

October 27, 2020

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Kingston Citizens

Rebecca:

Here is an interim and somewhat preliminary review of the results of tax incentive agreements between the Bonura group interests, and the City of Poughkeepsie, acting through its Common Council and the IDA. This review refers to public records and statements, as noted.

I am one of a group of Poughkeepsie residents, mostly attorneys and business people, who are researching the history of transactions with Bonura. We are organizing a comprehensive library of public records, records available through FOIA, and newspaper reports quoting parties in interest, including Joseph Bonura.

We are agreed to share this statement with your group. You may disseminate the information herein, with the proviso that you include the citations to the public record.

Speaking for myself, expressing my opinion, it is my belief that an independent review of the financial position and resources of the Kingstonian, LLC and its principals would be incomplete, without an independent contemporaneous review of the publicly available information regarding the Bonura Group's track record with tax assisted projects in Poughkeepsie.

1. First, I refer to a public presentation from the Poughkeepsie City Industrial Development Agency, to the Poughkeepsie Common Council on September 21, 2020.

The IDA presentation is on-line at the City of Poughkeepsie IDA page at www.cityofpoughkeepsie.com

I call your attention to pages 7, 8, 9, 11, 16 and 27, where the Poughkeepsie IDA reports that Bonura projects have received a present value of over \$ 1 billion in tax benefits, yet have produced only 226 jobs. The two Bonura projects authorized by the Poughkeepsie IDA cost \$ 141,000 per job for the Shadows restaurant, and \$ 142 million per job for the Water Club. These numbers compare to \$ 4378 per job across New York State, \$ 6555 per job in Dutchess County, and \$ 2677 per job in Ulster County, according to the 2018 IDA Data released by the NYS Comptroller on July 20, 2020. wwe1.osc.state.ny.us/localgov/ida/2020/

2. On October 5, 2020, the Poughkeepsie Common Council, in Resolution 20-79, called on the Bonura Group to make good on Bonura's claim that he has an enforceable contract to develop the DeLaval site, on the Poughkeepsie waterfront, a claim that dates from 2004. Bonura was directed to complete all the necessary steps to secure the PILOT that he claims he has and/or is entitled to from the Poughkeepsie IDA. He was given a 45-day deadline.

Three weeks later, October 27, neither the Common Council nor the Poughkeepsie IDA have reported progress in Bonura's compliance with the terms of the Resolution 20-79.

3. Further in regard to Bonura's claims to develop DeLaval and to finalize a PILOT for DeLaval is the 16-year failure to fulfill the requirement that 13 acres of replacement parkland be identified and placed in service, as a condition of the DeLaval's site being developed. This condition is imposed by state law, from the 2003-2004 Session, S07657/A11615-B.

The failure to meet the parkland replacement requirement is a serious hurdle to any development on DeLaval. The case Matter of Avella v. City of New York, 29 NY3d 425, 429 (2017), involving proposed development at the Met Stadium site, is very clear about the strict enforcement of parkland protection and alienation laws.

4. My group, though informal, is also inquiring into another topic-- the June, 2016, Landlord's Estoppel document, included as part of the Bonura \$ 23 million financing and re-financing of the Water Club apartment complex, in the City of Poughkeepsie, The Water Club is the subject of a 99-year PILOT in favor of Bonura's Waterfront Development LLC. The 2016 Landlord's Estoppel agreement is Document 1836 filed on March 24, 2016, and amended in Document 3842, filed June 16, 2016.

Today, the 2016 Estoppel agreement is relevant, because it will have to be amended by the Poughkeepsie IDA and executed as a formal agreement, in order to support Bonura's planned \$ 36 million re- financing of the Poughkeepsie properties, among other collateral.

Our group are hopeful that this time, that the Poughkeepsie IDA and other taxing authorities will refuse to agree to certain terms that were imposed in the June 2016 document, including but not limited to:

---bankruptcy proofing of the creditors' claims against the Water Club buildings and operations, and against the ground lease and PILOT contract, which two agreements are municipal assets. These municipal assets might not be subject to bankruptcy proofing. (Bankruptcy proofing is an agreement that protects a creditor in bankruptcy - the particular assets and resources are not subject to any other claims. It means that the two municipal assets - the ground lease and the PILOT—are the property of Bonura's bank until the \$ 23 million loan is repaid, even if Bonura enters bankruptcy.) Section 11 of Document 3842, filed June 16, 2016.

It is not clear that bankruptcy proofing is permissible as to municipal assets. It is certainly not a prudent concession, for a small municipality.

-- full transferability, at the discretion of the Lender, Section 17, Doc 3842, filed June 16, 2016

-- full transferability of the PILOT Section 1(c), Doc 3842 filed June 16, 2016

Our group's position is that the success of the Water Club and other Bonura operations is due to the tax benefits supplied by the taxpayers of Poughkeepsie. Therefore, the increase in the value of the properties, and related financial strength of the projects, should remain in Poughkeepsie, to benefit the Poughkeepsie economy. This success, measured by the increased value of the properties, the equity, should be frozen, in Poughkeepsie, until the original \$ 23 million loan and the 99-year tax holiday comes to an end.

If our group are able to convince the Poughkeepsie City IDA, the Poughkeepsie Common Council and the Poughkeepsie City School District to share our views, then, it is possible that the 2020 Lenders Estoppel Agreement will not facilitate the \$ 36 million re-financing.

It is also possible that the Bonura Group's ability to cash out the self-reported \$ 13 million equity may be restricted, in ways that affect the financing of the Kingstonian project.

5. Comments on Bonura's attention to detail and transparency in his public filings and disclosures.

The Water Club PILOT document, which is collateral for the June, 2016 \$ 23 million loan, is not filed with that transaction. Instead, the PILOT agreement provided as collateral is for a different property, with a completely different description of the location and the required development. Exhibit C, on p. 19, of document 3842, titled DEED, filed June 16, 2016.

Second, the Ground Lease that describes the required development is not filed, though it is the collateral for \$ 23 million in debt. Instead, Section 7(d) of this June, 2016, re-financing directs that the Ground Lease not be filed --possibly depriving the bank mortgagee of adequate description of the collateral for the \$ 23 mm loan, under applicable financing statutes.

More important, the parties' refusal to publicly file the complete history of the Water Club ground lease covers up the tortured and arguably illicit history of the Water Club development.

In 2004, the Common Council directed that a hotel and commercial space be built on the site. Poughkeepsie Journal, Sept. 15, 2004, Nov. 27, 2009, Dec. 22, 2019. This authorization to the Poughkeepsie City IDA was confirmed by the POK IDA, in December, 2009.

However, in November, 2015, the Poughkeepsie IDA changed the approved development plan, to give Bonura the sole discretion to build market rate apartments. There was no SEQRA review for this change in the scope of the project. Our group has not yet located any contemporaneous amendment to the original development plan, in the 2004 Resolution from the Poughkeepsie Common Council.

It is critical to appreciate that a boutique hotel on the waterfront, if built in 2016, would have competed with Bonura's Poughkeepsie Grand Hotel, on Main Street, in the City of Poughkeepsie.

Today, in 2020, such a boutique hotel, on the Poughkeepsie City waterfront, would have been in a highly advantageous competitive position, in today's hotel market in the Poughkeepsie area. In 2020, there were two proposals to build hotels near the Vassar campus just outside Poughkeepsie, a proposal to build a boutique hotel on the campus of the Culinary Institute, just outside Poughkeepsie, and two hotels under construction on Route 9, both just north of Poughkeepsie - the Bellefield site in Hyde Park and the former Hudson Valley Psychiatric hospital site. Five hotel proposals, just outside Poughkeepsie, but nothing in the City of Poughkeepsie, except the Bonura owned Poughkeepsie Grand Hotel, recently in the news because multiple large pieces of the building façade fell onto the Rte. 44/55 arterial highway.

Our group have no comment on the suitability of the proposed Kingstonian development, for the Kingston community. However, Bonura's track record with PILOTs in Poughkeepsie is relevant to a review of the Bonura finances and the developer's history of delivering the benefits paid for, by the Poughkeepsie taxpayers.

Ann Finney