation or directive that mandates the Borough Manager to commission an expensive commercial appraisal as a prerequisite for entering into direct negotiations.

Further, this excerpt taken directly from municipal code states the same:

**"16.12.010 - Power to acquire and dispose of real property.**

The borough assembly, by resolution, may authorize the acquisition and disposal of real property in accordance with the provisions of this chapter and on terms and conditions as the assembly shall determine. No acquisition or disposal shall be made until the assessor has assessed the affected property and given the assembly an opinion as to the property's full and true value. Except as otherwise provided herein, real property shall not be disposed of for less than its assessed value, plus any applicable costs of sale. The equivalency of value of property to be acquired and disposed of by land exchange shall be determined by appraisal, under the provisions of [section 16.12.140.](#)"

Now that we have clarified that there was no obligation to procure a commercial appraisal, we won't be including that amount in our counter offer. Furthermore, in the event that we need to secure funds from a financial institution for the land acquisition, it's common knowledge that a privately obtained appraisal is ineligible and will not be considered in the financing process. This appraisal that was ordered serves no purpose for us. Moreover, as per municipal code, any estimated costs and fees related to the property purchase should have been provided to the buyer in advance in written form, which was not done.

Allow us to emphasize that this property holds significance solely for the Borough as a leased parcel or disposal property, as well as for us, the proprietors of the permanent structure and the concrete pad that occupies the premises. No other parties could potentially express interest in acquiring this property without also acquiring our building. Moreover, it is legally impermissible to lease the property itself to any other entity because we own the permanent structure and the concrete pad atop it. Considering all these factors, a *fair* commercial appraisal would require an identical comparison to derive the value that was provided. Given that no other situations closely resemble ours, the appraisal presented holds little relevance and does not demonstrate fair market value.

We were informed that among the comparable properties used, one was a main street commercial parcel and another was located just off the main street; these do not appear to be suitable comparisons. A glance at the assessed values of neighboring properties in proximity to ours reveals that the commercial value is already factored into the borough's assessments. Our assessed value stands at \$11.20 per square foot, whereas the property immediately behind us, situated on the waterfront, which is currently used as commercial storage, is assessed at \$7.84 per square foot. Furthermore, industrial properties located within a quarter of a mile south of us, also on the waterfront and hosting active businesses, have assessed values ranging from \$4.21 to \$8.00 per square foot. This demonstrates that the commercial value we have personally invested and cultivated is already reflected in the assessed value per square foot, surpassing it by \$3, \$4, and in certain instances, as much as \$7 per square foot.

Now, addressing the alleged *mandatory* lease "buy-out." We have diligently combed through the borough municipal code and our lease agreement with the borough, seeking any provision that mandates the payment of the remaining (4) five-year lease terms, or even a portion thereof, without success. We have also requested from your office the specific section in the municipal code that stipulates such a requirement, but have not been furnished with this language. However, since we possess the option to terminate the lease before the commencement of each five-year term, it seems reasonable to settle the outstanding balance for the current five-year term. The lease is prepaid on an annual basis, and we have already covered three out of the five payments for the current lease term, so we are prepared to remit payment for the remaining two years as part of the property purchase.

Taking into consideration everything stated above, we are setting our counter offer at the full and most current assessed value on record, plus the final two years of our five-year lease term.

Current Property Value: \$75,300.00

Lease "buy-out":  $\$4032 \times 2 = \$8,064.00$

Counter Offer Total: \$83,364.00

We kindly request that you carefully consider our proposal. The original proposal you presented lacks financial feasibility from our perspective. The total value of the individual components, at the offered amount, does not align with the market value of the entire real property package when considered as a whole. We have made substantial investments in this property, surpassing those made by the Borough itself, and our only desire is to be treated fairly and equitably. This is needed for the continuation of our essential business and to enable us to retire in a proper manner after over three decades of serving our community.

Respectfully,

John & Sheri Wilkan

A handwritten signature in black ink, appearing to be 'J & S Wilkan', written in a cursive style.