

**DRAFT Minutes of the Meeting of the
Oneida County Industrial Development Agency**

April 7, 2022

584 Phoenix Drive, Rome, NY/Webex Video/Teleconference

Members Present: David Grow, Michael Fitzgerald; Steve Zogby.

Members Present: WebEx: Ferris Betrus, Kirk Hinman, Mary Faith Messenger; Gene Quadraro.

EDGE Staff Present: Shawna Papale, Steven DiMeo, Jennifer Waters, Bill Van Shufflin(WebEx), Mark Kaucher, Tim Fitzgerald, Laura Cohen

Other Attendees: Oneida County Executive, Anthony Picente; Paul Goldman, Esq., Goldman Attorneys, PLLC; Bruce Smith, CNY Cardiology/Central Utica Building, LLC

Other Attendees: WebEx/Call-In: Rome Mayor Jackie Izzo; Mark Levitt & Jenna Peppenelli, Levitt & Gordon; Patrick Donnelly, Brown Duke & Fogel; Bill Guglielmo, Rome Area Chamber of Commerce; Ray Durso, The Genesis Group; Edward Harris, Observer Dispatch; Lauren Brill, WUTR

Chair Grow called the meeting to order at 8:05 AM.

Executive Session

At 8:05 AM a motion to enter executive session to discuss possible litigation was moved by M. Fitzgerald, seconded by S. Zogby, and carried 7-0.

No action was taken during the executive session.

At 8:50 AM a motion to exit executive session and return to the open meeting was moved by S. Zogby, seconded by M. Fitzgerald, and carried 7-0.

Additional Call-In Attendees Post-Executive Session: Michael Licata, Bowers Development; David Quirello, CNY Cardiology/Central Utica Building, LLC

Chair Grow stated that all Agency directors are in attendance either personally or via electronic means, and that the meeting was called to consider a resolution approving:

- (a) the Determination and Findings of the Oneida County Industrial Development Agency (“Agency”) under Article 2 of the Eminent Domain Procedures Law (“EDPL”) in connection with the proposed acquisition of 411 Columbia Street, City of Utica, Oneida County, New York a/k/a Section 314.41, Block 2, Lot 38 (the “O’Brien Property”) (the “Determination and Findings”);
- (b) the synopsis of the Determination and Findings (the “Synopsis”);
- (c) the publication of the Synopsis in The Observer Dispatch, a newspaper of general circulation in the City of Utica in not less than two successive issues; and
- (d) approving personal service or certified mail return receipt requested of the Notice of the Synopsis (the “Notice”) upon:
 - (i) JP O’Brien Plumbing & Heating Supply, Inc., 411 Columbia Street, Utica, New York 13502, the record owner per the assessment records of the City of Utica (“O’Brien”); and
 - (ii) Bowers Development, LLC, 6308 Fly Road, East Syracuse, New York 13057, a contract vendee for the Property (“Bowers”); and
 - (iii) with a courtesy copy of the Notice of the Synopsis mailed to Brown Duke & Fogel, P.C., 120 Madison Street, Suite 1620, Syracuse, New York 13202 (“BDF”), the Attorneys for Bowers.

Chair Grow asked for a motion to approve the resolution as drafted so that Paul Goldman can present and the board can then discuss it. **M. Fitzgerald moved to approve the resolution and S. Zogby seconded the motion to approve the resolution.**

Chair Grow then introduced Paul Goldman who is Special Counsel Agency on this matter to make a short presentation on the Resolution, the Determination and Findings, the Synopsis and the project.

Mr. Goldman's Comments: He referred to the two documents in front of the board, one of which is the Determination of Findings with thirteen exhibits attached, and also the Resolution which was previously moved, which has a Synopsis attached to the Resolution and the Notice. He explained where the Agency is in the process of taking any property by eminent domain, which is Agency is currently under Article 2 of the EDPL (Eminent Domain Law), where we are evaluating the public purpose of a potential taking of the entire O'Brien Property for the public use as public parking. That is the issue at hand. The O'Brien Property will serve as public parking for the MOB (Medical Office Building) during the day and available nights and weekends for the general public. Those are the facts. He explained that we held a public hearing on February 23, 2022 at the Oneida County Office Building at which time comments were received, and have continued to receive comments since that public hearing. He stated that the stenographer originally engaged for the public hearing fell and had an accident so there was a delay in the preparation and delivery of the stenographic record and its filing with the OCIDA. As a result, the public comment period was extended to March 30th, 2022. During this time, the OCIDA continued to receive public comment from a variety of sources, both against, and in favor. All of that is incorporated and dealt with in the Determination and Findings. Every document received was dealt with in some fashion. People may not agree with it, but it was dealt with in the context of evaluation of the public purpose of the O'Brien Property as a parking lot. The Determination and Findings has all the documents referenced in it. The key thing is that in the FEIS of the City of Utica Planning Board reflected that the O'Brien Property was always shown as a parking lot. The MOB may have been moved, but the entire O'Brien Property was always shown as parking. All that is being done here is evaluating the public purpose of the potential taking of the O'Brien Property and using it as a parking lot available to the public. The next step if the board does approve the resolution is that the Synopsis of the Determination and Findings is required to be published for two days in The Observer-Dispatch. Within the Determination and Findings document is a section labeled Determination and Findings which is portion from which the Synopsis was prepared. It starts on Page 18. Attached as Exhibit C to the Resolution is the Notice of the Synopsis that will be served upon O'Brien and Bowers with a copy to the law firm that represents Bowers. The resolution as drafted approves the Determination and Findings with a couple of technical corrections we are going to make. And, it also approves the Synopsis and the publication thereof in The Observer Dispatch, and approves the service of the Notice of the Synopsis. That's all this resolutions does. That is what is in front of the board. Nothing more. It does not commit the Agency to an approval of the taking of the O'Brien Property pursuant to Article 4 of the EDPL. The next step is, if there is a dispute on the public purpose and the Determination and Findings, which it looks like there may be, is a filing and the evaluation of the public purpose, before the Appellate Division Fourth Department. That's the next step. Mr. Goldman then reviewed several technical corrections to the resolution: on page 9, paragraph 11, the 2017 date should be 2022; on page 10, paragraph 14, after the word county clerk, we want add "and multiple thumb drives of the record and additional documents thereto were delivered to the county clerk". On the last page, page 20, is the substitution of 17 for 22 in paragraph 8. He asked if anyone had any questions. Chair Grow stated that the proposed Determination and Findings had been delivered to all the board members of the Agency who have had the opportunity to review it in advance of this meeting. And, to the extent there are any questions on any of it, there will be discussion when Mr. Goldman is finished with his presentation. Mr. Goldman noted that the full volume of the record has been copied and delivered to every member of the Agency board. Chair Grow referenced to the online board attendees, the bound volume of the record in front of him as a copy of the full record that was provided to all board members in advance of the meeting and that they each had an opportunity to fully review in advance of the meeting. Mr. Goldman added that we have been adding to it as we go forward, but that is the full record, noting he had just received the publication of the extension of the notice of public comment period to March 30th, 2022.

Member M. Fitzgerald read a prepared statement (attached to these minutes) of his own opinion in support of the eminent domain process for the O'Brien Property which statement was entered into the records of the Agency. Chair Grow asked if any other board members had any more comments with regard to the proposed Resolution as modified herein and moving forward with the public purpose eminent domain process for the O'Brien Property. Chair

Grow stated that he personally concurs with Mr. Fitzgerald's comments, and emphasized that the Agency has been a supporter, from the beginning, of the location of the hospital; and the helping and assisting, in a substantial way, of the movement of businesses that were in that area to other locations without significant loss of customers or business. Chair Grow also noted that the Oneida County Local Development Corporation has assisted the hospital in locating at this location through its bond issuance. He added that Central Utica Building (CUB) has not requested any PILOT, so it will be subject to normal real property taxation rules, and once it's built, that issue will be handled by the City of Utica assessors office. So whatever taxes on it will come into the City of Utica coffers. The only financial assistance benefits the Agency has provided for the CUB project has been to authorize the mortgage recording tax exemption and sales and use tax exemption on construction of the building, all of which were done with the assistance and support of the County. Chair Grow stated that he personally thinks we need to move ahead, proceed on this, hopefully it can be resolved outside of court, but we need to move ahead so that the hospital project does not get delayed. Member S. Zogby stated that he agreed with both comments. **Member F. Betrus called for the vote; Chair Grow stated that this was a non-discussable motion, and asked if there was a second; Member E. Quadraro responded he would second the call for a vote; Chair Grow asked Member F. Betrus if his motion was for the resolution as Mr. Goldman had corrected; F. Betrus responded yes, and asked Member E. Quadraro if he agreed; Member E. Quadraro, said yes, he agreed; Chair Grow then asked the Secretary to take a roll-call vote by name; Secretary Shawna Papale proceeded with the roll call vote: Chair David Grow, voted YES; Member Mike Fitzgerald, voted YES; Member Steve Zogby, voted YES; Member Eugene Quadraro, voted YES, Member Mary Faith Messenger, voted YES, Member Ferris Betrus, voted YES. Chair Grow stated that this completed the vote with all members voting YES, and the motion is carried.**

There being no further business, at 9.07 AM Chair Grow asked for a motion to adjourn the meeting: S. Zogby moved, and M.F. Messenger seconded the motion to adjourn. Motion carried 7-0.

Respectfully Submitted,
Mark Kaucher

Attachment: Mike Fitzgerald's prepared statement

MOB by CUB

The new Wynn Hospital under construction in downtown Utica is a \$600 million plus investment. Other than the Wolfspeed project the largest investment in property, plant and equipment in Oneida County “ever”.

Many of those speaking against eminent domain are still arguing the location of the Hospital. That fight is “over”. Anyone can see the project’s seven story building is nearing exterior completion.

The new Hospital will be the only one less than 25 years old in all of Upstate New York. What a terrific selling point for the County in attracting new investment and new jobs, the essential principle the IDA works to accomplish.

The IDA has supported the investment in the new medical campus for several years. The IDA is not stepping in at the eleventh hour as some have suggest in arguing against eminent domain. The IDA through PILOT agreements and tax exemptions helped business moving out of the site to new locations (Park Outdoor to a new location inside the City, Engler Electric to a new building in the city only blocks from the new Hospital). Additionally other businesses (Mohawk Healthcare and RCIL) moved their offices to renovated, formerly vacant locations, also within blocks of the hospital. And now the newest large scale office building in downtown, the Utica National building, is getting new life, to be occupied by Hospital related functions. So there has been no mass migration of jobs away from the site, as some of argued as against eminent domain.

To let the Wynn Hospital fail at this point would be a complete repudiation of the IDA's function and purpose.

The plan is to have the MOB house the ambulatory surgery centers (ASC) for the Hospital. Without them the Hospital cannot provide the necessary care the county and adjoining areas need. And the ACS's will lower the cost of healthcare in the County, another attraction to businesses considering locating here.

Why Cub ? They have four essential factors that Bowers/O'Brien have failed to demonstrate 1) an agreement with the Hospital to house the ASC's, the radiation and other departments (a claimed willingness to do so is not enough) 2) lease commitments for enough of the MOB to make financing viable, 3) an agreement to house the major invasive cardiac group in the county in proximity to the Hospital, a must for such procedures and 4) a timeframe which meets the Hospital's need for the ASC to be open concurrent with the new Hospital.

O'Brien has already agreed to sell the parcel – at this point to whom it sells should not be a concern to them or a block to eminent domain.

Bowers has only one factor in their favor – control of the property at 411 Columbia Street. Eminent domain will move that to CUB who holds all the other essentials for the success of the MOB and thereby success of the Hospital and thereby success of the County.