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ONEIDA COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

OCIDA



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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 foot 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

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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.

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.

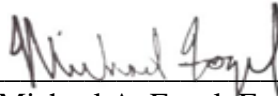
It would also be improper for OCIDA to proceed to condemn the O’Brien Parcel by eminent domain. OCIDA should not take property from one developer who intends to develop an MOB and give it to another developer to develop an MOB.

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)

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December 10, 2021

Executive Director Shawna Papale
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**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.

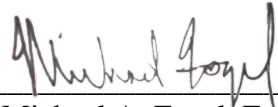
Nonetheless, if OCIDA does proceed with eminent domain, Bowers Development fully intends to oppose the taking and will pursue any-and-all legal remedies available to it to prevent such taking, and to seek just compensation, if such taking does occur. In addition, any taking of the O'Brien Parcel will 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.