

Special Meeting of the Board of Education - via Zoom Webinar (Wednesday, August 12, 2020)

Generated by Beth M Nystrom on Thursday, August 13, 2020

Members present

David Badanes, Victoria Buscareno, Larry Licopoli (arrived at 7:20 p.m.), Thomas Loughran, Donna McNaughton, Allison C Noonan, David Stein

Members absent

None

Also Present

Mr. Robert Banzer, Superintendent of Schools

Public Attendance: 0

1. **CALL TO ORDER** – President Badanes called the meeting to order at 6:37 p.m.
2. Mr. Badanes led those present in the **PLEDGE OF ALLEGIANCE**; and
3. Pointed out the **EMERGENCY EXITS**
4. **IF NECESSARY, THE CHAIR MAY ENTERTAIN A MOTION TO ENTER INTO EXECUTIVE SESSION** - Note: It is anticipated that the Board will meet in public at 6:00 p.m. in the Board Conference Room at the William J. Brosnan School to act upon a resolution, upon majority vote, to immediately convene into Executive Session to discuss matters pertaining to current litigation.

Action: 4.01 Motion to convene into Executive Session to discuss matters pertaining to current litigation.

Motion by David Badanes, second by Thomas Loughran.

Final Resolution: Motion passes

Yes: David Badanes, Victoria Buscareno, Thomas Loughran, Donna McNaughton, Allison C Noonan, David Stein

At 7:30 p.m., the the Board reconvened in public session.

5. LIPA SETTLEMENT

Action: 5.01 LIPA Settlement Resolution

Recommendation to approve the following resolution:

BOARD RESOLUTION AUTHORIZING SETTLEMENT

"WHEREAS, the Long Island Power Authority ("LIPA") and National Grid Generation, L.L.C. ("National Grid") commenced a series of tax certiorari proceedings against the Town of Huntington, the Assessor of the Town of Huntington, and the Board of Assessment Review of the Town of Huntington beginning in or about October of 2010 and every year thereafter for the 2010-2011 through 2019-2020 tax years alleging that the assessment of the Northport Power Plant is improper and excessive by approximately ninety percent (90%) ("LIPA/Huntington Tax Certiorari Litigation"); and;

WHEREAS, the school taxes paid on the Northport Power Plant currently represent approximately 38% of the Northport-East Northport Union Free School District's ("School District") annual tax levy necessary to fund the operations of the School District; and

WHEREAS, the Town of Huntington as the tax assessing jurisdiction under the New York State Real Property Tax Law has the sole fiduciary responsibility for the proper defense and settlement of tax certiorari claims asserted against the Town of Huntington and its Assessor; and

WHEREAS, the School District did not nor does it have any legal standing to intervene in the LIPA/Huntington Tax Certiorari Litigation, despite the fact that the School District and its school community will be the most significantly impacted by a judgment that dramatically reduces the property taxes currently paid on the Northport Power Plant; and

WHEREAS, on May 9, 2011, the Board of Education of the School District authorized its school attorneys, Ingerman Smith, L.L.P., to initiate legal action on behalf of the Board of Education against LIPA, National Grid and others to enforce promises and/or representations made to the School District and affected municipalities concerning the property taxes paid by LIPA and National Grid to the Town of Huntington on the Northport Power Plant property, by which litigation the School Board obtained a stakeholder role in any settlement negotiations between the Town of Huntington and LIPA; and

WHEREAS, on May 10, 2011, the School District commenced legal action against LIPA, National Grid and others in a matter captioned Board of Education of the Northport-East Northport Union Free School District, et al. v. Long Island Power Authority, et al., in New York State Supreme Court – Commercial Division, Suffolk County bearing Index Number 15194/2011 (the “School District/LIPA Litigation”), which legal action asserted a breach of the School District’s third party beneficiary contractual rights; and

WHEREAS, a similar legal action was commenced by the Town of Huntington against LIPA, National Grid and others on May 10, 2011 in New York State Supreme Court – Commercial Division, Suffolk County bearing Index Number 15186/2011 (“Huntington/LIPA Litigation”); and

WHEREAS, on August 15, 2018, the Honorable Elizabeth H. Emerson issued a Short Form Order granting LIPA’s and National Grid’s motions for summary judgment in the School District/LIPA Litigation, denying the School District’s cross-motion for summary judgment, issuing declaratory relief in favor of LIPA and National Grid on the first and third causes of action and dismissing all of the School District’s pending causes of action (“Short Form Order”); and

WHEREAS, the School District subsequently appealed the decision as set forth in the Short Form Order to the Appellate Division, Second Department where said appeal is currently pending; and

WHEREAS, as a result of having commenced the aforesaid School District/LIPA Litigation, the School District obtained the right to participate with the Town of Huntington in negotiations with LIPA and National Grid to seek a resolution of the various claims by and against LIPA and National Grid in the LIPA/Huntington Tax Certiorari Litigation, the School District/LIPA Litigation and the Huntington/LIPA Litigation (hereinafter collectively referred to as the “Litigation”); and

WHEREAS, since the instigation of its claimed breach of the School District’s third party contractual rights, the School District has asserted its right to actively participate in any settlement negotiations; and

WHEREAS, the Town of Huntington has informed the School District that the trial of the LIPA/Town of Huntington Tax Certiorari Litigation has been completed and that a decision in said proceeding is impending; and

WHEREAS, in addition to other efforts undertaken by the School District and the Town of Huntington to mediate the claims in the LIPA/Huntington Tax Certiorari Litigation, School District/LIPA Litigation and the Huntington/LIPA Litigation, during the 2019-2020 school year the School District participated in lengthy negotiations before the Suffolk County District Administrative Judge, Honorable C. Randall

Hinrichs, along with the Town of Huntington, LIPA and National Grid in an effort to seek resolution of the Litigation; and

WHEREAS, it was made known to all participants in the aforesaid negotiations that any proposed settlement acceptable to LIPA was expressly subject to the subsequent review and approval of the School Board and Town Board; and

WHEREAS, during the course of the aforesaid negotiations before Suffolk County District Administrative Judge, Honorable C. Randall Hinrichs, a settlement of the Litigation acceptable to LIPA was proposed in a certain Settlement Term Sheet (“Initial Settlement Term Sheet”), which was subsequently rejected by the Board of Education; and

WHEREAS, thereafter on July 2, 2020, as a result of subsequent direct negotiations between the School District and LIPA, an agreement in principle modifying the terms the Initial Settlement Term Sheet referred to above, including the direct payment of \$14,500,000 by LIPA to the School District, was reached between LIPA and the School District, subject to the formal approval of the Board of Education requiring its withdrawal of the appeal pending in the School District/LIPA Litigation (“July 2, 2020 Settlement Term Sheet”); and

WHEREAS, withdrawal of the appeal pending in the School District/LIPA Litigation is only required in the event that the parties execute a formal settlement agreement in accordance with the terms and intent of the provisions set forth in the attached July 2, 2020 Settlement Term Sheet; and

WHEREAS, the Huntington Town Board has been kept fully apprised of the foregoing direct negotiations and proposed agreement between LIPA and the School District; and

WHEREAS, to effectuate settlement of all Litigation in accord with the attached July 2, 2020 Settlement Term Sheet, the Huntington Town Board must also agree to the terms of settlement set forth in said July 2, 2020 Settlement Term Sheet, which requires the Town of Huntington’s withdrawal of its appeal pending in the Huntington/LIPA Litigation and LIPA’s withdrawal of its pending claims seeking a reduction of the Northport Power Plant’s assessed valuation through and including 2027, and thereafter subject to certain conditions, through 2032; and

WHEREAS, LIPA initially informed the School District and the Town of Huntington that it would withdraw its offer of settlement and proceed to judgment in the LIPA/Huntington Tax Certiorari Litigation, unless the aforesaid proposed settlement as set forth in the July 2, 2020 Settlement Term Sheet was formally approved by the Board of Education of the School District by public resolution on or before July 23, 2020 and thereafter formally approved by the Huntington Town Board by public resolution on or before August 11, 2020; and

WHEREAS, based upon its review of the facts and circumstances surrounding the School District/LIPA Litigation, the Board of Education has determined that it is in the best interest of the School District, and all other residents of the Town of Huntington, to settle the Litigation in accordance with terms set forth in the July 2, 2020 Settlement Term Sheet, and on July 20, 2020, the Board of Education approved and accepted the settlement proposed in the July 2, 2020 Settlement Term Sheet by resolution at a public Board of Education meeting; and

WHEREAS, at its July 21, 2020 meeting, the Huntington Town Board authorized a vote on the proposed settlement on September 29, 2020 rather than on August 11, 2020, the date imposed by LIPA, by which the Town Board was to act failing which LIPA would withdraw the proposed settlement; and

WHEREAS, on August 11, 2020, the Town Board modified the aforesaid date upon which it will vote on whether to accept and approve the proposed settlement from September 29, 2020 to September 3, 2020,

which change of date was approved and accepted by LIPA as the date by which the Town Board has to act failing which LIPA would withdraw the proposed settlement; and

WHEREAS, LIPA's approval of the change of date for the Town Board to act was made with the unconditional promise that LIPA would only withdraw the proposed settlement if the Town Board failed to approve and accept the proposed settlement on or before September 3, 2020; and,

WHEREAS, the change of the date by which the Town Board is obliged to act upon the proposed settlement to September 3, 2020 requires the Board of Education to modify its prior July 20, 2020 resolution approving and accepting the proposed settlement;

NOW, THEREFORE, BE IT RESOLVED that the Board of Education hereby authorizes and approves of the terms of settlement as set forth in the attached July 2, 2020 Settlement Term Sheet, subject to: (1) the Town Board's approval of the settlement terms as set forth in the attached July 2, 2020 Settlement Term Sheet; and, (2) the subsequent execution by all parties of a formal settlement agreement incorporating the settlement terms in accordance with the terms and intent of the provisions set forth in the attached July 2, 2020 Settlement Term Sheet; and

BE IT FURTHER RESOLVED that the Board of Education hereby urges the Town of Huntington Board to promptly authorize and approve the July 2, 2020 Settlement Term Sheet on or before September 3, 2020 to avoid the potentially devastating impact of an adverse judgment in the LIPA/Town of Huntington Tax Certiorari Litigation that will negatively affect the financial interests of the School District, the taxpayers of the Northport East Northport school community and every other taxpayer residing in the entire Town of Huntington; and

BE IT FURTHER RESOLVED that the President of the Board of Education is herewith authorized to execute a formal settlement agreement and any other documents necessary to effectuate the terms of said settlement agreement on behalf of the Board of Education, provided the conditions hereinabove are fully satisfied; and

BE IT FURTHER RESOLVED, that if the Huntington Town Board does not authorize and approve the July 2, 2020 Settlement Term Sheet on or before September 3, 2020, or in the further event that the parties do not execute a formal settlement agreement in accordance with the terms and intent of the provisions set forth in the attached July 2, 2020 Settlement Term Sheet, School Board counsel is hereby directed to continue to pursue the appeal of the School District/LIPA Litigation pending before the Appellate Division, Second Department."

Motion by David Stein, second by Thomas Loughran.

Final Resolution: Motion Passes

Yes: Victoria Buscareno, Larry Licopoli, Thomas Loughran, Donna McNaughton, David Stein

No: David Badanes, Allison C Noonan

6. ADJOURNMENT - Board policy requires adjournment by 10:30 pm, unless meeting is extended by vote.

Information: 6.01 Upcoming Meetings

REGULAR MEETING

Thursday, August 20, 2020

7:00 p.m.

William J. Brosnan School

REGULAR MEETING

Thursday, September 3, 2020

7:00 p.m.

William J. Brosnan School

REGULAR MEETING

Thursday, September 17, 2020

7:00 p.m.

William J. Brosnan School

Action: 6.02 Adjournment

Recommendation to adjourn meeting

Motion by David Badanes, second by Allison C Noonan.

Final Resolution: Motion Passes

Yes: David Badanes, Victoria Buscareno, Larry Licopoli, Thomas Loughran, Donna McNaughton, Allison C Noonan, David Stein

At 7:35 p.m., the Chair declared the meeting adjourned.

Respectfully submitted,

Beth M. Nystrom

District Clerk