

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Statement of Findings Pursuant to Section 862(2) of the General Municipal Law

Oneida County Industrial Development Agency (the "Agency"), pursuant to the provisions of Section 862(2) of the General Municipal Law of the State of New York, hereby finds as follows:

1. Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of a 94,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the Corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Agency shall provide financial assistance to the Project in the form of exemptions from sales and use taxes and exemptions from mortgage recording taxes, which financial assistance is consistent with the Agency's Uniform Tax Exemption Policy.

2. After notice duly published in the *Observer-Dispatch* on November 26, 2021 and notice to all affected tax jurisdictions on November 23, 2021, the Agency conducted a public hearing (the "First Public Hearing") on December 10, 2021 at 10:00AM at Oneida County Legislative Chambers, 10th Floor, Oneida County Office Buiding, 800 Park Avenue, Utica, New York. The minutes of the Public Hearing are attached hereto as Exhibit A. After notice duly published in the *Observer-Dispatch* on January 7, 2022 and notice to all affected tax jurisdictions on January 5, 2022, the Agency conducted a public hearing (the "Second Public Hearing") on January 18, 2022 at 10:00AM at Oneida County Legislative Chambers, 10th Floor, Oneida County Office Buiding, 800 Park Avenue, Utica, New York. The minutes of the Public Hearing are attached hereto as Exhibit B.

3. Based on information provided by the Company in its Application for Financial Assistance and based upon information presented to the Agency during the First Public Hearing and the Second Public Hearing, the Agency finds as follows:

X The Facility will serve the public purposes of Article 18-A of the General Municipal Law by preserving and increasing the overall number of permanent, private sector jobs in New York State.

 X The Facility is located in a “highly distressed area,” as such term is defined in Section 854(18) of the General Municipal Law.

Notes: The Facility is located in a HUB zone and is within an area that was formerly a designated Empire Zone.

4. The Agency hereby determines to request Anthony J. Picente, Jr., Oneida County Executive, to confirm the proposed action of the Agency with respect to the Facility.

Dated: January 21, 2022

EXHIBIT A

MINUTES OF FIRST PUBLIC HEARING

EXHIBIT B-1

MINUTES OF DECEMBER 10, 2021 PUBLIC HEARING

Oneida County Industrial Development Agency
Lease-Leaseback Transaction
Central Utica Building, LLC Facility

1. Jennifer Waters, Assistant Secretary of the Oneida County Industrial Development Agency (the "Agency"), called the hearing to order at 10:00 a.m.
2. Mark Kaucher, a representative of the Agency, recorded the minutes of the hearing.
3. The Assistant Secretary then described the proposed project and related financial assistance as follows:

Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of an 80,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Facility will be initially operated and/or managed by the Company.

The Company will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company pursuant to a leaseback agreement. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Company will sublease a 20,000± square foot portion of the Facility (the "CNYC Facility") to Central New York Cardiology, P.C. (the "CNYC Sublessee") for its operation for the

purpose of performing interventional cardiology services at the Wynn Hospital and to take cardiology call and provide cardiology services to patients admitted to the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility (the "MVASC Facility") to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").

The Agency is contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on materials and equipment acquired and installed in connection with the Project, which financial assistance is consistent with the Agency's Uniform Tax Exemption Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein. Such financial assistance will be conditioned upon the Company creating, retaining and maintaining (or causing the Sublessees to create, retain and maintain) certain employment at the Facility as a result of undertaking the Project.

4. The Assistant Secretary then opened up the hearing for comments from the floor for or against the proposed financial assistance and the location and nature of the Facility. Attached is a listing of the persons heard and a summary of their views as well as all written comments submitted for consideration.
5. The Assistant Secretary then asked if there were any further comments, and, there being none, the hearing was closed at 10:24 a.m.



Mark Kaucher

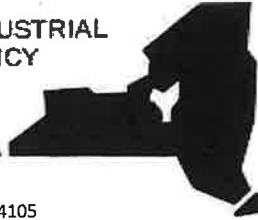
Anthony J. Picente Jr.
County Executive

Shawna M. Papale
Secretary/Executive Director

Jennifer Waters
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

OCIDA



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TO: OCIDA Board of Directors
FROM: Mark Kaucher
DATE: December 11, 2021

RE: **Central Utica Building, LLC Public Hearing**, Dec. 10, 2021 Public Hearing Minutes
WebEx teleconference and at Oneida County Legislative Chambers, 10th Floor, Oneida County
Office Building, 800 Park Avenue, Utica.

Attendance: Gerald Fiorini, Chair Oneida County Board of Legislators(OCBOL); Evon Ervin (OCBOL); Tim Julian (OCBOL); Mike Billard (OCBOL); Maya Miller(OCBOL); Anthony Picente, Oneida County Executive, Dr. Michael Kelberman, CNY Cardiology; Bruce Smith, CCB Law; Robert Scholefield, MVHS; Lou Aiello, MVHS; David Quirillo, CNY Cardiology (Webex); Michael Fogel, Brown, Duke & Fogel (Webex teleconference); Patrick Donnelly, unidentified teleconference call in user.

Representing the Agency: Shawna Papale, Jennifer Waters, Mark Kaucher, Tim Fitzgerald

Jennifer Waters opened the public hearing opened at 10:00 AM.

Consensus of the attendees was to waive public recitation the public hearing notice. She noted that MVHS has also provided a PowerPoint presentation that will be entered into the record.

Ms. Waters invited the first speaker to the podium.

Speaker #1, Robert Scholefield:

Mr. Scholefield thanked the Agency for allowing him the opportunity to speak, and introduced himself as Executive Vice-President with Mohawk Valley Health System (MVHS), and explained that he is overseeing construction of the new Wynn Hospital (WH). He first noted years ago, before there was any construction beginning, the administrative staff and Board of Trustees of MVHS had to create vision statement: what is it that they were they looking to accomplish as a result of building this state of the art facility in downtown Utica. He read the statement: To create an advanced health care campus for MVHS through design that promotes the health of patients, optimizes the work environment for our care givers and serves as a catalyst for revitalization of downtown Utica. He believes this will be accomplished with this project. MVHS is making a \$611 million investment in this 672, 000 square foot building in downtown Utica. This will be a comprehensive clinical campus

that's designed for accessibilities of their providers and their patients. It is intended to be an inpatient and outpatient campus. The WH will be the inpatient facility and medical office building (MOB) associated with the WH will be the outpatient facility, with the WH being the flagship building on that campus. The MOB and ambulatory surgery center (ASC) is in adjacent proximity to the WH which is a crucial component of the clinical campus because it will provide services that will not be provided within the WH itself. The ASC is necessary to accomplish the planned outpatient services. A loss of this cohesive partnership would have a significant negative impact on the social good of this community as the comprehensive campus for all of the customers, patients, providers and staff would be lost. The MOB and the ASC is included in the clinical campus and is referenced in the certificate of need application which was approved by the State of New York in 2019. It was also included in the Downtown Revitalization Grant Application, which resulted in the \$300 million grant that was awarded to MVHS to build the WH. The MOB was also a part of the SEQR findings and environmental impact statement prepared by O'Brien and Gere, now referred to as Rambol, and this can be found in the March 19th statement on Page 8. It was always intended that this building (MOB) be developed by a third party. MVHS never intended to build the MOB building on its own and it was not part of the financing for the project, nor is it part of the grant from the state of New York. Right from the beginning they worked with local physicians to make this building a desirable location for those who are hospital-based physicians who themselves will utilize both locations to take care of their patients and the outpatients will have close proximity to the hospital itself. They were required by the New York State Department of Health, as part of their grant application, to put together a number of quality metrics, to be able to ascertain for them, what types of benefits the \$300 million grant in the downtown will bring to health care in this community. They created what they call their "Ten Aims" which are actual measurable indicators that MVHS will measure for five years after the campus project is completed to ensure that the care given within this facility improves significantly over the care that they are able to deliver today. Included in those Aims are specific items such as reduction of the amount of traffic, sound, noise and throughput within the WH/ inpatient facility, which will be accomplished by removing a lot of the outpatient services from the WH and locating them into the MOB that will be immediately adjacent to the WH but on the clinical campus. He noted on the site plan dated March 19, 2019 and submitted to the City of Utica Planning Board, the MOB at that location across from the Wynn Campus on Columbia Street was identified as a future location of a MOB, and made it clear at that meeting that it would be a third party development, but that MVHS would utilize numerous services within inside that building.

Speaker #2, Lou Aiello:

Mr. Aiello identified himself as the Chief Financial Officer for MVHS and talked about the future state of the campus and the MOB and the ASC that would be developed by CUB. The CUB is a group of local physicians who have stepped up to develop the MOB, which MVHS appreciates, as MVHS is focused on the financing and capital needs of the WH itself. The MOB will provide space for those physicians, particularly those that support the major product lines of the MVHS; which are identified community needs of advanced endoscopy, stroke, neurovascular, surgery and cardiac services. Those physicians also provide that advanced care and complementing services in the WH. In planning for the WH many other communities and facilities were visited to ensure that a successful

campus with programming and services was planned and developed. When planning took place years ago, MVHS and its partners did site visits around the country and repetitively saw these MOB and ASCs as part of the campuses and how successful they are, not only in complementing the care they deliver, but in the economic development of the region. Having office space adjacent to and on the campus is an integral part of the plan. The ASC itself is part of that transformation process as MVHS applied for the Certificate of Need and grant from the State of New York, to not just take the care deliver today and move it to a shiny new building, but to transform that care based upon those 10 Aims that Mr. Scholefield represented earlier. The ASC is an integral part of the plan to transform care from an inpatient setting to a more appropriate and more cost appropriate setting in the outpatient setting. In addition to the ASC, the building will also provide diagnostic services and radiology services, ultrasound, PET scan, general radiology and some lab services in a patient service center, to compliment what is going on the overall campus. An effort is to not flood the hospital with patients who don't need to be in the WH for services, but in a convenient location adjacent to it – the MOB. The ASC itself will be built with six operating rooms and the WH will have 14 operating rooms. Currently there are 22 operating rooms between the two hospital campuses as inpatient facilities. When building the new WH for the future they looked at the data and the types of cases that were being done in the hospital setting that could be done in an outpatient setting. This was how they determined the need for 14 operating rooms for the new WH, thus recognizing the ASC would handle six operating rooms, complementing the 14 in a more appropriate setting. The ASC is expected to have over 5,000 cases done annually to start. Those are cases that are now being done in the two acute care hospital campuses. The project helps the community by being in close proximity to the WH so that cohesive integrative care can be delivered on the campus. Patients know where to go for their care. Know where to go for their diagnostic care. For their outpatient treatment. Then, obviously, to the WH for their inpatient and emergency treatment. MVHS didn't just stumble across the main focus on cardiac care; the statistics show a concerning prevalence in our area which commands significant care in this area. MVHS is now the only hospital in NYS to be a cardiac hospital with their newly earned distinction. They expect growth of cardiac disease in our region to be 11% between 2022 and 2025. The other financial benefit to the community, as they shift the 5,000 surgery cases over from the hospital to the ASC, is a significant cost benefit to the patient and to the payors. This is due to a difference in reimbursement. The difference in reimbursement is because it is more cost efficient to deliver care at a lower cost in the ACS. Surgery in the hospital costs the hospital, the patient and the payor more. With this transformation in care, there will be a significant reduction in costs. Part of the plan and reason they are able to do this now is because of this transformation with the new campus as they build the new efficient hospital and system thus affording the loss of cases to the ASC because they now have a cohesive, complimentary service for our community with the MOB. He stressed that the MOB/ASC by CUB will be a property tax paying entity. A significant amount of property tax revenue will be generated. There is no payment in lieu of tax agreement being requested. In his opinion, it could end up being one of the highest assessments in the City. He explained why the requested IDA financial assistance was needed: As everyone knows, whether you are undertaking a project at one's home or ones business, material costs have increased significantly. The pandemic has had a major impact on this. In addition to the increased cost of materials, the delays in construction time have also lead to

increased costs. This applies to projects of all sizes. Without the financial assistance that is being requested, there are certain areas of the building that may not be built out or delayed, and it could affect recruitment of providers. The assistance is really needed because of the increase in costs not anticipated five years earlier when the facility was being considered and how it is going to be paid for it long term. In conclusion, he thanked the Agency.

Speaker #3, Dr. Michael Kelberman:

Dr. Kelberman thanked the Agency for allowing him the opportunity and introduced himself as a Senior Partner with CNY Cardiology and Director of Cardiology at MVHS. It stated that he would like to take a 10,000 foot view of health care in general and why this project is so important. Healthcare is a rapidly changing, hotly competitive environment. There are a lot of things changing and they are in competition for physicians, staff, equipment, and all of these things have escalated to heights hereto really not seen. This is an opportunity in our community to create a health system and improve a health system that would be productive going forward. Some of this requires us to change. This is synergism. This is partnerships. The health system has reached out to CNY Cardiology and asked us to partner to create the state of the art health system we need. Some examples of this are: the promise of a new hospital, the promise of an ASC and offices that are conveniently and helpfully located has already enabled them to bring on three new doctors this year. They are top doctors from the absolute best programs in the country. They are top of the line and he can supply that information to anyone interested. They are replacing retiring and older physicians and thus gearing them up for the growth anticipate in cardiac care. An important concept to consider is that the health system provides obvious care to Oneida County, but to surround counties, probably around 200,000 people or so, where they have tremendous opportunity to experience flow. Internally at CNY Cardiology, with some of the things they're doing, they expect 20 to 30% growth over the next three to five years. If you have a \$1 billion health system and everybody replicates what they're doing, which admittedly, is a very high tech competitive field, but if you have a \$1 billion health system that grows 20 to 30%, that's \$200 to \$300 million additional revenue. He noted these are high tech jobs. Its internal growth for something that is extremely important to an area and is as high-tech and productive as any entity you could attract. So with this new synergism, this competitive new health care environment, they are positioned really well. The American College of Cardiology, the doctors that practice cardiology in this country and lead the way, have created a certification system that's rigorous. They spent two years undergoing scrutiny and they are now the first health system to receive the designation of a heart center by the American College of Cardiology. There will be others eventually, but the fact that they were able to do that and being able to create an impression to a very critical group of people in an organization, speaks to their capability to do this. In terms of technology and equipment, he said cardiology and high tech medicine is moving very quickly. There is new diagnostic equipment they plan to acquire; Cardiac PET scanning is now the new frontier in diagnosing heart disease. This is crucial because the diagnosis has improved. The ability to predict how a patient will do is improved and the ability to decide what they need is improved. They are big and expensive and they currently have no room for it either. They hope to bring this new \$10 million piece of equipment into the new MOB. As for

procedures, heart valves can now be fixed without surgery, but requires highly-specialized people, and it is extremely competitive to get them. With the new hospital with a synergistic ASC working together, they will get them. They are attracting the best and the brightest and the three doctors they have gotten this year speaks to this capability. Its already having an impact. The people want to see what's there. When you show them the plans and you show them the building, that's what really impacts them to decide to come. They see this as an absolute win-win for the community. It's a very, very expensive proposition for them with an investment north of \$40 million. A lot of people involved who had to be convinced this is where the future is and they have done that. Everybody is all in and anything that can be done to help them create this absolute state of the art MOB and ASC would be greatly appreciated. He thanked the Agency.

Speaker #4, Anthony Picente:

County Executive Anthony Picente thanked the Agency for the opportunity to speak. He stated that the MVHS project, in total, has been a great focus for the County of Oneida, and certainly the City of Utica, and the entire region. The proposal before the Agency for the MOB along with the ASC has been a key piece from the very beginning of this process and was a key part of securing the state aid, while as Mr. Scholefield said, it is not a part of the WH, the project itself, and the entire campus footprint, had always included the MOB and the ASC , and possibly more in the future, but this one was in the first piece of it. The funding for the MOB however is not in the dollars secured from NYS but is part of the campus project itself including the surgical center as being part of the MOB, and possibly more in the future. As we look at what is taking place around, certainly the pandemic and our health care needs in this community, you are seeing these types of centers popping up around hospitals, and as Dr. Kelberman, Mr. Aiello, and Mr. Scholefield explained, and surely other professionals would do the same. They explained why it is so important to have the MOB as part of the campus and so close to the hospital. As the professionals and the medical systems will tell you, and as NYS Health and other health departments will point to, in terms of medical offices and hospital systems, the importance of having an ASC in close proximity so that the overall capacity numbers, costs, structure, and flow, can be better managed. County Executive noted he has been very involved in the hospital project as this county government has in regards to the parking facility, but in looking at the total structure of this system and what had been anticipated and what had always been there from the beginning, he supports the need for the MOB. He referenced Mr. Aiello's earlier statement regarding real property taxes, and he thinks it's important to know this group is not requesting a PILOT, and that it will be paying property taxes. He noted that the taxes paid by the MOB will probably be equal to, or as close, to what were in the parcels that were in the campus footprint before the demolition and before the construction of the hospital system. He is very supportive of this project and as he spoke to the IDA previously, he encourages them to take up this application favorably. He thanked the Agency.

Ms. Waters asked if there were any others who wished to make a public comment. On the recording Call-in user, Michael Fogel stated that he tried to answer earlier on, but his attempts were not audible at the public hearing. Ms. Waters stated that if anyone was experiencing technical

difficulties and wishes to make a statement, written comments will be accepted as outlined in the public hearing notice.

There being no further request to make statements, Ms. Waters closed the public hearing at 10:24 AM.

Subsequent to the Public Hearing, the Agency received both an e-mail and a letter from individuals who were unable to make audible contact at the public hearing, but who wished to make public statements. An email/ letter from Patrick Donnelly/ Michael Fogel, Brown Duke & Fogel, is attached to this memo and the text from the email from David Quirillo, CNY Cardiology, can be found below:

December 10, 2021 e-mail From David Quirillo, CMPE, Chief Financial Officer, CNY Cardiology:

"I joined the public hearing via Web Ex. When I went speak no one could hear. I wanted to comment on the cost benefit analysis. "Previous speakers spoke to the benefit of both the enhanced integrated health services and positive financial impact on the community. But more specifically factoring the retained and created jobs, the multipliers or both the indirect jobs and construction jobs this project provides just under \$100MM in earnings in the first three years alone. Those earnings generate \$4,000,000 in revenues from income. It just doesn't stop there as these individuals will buy new cars, gas, stay in hotels, eat-in restaurants and purchase other taxable goods and services. Sales tax generated by this is estimated at almost \$3,500,000. Additionally, the same individuals will buy or build homes generating another \$700,000 plus in revenues related to property taxes. A total of between \$8-8.5MM in benefit to the community." Please let me know if you have any questions."

Respectfully submitted,

Mark Kaucher

Attached: Brown Duke & Fogel, P.C. December 10, 2021 Letter
MVHS PowerPoint Presentation

BROWN DUKE & FOGEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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December 10, 2021

Executive Director Shawna Papale
Oneida County Industrial Development Agency
584 Phoenix Drive
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info@mvedge.org
spapale@mvedge.org

**Re: Central Utica Building, LLC Application for Financial Assistance
Public Hearing on December 10, 2021 at 10 a.m.**

Dear Executive Director Papale and Oneida County Industrial Development Agency:

This office represents Bowers Development, LLC (“Bowers Development”).

Please accept this letter as Bowers Development’s comments on the Central Utica Building, LLC Application for Financial Assistance (the “Application”) to the Oneida County Industrial Development Agency (“OCIDA”). Pursuant to the instructions contained in the Notice of Hearing, we dialed in to the call-in number provided promptly at 10 a.m. Unfortunately, when I attempted to identify myself you could not hear me. I even attempted to dial in from a different phone and announced myself but was still unable to be heard. It appears it was a technical problem on your end. My office was able to reach Executive Director Shawna Papale by phone after the hearing, and Executive Director Papale directed my office to submit our comments by email today and stated that our comments will be included with the public hearing transcript.

Bowers Development is one of the most active developers in the City of Utica. Bowers Development is the contract-vendee of the property located at 411 Columbia Street (Tax Map 218.-41-2-38) (the “O’Brien Parcel”) and will be constructing a brand-new medical office building (“MOB”) on the O’Brien Parcel. Both Central Utica Building, LLC and Mohawk Valley Health System are fully aware of Bowers Development’s contract-vendee status and intent to construct its own MOB on the O’Brien Parcel. Yet, without Bowers Development’s consent or permission, the O’Brien Parcel has been included in the Application as part of the Central Utica Building, LLC MOB project. In fact, the Application acknowledges that Central Utica Building, LLC does not own or control the O’Brien Parcel, but yet admits that “[w]ithout this property it will be impractical if not impossible to construct the MOB as proposed.” It is disturbing and shocking that Central Utica Building, LLC would submit an Application for a project which includes property that it admits that it does not even own or control and which by its own admission it needs to construct the project. This should not be tolerated by OCIDA.

SYRACUSE

MONTICELLO

NEW YORK CITY

Therefore, we submit that OCIDA should not, and in fact, cannot as a matter of law, proceed to process, let alone approve, the Application because Central Utica Building does not even own all of the property which is part of the Application.

Furthermore, it would be improper for OCIDA to proceed to condemn the O'Brien Parcel by eminent domain, as requested by Central Utica Building, LLC. As a threshold matter, OCIDA should not be taking property from one private property owner and developer who intends to develop an MOB and give it to another developer to develop an MOB. This is not consistent with the purpose and authority of OCIDA, and we believe it would also be in violation of Eminent Domain Procedure Law.

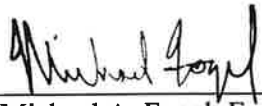
Nonetheless, if OCIDA does proceed with eminent domain, Bowers Development fully intends to oppose the taking and will pursue any-and-all legal remedies available to it to prevent such taking, and to seek just compensation, if such taking does occur. In addition, any taking of the O'Brien Parcel will result in significant direct, indirect and consequential financial damages to Bowers Development for which it fully intends to seek compensation for from all responsible parties.

Further, based on the Application that has been made available to the public, the Application appears to be incomplete. It appears to be missing the required completed SEQRA forms, and a completed Cost Benefit Analysis. Therefore, these documents need to be completed by the Applicant, and provided to the public for comment before OCIDA moves forward with processing and potentially approving the Application.

Thank you for your attention to this matter. Please include this letter in the record of your consideration of the Application.

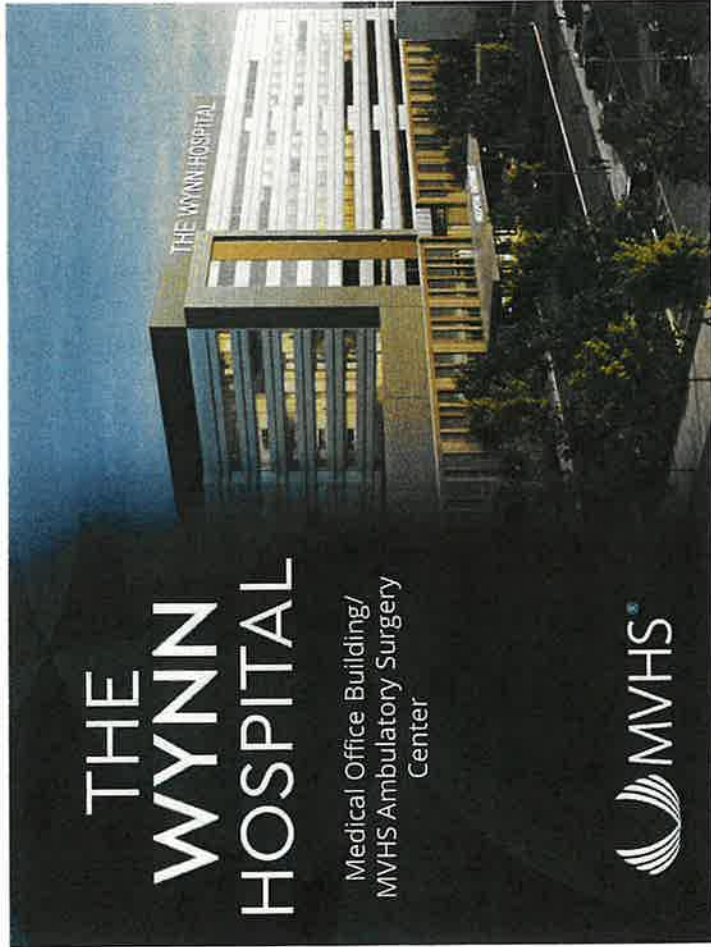
Very truly yours,

BROWN DUKE & FOGEL, P.C.

By: 
Michael A. Fogel, Esq.

THE WYNN HOSPITAL

Medical Office Building/
MVHS Ambulatory Surgery
Center



Vision Statement

To create an advanced healthcare campus for MVHS through design that promotes the health of patients, optimizes the work environment for caregivers and serves as a catalyst for the revitalization of downtown Utica.



www.mvhealthsystem.org

12/14/2021

Medical Office Building (MOB)/ Ambulatory Surgery Center (ASC)

- MVHS is making a \$6.11 million investment in The Wynn Hospital Clinical Campus – a comprehensive medical campus designed for accessibility for providers and patients, both in and outpatient services as well as the ability to develop a robust teaching program. The Wynn Hospital is the flagship piece of the campus.
- The MOB/ASU and its adjacent proximity to The Wynn Hospital is a crucial piece of the project because the services housed in this building complement the work being done in the hospital and work collaboratively to support each other. The loss of this cohesive partnership would have a significantly negative impact on the social good of the community as the cohesive campus for all customers, patients, providers and staff, would be lost.



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12/14/2021

Medical Office Building (MOB)/ Ambulatory Surgery Center (ASC)

- The MOB/ASU was included in MVHS's new clinical campus plans from the early planning stages.
 - It was included in the NYS Certificate of Need, the Downtown Revitalization Grant application which resulted in a \$300 million award, and in the SEQRA Final Environmental Impact Statement Prepared by O'Brien & Gere Engineers (Ramboll) March 2019 (page 8).
- This building was always intended to be developed by a third party with MVHS as a tenant. MVHS worked with local hospital-based physician groups to determine a desire to develop this building.

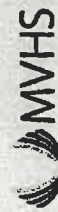


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12/14/2021

Ten Aims – Guiding Principles

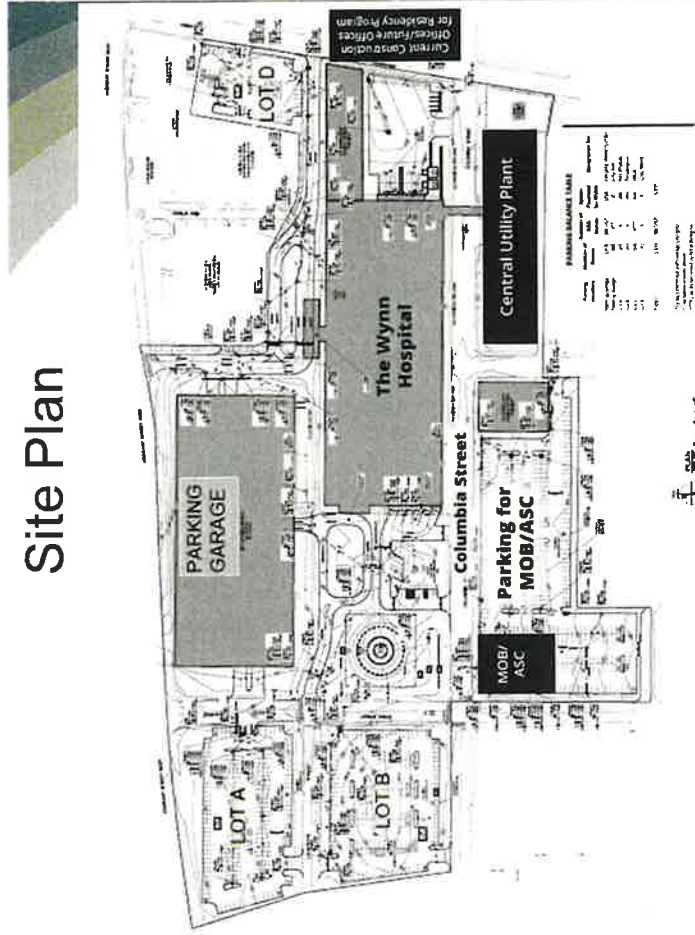
1 Reduction of hospital-acquired infections	2 Reduction in length of stay due to improved diagnosis/phenology	3 Reduction in unnecessary tests and procedures	4 Minimization of waste	5 Improved patient satisfaction
6 Improved direct patient care time with clinical staff	7 Improved patient safety and reduction of hospital-acquired infections rates	8 Reduction in patient falls	9 Reduction in unnecessary emergency calls and equipment utilization	10 Reduction in unnecessary imaging



www.mvhealthsystem.org

12/14/2021

Site Plan



What will services will be housed in the MOB/ASC?

- Central Utica Building (CUB), a group of local physicians, has stepped up to develop the building and will rent to other physician practices as well as MVHS who will lease a significant amount of space. We are grateful to the CUB group for taking on this project.
- The MOB will provide office space to physician practices, particularly those that support major product lines of MVHS, based on community need: Endoscopy, Stroke and Neurovascular, Surgery, Cardiac, etc.
- The ASU is a new service for MVHS and will provide a space for same-day surgical care, including diagnostic and preventive procedures. ASCs have transformed the outpatient experience by providing a convenient alternative to hospital-based outpatient procedures.
- In addition to the MOB and ASC, the building will contain Radiology (CT Scan, Fluoroscopy, Ultrasound, Pet Scan and General Radiology) and a Lab Service Center.



MVHS | www.mvhealthsystem.org

12/14/2021

MOB/ASC Details

- Space for multiple physician practices including CNYC, MVHS, etc.
- A six Operating Room (OR) ASC
- The Wynn Hospital will have 14 ORs which brings the total number of ORs to 20; a decrease of two from the two current inpatient hospitals.
- Expected volume shift to outpatient surgery – 5,300 cases



MVHS | www.mvhealthsystem.org

12/14/2021

How does this help the community?

- **Medical Campus:** The proximity of the building to The Wynn Hospital provides a convenient, medical campus for patients, providers and staff along with almost immediate access for providers to see and/or treat one of their patients in the hospital.
- **Heart Disease:** The developers of the building and one of its main physician offices is CNYC.
- The prevalence of coronary heart disease among adults is high in Mohawk Valley with MVHS as the only cardiac hospital in the eight-county region.
- Outpatient cardiac demand in the Mohawk Valley is expected to grow by nearly 11% between 2022 and 2025. This is versus an anticipated decline in inpatient growth of 10%.



www.mvhealthsystem.org

12/14/2021

How does this help the community?

- **Growth:** Having a physician practice such as CNYC in a MOB/ASC next to The Wynn Hospital will bring 30-40,000 patients/year from both local and surrounding counties down to the new medical campus which helps reinforce that important referral pattern and expectation that "this is where they go for medical care."
- With the new MOB/ASC and enhanced cardiac services, CNYC is expecting a 20-30 percent growth
- We are already working in the right direction as the first program in NYS to be designated a "Heart Center" by the American College of Cardiology. The MOB/ASC will provide the opportunity to build on this along with the ability to grow and recruit more highly skilled, well-trained physicians.



www.mvhealthsystem.org

12/14/2021

How does this help the community?

- **Physician Recruitment:** The Wynn Hospital and adjacent MOB/ASC is key to physician recruiting. CNYC has successfully recruited three new, well-trained cardiac specialists this year alone. Access to a larger, modern office building with state-of-the-art diagnostic technologies, closely located to the new hospital, is a major draw.
- The training and skills of these newly recruited physicians provides the ability to offer new procedures not currently available in this region, enhancing healthcare and expansion of services to benefit the community.
- **Technology:** CNYC will implement the use of myocardial perfusion positron emission tomography (PET), a noninvasive cardiac imaging option for patients with coronary artery disease. Myocardial perfusion PET has high diagnostic accuracy, high-quality images, low radiation exposure, short acquisition protocols, quantification of myocardial blood flow and strong prognostic power.
- **New Procedures:** CNYC will also implement MitraClip/Transcatheter Mitral Valve Repair. MitraClip is a medical device used to treat mitral valve regurgitation for individuals who should not have open-heart surgery. It is implanted via a tri-axial transcatheter technique and involves suturing together the anterior and posterior mitral valve leaflets.

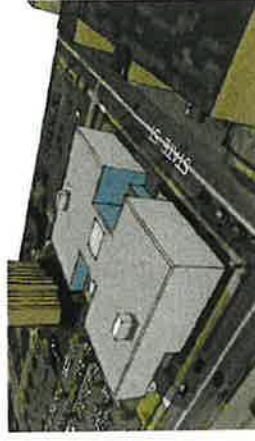
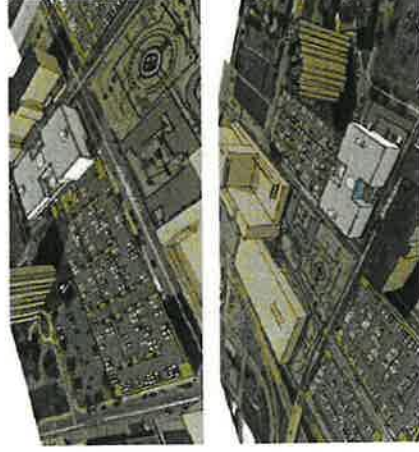
Financial Benefit to Community

- ASCs provide care in a space that is more efficient and at a lower cost. The move of 5,300 surgery cases to an outpatient setting will pass these savings on to patients as copays for ASCs are much lower than for a hospital-based surgery.
- Payers will also benefit due to the lower reimbursement paid to ASCs vs Hospitals.
- The MOB/ASC will be a tax-paying entity without a requested Pilot. A significant amount of tax revenue will be generated from this building.

Why is Financial Assistance Needed?

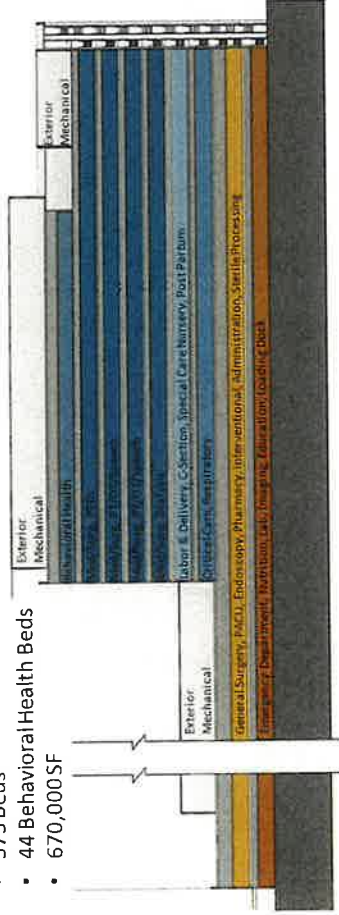
- The cost of construction materials have significantly increased in cost. The pandemic had a major impact on this.
- Delays in construction have also led to increased costs.
- Without the requested financial assistance, the ability to finalize or enhance certain areas may not be possible: purchasing equipment, bringing in additional doctors, or finishing certain spaces in the building.

CENTRAL UTICA BUILDING




Layout of The Wynn Hospital

- 373 Beds
- 44 Behavioral Health Beds
- 670,000 SF



I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meetings, (ii) said meetings were open for the public to attend and public notice of the time, place of, and instructions to access, said meetings was duly given, (iii) the meetings in all respects were duly held, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand this 24th day of January 2022.



Shawna Papale, Secretary

EXHIBIT B

MINUTES OF SECOND PUBLIC HEARING

EXHIBIT B-2

MINUTES OF JANUARY 18, 2022 PUBLIC HEARING

Oneida County Industrial Development Agency
Lease-Leaseback Transaction
Central Utica Building, LLC Facility

1. Jennifer Waters, Assistant Secretary of the Oneida County Industrial Development Agency (the "Agency"), called the hearing to order at 10:00 a.m.
2. Mark Kaucher, a representative of the Agency, recorded the minutes of the hearing.
3. The Assistant Secretary then described the proposed project and related financial assistance as follows:

Central Utica Building, LLC, on behalf of itself and/or the principals of Central Utica Building, LLC, and/or an entity formed or to be formed on behalf of any of the foregoing (collectively, the "Company") has applied to the Oneida County Industrial Development Agency (the "Agency") to enter into a transaction in which the Agency will assist in the construction of a 94,000± square foot state-of-the-art medical office building and appurtenant facilities including parking areas and all infrastructure, utilities and amenities to support the same (collectively, the "Improvements") situated on parcels of land measuring 2.90± acres in the aggregate adjacent to the new Wynn Hospital (the "Wynn Hospital") located at the Corner of State and Columbia Streets, City of Utica, Oneida County, New York (the "Land") and acquisition and installation of equipment in the Improvements (the "Equipment"), all for the purpose of providing a seamless and integrated health care delivery system together with the Wynn Hospital, and to enhance and expand the delivery of health care services to the community (the Land, the Improvements and the Equipment are referred to collectively as the "Facility" and the construction and equipping of the Improvements is referred to as the "Project"). The Facility will be initially operated and/or managed by the Company.

The Company will lease the Facility to the Agency, and the Agency will lease the Facility back to the Company pursuant to a leaseback agreement. At the end of the lease term, the Agency will terminate its leasehold interest in the Facility. The Company will sublease a 20,000± square foot portion of the Facility to Central New York Cardiology, P.C. (the "CNYC Sublessee") for its operation for the purpose of performing interventional cardiology services at the Wynn Hospital, to take cardiology call and provide cardiology services to patients admitted to

the Wynn Hospital. The Company will sublease an 18,000± square foot portion of the Facility to Mohawk Valley ASC, LLC (the "MVASC Sublessee") for its operation for the purpose of operating an Article 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms. The Company will sublease other portions of the Facility to MVHS and other medical practices whose physicians practice in, and need access to, the Wynn Hospital, and to other commercial and/or retail tenants to provide complementary services (such sublessees, together with the CNYC Sublessee and the MVASC Sublessee, are referred to collectively as the "Sublessees").

The Agency was contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on materials and equipment acquired and installed in connection with the Project, such sales tax exemption limited to \$500,000, which financial assistance was a deviation from the Agency's Uniform Tax Exemption Policy (the "Policy"). The Agency conducted a public hearing on December 10, 2021 to hear and accept written comments from all persons with views in favor of or opposed to either the proposed financial assistance or the location or nature of the Facility. The Agency is now contemplating providing financial assistance in the form of exemptions from mortgage recording taxes and exemptions from sales tax on all taxable materials and equipment acquired and installed in connection with the Project, which financial assistance is consistent with the Policy, to be more particularly described in a Final Authorizing Resolution to be adopted by the Agency prior to the closing of the transactions described herein. Such financial assistance will be conditioned upon the Company creating, retaining and maintaining (or causing the Sublessees to create, retain and maintain) certain employment at the Facility as a result of undertaking the Project.

4. The Assistant Secretary then opened up the hearing for comments from the floor for or against the proposed financial assistance and the location and nature of the Facility. Attached is a listing of the persons heard and a summary of their views as well as all written comments submitted for consideration.
5. The Assistant Secretary then asked if there were any further comments, and, there being none, the hearing was closed at 10:10 a.m.



Mark Kaucher

Anthony J. Picente Jr.
County Executive

Shawna M. Papale
Secretary/Executive Director

Jennifer Waters
Assistant Secretary

ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY



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David C. Grow
Chairman

Michael Fitzgerald
Vice Chairperson

Mary Faith Messenger
Treasurer

Ferris Betrus, Jr.
Kirk Hinman
Eugene Quadraro
Stephen Zogby

TO: OCIDA Board of Directors
FROM: Mark Kaucher
DATE: January 18, 2022

RE: **Central Utica Building, LLC Public Hearing**, January 18, 2022 Public Hearing Minutes
WebEx teleconference and at Oneida County Legislative Chambers, 10th Floor, Oneida County
Office Building, 800 Park Avenue, Utica.

Attendance: Robert Scholefield, MVHS; Michael Fogel, Brown, Duke & Fogel, P.C.); Patrick Donnelly,
Brown, Duke & Fogel P.C. (Webex teleconference); L. Michael Fitzgerald, OCIDA Board member.

Representing the Agency: Shawna Papale, Jennifer Waters, Mark Kaucher, Tim Fitzgerald

Jennifer Waters opened the public hearing opened at 10:00 AM.

Ms. Waters asked if there was consensus of the attendees was to waive public recitation of the public hearing notice, and there was. She referred to the attendee sign-in sheet and will read the names on the sheet, and she will call on them to speak. She clarified that this is a public hearing and not a question and answer session.

Ms. Waters asked Mr. Robert Scholefield, if he would like to make any comments on the record. He said yes.

Speaker #1, Robert Scholefield, MVHS

Mr. Scholefield noted that he would not be doing a full presentation, as one was done at the first public hearing by MVHS and Central New York Cardiology on the planned medical office building (MOB) in Downtown Utica. He did want to remind that the medical office building is part of the Downtown Medical Campus associated with the building of the Wynn Hospital, which is a 672,000 square foot in-patient facility that is being built and is expected to be completed in July of 2023 and occupied in October of 2023. The medical campus is anticipated to have a medical office building associated with the inpatient facility and the medical office building, which will be owned by Central Utica Business (CUB), and the MVHS will be a tenant in approximately 40,000 square feet of the 93,000 square feet building and it is the intention of the MVHS to have an ambulatory surgery center, hospital-based physician offices, outpatient radiology center, and outpatient laboratory. All

services that support what happens on the in-patient side of the facility. MVHS will be a tenant and would anticipate paying its share of the real estate taxes and sales taxes in that building.

Ms. Waters asked Mr. Michael Fogel, P.C. if he would like to make any comments on the record. He said yes.

Speaker #2, Michael Fogel, Esq., Brown, Duke and Fogel, P.C.

Mr. Fogel introduced himself as representing Bowers Development, LLC. He explained that they had previously submitted a comment letter at the first public hearing held on December 10, 2021, and have also submitted a letter this morning by e-mail (Ms. Waters, acknowledged receipt of this email and letter). But, he feels it's important in addition to the letter to comment during this public hearing because there is a very important issue, and what they think is a fatal flaw to the Central Utica Building, LLC (CUB) application and the Oneida County Industrial Development Agency's (OCIDA) consideration of that application. As noted in his letter, Bowers Development is the "contract vendee" of the property located at 411 Columbia Street, which is commonly known as the O'Brien parcel, and Bowers Development fully intends to construct its own medical office building on that property. A brand new medical office building which they think will exceed in size and synergy with the one that is being proposed by CUB. This is a fact that both CUB and MVHS are fully aware of. They know of both of Bowers Development status as contract vendee for the O'Brien parcel, as well as its intent to construct its own medical office building on that property. Without Bowers Development's consent or permission, the O'Brien parcel has been included as part of the application submitted by the CUB. In fact, the CUB application acknowledges that the parcel is critical to its project. It acknowledges that it can't construct its project without it. That critical piece they don't have under ownership or control. Bowers Development does. They are very troubled by the fact that the CUB would submit an application to the OCIDA for financial benefits, for a project that even it acknowledges, it doesn't have ownership control of a critical piece of that project. They are equally, if not more disturbed, that the OCIDA apparently sees no issue with that and is considering to process that application, and apparently on Friday is prepared to approve it, based upon the agenda that they've reviewed for Friday's meeting along with the proposed resolutions that are already up on the OCIDA's website. They think that's a fatal flaw. They do not think that as a matter of law, an applicant for financial assistance can include property within its application that it doesn't own or control. And they think it is similarly fundamentally flawed as a matter of law, for the OCIDA to consider, process and approve an application for financial benefits to an applicant when that applicant does not own or control a piece of that property. Mr. Fogel stated "Now the OCIDA is aware of that definition of facility, if you look at the proposed resolutions, and the way the applicant submitted the application, the facility included the O'Brien parcel. Now, the OCIDA is also aware that the intention is to enter into a lease and leaseback arrangement with CUB for the facility, which again, includes property that CUB doesn't own or control. So maybe you could help us, and I know you're probably not going to answer any questions, but I don't understand how an IDA and an entity like CUB can enter into a lease and leaseback transaction for a facility where they don't even own or control a piece of said facility. I'm at a loss, my client's at a loss, and I think the reason we don't understand it is that it doesn't comply with law and it doesn't make sense. You can't enter into a

lease and a leaseback transaction for a facility when that facility includes property that you don't own or control. It seems to be common sense to me." Mr. Fogel continued saying that they obviously object to the OCIDA's continued processing, consideration, and obviously the ultimate approval of the application, and they intend, on behalf of their client, to pursue all legal remedies in the event that the OCIDA transaction is approved because it would include property they own and control, not CUB. And property his client intends to build a superior medical office building on. He noted that it is important to note, and they want to make sure it's clear, is that his client is not trying to stop or interfere with the development of the hospital, but they intend to build a bigger and better medical office building that they think would have more synergies with the hospital project than the one that is part of the application submitted by CUB. He also noted that the applicant did request the OCIDA to consider exercising eminent domain, and from looking at the agenda they saw for this Friday's meeting, that the request is going to be taken up at that meeting, and that a public hearing under Article 2 of the Eminent Domain Procedure Law will be scheduled. He won't belabor the point on the Eminent Domain because they fully intend to develop the public hearing record during the Article 2 proceeding, if the OCIDA does choose to proceed with that. Suffice it to say they are going to oppose, obviously that taking, and pursue any legal remedies available to challenge that taking because they don't think, as a threshold matter, that the proposed taking would comply with eminent domain procedure law, and they would obviously be pursuing and damages that flowed from any such taking including seeking just compensation under the eminent domain procedures law. With that, further, they will just rely on the written submission they submitted as part of this public hearing and said thank you for the OCIDA's attention to this matter and ask that his comments and letter be included as part of the record of today's public hearing.

Ms. Waters asked Mr. Fitzgerald if he wished to make a comments on the record. He declined.

There being no further request to make statements, Ms. Waters closed the public hearing at 10:10 AM.

Respectfully submitted,

Mark Kaucher

Attached: Brown Duke & Fogel, P.C. January 18, 2022 Letter

BROWN DUKE & FOGEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

WWW.BDFLEGAL.COM

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mfogel@bdflegal.com
Tel: 315-399-4343

January 18, 2022

Executive Director Shawna Papale
Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441-4105
spapale@mvedge.org

**Re: Central Utica Building, LLC Application for Financial Assistance
Public Hearing on January 18, 2022 at 10 a.m.**

Dear Executive Director Papale and Oneida County Industrial Development Agency:

As you know, this office represents Bowers Development, LLC (“Bowers Development”). Please accept this letter as Bowers Development’s comments as to the January 18, 2022 Public Hearing as to the Central Utica Building, LLC (“CUB”) Application for Financial Assistance (the “Application”) to the Oneida County Industrial Development Agency (“OCIDA”).

Please see enclosed and incorporated with this letter our prior letter to OCIDA regarding this matter, dated December 10, 2021 (“2021 BDF letter”), and Bowers Development’s letter to OCIDA, dated September 13, 2021 (“2021 Bowers Development letter”).

As previously stated, Bowers Development is one of the most active developers in the City of Utica. Bowers Development is the contract-vendee of the property located at 411 Columbia Street (Tax Map 218.-41-2-38) (the “O’Brien Parcel”) and intends to construct a brand-new medical office building (“MOB”) on the O’Brien Parcel that will be better and have more square footage than the MOB proposed by CUB. Bowers Development is not objecting to, or seeking to interfere with, the hospital development. In fact, Bowers Development intends to build an MOB that compliments the hospital and provides greater space for doctors. Both CUB and MVHS know of Bowers Development’s plans for the O’Brien Parcel. Yet, without Bowers Development’s consent or permission, the O’Brien Parcel has been included in CUB’s Application.

The Application acknowledges that CUB does not own or control the O’Brien Parcel, but the description of the “Facility” for which CUB seeks tax exemption through a lease-leaseback agreement with OCIDA includes the O’Brien Parcel as a “critical” part of the facility. OCIDA should not and cannot approve tax exemption and a lease-leaseback for a facility that is not owned or controlled by the applicant.

SYRACUSE

MONTICELLO

NEW YORK CITY

The proposed project does not meet the legal requirements for approval, including but not limited to the restrictions as to the purposes of OCIDA and the types of projects that can be approved under General Municipal Law § 858.

It also appears the Application is still incomplete as to requirements, including but not limited to signed SEQRA forms, such as a signed Environmental Assessment Form ("EAF") Part 1. A complete application should be provided for public review before OCIDA moves forward with processing and potentially approving the Application.

It would be improper for OCIDA to approve the CUB application as proposed, and Bowers Development fully intends to oppose approval by OCIDA and will pursue all legal remedies available.

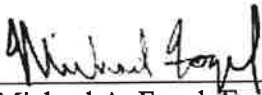
It would also be improper for OCIDA to proceed to condemn the O'Brien Parcel by eminent domain. OCIDA should not take property from one developer who intends to develop an MOB and give it to another developer to develop an MOB.

Nonetheless, if OCIDA does proceed with eminent domain, Bowers Development fully intends to oppose the taking and will pursue all legal remedies available. Any taking of the O'Brien Parcel and interference with Bowers Development's MOB plans will result in significant financial damages to Bowers Development for which it fully intends to seek compensation from all responsible parties.

Thank you for your attention to this matter. Please include this letter and the enclosures in the record of your consideration of the Application.

Very truly yours,

BROWN DUKE & FOGEL, P.C.

By: 
Michael A. Fogel, Esq.

Enclosures:

- Letter to OCIDA from Bowers Development, LLC, dated September 13, 2021
- Letter to OCIDA from Brown Duke & Fogel, P.C., dated December 10, 2021



September 13, 2021

Mr. David Grow, Chairman
Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441

RE: OCIDA and Oneida County's Proposed Use of Eminent Domain
411 Columbia Street, City of Utica, New York

Dear Mr. Grow:

This letter is being submitted to you to openly question the Oneida County Industrial Development Agency (OCIDA) and Oneida County's (OC) plan to utilize eminent domain to take possession of a property that Bowers Development, LLC (BD) has under contract and plans to develop into a medical office building.

In late August 2021, OCIDA publicly announced in the Observer Dispatch that they intend to explore the use of eminent domain to take the commercial property, located at 411 Columbia Street, in the City of Utica. Since there is an upcoming OCIDA board meeting on the agenda for this week to discuss and potentially vote on this matter, I want to make sure that OCIDA / OC have a full understanding of our plans. Questions that I would raise at this time include the following:

- 1. Why hasn't anyone from OCIDA / OC taken the time to speak or meet with BD to discuss their plans for the site? Is it a foregone conclusion that OCIDA / OC are just going to take this property for MHVS / CNY Cardiology without any type of responsible due diligence?** In fairness to OCIDA / OC, if MHVS did not provide you with all of the pertinent details we would not be surprised. MHVS has repeatedly and incorrectly stated that our purchase of the site is somehow an attempt to sabotage "their project." Nothing could be further from the truth. In fact, we believe our development would only enhance the MHVS campus. Last week, we heard that one of the MHVS board members didn't know of our plans for the site and was utterly shocked to see our rendering / development plans. The levels to which certain members of the MHVS team will act to suppress the BD plans in order to benefit CNY Cardiology (the real beneficiary) is appalling.
- 2. Do all of the OCIDA / OC members know that the taking of this property is to ultimately benefit CNY Cardiology and not MHVS?** This is an important distinguishing factor for everyone to contemplate, as the proposed OCIDA / OC eminent domain action will potentially involve the taking of property to benefit one private group (CNY Cardiology) over another private group (BD). It is not MHVS as they would like everyone to believe.
- 3. Do all of the OCIDA / OC members know that the CNY Cardiology project involves an 80,000 SF office building with one medical practice in the ownership structure (CNY Cardiology), while the BD project involves a 150,000 SF building with multiple medical practices in the ownership structure?** This is also very important for everyone to understand, as eminent domain case law revolves around the highest-and-best use for the property. Our larger medical office building project will provide more medical services to the local community rather than simply focusing on the revenues of CNY Cardiology alone, which seems to be the intent of MHVS.



4. **Why have several individuals called us to inform us that members of OCIDA / OC been telling people throughout the community that they are moving forward with taking the property, when this matter is supposed to be tabled / discussed (and possibly voted on) during the next OCIDA board meeting on Friday, September 17th?** While we do not want to believe these rumors, the frequency and extent to which we have heard such comments are very disturbing, as it suggests that the outcome of the upcoming Friday board meeting has already been determined without any discussion or dialogue with BD.

5. **Has anyone from OCIDA / OC researched the legal implications of taking this property, when BD clearly has a larger and better medical office building development project planned for the site?** A recent New York Supreme Court case (*Matter of 730 Equity Corp. vs. New York State Development Corp.*), which was upheld after an appeal, changed the perception of eminent domain and how it is now interpreted. We strongly believe that we have the "highest-and-best use" of the property in our development plans. An uninformed march toward eminent domain would only lead to protracted litigation and legal proceedings (which is not in anyone's best interest). Though we are confident that we would prevail, the outcome would be detrimental to the community, which we would prefer to avoid.

We remain optimistic that OCIDA / OC will investigate this matter further and realize in short order that they have not been provided all of the facts / details by MHVS, rather only provided what certain members have wanted to pass along and put in front of your respective organizations.

If you have any questions related to our proposed development plans and would like to hear more about them, please let us know and we would be happy to meet with OCIDA / OC to discuss them at your earliest convenience.

Sincerely,
Bowers Development, LLC

A handwritten signature in black ink, appearing to read "Bryan Bowers", written over a white background.

Bryan Bowers
Managing Member

Cc: Michael Fitzgerald, Vice Chair (OCIDA)
Mary Faith Messenger, Treasurer (OCIDA)
Shawna Papale, Secretary / Executive Director (OCIDA)
Jennifer Waters, Assistant Secretary (OCIDA)
Ferris Betrus, Jr. (OCIDA)
Kirk Hinman (OCIDA)
Eugene F. Quadraro (OCIDA)
Stephen R. Zogby (OCIDA)
Anthony J. Picente, Jr., County Executive (OC)

BROWN DUKE & FOGEL, P.C.

ATTORNEYS AND COUNSELORS AT LAW

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December 10, 2021

Executive Director Shawna Papale
Oneida County Industrial Development Agency
584 Phoenix Drive
Rome, New York 13441-4105
info@mvedge.org
spapale@mvedge.org

**Re: Central Utica Building, LLC Application for Financial Assistance
Public Hearing on December 10, 2021 at 10 a.m.**

Dear Executive Director Papale and Oneida County Industrial Development Agency:

This office represents Bowers Development, LLC ("Bowers Development").

Please accept this letter as Bowers Development's comments on the Central Utica Building, LLC Application for Financial Assistance (the "Application") to the Oneida County Industrial Development Agency ("OCIDA"). Pursuant to the instructions contained in the Notice of Hearing, we dialed in to the call-in number provided promptly at 10 a.m. Unfortunately, when I attempted to identify myself you could not hear me. I even attempted to dial in from a different phone and announced myself but was still unable to be heard. It appears it was a technical problem on your end. My office was able to reach Executive Director Shawna Papale by phone after the hearing, and Executive Director Papale directed my office to submit our comments by email today and stated that our comments will be included with the public hearing transcript.

Bowers Development is one of the most active developers in the City of Utica. Bowers Development is the contract-vendee of the property located at 411 Columbia Street (Tax Map 218.-41-2-38) (the "O'Brien Parcel") and will be constructing a brand-new medical office building ("MOB") on the O'Brien Parcel. Both Central Utica Building, LLC and Mohawk Valley Health System are fully aware of Bowers Development's contract-vendee status and intent to construct its own MOB on the O'Brien Parcel. Yet, without Bowers Development's consent or permission, the O'Brien Parcel has been included in the Application as part of the Central Utica Building, LLC MOB project. In fact, the Application acknowledges that Central Utica Building, LLC does not own or control the O'Brien Parcel, but yet admits that "[w]ithout this property it will be impractical if not impossible to construct the MOB as proposed." It is disturbing and shocking that Central Utica Building, LLC would submit an Application for a project which includes property that it admits that it does not even own or control and which by its own admission it needs to construct the project. This should not be tolerated by OCIDA.

Therefore, we submit that OCIDA should not, and in fact, cannot as a matter of law, proceed to process, let alone approve, the Application because Central Utica Building does not even own all of the property which is part of the Application.

Furthermore, it would be improper for OCIDA to proceed to condemn the O'Brien Parcel by eminent domain, as requested by Central Utica Building, LLC. As a threshold matter, OCIDA should not be taking property from one private property owner and developer who intends to develop an MOB and give it to another developer to develop an MOB. This is not consistent with the purpose and authority of OCIDA, and we believe it would also be in violation of Eminent Domain Procedure Law.

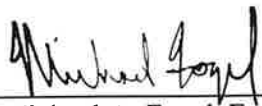
Nonetheless, if OCIDA does proceed with eminent domain, Bowers Development fully intends to oppose the taking and will pursue any-and-all legal remedies available to it to prevent such taking, and to seek just compensation, if such taking does occur. In addition, any taking of the O'Brien Parcel will result in significant direct, indirect and consequential financial damages to Bowers Development for which it fully intends to seek compensation for from all responsible parties.

Further, based on the Application that has been made available to the public, the Application appears to be incomplete. It appears to be missing the required completed SEQRA forms, and a completed Cost Benefit Analysis. Therefore, these documents need to be completed by the Applicant, and provided to the public for comment before OCIDA moves forward with processing and potentially approving the Application.

Thank you for your attention to this matter. Please include this letter in the record of your consideration of the Application.

Very truly yours,

BROWN DUKE & FOGEL, P.C.

By: 
Michael A. Fogel, Esq.

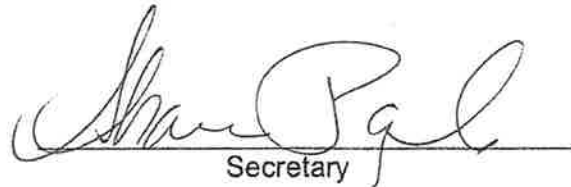
STATE OF NEW YORK)
 : SS.:
COUNTY OF ONEIDA)

I, the undersigned Secretary of the Oneida County Industrial Development Agency, DO HEREBY CERTIFY:

That I have compared the foregoing copy of the minutes of a public hearing held by the Oneida County Industrial Development Agency (the "Agency") on January 18, 2022 at 10:00 a.m. local time, at Oneida County Legislative Chambers, 8th Floor, Oneida County Office Building, 800 Park Avenue, City of Utica, New York, with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of the minutes in connection with such matter.

I FURTHER CERTIFY that (i) the public hearing was open for the public to attend and public notice of said hearing was duly given, (ii) the hearing in all respects was duly held, and (iii) members of the public had an opportunity to be heard.

IN WITNESS WHEREOF, I have hereunto set my hand as of January 24, 2022.


Secretary