

**Northport-East Northport Union Free School District Special Meeting – William J. Brosnan School  
– 7:00 p.m. (Monday, July 20, 2020) via Zoom**

*Generated by Beth M Nystrom on Wednesday, July 22, 2020*

**Members present**

David Badanes, Victoria Buscareno, Larry Licopoli (arrived at 7:08 p.m.), Thomas Loughran, Donna McNaughton, Allison C Noonan, David Stein

**Members absent**

None

**Also Present**

Mr. Robert Banzer, Superintendent of Schools  
Mr. Robert Howard, Assistant Superintendent for Business  
Mr. John Gross, Ingerman Smith, LLP, Board Counsel

Public Attendance: 0

1. **CALL TO ORDER** – President Badanes called the meeting to order at 6:03 a.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 David Stein.

Final Resolution: Motion passes

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

Not Present at Vote: Larry Licopoli

**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 has informed the School District and the Town of Huntington that it will withdraw its offer of settlement and proceed to judgment in the LIPA/Huntington Tax Certiorari Litigation, unless the proposed settlement as set forth in the Settlement Term Sheet is 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;

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 August 11, 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 August 11, 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."

President Badanes stated that this is a very important decision. The Board has received many emails and calls regarding it and everyone is entitled to their point of view.

There was a long discussion by the Board regarding the proposed LIPA settlement agreement and questions from over fifty community members were answered.

Trustee Loughran asked about the 3<sup>rd</sup> party beneficiary suit and the promise made by LIPA Chairman Kessel and Governor Pataki not to challenge the taxes; LIPA's relationship to New York State; if the State has passed any legislation that directly impacts the District and the Town of Huntington; the \$14.5 million in the settlement that will be paid directly to the District and how can LIPA be trusted.

Trustee McNaughton asked who was deposed during the trial, who would be responsible for paying back taxes if a settlement isn't approved

Vice President Noonan asked if the settlement precludes the school district or anyone in the Town of Huntington from filing a class action lawsuit for environmental issues against LIPA.

Trustee Stein stated that there were many negotiation sessions and settlements were rejected by the Board and asked why LIPA was putting forth the timeline now; asked if nearly a billion dollars in taxes was a real outcome; and if there was any assistance from the State. Mr. Stein stated that the impact of the settlement on property taxes for the rest of the Town of Huntington is diminutive.

Trustee McNaughton asked what would happen if LIPA repowers the plant, increases capacity or makes any type of improvement. Mrs. McNaughton stated that she has heard from the public that LIPA must be against a wall and afraid to lose and that is why they are pushing for a settlement.

Trustee Licopoli and Trustee Buscareno asked why the July 23<sup>rd</sup> deadline especially when we are in the middle of a pandemic.

Mr. Gross stated that a letter was composed and sent to LIPA requesting that the case be put on ice for two years because of the current situation and LIPA adjectively rejected it.

President Badanes asked about the North Rockland tax certiorari case in comparison to the Town of Huntington's; if the Town of Huntington appeals it would be an automatic stay; legislation put forth to help the district and the Town; and if the Board votes no, the settlement would not then go to the Town for approval.

After the discussion, President Badanes asked if any Board Members had final comments before taking the vote.

President Badanes stated that he does not believe it is a good deal. The \$14.5 million in payments to the school district should be going directly to the taxpayers to reduce the tax levy and that future Boards should agree to a 1% tax levy cap instead of 2% tax levy cap. Mr. Badanes stated that the district should not have had to bring this lawsuit in the first place and he believes the 3<sup>rd</sup> party beneficiary case is a good case and the district would have succeeded on appeal. Mr. Badanes stated that he would only vote yes if it was a good deal.

Trustee Licopoli respectfully disagreed with Mr. Badanes. He listened to alternatives to not settling and did not receive a decent answer as to what would happen if the appeal didn't work. What would happen to the community would be devastating. The guarantee in effect is being prepared for this and anything else would be a disaster if the worst case scenario would occur. Mr. Licopoli state he would vote for the settlement.

Trustee Loughran stated that the LIPA stacks are a beacon to Northport. He has engaged in many discussions regarding LIPA and has been told to date that the law is not on our side and we barely have a seat at the table. An immediate judgement in favor of LIPA would be close to their request and would saddle the taxpayers to an immediate payment of a minimum of \$10,000 in taxes and dramatically increase taxes to cover the back taxes owed of approximately \$600,000,000. This would send the financial standing of the district into a tailspin. This settlement offer would provide a glide path to reduction and give the residents times to plan. It is not a great deal but it is better than an alternative judgement. Without legislation in support, no one in the New York State government will be coming to help us. In addition, an expert in tax certiorari cases was appointed as a LIPA trustee. Mr. Loughran stated that he will be supporting the settlement.

Action: Extend Meeting  
Recommendation to extend the meeting

Motion by David Stein, second by Thomas Loughran.

Final Resolution: Motion Passes

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

Trustee Buscareno stated that she feels the same way as Trustee Licopoli. She has had many sleepless nights thinking about this and having to make this decision during a pandemic is horrendous. The misuse of power and political gain, and having to be burdened with this is filthy. Mrs. Buscareno stated that the Board will continued to work hard to ensure the District provides the best education for our students under these circumstances. Mrs. Buscareno stated she will be voting yes on the settlement.

Vice President Noonan concurred with Trustee Buscareno and stated that LIPA is taking advantage in these unprecedented times. Northport is the host community to this urban blight and there was one condition for LIPA to keep their promise and not file a tax certiorari. Mrs. Noonan stated that LIPA has chosen not to be a decent neighbor and wished they didn't paint the district as benefitting from something we don't deserve.

Trustee Stein stated that he agreed with Trustee Buscareno's statement. What LIPA has done is filthy. The district has been doing long range planning for years and must continue to go on to create a financial plan that will allow us to weather the impact, synthesize the loss along with the revenue stream and an efficiency plan to roll out a district that still provides the class of education it always has. Mr. Stein stated that we can make this work and preserve programs. Mr. Stein stated that the Governor is not listening to us and the assembly was very effectively lobbied against us by LIPA. The deal is a significant benefit to the broader Huntington area. The Northport-East Northport district will shoulder the \$24 million loss and the \$16 million will be spread among the rest of the town. The impact was always predominantly outsized on the Northport school district. The risk now is overwhelming. Mr. Stein said his decision is made on being extremely involved, knowing all the moving parts and what's in the best interest of his community. Mr. Stein said his vote for the settlement tonight will be a yes.

Trustee McNaughton stated that you will not find a LIPA fan among any of the Trustees or the ones that came before them. None of them think this is right or fair. This is an unfortunate example of apolitical cudrul. Mrs. McNaughton stated that the risk is to great and having something that is predictable will help address the declining enrollment. The district should benefit because we host the stacks. Mrs. McNaughton stated that all the Trustees have struggled with this and have done everything they can and her vote will be to support the settlement.

Vote on motion to approve item 5.01 LIPA Settlement Resolution was as follows:

Motion by Allison C Noonan, second by David Stein.

Final Resolution: Motion Passes

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

No: David Badanes

Superintendent Banzer thanked the Board, John Gross and Carrie-Anne Tondo for their tireless efforts over the past decade. He thanked the trustees, past and present, for their fortitude, the amount of thoughtfulness, and fight. Mr. Banzer stated that this will give the district and opportunity to move forward.

**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 Thomas Loughran, second by Victoria Buscareno.

Final Resolution: Motion Passes

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

At 10:50 p.m., the Chair declared the meeting adjourned.

Respectfully submitted,

Beth M. Nystrom  
District Clerk