



**Office of the
Ulster County Comptroller
March S. Gallagher**



**COMPTROLLER'S
REVIEW OF
701 GRANT
AVENUE
PROPERTY**



ULSTER COUNTY OFFICE OF THE COMPTROLLER

REVIEW OF 701 GRANT AVENUE PROPERTY

comptroller.ulstercountyny.gov

Released June 2022

Executive Summary

Why this review is important

Ulster Acquisitions I LLC, the title record owner of 701 Grant Avenue in the Town of Ulster, has not paid taxes since the 2010 tax year. Based on our review, we find no justification for Ulster County not to foreclose on 701 Grant Avenue and find no justification for its current classification as hazardous uncollectible.

To date, the County has not pursued foreclosure on this property, which reports the total amount of taxes, interest, and penalties due at over \$10.1 million. The size of the growing receivable has a material impact on Ulster County's financial statement.

In each year since 2013 when the property first became eligible for foreclosure, the County either did not take action or withdraw the property from foreclosure resulting in significant lost tax revenues. The parcel was withdrawn from annual foreclosure actions without further investigation of 1) the scope of potential contamination and, 2) other means to enforce the tax arrears to obtain back taxes for taxpayers.

Ulster County Unpaid Tax Due Computation			
Levy Year	Total Real Property Tax	Total Interest/ Penalties/ Fees	Total Unpaid
2011	\$ 396,107	\$ 392,146	\$ 788,253
2012	607,800	593,100	1,200,900
2013	606,005	520,141	1,126,146
2014	606,257	446,229	1,052,486
2015	615,317	377,621	992,938
2016	633,037	310,564	943,601
2017	650,122	240,059	890,181
2018	662,659	165,067	827,726
2019	673,976	87,016	760,992
2020	559,156	135,817	694,973
2021	554,605	66,153	620,758
2022	205,410	-	205,410
Total	\$ 6,770,451	\$ 3,333,913	\$ 10,104,364

*As of 4.29.22 per documents received from Commissioner of Finance

Withdrawal certificates indicating a legal impediment or hazardous condition lacked supporting documentation under Real Property Tax Law (RPTL) to justify the County's decision to not enforce tax collection. All available building Inspector reports and communications from environmental attorneys stated that there were no significant environmental concerns on the property and the County took no actions to validate any perceived concerns related to the property.

Financial information submitted by the owners in court documents show that the property's owners were able to continue operating the property, collecting rental income and making distributions to owners as recently as 2021. The four years of financial statements available in court records showed that property owners have taken at least \$1.875 million in distributions from the property. While the owners repeatedly contested the real property tax assessment, this is not a justification for non payment or a lack of enforcement of the tax due. The structure of the property tax system requires the property owner to pay tax while they challenge a foreclosure. The property owners failed to provide a court ordered appraisal to justify the reduction in the assessment requested, resulting in the dismissal of several years of cases related to taxes owed.

What we recommend

The County should immediately proceed with the foreclosure of said parcel to recoup any available back taxes and restore its status to the tax roll. Additionally, the County should consider the following policy related changes to ensure that property tax collections are being appropriately enforced.

- Maintain a file of all potential hazardous uncollectible properties including all environmental information, leasing information, comparables, and relevant legal filings made by the property owner etc.
- Annually compare fair market value appraisal to potential liabilities when deciding to remove a property from the list of properties eligible foreclosure.
- Better coordinate between the Department of Finance and County Attorney for filing of tax foreclosure documents including Certificates of Withdrawal and Collective Statement of Redemptions.
- Create a formal committee for making hazardous uncollectible determinations and next steps for action that include Finance, the County Attorney's Office, Department of the Environment and Planning.

Grounds for Withdrawal

Once a property is included in the List of Properties Eligible for Foreclosure in an in rem tax foreclosure proceeding Real Property Tax Law §1138 provides several reasons why it might be withdrawn from the proceeding.

Ulster County cited two such reasons for withdrawing 701 Grant Avenue from foreclosure proceedings neither of which was substantiated.

1) §1138(a) "There is a reason to believe that there may be a legal impediment to the enforcement of the tax lien affecting said parcel."

The 701 Grant Avenue property was removed under the color of legal consideration but there was no legal impediment to foreclosure such as incomplete service. Litigation related to contesting tax assessments does not qualify as a justification not to pay the assessed tax and does not qualify here.

Case law regarding tax collection and tax certiorari cases is clear, stating that the taxpayer must pay the tax while the challenge to the underlying assessment is pending. "It is well established that one challenging a tax assessment must continue to pay his taxes and that the commencement of an assessment review proceeding does not stay the collection of taxes or enforcement procedures instituted by the taxing authority."

(W.T. Grant Co. v. Srogi, 52 N.Y. 2d 496, 513 (1982)).

While the owners of Ulster Acquisitions I LLC has contested their tax assessments for tax years 2013 through 2017 by initiating a tax certiorari case against the town of Ulster, they failed to successfully argue their case which was dismissed in March of 2018 after they failed to produce an appraisal. Even if the tax certiorari case had been successful or was still pending, it is not a proper justification for failure to pay taxes assessed.

2) §1138(d) "If the tax district were to acquire the parcel, there is a significant risk that it might be exposed to a liability substantially in excess of the amount that could be recovered by enforcing the tax lien."

In other words, the property was removed for perceived environmental liabilities. The Comptroller's Office review found no evidence that liabilities associated with the property exceeded the property value. Ulster County did not take the steps necessary to quantify liabilities. Ulster County has not sought an appraisal on 701 Grant Avenue to know the value. The property next door, 901 Grant Avenue, same size, same footprint, same common historical ownership, in worse condition, sold for \$1,925,000 on 6/22/21. Thus, we can assume that 701 Grant Avenue is worth at least \$1.9 million, but probably significantly more given the active tenancy and the potential for growth. Each year that goes by, the outstanding taxes owed grow. Lack of movement on the property impedes collection in future tax years.

The only records provided in response to document requests pertained to a neighboring parcel used by Miron, and those records demonstrate that all potential environmental liabilities were immaterial as of 2014 when said nearby property received a Certificate of Completion. The 2013 in rem proceeding was still active at this time.

While withdrawal certificates were filed with the County Clerk citing both of the above grounds for withdrawal, there was no documentation provided to justify the property's withdrawal for either reason. Additionally, the County failed to file withdrawal certificates citing any reason for years 2016 – 2018.



Assessed at \$9,251,378
SBL: 39.82-1-30.420

The property is a 310,000 SF office building on 15.4 acres zoned for Office and Manufacturing. Renovated in 2010 the building is self-branded the Hudson Valley Business Center.

Timeline of In Rem Foreclosure Actions taken by Tax Year

The Property appears on the petition and notice of tax foreclosure filed for each year from 2013 – 2021. Verified answers were received from Ulster Acquisitions I LLC for each action filed for 2013 -2018 tax delinquencies. The Commissioner of Finance filed certificates of withdrawal for tax years 2013 -2015 and 2019 citing either legal impediments to enforcement or potential liabilities related to environmental concerns. No withdrawal certificates were filed in years 2016 – 2018 and no further action was taken by the County in relation to this property.

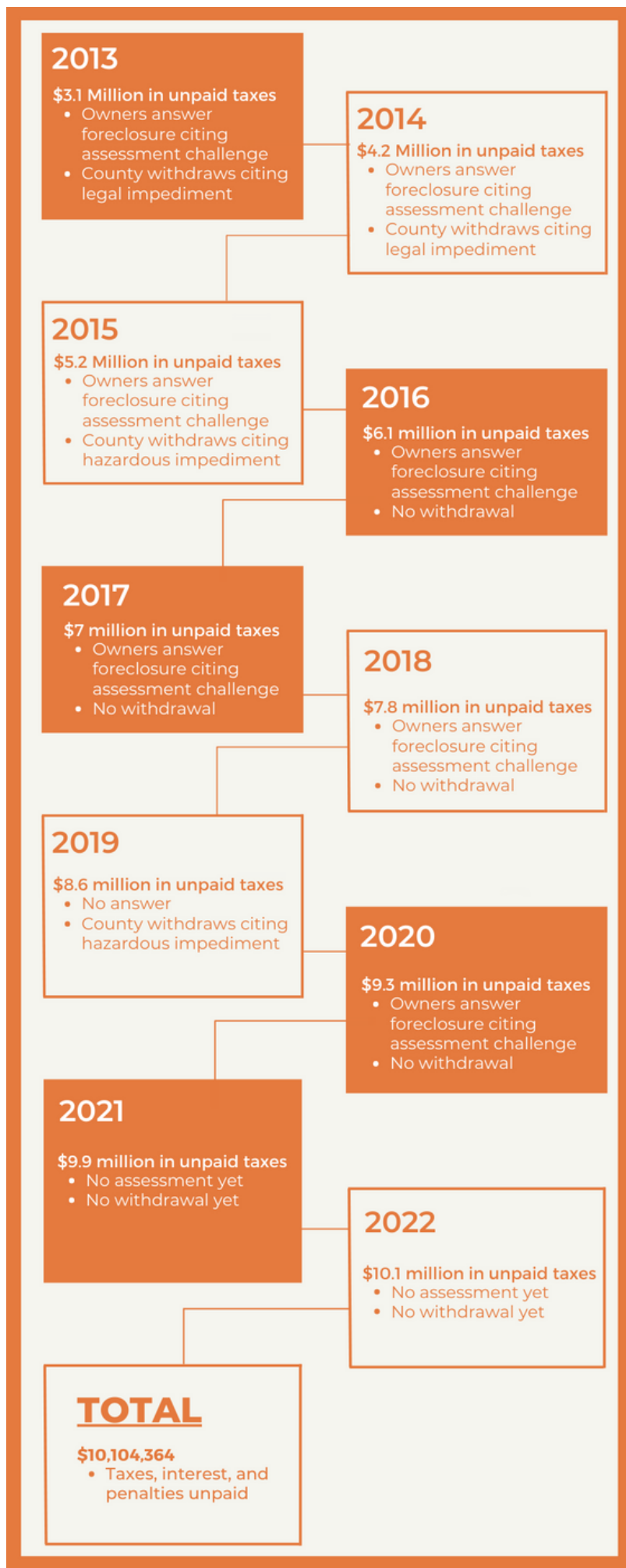
After thorough review of the records provided to us and obtained through the court records filed in the Clerk’s Office, the Comptroller’s Office has developed a timeline of facts associated with the status of 701 Grant Avenue in the Town of Ulster and the tax foreclosure process detailed below:

A detailed timeline of in rem proceedings is also available in Exhibit A at the end of this report.

Hazardous Uncollectible Environmental Review

In 2018, the County first filed a “withdrawal” for the 2013 in rem action citing the potential for hazardous conditions present at the property. We have received no documentation to substantiate this classification. As of January 2015, there was no supporting evidence to classify the property as hazardous.

Building Inspector Questionnaires reviewed state there is no reason the County should not foreclose on this property for each year under review. The Commissioner of Finance annually sends a questionnaire to various building inspectors, mayors and town supervisors, containing a question that specifically asks, “Is there any condition(s) you are aware of why the County should not foreclose on this property?”



For each year, the response was “no”, and in one year there was no response to this question. Beginning in 2019, the forms note the presence of transformers on the site in several years and notes the building was previously owned by IBM in the 2016 response under “Hazards,” on the form. In several years the Description for “Hazardous” was “none.” For copies of building inspector reports provided see Appendix K.

There were no known environmental concerns related to the property. Based on communication provided from the Department of the Environment related to the property and the possibility of environmental concerns, communications between the Department of the Environment and Environmental Attorney and consultant Gary Bowtich in which Mr. Bowtich states:

“[O]ther than the issue of tenants being there, I am unaware of any environmental issues associated with this property. I don’t believe it was ever used for industrial or commercial uses by IBM or anyone else.”

The communication also notes that the County had never conducted a Phase I analysis of the property or any other analysis of the conditions there to justify its concerns. The communication also references a similar conversation related to the status of the property from the prior year, though that communication was not provided in response to our request. See page 29 of Appendix H.

This communication, which occurred on March 2, 2017, indicates that there was no reason to believe there were any hazardous liabilities related to the property, which was known to the County as early as 2016, when it was first classified as “Hazardous/Uncollectible”.

The environmental documentation provided is related to a hazardous property located next to the subject property. Documentation provided by the Department of the Environment relate to a property next to the 701 Grant Avenue property. DEC approved a Work Plan to remediate that site in 2013 (See Appendix I). The area noted in the workplan does not include the property at 701 Grant Avenue but is adjacent to the work plan site. The work plan references nearby locations in the report but does not specifically note the property at 701 Grant Avenue as being at risk for contamination related to this property.

This nearby property was remediated and deemed no longer an environmental concern in 2014. The remediation of this nearby property was completed between 2013 and 2014 through a State sponsored DEC Brownfields Cleanup program and was issued a certificate of completion in December 2014. This certificate of completion was filed with the Ulster County Clerk on January 13, 2015 (See Appendix J). The completed Work Plan report does not indicate any risk of contamination to surrounding properties.

Communications provided by the Department of Environment to the Real Property Tax Department on January 26, 2022, did not indicate that there were significant concerns related to the hazardous nature of the building and were the only documents provided in response to our request.

Previously identified issues related to the nearby former Miron Pre-Cast site were remediated through the DEC Brownfield Cleanup Program in 2013-2014. Additionally, the DEC noted that risks of contamination from the Miron site to surrounding properties is low.

Furthermore, in 2018 Congress adopted the Brownfields Utilization, Investment and Local Development (BUILD) Act. The BUILD Act created an exemption from owner/operator status in instances where a local government acquires title to property “by virtue of its function as sovereign” when exercising a uniquely governmental authority including tax delinquency and foreclosure proceedings. Beginning in 2018, the BUILD Act substantially reduced the risk to Ulster County of taking title to any contaminated property in an in-rem tax foreclosure proceeding.

The Department of Environment also suggested to consider the possibility of asbestos, but suggested follow-up with the Town of Ulster Building Department for more information. To date, no documentation has been provided to suggest the presence of asbestos or any other significant liability at the property. To date no building inspector reports have been provided for the property. This property was omitted from hazardous uncollectible lists provided to the Ulster County Comptroller annually and was omitted from the County's foreclosure book until 2019 based on records maintained by the Comptroller's office on an annual basis, dating back to 2015.

See Appendix G for copies of the hazardous lists provided by the Department of Finance in response to our request.

Actions Filed Regarding Real Property Tax Assessments

Ulster Acquisitions I LLC began contesting their real property tax assessment in 2013. They filed a Notice of Petition to contest their assessment in each year from 2013 to 2017. In April of 2017, the judge hearing the petition ordered an appraisal of the property to be returned to the court by 9/8/2017. After no appraisal was provided, the case was dismissed with prejudice, meaning it could not be brought in front of the court again. At that time there was no longer pending litigation as it related to the real property tax assessments or related levies for tax years 2011 through 2017.

See the Exhibit B for a timeline and summary of court documents reviewed regarding Tax Certiorari proceedings at the end of this report (for complete record see Appendices A through D)

Current Tenants and Space Presently Available for Rent and Other Financial Considerations

The building is currently occupied by four businesses: First Source Transaction Services (listed as 709 Grant Avenue, Lake Katrine) and WillCare (803 Grant Avenue, Lake Katrine) occupy the North side; Kapsch TrafficCom IVHS (705 Grant Avenue, Lake Katrine) occupies the West side; HealthAlliance Billing center (741 Grant Avenue, Lake Katrine) occupies the East side. Upon a site inspection by the Comptroller's Office on April 28, 2022, more than 70 cars were present on site.

The property is currently being marketed for rental space available through the firm SVN Deegan-Collins Commercial Realty, by managing director Thomas Collins. There are three spaces listed as available with a combined square footage of 140,000SF with a lease rate of \$14.00 SF/Yr. The listing for the property highlights that most of the space is "Turnkey" and not in need of substantial renovation. See Appendix L for the complete listing.

<https://www.loopnet.com/Listing/701-Grant-Ave-Lake-Katrine-NY/4246395/>

901 Grant Avenue, which is a similar building constructed at the same time and approved for the same uses, sold last year for \$1.925 million dollars. Additionally, after reviewing financial statement information submitted to the court related to the tax certiorari cases revealed that while failing to pay property taxes on the property, property owners continued to collect rent, and take distributions from the property, even as late as 2020 and 2021 when there were more than \$100,000 in distributions to owners. See Appendix B for complete verified statements submitted.

Exhibit A Timeline of In Rem Proceedings

2013 In Rem Foreclosure Action

10/21/2015 Petition and Notice of Tax Foreclosure filed 2013-3835.

2/4/2016 Verified Answer filed by Ulster Acquisitions I LLC in response to Notice of Foreclosure, claiming failure to comply with notice provisions and "exorbitant and patently unreasonable property tax assessment."

3/4/2016 Certificate of Withdrawal filed by County "There is a reason to believe that there may be a legal impediment to the enforcement of the tax lien affecting said parcel."

2014 In Rem Foreclosure Action

10/19/2016 Petition and Notice of Foreclosure filed 2014-3482.

11/14/2016 Verified Answer filed by Ulster Acquisitions I LLC in response to Notice of Foreclosure, claiming failure to comply with notice provisions and "exorbitant and patently unreasonable property tax assessment."

10/12/2017 Certificate of Withdrawal filed by County stating "If the tax district were to acquire the parcel, there is a significant risk that it might be exposed to a liability substantially in excess of the amount that could be recovered by enforcing the tax lien."

2015 In Rem Foreclosure Action

10/25/2017 Petition and Notice of Foreclosure filed 2015-3377.

2/14/2018 Verified Answer filed by Ulster Acquisitions I LLC in response to Notice of Foreclosure, claiming failure to comply with notice provisions and "exorbitant and patently unreasonable property tax assessment."

3/6/2018 A Stipulation of Discontinuance ended tax certiorari cases from 2013, 2014, 2015 and 2016 with prejudice.

5/4/2018 Certificate of Withdrawal filed by the County stating "If the tax district were to acquire the parcel, there is a significant risk that it might be exposed to a liability substantially in excess of the amount that could be recovered by enforcing the tax lien."

2016 In Rem Foreclosure Action

10/24/2018 Petition and Notice of Foreclosure Filed 2016-3008

2/20/2019 Verified Answer filed by Ulster Acquisitions I LLC in response to Notice of Foreclosure, claiming failure to comply with notice provisions and "exorbitant and patently unreasonable property tax assessment."

No withdrawal found in the Ulster County Clerk's court records.

2016 - No withdrawal, redemption, or motion to foreclose filed by County.

2017 In Rem Foreclosure Action

10/23/2019 Petition and Notice of Foreclosure filed 2017-3146.

2/12/2020 - Verified Answer filed by Ulster Acquisitions I LLC in response to Notice of Foreclosure, claiming failure to comply with notice provisions and "exorbitant and patently unreasonable property tax assessment."

No withdrawal found in the court records, Clerk's record has no indication of withdrawal.

2017- No withdrawal, redemption, or motion to foreclose filed by County.

2018 In Rem Foreclosure Action

10/21/2020 Petition and Notice of Foreclosure filed 2018-3980.

2/17/2021 Verified Answer filed by Ulster Acquisitions I LLC in response to Notice of Foreclosure, claiming failure to comply with notice provisions and "exorbitant and patently unreasonable property tax assessment."

No withdrawal found in the court records, Clerk's record has no indication of withdrawal.

2018 - No withdrawal, redemption, or motion to foreclose filed by County.

2019 In Rem Foreclosure Action

10/21/2021 - Petition and Notice of Foreclosure filed 2019-3784.

No Verified Answer found from Ulster Acquisitions I LLC in response to 2019 Notice of Foreclosure Filed.

2/22/2022 Withdrawal certificate filed by County stating "If the tax district were to acquire the parcel, there is a significant risk that it might be exposed to a liability substantially in excess of the amount that could be recovered by enforcing the tax lien."

2020 In Rem Foreclosure Action

11/10/20 Application for an Index No. 2020-2839.

2020- No withdrawal, redemption, or motion to foreclose filed by County.

2021 In Rem Foreclosure Action

4/28/21 Motion fee paid, Index No. 2021- 1112.

2021- No withdrawal, redemption, or motion to foreclose filed by County.

For complete copies of answers and withdrawals noted above, refer to Appendix E and F attached to this report.

Exhibit B Timeline of Tax Certiorari Proceedings

7/31/2013 - Taxes are contested. Notice of Petition Tax Certiorari filed by Ulster Acquisitions I LLC- re: 2013 Real Property Tax Assessment 2013-2693 (Contesting Real Property Tax Assessment by the Town of Ulster).

7/29/2014 - Taxes are contested. Notice of Petition filed by Ulster Acquisitions I LLC - re: 2014 Real Property Tax Assessment 2014-2387 (Contesting Real Property Tax Assessment by the Town of Ulster).

7/22/2015 - Taxes are contested. Notice of Petition filed by Ulster Acquisitions I LLC - re: 2015 Real Property Tax Assessment 2015-2296 (Contesting Real Property Tax Assessment by the Town of Ulster).

7/26/2016 - Taxes are contested. Notice of Petition filed by Ulster Acquisitions I LLC - re: 2016 Real Property Tax Assessment 2016-1958 (Contesting Real Property Tax Assessment by the Town of Ulster).

4/20/2017 - Order for Appraisal by 9/18/2017 in reference to 13-2693, 14-2387, 15-2296, 16-1959, 17-1904 (re: Real Property Tax Assessments for years 2013- 2017).

7/25/2017-Taxes are contested. Notice of Petition filed by Ulster Acquisitions I LLC - re: 2017 Real Property Tax Assessment 2017-1904 (Contesting Real Property Tax Assessment by the Town of Ulster).

9/8/2017 - Ulster Acquisitions I LLC fails to provide court ordered appraisal.

3/6/2018 - Cases relating to 2013 -2017 Tax Assessments are terminated. Stipulation Discontinuing Actions with prejudice 2013-2693, 14-2387, 15-2296, 16-1959, 17-1904 (re: Real Property Tax Assessments for years 2013- 2017).

In 2018 Ulster Acquisitions I LLC takes no actions to contest 2018 Tax Assessments.

In 2019 Ulster Acquisitions I LLC begins contesting the real property tax assessment on the property.

7/26/2019 - Notice of Petition filed by Ulster Acquisitions I LLC - re: 2019 Real Property Tax Assessment 2019-2406 (Contesting Real Property Tax Assessment by the Town of Ulster).

7/30/2020 - Notice of Petition filed by Ulster Acquisitions I LLC - re: 2020 Real Property Tax Assessment 2020-2839 (Contesting Real Property Tax Assessment by the Town of Ulster).

7/27/2021 - Notice of Petition filed by Ulster Acquisitions I LLC - re: 2021 Real Property Tax Assessment 2021-2064 (Contesting Real Property Tax Assessment by the Town of Ulster).

2/4/2022 - Statement of Income and Expense Provided.

Appendices

Appendix A. Notices of Petition filed with the Ulster County Court contesting Real Property Assessments

- Notice of petition Tax Certiorari – re: 2013 Real Property Tax Assessment 2013-2693
- Notice of petition – re: 2014 Real Property Tax Assessment 2014-2387
- Notice of petition – re: 2015 Real Property Tax Assessment 2015-2296
- Notice of petition – re: 2016 Real Property Tax Assessment 2016-1958
- Notice of petition – re: 2017 Real Property Tax Assessment 2017-1904
- Notice of petition – re: 2019 Real Property Tax Assessment 2019-2406
- Notice of petition – re: 2020 Real Property Tax Assessment 2020-2839

Appendix B. Financial information was filed with the Ulster County court in proceedings regarding the tax assessment.

- 2012 Income Statement
- 2012 Balance Sheet and Statement of Cash Flows
- 2013 Income Statement
- 2013 Balance Sheet and Statement of Cash Flows
- 2020 Income Statement
- 2021 Income Statement

Appendix C. Stipulation Order for Appraisal of subject by 9/18/2017

Appendix D. Stipulation Discontinuing Actions with prejudice 2013-2693, 14-2387, 15-2296, 16-1959, 17-1904

Appendix E. Verified Answers filed by Ulster Acquisition I LLC re: Notices of Foreclosure

- 12-4055 re: 2012 In Rem Foreclosure Action
- 13-3835 re: 2013 In Rem Foreclosure Action
- 14-3482 re: 2014 In Rem Foreclosure Action
- 15-3377 re: 2015 In Rem Foreclosure Action
- 16-3008 re: 2016 In Rem Foreclosure Action
- 17-3146 re: 2017 In Rem Foreclosure Action
- 18-3980 re: 2018 In Rem Foreclosure Action

Appendix F. Certificates of Withdrawal filed by County

- 3/4/2016 Certificate of Withdrawal filed by County re: 2013 In Rem Foreclosure Action
- 10/12/2017 Certificate of Withdrawal filed by County re: 2014 In Rem Foreclosure Action
- 5/4/2018 Certificate of Withdrawal filed by County re: 2015 In Rem Foreclosure Action
- 2/22/2022 Certificate of Withdrawal filed by County re: 2019 In Rem Foreclosure Action

Appendix G. Hazardous Uncollectible Lists provided by Department of Finance in response to this inquiry

Appendix H. Department of the Environment response to Comptroller's Document Request, Re: information used to identify potential environmental hazards for select properties

Appendix I. Department of Environmental Conservation Work Plan.BCP.C356049.2014-12-17.Miron SMP for adjacent property located at 1561 Ulster Avenue Lake Katrine, NY

Appendix J. Notice of Certificate of Completion for DEC Work Plan. BCP.C356049.2014-12-17.Miron SMP for 1561 Ulster Avenue Property

Appendix K. Building Inspector Questionnaires for 701 Grant Avenue

Appendix L. Loopnet Property Listing for Space Available