

Onondaga County Industrial Development Agency  
Special Meeting Minutes  
August 24, 2021

A Special meeting of the Onondaga County Industrial Development Agency was held on Tuesday, August 24, 2021 at 333 West Washington Street, Syracuse, New York in the large conference room on the first floor.

Patrick Hogan called the meeting to order at 8:00 am with the following:

PRESENT:

Patrick Hogan  
Janice Herzog  
Victor Ianno  
Steve Morgan  
Susan Stanczyk

ABSENT:

Kevin Ryan  
Fanny Villarreal

ALSO PRESENT:

Robert Petrovich, Executive Director  
Nancy Lowery, Secretary  
Nate Stevens, Treasurer  
Karen Doster, Recording Secretary, Agency  
Len Rauch, Office of Economic Development  
Rebecca Shiroff, Office of Economic Development  
Jeff Davis, Barclay Damon Law Firm  
Mark McNamara, Barclay Damon Law Firm  
Rick Moriarty, Post Standard  
Barbara O'Brien (via Zoom)  
Michele Wolfender (via Zoom)

APPROVAL OF REGULAR MEETING MINUTES – AUGUST 10, 2021

Upon a motion by Janice Herzog, seconded by Victor Ianno, the OCIDA Board approved Special Meeting Minutes of August 10, 2021 with the correction. Motion was carried.

CONFLICT OF INTEREST DISCLOSURE

The Conflict of Interest was circulated and there were no conflicts reported.

## EMINENT DOMAIN

Jeff Davis stated before the Board for consideration is a proposed resolution to commence or take any necessary steps should they be required for the use of eminent domain under the Eminent Domain Procedure Law with regard to acquisition of lands or easement rights in support of the White Pine Commerce Park. He stated he will read the resolution and then discuss procedure and steps.

Jeff Davis read the following resolution.

Whereas, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install one or more “projects” (as defined in the Act), or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

Whereas, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire by eminent domain pursuant to the New York Eminent Domain Procedure Law (“EDPL”) or other means those real property interests necessary and/or appropriate to further its stated purposes; and

Whereas, the Agency manages the White Pine Commerce Park (“Park”) which currently consists of approximately 723± acres owned by the Agency and which is located northeast of the intersection of NYS Route 31 and CR 49 ( Caughdenoy Road) in the Town of Clay, Onondaga County, New York; and

Whereas, the Park was originally created to be capable of supporting a mix of industrial and/or commercial uses with related office space, advanced state-of-the-art research, large- or small-scale manufacturing, assembly, warehousing, data management, material processing facilities in a campus-like setting, to that end, since 2013, the Agency has attempted to market the Park for development around the United States to potential manufacturing, industrial, and commercial users, but those efforts have been unsuccessful and the Park remains vacant; and

Whereas, through its marketing efforts and communications with desired tenants around the United States, the Agency has determined that the Park is not geographically large enough and must be expanded significantly to be considered an attractive, viable location for prospective large- and small-scale manufacturing and industrial developers, particularly in the semiconductor industry, which will bring high-tech facilities and high paying jobs to Onondaga County but which requires a larger geographic footprint to support this industry and the associated investment required by such tenants; and

Whereas, to improve the Agency’s ability to market the Park to a larger, more diverse mix of large- and small-scale industrial, manufacturing, and commercial users, the Agency by previous resolutions has proposed to expand the Park to approximately 1,250± acres (the “Project” or “Action”) with the real property and improvements to be acquired being parcels located in the Town of Clay and contiguous to the current Park generally bounded on the north by the northern lot boundaries of parcels 048.-01-02.2, 048.-01-19.0, 048.-01-23.1, 048.-01-21.0, and 048.-01-22.0; on the east by the boundary between the towns of Clay and Cicero; on the south by NYS Route 31; and on the west by Caughdenoy Road (“Project Site”) including, but not limited

to, real property and improvements the Agency has under contract to purchase or is in negotiations to acquire by purchase, and various permanent easements in real property described below; and

Whereas, the purpose of the expanded Park and Project includes, but is not limited to: enabling the Agency to market the Project to a larger, more diverse mix of potential industrial and commercial developers by making the site more attractive to a broader scope of industries and particularly the semiconductor industry since: i) the expanded Park will be capable of supporting a mix of industrial and/or commercial uses including large scale semiconductor industrial development with related office space, advanced state-of-the-art research, large- or small-scale manufacturing, assembly, warehousing, data management, material processing and distribution facilities in a campus-like setting; ii) the Project will provide an expanded and improved “shovel ready” facility, demonstrating to industrial and commercial prospects that governmental approvals needed for the infrastructure development and construction have already been secured, or can be readily secured within certain thresholds or permit criteria all of which will advance the job opportunities, health, general prosperity and economic welfare of the people of Onondaga County and the State of New York and to improve their prosperity and standard of living and prevent unemployment and economic deterioration; and

Whereas, in addition to the real property the Agency currently owns at the Park, the Agency is considering acquiring the other real property and improvements at the Project Site necessary to develop the Project; and

Whereas, in addition to the real property within the Project Site, the Agency is considering acquiring property interests in fee and permanent right of way and/or temporary easements necessary to develop the Project, which rights will be located in lands within and immediately adjacent to the existing Niagara Mohawk Power Corporation utility easements running from 8720 Caughdenoy Road to the Niagara Mohawk Power Corporation substation located at 4459 NYS Route 31 including, but not limited to, portions of the following properties located in the Town of Clay:

<b>Property Address</b>	<b>Tax Map Number</b>
Van Hoesen Road	044.-01-29.1
4806 Appaloosa Trail	044.-01-50.0
4800 Appaloosa Trail	044.-01-49.0
4796 Appaloosa Trail	044.-01-48.0
4790 Appaloosa Trail	044.-01-47.0
4782 Appaloosa Trail	044.-01-45.0
4780 Appaloosa Trail	044.-01-44.0
Ver Plank Road	044.-01-17.1
Van Hoesen Road	044.-01-18.1
8761 Van Hoesen Road	044.-01-19.0
8790 Van Hoesen Road	047.-01-03.0
4936 Ver Plank Road	047.-01-09.1
8721 Caughdenoy Road	047.-01-14.3
Caughdenoy Road	047.-01-13.0
4401 State Route 31	029.-01-06.1
4531 State Route 31	029.-01-10.1
4523 State Route 31	029.-01-11.1
4541 State Route 31	029.-01-09.1
Henry Clay Boulevard	045.-01-02.1
4647 State Route 31	045.-01-05.1

and, a temporary easement running to the west of the Ver Plank Road Niagara Mohawk Power Corporation substation complex in an approximately linear direction from Ver Plank Road to the existing Niagara Mohawk Power Corporation utility easement area (collectively, the “Easement Property”); and the acquisition of various roadway property interests in fee and temporary, and permanent easements along NYS Route 31 from west of the NYS Route 11 intersection and continuing east along NYS Route 31 to the Lakeshore Spur intersection; the triangle created by Lakeshore Road, Lakeshore Road Spur, and NYS Rte. 31; the I-481/Caughdenoy Road/Maple Road Roundabout; and the Caughdenoy Road/NYS Rte. 31 intersection (collectively, “Roadway Interests”).

Whereas, in an effort to transform the Park into a modern industrial park for advanced manufacturing and state-of-the-art industrial uses, the Agency previously performed a thorough environmental review of the Park and its anticipated environmental impacts pursuant to Article 8 of the Environmental Conservation Law of the State of New York, as amended, and the regulations of the Department of Environmental Conservation of the State of New York promulgated thereunder (collectively referred to hereinafter as “SEQRA”), which included, but was not limited to, the following: (1) classifying the Park project as a Type 1 action; (2) acting as Lead Agency for the purpose of a coordinated environmental review; (3) conducting necessary studies and holding required hearings in connection with the preparation of a Generic Environmental Impact Statement (“GEIS”) to address anticipated potential impacts associated with the proposed multi-use industrial park; (4) preparation of a subsequent Final GEIS (“FGEIS”) that incorporated the DGEIS by reference and included responses to public comments received; and (5) preparation and issuance by the Agency of a Findings Statement in October of 2013 that (a) concluded the project avoided or minimized adverse environmental impacts to the maximum extent practicable, (b) incorporated mitigation measures that were considered practicable, and (c) identified certain impact thresholds that, if exceeded, may require supplemental determinations of their significance and/or impact evaluation, and possibly mitigation measures in addition to those identified; and

Whereas by Resolution dated December 8, 2020 the Agency, based on its review and evaluation of the Full Environmental Assessment Form for the Project, determined that:

- i) the Project represents a significant change from the Park’s current footprint and will result in changed circumstances from those previously evaluated by the Agency in the DGEIS/FGEIS, and that the preparation of a Supplemental GEIS (“SGEIS”) is necessary to adequately identify and evaluate potential significant adverse impacts associated with the Project that are not addressed or are inadequately addressed in the existing DGEIS/FGEIS;
- ii) a supplement to the FGEIS should be prepared, and, therefore, issued a Notice of Intent to prepare a supplemental GEIS (i.e., a positive declaration);
- iii) declared its intent to act as “Lead Agency” (as said term is defined in SEQRA) with respect to a coordinated agency review of the Project pursuant to SEQRA, including the preparation of a SGEIS, and published notice of its determination and intent to be “Lead Agency;”

and,

Whereas, pursuant to SEQRA the Agency prepared, accepted, and issued the Draft SGEIS on May 6, 2021, held a public comment hearing with respect to the Draft SGEIS on May 24, 2021, closed the public comment period on June 11, 2021, prepared and issued the Final SGEIS at a special meeting of OCIDA on July 16, 2021 and made its SEQRA Findings on July 27, 2021; and

Whereas, Agency representatives have contacted the record owners of the Property and certain other properties located within the Project Site to negotiate the possible acquisition of their respective parcels and improvements but such negotiations, to date, have been unsuccessful;

Now, therefore, be it resolved by the members of the Onondaga County Industrial Development Agency as follows:

- (1) The Agency Executive Director, staff, and the Agency's legal counsel, Barclay Damon LLP, are hereby authorized and directed:
  - a. To do such things or perform such acts and execute such documents as are necessary and/or appropriate to duly notice and conduct a public hearing as provided for under EDPL Article 2 including, but not limited to, retaining any professionals, consultants and contractors necessary to provide materials required under the EDPL in connection with a public hearing and the possible acquisition of the real property within the Project Site and, in addition, the Easement Property and Roadway Interests by eminent domain or negotiated purchase; and
  - b. To take all actions under EDPL § 404 to allow for and facilitate Agency officers, agents, and contractors to enter upon the real property located within the Project Site, the Easement Property, and Roadway Interests for the purpose of making surveys, test pits and borings, or other investigations, and also for temporary occupancy during construction.

(2) A copy of this Resolution, together with the attachments hereto, shall be placed on file in the office of the Agency where the same shall be available for public inspection during business hours.

(3) This Resolution shall take effect immediately.

Jeff Davis stated that is the proposed draft resolution and would take the step of starting what would be a process, if necessary, to undertake acquisition of lands, easement areas and certain interests by eminent domain. He stated it does not set a date for a public hearing but it authorizes us to do one in the future should we get to that point. He stated it would authorize the Executive Director, staff and agency counsel to take other steps necessary under the eminent domain procedure law to pursue the acquisition of lands under Eminent Domain Procedure Law if necessary.

Robert Petrovich stated as the Board knows this sets the table for us to proceed down this path should we deem it necessary but we are confident given where we are today that we are in discussions and negotiations to acquire property within the park as identified in this resolution through negotiated purchase and sale. He stated the other aspect of this is we need to secure rights for placement of a gas line that is eventually going to serve the site and this preserves our

right to be able to do that should we not be able to come to reasonable terms in acquiring easement rights for placement of the gas line. He stated we talked about this ad hoc before with individual Board members and we feel like we are at the point now where we should set the table if we find it necessary to proceed. He stated that is effectively where we are at.

Mark McNamara stated he would like to emphasize this is not a resolution to acquire any property interests that are identified here. He stated it is a resolution to set the table and start the process which culminates with a public hearing, comment from the public, consideration of all the comments by this Board and then potentially the issuance of the determination and findings. He stated it is that resolution at some point in the future if the Board so determines, that authorizes the next stage of the process to actually take title to these properties and take these easements. He stated this again sets the table and authorizes the process to go formally forward with the process of at some point scheduling and holding a public hearing and then potentially making a determination and findings in a resolution.

Victor Ianno asked if the goal is 1,200 acres and how many acres do we have now. Robert Petrovich stated our goal is 1,250 ±. Jeff Davis stated in fee right now we have 723 acres that we own in OCIDA's name.

Victor Ianno asked how many are contracted. Robert Petrovich stated we have about 100 acres yet to be under contract. He stated we are in negotiations with all the folks within the park.

Victor Ianno stated we have 700 and another 100 in transition. Robert Petrovich stated the balance we have under contract or option. Jeff Davis stated we have about 1,150 acres either in our name or under contract. He stated we have a remaining 100 acres that we do not have.

Victor Ianno stated we have 100 acres give or take that will probably be part of the eminent domain. Robert Petrovich stated if we can't come to terms. He stated given developments over the past couple weeks, we feel that we should come to terms with folks in the near future.

Victor Ianno asked if we are only 100 acres from our goal. Robert Petrovich stated roughly yes.

Victor Ianno asked if the gas line is going to come across other properties that are not part of the 1,200 acres. Robert Petrovich stated yes. He stated from the Clay station we need to bring a gas

line to the site and within existing roadway or existing National Grid right of ways, in some instances, we have to cross public land. He stated National Grid has done this before so we will essentially install another gas line in the existing easement.

Jeff Davis stated if the Board recalls during the process of reviewing the draft supplemental GEIS and the final supplemental GEIS there were certain areas that were studied. He stated one of them was the site proper and one was the potential gas line location where two different alternative gas line locations were looked at. He stated we are talking about identifying one of those now as a location that runs primarily along the existing Niagara Mohawk overhead utility line easement area. He stated another thing that was studied extensively in that EIS documentation was roadway mitigation locations. He stated there were certain improvements in various intersections along that Route 31 corridor in other intersections. He stated some of those improvements required minor widening outside the existing right of way. He stated this resolution addresses, that should we not be able to acquire a couple small strips in either one of those intersection locations by negotiating an agreement with the neighboring land owners. He stated then if we need to acquire land via eminent domain we can do that by including those properties and acquiring easements and/or fee title interests to areas that will allow us to do those roadway improvements for mitigation purposes. He stated those are the three components in the resolution; the site proper, the gas line easement area and certain locations along that Route 31 corridor, 481, Caughdenoy Road intersection mentioned etc. that come off 481 where there were roadway mitigation improvements identified in those locations.

Victor Ianno asked how long until we get the other 100 acres and how much time until we are open for business so we can market and entertain offers. Robert Petrovich stated we are already doing that. He stated we do not have an end user and are actively looking to get an end user to come here. He stated we do not have one today. He stated the County Executive has made no secret that we are in discussions with global companies that are looking for a location. He stated he thinks we have a very attractive location. He stated no one has said "yes" to us yet. He stated we need obviously to be in conversations with these folks because these types of multi-billion dollar projects are not decided on off the cuff. He stated at the same time we need to do the spade work necessary to be sure that our site is a mega site available and ready for a potential end user.

Victor Ianno asked if we are a year away from having the 1,200 acres and ready to go. Robert Petrovich stated his expectation is the 1,253 acres is going to come together within the next 2-4 weeks.

Victor Ianno asked if we will be at 1,200. Robert Petrovich stated we should be at 1,253 roughly.

Patrick Hogan stated we wouldn't even contemplate such a serious matter unless we were committed to having something out there.

Robert Petrovich stated this just sets the table to be able to affect this process should we become stuck in the mud some place. He stated in terms of schedule he would refer to counsel for the descriptive schedule of eminent domain relative to a public hearing but we are not there yet. Jeff Davis stated the 2-4 week time line that Mr. Petrovich laid out does not utilize the Eminent Domain Procedure Law and that is our goal. He stated if we have to utilize eminent domain then the time line to acquire actual easement and/or title rights to the property is a little bit longer because you have to go through the public hearing process and take particular procedural steps and time lines.

Victor Ianno asked if we are ready to say yes if a prospect says they want to locate there. Robert Petrovich stated we are getting ready to say yes.

Janice Herzog stated the 4,000 employees number has been tossed around and she has seen that number in some of the documents. She asked if that number of employees reached is consistent with other facilities around the country for what we are looking at White Pine. Robert Petrovich stated the short answer is yes. He stated this is an iterative process so we have learned as we have gone through opportunities from the evaluation of the Project Rhino and TSMC opportunities that came here. He stated there were certain aspects of what we had that needed to be enhanced, corrected and made better. He stated TSMC said this is an ok site for now but doesn't afford us any ability to expand so we recognize that to attract a substantive project that would be a 2 decade long investment, the site had to be that much bigger. He stated based on the research and based on the back and forth with prospects, we determined that end users want between 1,000 and 1,500 acres. He stated that we are at 1,250 ±. Jeff Davis stated the Generic Environmental Impact Statement process had to identify certain assumptions and so the review



that was completed was based upon an initial development and we used 4,000 employees as a number as an assumption in that generic environmental review to allow us to start looking at the types of potential environmental impacts that could result from a facility at that location with 4,000 employees. He stated that figures in traffic counts, number of shifts, etc. He stated that is how you build your models for review of the generic EIS. He stated that was what was studied and reviewed for development of the White Pine Commerce Park. He stated in the future should something come in 10 years from now and somebody wants to expand beyond, there will be additional environmental review for that.

Patrick Hogan stated let's not forget the significant economic impacts for the construction industry on a facility like this. He stated it will be transformative.

Janice Herzog stated she thinks it is important to focus on the employee impacts for the community. Robert Petrovich stated if you look at the numbers based on what the industry pays you are looking at an addition to the local payroll of something like \$500,000,000. He stated they are high paying highly skilled jobs so it is the kind of a project that we are chasing.

Janice Herzog stated hopefully training programs will be provided. Robert Petrovich stated there is a whole ecosystem that comes around it. Janice Herzog stated if we do have a company ready to go those are things we have to look at.

Janice Herzog asked if and when this advances to the public meeting, what does that look like and what does that entail. Mark McNamara stated keep in mind that part of this is that there is no decision which has been made despite all the activities that are ongoing into this process. He stated there is no preordained decision with respect to the acquisition of any of these properties. He stated the purpose of the public hearing is part of the whole due diligence process that the OCIDA Board has been going through with respect to the pragmatics of any agency looking at a project like this plus the environmental review. He stated this is one more aspect of the due diligence process. He stated the purpose of the public hearing is not so much for the Board to comment or to provide a lot of information to the public but to get information from the public. He stated the way the meeting is run is there is a description of the project or proposed project which is identical to what the Board has heard numerous times in terms of the various actions the Board has taken, and then you ask for public comment. He stated the Board sits back and the people who wish to make statements both in favor of the project or potential acquisition of

property as well as against the project or against the acquisition of property have a limited amount of time, depending on how many people and it is usually about 5 minutes, and then they come up to the microphone and make their statement. He stated the Board is not there to answer questions, you are there to get information. He stated people sometimes ask questions but representatives of the Agency who are there are not really supposed to answer, they are to get information. He stated you will accumulate all of that information, in addition to which people can make written submissions over a period of time that the hearing is open. He stated once you have all that information and you close the hearing information, you then have 90 days in which to make your determination and findings. He stated your determination and findings is a resolution with respect to the public use benefit or purpose of the project, the location of the project and if there were any serious alternative locations, and in this case there really aren't, the environmental impacts of the project which the Agency has already done which was at the meeting that the Board made the findings statement under SEQR and anything else you want to make findings about. He stated that determination and findings, assuming that that type of resolution was approved, comes out like a normal resolution. He stated there is then a synopsis of that resolution which is published and served on all the property owners and that starts a time period, a legal process, in which any of those property owners could challenge the determination and findings itself. He stated that is a litigation phase.

Steve Morgan asked how long the eminent domain process takes for something like this. Mark McNamara stated there are two different time lines. He stated from the time you make your determination and findings, assuming there is not a challenge to the determination and findings, it is approximately 60-90 days. He stated the next phase going to court to seek an order of condemnation acquiring the various property interest that you identified in your determination and findings. He stated that goes right to the Supreme Court Justice here in Syracuse. He stated basically the time is when you are going to get his or her return date and these are special proceedings so they move very quickly. He stated it is not like a normal civil action. He stated it is a monumental undertaking, difficult process and an expensive process if you are going to challenge them.

Patrick Hogan asked if it goes to eminent domain who determines the just compensation. Mark McNamara stated the just compensation phase is the final phase so having taken title to the property, part of that process is that you make an advance payment offer to the property owners

in the amount of the highest approved appraisal, which is different than the amounts you are negotiating for terms of acquiring the property.

Patrick Hogan stated so the property negotiations might be higher than the court determined compensation. Mark McNamara stated yes. He stated you get your order of condemnation and the order of condemnation provides the statute of limitations. He stated the judge sets the statute of limitations by which the property owner brings a claim, like a counter claim in a law suit, against the Agency for additional compensation and then that plays out over a period of time. He stated those are relatively quick proceedings also but that plays out over whatever time is necessary. He stated once the order of condemnation and the acquisition maps are filed the Agency automatically takes title by virtue of the filing of those documents in the County Clerk's office.

Robert Petrovich stated in 60-90 days there is the ability to advance and move forward and then downstream we are figuring out what the price is. Mark McNamara stated yes and when you get your condemnation you pay the just compensation either to the property owner or into the court based on your highest approved appraisal. He stated it goes into the court if there are any title issues. He stated that challenge or evaluation takes place outside the project. He stated it is a different procedure moving forward but as of the filing of that order of condemnation you have control of the property.

Robert Petrovich stated it is not unreasonable to assume those numbers could come in substantially lower than what is being negotiated amongst the parties. Mark McNamara stated he will respectively say that is an understatement.

Patrick Hogan asked who pays the court costs. Mark McNamara stated the court either confirms or rejects and that is all they can do. He stated in the event that they were successful with respect to that or if the project was abandoned then they are able file claim to get reimbursed for all of their attorney and expert fees. He stated on the evaluation side in the event the ultimate determination of just compensation made by the judge is substantially in excess of the advancement payment then they can make the claim for attorney's fees and appraisers fees in connection with that evaluation proceeding.

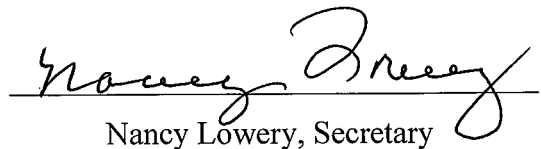
Robert Petrovich asked Mark McNamara how likely that is based on his experience. Mark McNamara stated that it is not unusual. He stated he always advises condemners give property owners the benefit of the doubt and to always boost evaluation higher towards the property owner because you are taking their property but also because of that exposure. He stated your appraisers are going to do an honest and objective evaluation and determination of the property value. He stated if another appraiser comes in that is substantially in excess of the advance payment offer based on your appraisal and the judge agrees with that, you have exposure. He stated the once you get north of 30-40% above the advance payment you are in strong territory to recover the attorney fees.

Patrick Hogan stated it sounds like an onerous process to challenge. Mark McNamara stated it certainly is with respect to challenging the determination and findings. He stated that is a massive undertaking with a project like this. He stated the evaluation challenges not so much.

Patrick Hogan stated he would like to congratulate Mr. Petrovich because he knows he has gone to great lengths to negotiate this along with staff. Robert Petrovich stated he appreciates that and we has been working closely with the County Executive on this and he hopes we get to a point where everyone feels good.

Upon a motion by Victor Ianno, seconded by Steve Morgan, the OCIDA Board approved a resolution authorizing and directing Agency staff and counsel to take various actions pursuant to the Eminent Domain Procedure Law for the potential acquisition of lands and easement rights in support of the development of the White Pine Commerce Park. Motion was carried.

Upon a motion by Victor Ianno, seconded by Steve Morgan, the OCIDA Board adjourned the meeting at 8:36 am. Motion was carried.

  
Nancy Lowery, Secretary