

# THE POST-STANDARD

LEGAL AFFIDAVIT

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INV#: 0010771525



BARCLAY DAMON LLP  
ERICA F THOMPSON  
125 E JEFFERSON ST  
SYRACUSE, NY 13202

Name: BARCLAY DAMON LLP

Sales Rep: Pamela Gallagher

Account Number: 1056027

INV#: 0010771525

Date	Position	Description	P.O. Number	Ad Size
11/02/2023	Other Legals NY	NOTICE OF PUBLIC HEARING PURSUANT TO ARTICLE 2 OF		1 x 208.00 CL

State of New York, County of Onondaga ss. Pamela Gallagher, of the City of Syracuse, in said County, being duly sworn, doth depose and says: this person is the Principal Clerk in the office of THE POST-STANDARD, a public newspaper, published in the City of Syracuse, Onondaga County, New York and that the notice, is an accurate and true copy of the ad as printed in said newspaper, was printed and published in the regular edition and issue of said newspaper on the following days, viz.:

Post-Standard 10/22/2023, 10/24/2023, 10/26/2023, 10/29/2023, 10/31/2023, 11/02/2023

Pamela Gallagher  
Principal Clerk

An Authorized Designee of the President, Timothy R. Kennedy  
Subscribed and sworn to before me, this 2nd day of November  
2023

  
NOTARY PUBLIC

LOIS ROTCHFORD  
NOTARY PUBLIC, STATE OF NEW YORK  
Registration No. 01RO6395132  
Qualified in Onondaga County  
My Commission Expires 1/26/2027

FOR QUESTIONS CONCERNING THIS AFFIDAVIT,  
PLEASE CONTACT PAMELA GALLAGHER AT  
(315) 470-2051 OR Legals@Syracuse.com

Date	Position	Description	P.O. Number	Ad Size
11/02/2023	Other Legals NY	NOTICE OF PUBLIC HEARING PURSUANT TO ARTICLE 2 OF THE		1 x 208.00 CL

**NOTICE OF PUBLIC HEARING PURSUANT TO ARTICLE 2 OF THE EMINENT DOMAIN PROCEDURE LAW REGARDING THE POTENTIAL ACQUISITION BY EMINENT DOMAIN OF CERTAIN REAL PROPERTY INTERESTS FOR THE PROPOSED DISTRICT EAST PROJECT NOTICE IS HEREBY GIVEN** that the Onondaga County Industrial Development Agency ("Agency"), pursuant to the December 20, 2022 Resolution of its Board and in accordance with the provisions of the New York Eminent Domain Procedure Law ("EDPL"), will hold an EDPL Article 2 public hearing on November 13, 2023 at 2:00 PM local time in the Dewitt Town Court located at 5400 Butternut Drive, East Syracuse, New York 13057 ("Public Hearing"). The purpose of the Public Hearing is to inform the public and review the public use, benefit and purpose of the Agency's potential acquisition of certain real property interests by eminent domain or negotiated purchase as part of the proposed redevelopment of the former Shoppingtown Mall located on Erie Boulevard in the Town of Dewitt, New York into a mixed-use town center development also known as "District East" as described below ("Project"). The Project site is located at the northwest corner of the intersection of Erie Boulevard and Kinne Road in Dewitt, New York and is comprised of five separate parcels which together total approximately 69 acres in size ("Project Site"). The proposed Project site currently consists of a vacant retail mall. Members of the public may attend this public hearing in person and also by listening to or commenting on the Project during the Public Hearing by attending via Zoom video link at: <https://us02web.zoom.us/j/84530272617> Meeting ID: 845 3027 2617 One tap mobile +19294362866,,84530272617# US (New York) +16469313860,,84530272617# US The Agency is considering an application (the "Application") from OHB Redev, LLC ("OHB"), a copy of which is on file at the office of the Agency, requesting that the Agency undertake a Project which will in-

clude the proposed demolition of the bulk of the existing former Shoppingtown Mall, and its redevelopment into a walkable, mixed-use town center development, inclusive of retail, entertainment, office, residential, and open space, at the Project Site. The Project is anticipated to include 1.96 million square feet of leasable space inclusive of 912 dwelling units in 33 structures of up to six stories in height. In addition, a new street grid that will incorporate sidewalks, bicycle infrastructure, pedestrian scale lighting, street trees, and on-street parking will be constructed. The Project will also include surface parking areas and will utilize the existing parking garage in order to provide up to 4,105 parking spaces. OHB currently controls 64.46± acres of the Project Site. As part of its Application, the Applicant is requesting that in furtherance of the Project and pursuant to the EDPL the Agency exercise its authority to acquire fee interests in the following real property by negotiated purchase or through the exercise of its power of eminent domain for the purposes of acquiring all needed rights for a unified and comprehensive redevelopment of the overall 69± acre Project Site: i) former Sears sites located at tax map lots 063.-01-2.4 and 063.-01-2.5 totaling 2.54± acres and ii) the former Macy's site located at tax lot 063.-01-02.3 totaling 1.67 acres, all located within the Project Site in the Town of Dewitt, Onondaga County, New York. On October 12, 2023 the Agency made and issued its Negative Declaration/Notice of Determination of No Significant Effect on the Environment pursuant to Article 8 of the Environmental Conservation Law regarding the potential environmental impact of the Project. The anticipated public use, benefit and purpose of the Project includes, but is not limited to, the transformation of a blighted and vacant former shopping mall into a mixed use urban center with residential, commercial, office, and entertainment facilities, and common area amenities such as bike

paths, walking trails and green spaces designed to encourage pedestrian activities and gathering places; expansion of health care and educational facilities and offices to service the region; shopping, dining, and entertainment experiences in the form of shops, restaurants, and entertainment venues tied together with landscaped walkways to create a pedestrian friendly urban environment; attract residents and visitors and enhance the Finger Lakes region as a tourist destination; create 950± construction jobs and 1,500± full time jobs; result in projected sales tax revenues of \$12 million to the local and state governments annually with millions of dollars in additional state and federal payroll taxes; 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. At the Public Hearing, any person in attendance will have an opportunity to be heard on the proposed Project. The Public Hearing is intended to inform the public and to outline and review the public use, benefit and purpose to be served by the Project and its impact on the environment and residents of the locality. The general public and residents and property owners in the vicinity of the Project are invited to attend the Public Hearing in person or by video or teleconference call and to present oral or written statements or other documents concerning the proposed public Project. Written comments or documents may be submitted to Robert M. Petrovich, Executive Director, Onondaga County Industrial Development Agency, 335 Montgomery Street, Second Floor, Syracuse, NY 13202 through the close of business on November 20, 2023 at which time the Public Hearing will be closed. **PROPERTY OWNERS WHO MAY SUBSEQUENTLY WISH TO CHALLENGE CONDEMNATION OF ANY REAL PROPERTY INTERESTS THEY HAVE IN**

THE PROJECT SITE, VIA JUDICIAL  
REVIEW MAY DO SO ONLY ON  
THE BASIS OF ISSUES, FACTS,  
AND OBJECTIONS RAISED AT  
THIS PUBLIC HEARING. Dated:  
October 22, 2023 ONONDAGA  
COUNTY INDUSTRIAL DEVELOP-  
MENT AGENCY

**BARCLAY DAMON** <sup>LLP</sup>

**Mark R. McNamara**  
*Partner*

October 24, 2023

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

Transform SR Brands, LLC  
333 Beverly Road  
Hoffman Estates, IL 60179

Patrick L Seely, Jr.  
Jones Hacker Murphy LLP  
200 Harborside Drive #300  
Schenectady, NY 12305



Re: **Onondaga County Industrial Development Agency**

***Notice of Public Hearing / Potential  
Redevelopment of former Shoppingtown Mall  
("Project")***

Dear Sir(s) or Madam:

We represent the Onondaga County Industrial Development Agency ("Agency") in connection with this Project. The purpose of this letter is to provide you with notice of the Eminent Domain Procedure Law ("EDPL") Article 2 public hearing that the Agency will conduct regarding the real property located at 3649 Erie Blvd E, Dewitt, NY, identified by SBL Nos. 063.-01-02.4 and 063.-01-02.5 (collectively, "Property") on November 13, 2023 at 2:00 PM in the Dewitt Town Court located at 5400 Butternut Drive, East Syracuse, New York 13057 ("Public Hearing"). The text of the notice which has been published in the *Syracuse Post Standard* is as follows:

NOTICE IS HEREBY GIVEN that the Onondaga County Industrial Development Agency ("**Agency**"), pursuant to the December 20, 2022 Resolution of its Board and in accordance with the provisions of the New York Eminent Domain Procedure Law ("**EDPL**"), will hold an EDPL Article 2 public hearing on November 13, 2023 at 2:00 PM local time in the Dewitt Town Court located at 5400 Butternut Drive, East Syracuse, New York 13057("Public Hearing"). The purpose of the Public

The Avant Building - 200 Delaware Avenue Suite 1200 - Buffalo, New York 14202 barclaydamon.com  
MMcNamara@barclaydamon.com Direct: (716) 566-1536 Fax: (716) 846-1210  
Also Admitted in: District of Columbia

Transform SR Brands, LLC  
Patrick L Seely, Jr.  
October 24, 2023  
Page 2

Hearing is to inform the public and review the public use, benefit and purpose of the Agency's potential acquisition of certain real property interests by eminent domain or negotiated purchase as part of the proposed redevelopment of the former Shoppingtown Mall located on Erie Boulevard in the Town of Dewitt, New York into a mixed-use town center development also known as "District East" as described below ("**Project**"). The Project site is located at the northwest corner of the intersection of Erie Boulevard and Kinne Road in Dewitt, New York and is comprised of five separate parcels which together total approximately 69 acres in size ("Project Site"). The proposed Project site currently consists of a vacant retail mall. Members of the public may attend this public hearing in person and also by listening to or commenting on the Project during the Public Hearing by attending via Zoom video link at:

<https://us02web.zoom.us/j/84530272617>

Meeting ID: 845 3027 2617

One tap mobile

+19294362866,,84530272617# US (New York)

+16469313860,,84530272617# US

The Agency is considering an application (the "**Application**") from OHB Redev, LLC ("**OHB**"), a copy of which is on file at the office of the Agency, requesting that the Agency undertake a Project which will include the proposed demolition of the bulk of the existing former Shoppingtown Mall, and its redevelopment into a walkable, mixed-use town center development, inclusive of retail, entertainment, office, residential, and open space, at the Project Site. The Project is anticipated to include 1.96 million square feet of leasable space inclusive of 912 dwelling units in 33 structures of up to six stories in height. In addition, a new street grid that will incorporate sidewalks, bicycle infrastructure, pedestrian scale lighting, street trees, and on-street parking will be constructed. The Project will also include surface parking areas and will utilize the existing parking garage in order to provide up to 4,105 parking spaces. OHB currently controls 64.46± acres of the Project Site. As part of its Application, the Applicant is requesting that in furtherance of the Project and pursuant to the EDPL the Agency exercise its authority to acquire fee interests in the following real property by negotiated purchase or through the exercise of its power of eminent domain for the purposes of acquiring all needed rights for a unified and comprehensive redevelopment of the overall 69± acre Project Site: i) former Sears sites located at tax map lots 063.-01-2.4 and 063.-01-2.5 totaling 2.54± acres and ii) the former Macy's site located at tax lot 063.-01-02.3 totaling 1.67 acres, all located within the Project Site in the Town of Dewitt, Onondaga County, New York.

Transform SR Brands, LLC  
Patrick L Seely, Jr.  
October 24, 2023  
Page 3

On October 12, 2023 the Agency made and issued its Negative Declaration/Notice of Determination of No Significant Effect on the Environment pursuant to Article 8 of the Environmental Conservation Law regarding the potential environmental impact of the Project.

The anticipated public use, benefit and purpose of the Project includes, but is not limited to, the transformation of a blighted and vacant former shopping mall into a mixed use urban center with residential, commercial, office, and entertainment facilities, and common area amenities such as bike paths, walking trails and green spaces designed to encourage pedestrian activities and gathering places; expansion of health care and educational facilities and offices to service the region; shopping, dining, and entertainment experiences in the form of shops, restaurants, and entertainment venues tied together with landscaped walkways to create a pedestrian friendly urban environment; attract residents and visitors and enhance the Finger Lakes region as a tourist destination; create 950± construction jobs and 1,500± full time jobs; result in projected sales tax revenues of \$12 million to the local and state governments annually with millions of dollars in additional state and federal payroll taxes; 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.

At the Public Hearing, any person in attendance will have an opportunity to be heard on the proposed Project. The Public Hearing is intended to inform the public and to outline and review the public use, benefit and purpose to be served by the Project and its impact on the environment and residents of the locality. The general public and residents and property owners in the vicinity of the Project are invited to attend the Public Hearing in person or by video or teleconference call and to present oral or written statements or other documents concerning the proposed public Project. Written comments or documents may be submitted to Robert M. Petrovich, Executive Director, Onondaga County Industrial Development Agency, 335 Montgomery Street, Second Floor, Syracuse, NY 13202 through the close of business on November 20, 2023 at which time the Public Hearing will be closed. PROPERTY OWNERS WHO MAY SUBSEQUENTLY WISH TO CHALLENGE CONDEMNATION OF ANY REAL PROPERTY INTERESTS THEY HAVE IN THE PROJECT SITE, VIA JUDICIAL REVIEW MAY DO SO ONLY ON THE BASIS OF ISSUES, FACTS, AND OBJECTIONS RAISED AT THIS PUBLIC HEARING.

Dated: October 22, 2023

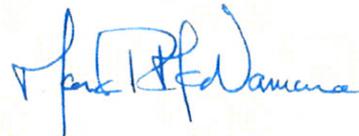
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

Transform SR Brands, LLC  
Patrick L Seely, Jr.  
October 24, 2023  
Page 4

You are receiving this notice because, upon information and belief, you are one of the assessment record billing owners of the Property.

**PLEASE NOTE OWNERS WHO MAY SUBSEQUENTLY WISH TO CHALLENGE CONDEMNATION OF ANY REAL PROPERTY INTERESTS THEY HAVE IN THE PROJECT SITE, VIA JUDICIAL REVIEW MAY DO SO ONLY ON THE BASIS OF ISSUES, FACTS, AND OBJECTIONS RAISED AT THIS PUBLIC HEARING.**

Very truly yours,



Mark R. McNamara

**BARCLAY DAMON** <sup>LLP</sup>

**Mark R. McNamara**  
*Partner*

October 24, 2023

**CERTIFIED MAIL - RETURN RECEIPT REQUESTED**

3649 Erie, LLC  
7978 Cooper Creek Blvd  
Suite 100  
University Park, FL 34201

Christopher M. McDonald, Esq.  
Whiteman Osterman & Hanna LLP  
One Commerce Plaza  
99 Washington Avenue  
Albany, NY 12260

Re: **Onondaga County Industrial Development Agency**  
**Notice of Public Hearing / Potential Redevelopment**  
**of former Shoppingtown Mall ("Project")**

Dear Sir(s) or Madam:

We represent the Onondaga County Industrial Development Agency ("Agency") in connection with this Project. The purpose of this letter is to provide you with notice of the Eminent Domain Procedure Law ("EDPL") Article 2 public hearing that the Agency will conduct regarding the real property located at Agway Drive, Dewitt, NY, identified by SBL No. 063.-01-02.3 ("Property") on November 13, 2023 at 2:00 PM in the Dewitt Town Court located at 5400 Butternut Drive, East Syracuse, New York 13057 ("Public Hearing"). The text of the notice which has been published in the *Syracuse Post Standard* is as follows:

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The Avant Building - 200 Delaware Avenue Suite 1200 - Buffalo, New York 14202 barclaydamon.com  
MMcNamara@barclaydamon.com Direct: (716) 566-1536 Fax: (716) 846-1210  
Also Admitted in: District of Columbia

3649 Erie, LLC  
Christopher M. McDonald, Esq.  
October 24, 2023  
Page 2

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3649 Erie, LLC  
Christopher M. McDonald, Esq.  
October 24, 2023  
Page 3

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Dated: October 22, 2023

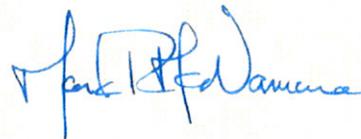
ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT AGENCY

3649 Erie, LLC  
Christopher M. McDonald, Esq.  
October 24, 2023  
Page 4

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Very truly yours,



Mark R. McNamara

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 City, State, ZIP+4: Hoffman Estates, IL 60179

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<b>Total Postage &amp; Fees</b>	<b>\$</b>

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 Street, Apt. No. or PO Box No.: 7078 Cooper Creek Blvd Suite 100  
 City, State, ZIP+4: University Park, FL 34201

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PS Form 3800, August 2006 See Reverse for Instructions

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**SENDER: COMPLETE THIS SECTION**

- Complete items 1, 2, and 3.
- Print your name and address on the reverse so that we can return the card to you.
- Attach this card to the back of the mailpiece, or on the front if space permits.

1. Article Addressed to:

Christopher M. McDonald, Esq.  
 White man Osterman & Hanna LLP  
 One Commerce Plaza  
 99 Washington Avenue  
 Albany, NY 12260



9590 9402 8055 2349 3051 09

2. Article Number (Transfer from service label)

7011 1570 0000 8620 7632

PS Form 3811, July 2020 PSN 7530-02-000-9053

**COMPLETE THIS SECTION ON DELIVERY**

A. Signature  Agent  Addressee  
 X *Maide Rios*

B. Received by (Printed Name)  Date of Delivery  
 Maide Rios 10/30/23

D. Is delivery address different from item 1?  Yes  No  
 If YES, enter delivery address below:

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<input type="checkbox"/> Collect on Delivery	<input type="checkbox"/> Registered Mail Restricted Delivery
<input type="checkbox"/> Insured Mail (over \$500)	<input type="checkbox"/> Signature Confirmation™
	<input type="checkbox"/> Signature Confirmation Restricted Delivery

Domestic Return Receipt

EDPL Article 2 Public Hearing  
 November 13, 2023  
 Dewitt Town Court Dewitt, New York  
 District East Project - Shoppingtown Redevelopment



## SPEAKER SIGN-IN SHEET

	Name	Address	Organization
✓ (1)	Chris McDonnell	Whitman Station One Commerce Plaza Albany, NY 12260	3649 Erie, LLC
✓ (2)	Ben Meidl	E. Stewart Jones 200 Harborside Drive, Schenectady NY	Transform Saleco C/O Transform Holdings, LLC and Transform Midco
✓ (3)	Tom Greenwood	2949 Eric Bluff E. Ste. 106 Syracuse, NY	Greenwood Development Group
✓ (4)	Jared Shepard	212 Diane Circle Chittenango, NY	CenterState CEO.
(5)	Robert Petruich	335 Montgomery St Syracuse, NY 13202	OCIDA
✓ (6)	Richard Kunz	507 Colthoun E Syracuse	Resident

		Address	Organization
✓ (7)	Bonnie Strank	Kinne Road Dewitt NY 13214	Public
✓ (8)	Peter SUBODA	46 Lynacres Blvd Fayetteville, NY 13069	Pinnacle Tech CNY Artists Roadside Dewitt
✓ (9)	Mary Kuhn	108 2nd Street	Public
✓ (10)	MIKE DURKIN	59 LYNACRES BLVD	PUBLIC TAXPAYER
✓ (11)	Daniel Romeo	142 Ridgewood Dr Syracuse NY 13206	Public
✓ (12)	Kathleen Koss	10 Northridge Rd Dewitt, NY 13214	Public Taxpayer Dewitt Resident since 1988
✓ (13)	Ben Lockwood	1201 E. Fayette St. Syracuse, NY 13210	Housing Visions
✓ (14)	ROBERT HAUFF	2645 Peoria Ln 13087	FARMERS HS

(15)	JIMMY McKEOWN	6322 HARDWOOD LN CICERO, NY	PUBLIC
(16)	Bill Brower	5294 BURKE LN Fayetteville, NY 13066	LeMoyne College
(17)	<del>Raymond Smith</del>	<del>117 Anthony Hill Syracuse 13210</del>	<del>PUBLIC</del>
(18)	Susan Rabin	108 Old Lyme Rd Syracuse 13224	Public
(19)	Barry Rabin	108 Old Lyme Rd Syracuse 13224	Public
(20)	Kerry Mannion	Deputy Supervisor Town of DeWitt	
(21)	ED MICHALENKO	Town of DeWitt SUPERVISOR	
(22)	Matt Jones	on behalf of Assemblywoman Pam Hunter	NYS Assembly

(23)	Glenn Davies	102 Albany Rd Dew. to NY 13214	Self
(24)	David Thomas	108 Orville Dr 13214	Self
(25)	Desiree Yegaw	1162 West Bellevue 13204	Desiree Yegaw
(26)	Janet O'Donnell	37 Wexford	Self
(27)			
(28)			
(29)			
(30)			

WHITEMAN  
OSTERMAN  
& HANNA LLP

Attorneys at Law  
www.woh.com

One Commerce Plaza  
Albany, New York 12260  
518.487.7600 phone  
518.487.7777 fax



Christopher M. McDonald  
Partner  
518.487.7662 phone  
cmcdonald@woh.com

November 13, 2023

**VIA HAND DELIVERY**

Robert M. Petrovich, Executive Director  
Onondaga County Industrial Development Agency  
335 Montgomery Street, Second Floor  
Syracuse, New York 13202

Re: Shoppingtown Mall/OHB Redev, LLC  
Eminent Domain Procedure Law Hearing

Dear Mr. Petrovich and Members of the Onondaga County Industrial Development Agency (“OCIDA”):

This firm represents 3649 Erie, LLC, the owner of the former Macy’s store in the Shoppingtown Mall (being approximately 1.64 acres and commonly known as Tax Map No.: 063.-01-02.3) (the “Macy’s Parcel”) and the beneficiary of rights under an Amended and Restated Construction, Operation and Reciprocal Easement Agreement, dated September 13, 1995 (the “COREA”) relating to the Macy’s Parcel. We submit this letter in opposition to OCIDA’s contemplated use of the power of eminent domain with respect to 3649 Erie’s valuable real property interests for the benefit of a private developer, OHC Redev, LLC, and its proposed “District East” redevelopment project. As set forth below, OCIDA lacks authority to condemn the Macy’s Parcel and COREA and has otherwise failed to comply with the applicable processes and standards in attempting to do so.

As OCIDA is undoubtedly aware, it can only exercise its power of eminent domain if: (1) it comports with the state and federal constitution; (2) it has the proper statutory jurisdiction or authority; (3) it complies with the requirements of the Eminent Domain Procedure Law (“EDPL”) and the State Environmental Quality Review Act (“SEQRA”); and (4) a public use, benefit or purpose will be served by the proposed acquisition (*see generally* EDPL § 207; *Matter of Bowers Dev. LLC v Oneida County Industrial Dev. Agency*, 211 AD3d 1495, 1495 [4<sup>th</sup> Dep’t 2022]; *Matter of City of New York [Grand Lafayette Props., LLC]*, 6 NY3d 540, 546 [2006]). Here, OCIDA’s proposed acquisition of 3649 Erie’s property by eminent domain fails the second, third,

and fourth prongs of this test; specifically: (1) OCIDA lacks statutory authority to exercise its power of eminent domain because the project is predominantly residential and/or retail; (2) OCIDA has not complied with the “hard look” SEQRA standard by, among other things, failing to require an environmental impact statement and improperly deferring and/or segmenting its consideration of important mitigation measures; and (3) there is insufficient evidence that the District East project will serve a public, rather than private, purpose. Each deficiency will be addressed in greater detail below.<sup>1</sup>

### **1. OCIDA Lacks The Statutory Authority To Exercise Its Powers Of Eminent Domain.**

An IDA’s “powers of eminent domain are restricted by General Municipal Law § 858(4), which provides, in relevant part, that an industrial development agency shall have the power ‘[t]o acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property ... therein necessary for its corporate purposes’” (*Bowers Dev. LLC*, 211 AD3d at 1496). IDA corporate purposes are, in turn, set forth in the opening paragraph of GML § 858:

The purposes of the agency shall be to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing *industrial, manufacturing, warehousing, commercial, research, renewable energy and recreation facilities* including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities, automobile racing facilities, renewable energy projects and continuing care retirement communities, provided, however, that, of agencies governed by this article, only agencies created for the benefit of a county and the agency created for the benefit of the city of New York shall be authorized to provide financial assistance in any respect to a continuing care retirement community, and thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the state of New York and to improve their recreation opportunities, prosperity and standard of living ...

(emphasis supplied).

Applying the well-worn rule of statutory construction *expressio unius est exclusio alterius*, GML’s 858’s express list of certain powers while omitting reference to others leads to the inescapable conclusion that the omitted powers are not authorized (*see e.g.* NY Statutes § 240; *Town of Aurora v Village of Aurora*, 32 NY3d 366, 372-73 [2018]) “[W]here a law expressly

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<sup>1</sup> 3649 Erie also adopts and incorporates by reference any other objection raised by any other interested party to OCIDA’s exercise of eminent domain in connection with the District East project.

describes a particular act, thing or person to which it shall apply, an irrefutable inference must be drawn that what is omitted or not included was intended to be omitted or excluded”] *quoting Matter of Town of Riverhead v New York State Bd. of Real Prop. Servs.*, 5 NY3d 36, 43 [2005]). Applying that standard here, since the phrase “residential” is notably absent from the list of an IDA’s corporate purposes, the IDA cannot use its power of eminent domain for residential projects. Had the Legislature intended to empower OCIDA to act in furtherance of a residential project, it could have easily done so by including the term “residential” in the GML. It did not do so, and that exclusion is presumed to be intentional.

This restriction is critically important to OCIDA’s contemplated use of eminent domain for the District East project, because, according to the project documents available online, the majority of the proposed redevelopment (1,129,574 square feet out of a total 1,985,949 square feet; over 57%) will be residential.

The GML contains other limitations on an IDA’s powers as well. To wit, GML § 862 expressly prohibits an IDA from using its funds for projects where retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost unless certain additional statutory prerequisites are met. OHB identifies the non-residential portions of the project as “retail” (252,894 square feet), “medical/office space” (404,433 square feet), “hotel/hospitality” (61,773 square feet), “grocery” (46,750 square feet), and “entertainment” (70,525 square feet). Combining the “retail,” “medical/office space” and “grocery” categories – all anticipated uses involving the sale of goods or services – results in aggregate square footage of 704,077 square feet, representing approximately 35% of the overall project.<sup>2</sup> OHB, perhaps recognizing that its project meets the retail threshold for the application of GML § 862, has attempted to show that its proposed project fits within at least two of GML § 862’s exceptions; namely, that the proposed project is a “tourism destination” or that it is located in a “highly distressed area” (*see* GML § 862[2][a], [b]). OCIDA should reject these efforts.

A “tourism destination” is defined by statute as “a location or facility which is likely to attract a significant number of visitors from outside the economic development region as established by section two hundred thirty of the economic development law in which the project is located.” This standard requires a direct “causal link between the project’s location or facilities and visitors coming from outside the economic development region” (*Matter of Iskalo 5000 Main LLC v Town of Amherst Industrial Dev. Agency*, 147 AD3d 1414, 1415 [4<sup>th</sup> Dep’t 2017]). In other words, it is insufficient that “visitors may come to the economic development region for any number of reasons independent of petitioners’ project and simply choose to use the project’s facilities rather than lodge or dine at any of the other available options” (*id.*). The “Visitor Impact Assessment” submitted by OHB purporting to evaluate the project’s suitability as a tourism

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<sup>2</sup> To the extent that the anticipated office buildings are to be used for medical purposes, they are also outside of OCIDA’s statutory authority (*see Bowers Dev. LLC*, 211 AD3d at 1496 [annulling IDA determination and findings for proposed acquisition of property in connection with hospital and healthcare facility project]).

destination does not meet this standard; rather, at best, it opines that people visit the Finger Lakes<sup>3</sup> region generally and that the project can “tap into an existing tourism market.”

OHB also claims that the project is located in a “highly distressed area” because “in 2002, a portion of the site was designated as an Empire Zone by New York State, which, by definition, qualifies the site as distressed.” GML § 862(b)(ii) does not, however, grant an exception to the prohibition on funding retail project where “a portion” of the site is in a highly distressed area. To the contrary, “the project” must be located in a highly distressed area. Based on this statutory language, OHB has failed to demonstrate that GML § 862(b)(ii) applies (see *Town of Aurora*, 32 NY3d at 372-73). In any event, though, the GML has an additional requirement for those retail projects that seek refuge in the “highly distressed” exception – they must show that the project will preserve or increase the overall number of permanent, private sector jobs in the State. OHB has not submitted sufficient information that would allow OCIDA to make this required finding.

## **2. OCIDA Has Failed To Comply With The “Hard Look” Standard of SEQRA.**

Even assuming for the sake of argument that OCIDA had the statutory authority to use its powers of eminent domain to facilitate the District East project, the exercise of those powers here would be unlawful because OCIDA has not performed an adequate SEQRA review of the project’s potential adverse environmental impacts. To comply with SEQRA, OCIDA must “identif[y] the relevant areas of environmental concern, [take] a hard look at them, and [make] a reasoned elaboration of the basis for its determination (*Matter of Boise v City of Plattsburgh*, 219 AD3d 1050, 1055 [3d Dep’t 2023] quoting *Matter of Riverkeeper, Inc. v Planning Bd. of Town of Southeast*, 9 NY3d 219, 231-32 [2007]). An agency does not satisfy these requirements if it, among other things, fails to require the preparation of a required environmental impact statement (“EIS”) or other necessary documents (*Matter of Bd. of Co-operative Educ. Svcs. Of Albany-Schoharie-Schenectady-Saratoga Counties v Town of Colonie*, 268 AD2d 838, 839-40 [3d Dep’t 2000]), improperly defers consideration of environmental impacts (*Boise*, 219 AD3d at 1057), or otherwise fails to consider all the potential adverse environmental impacts of all elements of a proposed project at once, a procedure known as impermissible segmentation (*Matter of J. Owens Bldg. Co. v Town of Clarkstown*, 128 AD3d 1067, 1068-69 [2d Dep’t 2015]).

As an initial matter, the District East project was identified as a “Type 1” action under SEQRA, a designation that carries with it “the presumption that it is likely to have a significant adverse impact on the environment and may require an EIS” (6 NYCRR 617.4[a][1]). Notwithstanding this presumption, OCIDA has issued a negative declaration finding that the District East project is not likely to result in any significant adverse environmental impacts. This was error. The project is a massive undertaking that will fundamentally change the environment at the project site. OHB is proposing to demolish substantial portions of the existing Shoppingtown Mall and replace and/or redevelop it as a 33-building, 1.9 million square foot mixed-use development, including internal infrastructure such as streets, sidewalks, and sewers.

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<sup>3</sup> The Visitor Impact Assessment does not specifically define which economic development area the project is located in, but most of its analysis seems to presume that it is the Finger Lakes Region. Upon information and belief, the project is in the Central New York Region.

It blinks at reality to suggest that such a significant demolition, redevelopment, and construction project is not likely to have any significant adverse impacts on the environment, including things like impacts to air and water resources from construction, traffic impacts, noise impacts, and solid waste production.

Some potential impacts did receive at least passing review from OCIDA. For example, OHB submitted a traffic analysis indicating that the project will generate between 1,658 and 3,257 total trips per day depending on the time of day and day of the week. But this estimate appears inconsistent with other submissions made by OHB (specifically, the Visitor Impact Study) which estimated 4,545,000 visitors to the site annually, which would translate to approximately 12,452 visitors per day. The failure to notice and account for this discrepancy demonstrates that while OCIDA looked at traffic impacts it did not take the statutorily-required “hard look” at them.

Other potential impacts were left wholly unconsidered by OCIDA, as the negative declaration identifies numerous impacts that OCIDA impermissibly deferred or segmented from its review, including, among others, surface water quality (“[t]he finalized SWPP, which will include final erosion and sediment control details, will undergo review and approval by the Town of DeWitt and the NYSDEC (upon request), and the final design will comply with the requirements of each agency’s engineers), noise (“[a] noise mitigation plan that includes potential noise mitigation options, along with when they should be implemented will be developed and provided to any contractors and will be approved prior to implementation by the Town of DeWitt” and “[a] project manual will be developed with potential noise mitigation measures that will be required to be kept onsite through the course of construction”), and lighting (“[t]he final lighting plan will be approved by the Town of DeWitt Planning Board, which has final approval authority”).

The Third Department recently rejected precisely this type of approach to SEQRA in *Boise v City of Plattsburgh*, 219 AD3d 1050 (3d Dep’t 2023). There, a developer proposed to redevelop an existing municipal parking lot into a mixed-use project. The redevelopment would require the excavation of the existing lot and the disruption of potentially contaminated soils. In order to address this concern, the lead agency indicated that a health and safety protocol (“HASP”) would be developed and implemented in the future, but it did not require the preparation and review of the HASP before it took action. The Third Department found this procedure inadequate under SEQRA, stating: “this is not to say that ... the lead agency, needs to create the HASP itself, but rather that the HASP, in some form, needs to be created and subject to review as part of the SEQRA process” (*id.* at 1058). To do otherwise would, the Court held, insulate the HASP from public scrutiny, prevent the lead agency from taking the necessary “hard look” at environmental impacts, and “demonstrate[] noncompliance with the mandates of SEQRA” (*id.* at 1059, 1060).

Applying the holding of *Boise* to the instant matter, in those instances where OCIDA has deferred consideration of specific mitigation measures to other agencies or just a future time, it has violated its obligations under SEQRA. Instead, OCIDA should require the OHB prepare reports outlining *all* necessary mitigation measures, so those reports can be subject to public scrutiny and a “hard look” review by OCIDA.

Robert M. Petrovich, Executive Director  
November 13, 2023  
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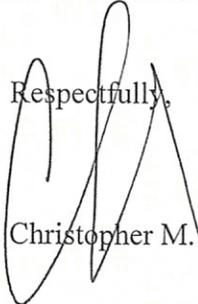
OCIDA's failure to consider all the potential impacts from the District East project at once also constitutes impermissible segmentation (*Matter of J. Owens Bldg. Co.*, 128 AD3d at 1068-69). Notably, this is not a situation where the potential future environmental impacts were too speculative to warrant sufficient contemporaneous SEQRA review (*Matter of Evans v City of Saratoga Springs*, 202 AD3d 1318, 1322 [3d Dep't 2022]; cf. *Matter of PSC, LLC v City of Albany Industrial Dev. Agency*, 200 AD3d 1282, 1288-89 [3d Dep't 2021]; *Matter of GM Components Holdings, LLC v Town of Lockport Industrial Dev. Agency*, 112 AD3d 1351, 1353 [4th Dep't 2013]). Indeed, the language of OCIDA's negative declaration makes clear that these currently-identified mitigation measures "will" be developed, not simply "may" be developed.

### 3. There Is Inadequate Evidence That The Project Serves A Public Purpose.

Finally, OCIDA may not exercise its powers of eminent domain to take 3649 Erie's real property interests in the Shoppingtown Mall because there is insufficient evidence in this record that such a taking in furtherance of OHB's proposed District East project will serve a public, rather than private, purpose (*Matter of HBC Victor LLC v Town of Victor*, 212 AD3d 121 [4th Dep't 2022]; *Matter of Gabe Realty Corp. v City of White Plains Urban Renewal Agency*, 195 AD3d 1020, 1022 [2d Dep't 2021]). Any claim that the public purpose to be served by the taking is the elimination of an alleged blighted condition existing at the currently closed mall is unfounded. The only items that OHB points to as evidence of blight are the existing conditions photolog and reports from various news outlets that use the word "blight." The mere fact that the mall is currently vacant does not, by itself, mean it or its surrounding area is "blighted" (*Matter of HBC Victor, LLC*, 212 AD3d at 125). Instead, there must be substantial proof in the record to support a determination that the property is actually blighted (*Matter of Gabe Realty Corp.*, 195 AD3d at 1022). This record does not meet that standard, and, as such, there is no demonstrated public purpose for the taking of 3649 Erie's property.

Based on the foregoing, 3649 Erie respectfully requests that OCIDA reject OHB's request and decline to exercise the power of eminent domain to take the Macy's Parcel and the rights under the COREA. Thank you for your consideration in this matter.

Respectfully,



Christopher M. McDonald

cc: Mark McNamara, Esq. (via hand delivery)

4893-7732-5966

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November 13, 2023

**Via Certified Mail**

Mr. Robert M. Petrovich  
Executive Director  
Onondaga County Industrial  
Development Agency  
335 Montgomery Street, 2<sup>nd</sup> Floor  
Syracuse, N.Y. 13202

**Via Hand Delivery (at hearing)**

Mr. Robert M. Petrovich  
Executive Director  
Onondaga County Industrial  
Development Agency  
5400 Butternut Drive  
East Syracuse, N.Y. 13057

Re: Public Comment on Application from OHB Redev LLC, 3649 Erie Blvd. E,  
DeWitt, NY, SBL Nos. 063.-01-02.4 and 063.-01-02.5  
Comment By: TRANSFORM SALECO c/o TRANSFORM HOLDCO, LLC  
AND TRANSFORM MIDCO

Greetings:

Our firm respectfully submits this statement on behalf of Transform Saleco LLC c/o Transform Holdco, LLC and Transform Midco (served notice of the above-referenced public hearing as Transform SR Brands, LLC, and each collectively referred to herein as “Transform Midco”). Transform Midco is the owner of an approximate 2.5-acre parcel formerly occupied by a Sears store and the adjoining parcel for the Sears Auto Service Center. We object to this proposed acquisition by eminent domain for the following reasons:

1. The Entire Project Exceeds The Scope of Statutory Authority of the Onondaga County Industrial Development Agency

The proposed project consists of 1,965,037 square feet. Of that, 1,1028,662 square feet are dedicated to residential housing, or approximately 57% of the project. EAF Part I Narrative – Appendix A “Master Plan.” The priority of residential housing, which is limited to:

industrial, manufacturing, warehousing, commercial, research, renewable energy and recreation facilities including industrial pollution control facilities, educational or cultural facilities, railroad facilities, horse racing facilities, automobile racing facilities,

renewable energy projects and continuing care retirement communities. GML §858.

The priority and primacy of residential housing flows further from its proposed construction in Phase 1 of the development. An additional 704,000 square feet are set aside for other retail and services that constitute 35% of the project. Each of these proposed uses fall outside the scope of any IDA's authority.

IDA authority to act does not extend to residential housing, nor should it. IDA's were created to attract businesses that generate good-paying jobs or preserve existing ones. They should not cannibalize competing area businesses, which retail sales, services and housing certainly do.

2. Lack of Public Use

Transform Midco has been marketing its property for the past several years. It contracted to sell it for re-use by a medical provider, which planned to retain the existing building. For this specific proposed acquisition by eminent domain of the property owned by Transform Midco, the developer also plans to use the existing building for medical use. This would constitute a transfer from one private owner who contracted to sell the property for a medical use to another private owner to use for proposed medical uses. The forced transfer of property for the same proposed private purpose cannot be deemed a public use.

3. Unreconciled SEQRA Findings Concerning Impacts on Traffic and Transportation

OCIDA issued a Resolution on October 12, 2023, making a "negative declaration" under SEQRA, i.e. a finding that the project will not pose a negative adverse environmental impact, and dispensing with the need for an Environmental Impact Statement. This is remarkable, in particular, with regard to the potential impacts on traffic volume and patterns and pressure on transportation infrastructure. OCIDA's own FEAF Part 2 noted that "Moderate to large impacts may occur" with regard to the categories headed "Projected traffic increase may exceed capacity of existing road network," and "The proposed action may alter the present pattern of movement of people or goods." The record contains a January 2023 Updated Traffic Impact Study by GTS Consulting, which estimated more than 7,600 vehicular trips per day to or from the property. Even these estimates are based on optimistic assumptions that the trips generated will be less than those forecasted in the ITE Trip Generation (11<sup>th</sup> Edition) resource. For example, GTS cut the trip estimates for the movie theater uses by 20% because of the increased tendency toward "streaming" movies at home (as though the authors of the ITE were unaware of this phenomenon). Likewise, GTS cut trips by 15% based on speculation that some of them will be "internal capture trips" (without any explanation of how they arrived at the 15% rate in particular), and heavily diluted the estimates for departure and return trips for residents of the property based on the unquantified assumption that they will "stagger" their departures and arrivals over time. Although OCIDA's Negative Declaration Resolution references "mitigation measures" that may affect the traffic rates (which were also recommended by GTS and evidently concurred in by NYSDOT), this does not seem to provide any assurance that the traffic activity on the site or near it will remain within

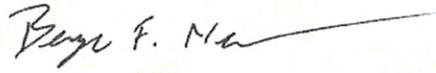
Page 3

reasonably comfortable bounds. Water may “mitigate” fire, or it may not, depending on the size of the conflagration and the amount of water available. Despite the size of the record, it ultimately proffers “mitigations” to “reduce” the impacts of traffic without a cogent expression of what the net outcome experience will be for motorists driving at or near the site. OCIDA should have ordered an Environmental Impact Statement for further examination of the traffic potentials.

For these reasons, the IDA should not proceed with its proposed acquisition.

Very truly yours,

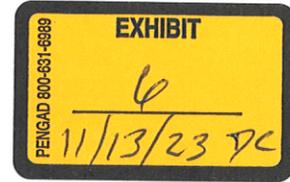
E. STEWART JONES HACKER  
MURPHY LLP

By:   
Benjamin F. Neidl  
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BFN:kah

cc: Onondaga County Industrial Development Agency

Karen Doster  
Onondaga County Office of Economic Development  
335 Montgomery Street, Floor 2M  
Syracuse, New York 13202  
karendoster@ongov.net  
315-435-3770



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**From:** Kathleen Koss <kosskathleent@gmail.com>  
**Sent:** Monday, November 13, 2023 9:53 PM  
**To:** ED - Web 1 <economicdevelopment@ongov.net>  
**Subject:** ShoppingTown Meeting Eminent Domain 11/13/23

NOTICE: This email originated from outside of Onondaga County's email system. Use caution with links and attachments.

OCIDA DEEJAY:

Thanks for pretending to listen at the meeting today.



A current resident of Shopping Town (left) discusses the disgraceful decline of a formerly lovely mall

(right, who probably is not that concerned because of all of the residuals he receives from “Caddyshack” and “Groundhog Day.”)

It ain't over til it's over.

Those lawyers for the Bendersons (Macy's) and whatever crime syndicate owns SEARS now are not getting away with this scam. We don't negotiate with terrorists.

Do your jobs.

OCIDA has (paid with our taxes)lawyers. Use them.

We Onondaga County East Enders are getting the shaft because BabyCakes Ryan knows intelligent people won't vote for him.

Other people's money. You guys must have so much fun spending it.  
Dee-sgustin.

P. S. Was Patrick Hogan too busy to show up for this meeting today?

Kathleen Koss  
(315) 391-3016

P. P.S. Does your mother know what you do for a living?

Next time you want “input” from your citizens, how about “announcing” somewhere other than the Legal Notices section of the Sunday Syracuse Post Standard, page G11, column 2 and 3, a Public Meeting on a Monday workday at 2PM in the afternoon, when most non-retired people are AT WORK!!! Transparent government, anyone?

Sent from my iPhone  
Kathleen T Koss

Please send all mail to:  
**TROY OFFICE**

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Troy, NY 12180  
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November 17, 2023

**VIA FEDEX:**

**Onondaga County Industrial Development Agency**  
Robert M. Petrovich, Executive Director  
335 Montgomery Street, Second Floor  
Syracuse, NY 13202



**Re: Proposed Eminent Domain at Shoppingtown Mall**

Dear IDA members,

We appeared at the scheduled public hearing held on November 13, 2023 at 2 o'clock at the Dewitt town court on behalf of Transform Sales Co. and its related entities. For several reasons we objected to the proposed acquisition to the use of eminent domain and offer the following to supplement those points.

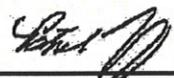
EDPL §201 requires a condemnor "to inform the public and to review the public use to be served by a proposed public project and the impact on the environment and residence of the locality where such project will be constructed, [to] conduct a public hearing" pursuant to the Eminent Domain Procedure Law. As part of that public hearing the IDA is required to "outline the purpose, proposed location or alternate location of the public project and any other information it considers pertinent, including maps and property descriptions of the property to be acquired and adjacent parcels." EDPL §203. We submit that the truncated discussion and brief reference to project documents fail to meet these standards.

In addition, neither the hearing nor any records offered then specified how it is that the IDA, which lacks any independent taxing authority to raise funds, provides for adequate and certain funding for the proposed acquisition. The proposed project dwarfs anything the developer (OHB Redev, LLC) has previously undertaken. If the developer represents the funding source to provide just compensation there does not appear to be any mechanism for insuring it possesses the means to supply such constitutionally required payments.

We add these arguments along with our earlier comments and letter of objection, together with the issues raised at the public hearing to further supplement our objection to this proposed taking.

Thank you for your consideration.

Very truly yours,  
E. Stewart Jones Hacker Murphy, LLP

  
\_\_\_\_\_  
Patrick L. Seely, Esq.

CC: Mark McNamara ([MMcNamara@barclaydamon.com](mailto:MMcNamara@barclaydamon.com))

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November 17, 2023

**VIA OVERNIGHT DELIVERY**

Robert M. Petrovich, Executive Director  
Onondaga County Industrial Development Agency  
335 Montgomery Street, Second Floor  
Syracuse, New York 13202

Re: Shoppingtown Mall/OHB Redev, LLC  
Eminent Domain Procedure Law Hearing

Dear Mr. Petrovich and Members of the Onondaga County Industrial Development Agency ("OCIDA"):

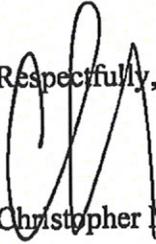
As you may recall, this firm represents 3649 Erie, LLC, the owner of the former Macy's store in the Shoppingtown Mall (the "Macy's Parcel") and the beneficiary of rights under an Amended and Restated Construction, Operation and Reciprocal Easement Agreement, dated September 13, 1995 (the "COREA") relating to the Macy's Parcel. We submit this letter as a supplemental opposition to OCIDA's contemplated use of eminent domain to take the Macy's Parcel and 3649 Erie's rights under the COREA in connection with the proposed "District East" project of OHB Redev, LLC.

In addition to the issues raised in our prior written submission and oral comments at this week's public hearing, it is inappropriate for OCIDA to use its power of eminent domain in this matter because there is insufficient proof in the record to show that there is a sure, certain, and/or adequate source of eventual just compensation for any taking (*see e.g. Sun Co., Inc (R&M) v City of Syracuse Indus. Dev. Agency*, 209 AD2d 34 [4<sup>th</sup> Dep't 1995]; *Matter of New York State Urban De. Corp.*, 165 AD2d 733 [1<sup>st</sup> Dep't 1990]). Without such proof, condemnation would be constitutionally infirm.

Based on the foregoing and 3649 Erie's prior written and oral submissions, we respectfully request that OCIDA reject OHB's request and decline to exercise the power of eminent domain to take the Macy's Parcel and the rights under the COREA. Thank you for your consideration in this matter.

Robert M. Petrovich, Executive Director  
November 17, 2023  
Page 2

Respectfully,

A handwritten signature in black ink, appearing to be 'C. McDonald', written over the word 'Respectfully,'.

Christopher M. McDonald

cc: Mark McNamara, Esq. (via electronic mail)

4888-8182-7729

## Comment Submission for Shoppingtown Eminent Domain



The following comments represent the combined thoughts of two Town of DeWitt Planning Board members who combined have served on the Planning Board since 1987 to 2023 and served as Chairman from 2000 to the present. This timeframe covers the conversion of Shoppingtown from a very successful strip mall to an enclosed mall with multiple expansions to an empty derelict property.

It is very important to recognize that Shoppingtown played a significant role as a regional, east side, and sustainable facility.

Onondaga County purchased most of the facility in 2020 and awarded a development contract to OHB Redev, LLC in mid 2021.

The current situation with Onondaga County owning a large part of the facility except for two major buildings, precludes any reasonable development of the property. OHB Redev, LLC has been unsuccessful in negotiating with the owners of the two outparcels, due to the two owners not negotiating in good faith.

The vision for this property for OHB Redev, LLC and their well-known national consultant, Onondaga County, Town of DeWitt together with its Planning Board and the public is for the mixed-use development proposed. Both the DeWitt Town and Planning Board have worked collaboratively with the developer and approved the proposed plan unanimously.

### **The use of eminent domain will allow this project to proceed in an orderly manner.**

The design concept as presented creates a modern, well-planned mixed-use facility that represents what successful projects throughout the country have done at derelict shopping centers/distressed properties.

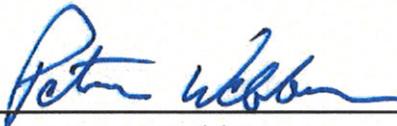
The plan supports housing which is integral to walkable and sustainable communities. This location is central to a very large existing housing population. Existing and planned infrastructure supports walking/biking to the project with a significant reduction in the carbon footprint. Imagine the significant reductions in vehicular travel from the people that now drive east or west to access shopping that will be available from the project. The public amenities will indeed create a "Town Center", not only for residents of DeWitt, but would include surrounding towns West and East of the City.

The plan is very compatible with the adjacent Marshall's Plaza Shopping Center which has used all the vacant land they had available. Both projects would benefit from the increase in total activity.

Delaying the start of the project adds additional costs to Onondaga County, its residents, and the Developer. In fact, any further delay could endanger the project , itself! It also delays the beginning of income to both parties which is never received.

Leaving the current wasteland is not an option. We have witnessed firsthand the economic and community losses that have occurred by the lack of action by these two owners. The foresight of Onondaga County to lead the effort by acquiring the land, selecting a developer, and starting the Eminent Domain process should be completed immediately.

  
\_\_\_\_\_  
Michael Lazar

  
\_\_\_\_\_  
Peter Webber



Desiree Yagan <desireeyagan@gmail.com>

**Urgent Request to Nancy Lowery. Desiree Yagan's Statement re: EDPL Sect. 201 & Amended RPL Implicates Shoppingtown Mall.**

1 message

Desiree Yagan <desireeyagan4.11.2010@gmail.com>

Mon, Nov 20, 2023 at 11:20 AM

To: "NancyLowery@ongov.net" <NancyLowery@ongov.net>  
Cc: ryanmcmahon@ongov.net, robertdurr@ongov.net

Desiree Yagan (315) 440-6133  
1162 West Belden Ave  
Syracuse, NY 13204

November 20, 2023

Onondaga County Industrial  
Development Agency (OCIDA)

Attn: Nancy Lowery:

Request Macy's & Sears Owner's Statements & Documents. As you know I arrived late to Eminent Domain Public Hearing Held Nov 13, 2023.

Request the Statements & Attachments of the Owners of Macys & Sears, ASAP. Information to include in my statement. As stated at the hearing I Object to the Legality of Eminent Domain .

Brief History and basis for Challenge to Legality of Eminent Domain. OCIDA Onondaga County threat to Use EDPL to acquire title to Macy's & Sears. Based on REDPL Requirements, Amended (2015) REA, Macys & Sears Contract w/Shoppingtown Mall, DeWitt & Veh. Assault Desiree Yagan.

Statement Has Not Been Prepared Yet. Nonetheless, it will be Hand Delivered by end of day.

Facts interfering with preparing Statement FTR relevant to Shoppingtown. ASUS Laptop Hacked July 29, 2023. Trojan Malware fatally Damaged My Laptop. Happened the Day after FOIL Request.

FOIL Request: Sought Records on Shoppingtown Mall, RFP, OHB Proposal and signed \$8 Million Contract For Sale & Development Shoppingtown. Announced by Ryan McMahon July 29, 2023.

**REQUESTED RECORDS OF MATTER OF PUBLIC CONCERN**

No. 1 RFP and All Proposals Received by Onondaga County Executive Ryan McMahon. RFP For the Purchase & Develop Shoppingtown Mall.

No. 2 OHB Redev, LLC Ryan Benz Proposal, the \$8 M. Dollar Contract & All attachments to RFP. Which Ryan McMahon & OCIDA know Requires Affidavit of Non-Collusion.

No. 3 All Proposals Received on Onon. County for Purchase & Develop Shoppingtown Mall.

No. 4 Onondaga County Salary Payment to Robert F. Julian Esq. Private Attorney Hired to Represent Onondaga County in Tax Litigation with Shoppingtown Mall NY, LLC.

On Nov 9, 2023 Onondaga County Law Dept. Notified me by phone records were ready. Records were e-mailed & Arranged to Pickup Monday Nov 13, 2023. Necessary as Computer Interference & Technical issues Still Not resolved. I cannot Print Documents, Draft on Word or access my records.

I picked up these records on Nov 13, 2023 Enroute to OCIDA Eminent Domain Public Hearing.

Continued technical problems w/ Laptop Obstruct Preparation of Written Statement. My Statement with records, regardless of Computer Problems, we I'll be Filed.

**VEHICULAR ASSAULT & SERIOUS INJURY NOT REPORTED BY SHOPPINGTOWN MALL**

Nov 30, 2017 I was Hit and severely Injured on the Parking lot Shoppingtown Mall. It was a Vehicular Assault & Dewitt Police Cover-up. Legs Fractured Hospitalized @ Upstate Hospital.

Suffered further injury during 5 Months at Van Duyn Rehab Center. *\*NYAG MFCU opened investigation (2021-2022?) into 7 Deaths, (Criminal) Negligence and Medical Malpractice.*

Town of Dewitt Police Filed False Accident Report. Stated that Pedestrian Desiree Yagan "Fell". Shoppingtown Mall Mgt and Security in violation of NYS Insurance Law Refused to File Report. Surveillance videotape of the Parking Lot if Existed is Evid. of Vehicular Assault on Nov 30, 2027.

Shoppingtown Mall Filed False Bankruptcy Petition. On Creditor Desiree Yagan as Slip and Fall. CEO Shawl Pryor LIED at 341 Creditors Meeting. When asked about Creditor Desiree Yagan. Testified I was Slip & Fall. Evid.: Tapes & Documents Published On "Desiree Yagan" YouTube Channel.

**I HAVE LEGAL INTEREST IN SHOPPINGTOWN MALL PROPERTY EVIDENCE VEHICULAR ASSAULT**

Evidence: US Bankruptcy Court (WD Pa) Shoppingtown Mall NY, LLC Chapter 11 Docs & Records. US Trustee Vera (Region 3) Asst. US Trustee Sica Provided TAPE RECORDING 341 Creditors Meeting. CERTIFIED AUDIO RECORDINGS OF HEARINGS IN UNITED STATES BANKRUPTCY COURT (WD Pa). Confirmation Hearing Dec 14, 2020. Shoppingtown Mall NY LLC Chapter 11 Case No. 17-559381.

\*I Desiree Yagan had No idea Chapter 11 Bankruptcy filed by Shoppingtown Mall. I Objected to Sale & Settlement Agreement December 14, 2020. Objected to Confirmation Shoppingtown Mall Sale to Onondaga County. After call and Discussion with Courtroom Deputy Donna Krohn Letter to Judge Carlota Bohn was Drafted, Printed and Scanned. Letter Objection was Electronically Filed by Chief Judge Bohn's Permission. Entered on Court Docket Friday Dec 11, 2020 at 5:15 PM.

Please acknowledge this email and send these records. I appreciate OCIDA's immediate attention to this Important and Justified Request.

Seeking Justice,

Desiree Yagan

P.S. New video on OCIDA Published on YouTube (Last Night). Published "as is". OCIDA Eminent Domain Use Not Lawful use on Macy's & Sears at Shoppingtown. \*Desiree Yagan's YouTube Channel Focus is Public Corruption and Matters of Public Concern.

**\*Experienced many Technical problems during editing on CLIPCHAMP. Video Published "as is".**

\*\*\*\*\*

----- Forwarded message -----

**From: Nancy Lowery <NancyLowery@ongov.net>**

**Date: Fri, Nov 17, 2023, 3:26 PM**

**Subject: OCIDA Address**

**To: desireeyagan4.11.2010@gmail.com <desireeyagan4.11.2010@gmail.com>, desireeyagan@gmail.com <desireeyagan@gmail.com>**

**Hi Desiree,**

**Our address is:**

**335 Montgomery Street, 2M**

**Syracuse, NY 13202**

**Please email your documents at you earliest convenience.**

**Nancy**

**Nancy Lowery**

**Office of Economic Development**

**Onondaga County**

**335 Montgomery Street, 2<sup>nd</sup> Floor**

**Syracuse, NY 13202**

**315-435-3770 (o)**

**315-640-0665 (c)**

**www.ongoved.com**

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**DUE TO COMPUTER & TECHNICAL PROBLEMS**

Desiree Yagan's Statement Eminent Domain Not Lawful Use on Macy's & Sears EDPL Sect. 201 & RPL Implicates Shoppingtown Mall.

Desiree Yagan <desireeyagan@gmail.com>

Mon 11/20/2023 4:23 PM

To: Nancy Lowery <NancyLowery@ongov.net>

Cc: Jeff Davis <jdavis@barclaydamon.com>



📎 2 attachments (11 MB)

To OCIDA Robert Petrovich, Exec. Director Nov 20, 2023. Eminent Domain on Macy's & Sears \_Not Lawful (REA & Evid.).pdf; To US Trustee Joseph Sica (Region 3) Shoppingtown Mall Fraud, False Oath & Perjury (Evid.) Desiree Yagan Nov 10, 2021 (7 pp).pdf;

**NOTICE:** This email originated from **outside** of Onondaga County's email system. **Use caution** with links and attachments.

Statement of Desiree Yagan and L

LETTER TO US TRUSTEE SICA (REGION 3) RE SHOPPINGTOWN MALL FRAUD AND PERJURY. SENT TO ALL GOV'T ATTORNEYS AND PUBLIC OFFICIALS, AND RYAN MCMAHON ONONDAGA COUNTY AND TOWN OF DEWITT (Attached).

Desiree Yagan (315) 440-6133  
1162 West Belden Ave  
Syracuse, NY 13204

November 20, 2023

Via Email

Robert M. Petrovich, Executive Director OCIDA  
Onondaga County Industrial Development Agency  
335 Montgomery Street, 2nd Floor, Syracuse, NY 13202

**STATEMENT OF DESIREE YAGAN**

**EMINENT DOMAIN NOT LAWFUL USE ON MACYS & SEARS**

Mr. Petrovich

Brief History and basis for Challenge to Legality of Eminent Domain. OCIDA Onondaga County threat to Use EDPL to acquire title to Macy's & Sears. Based on REDPL Requirements, Amended (2015) REA, Macys & Sears Contract w/Shoppingtown Mall, DeWitt & Veh. Assault Desiree Yagan.

Full Statement Could Not Been Prepared due to continued, Serious Computer Tech Problems. Obstructed preparing Full Statement THEREFORE cited FTR. ASUS Laptop Hacked July 29, 2023. Trojan Malware Fatally Damaged Laptop. Occurred Day after FOIL Request re FTR & OHB Redev.

FOIL Request July 28, 2023 Records on Shoppingtown Mall RFP, OHB Proposal, OHB \$8 M. Contract For Sale & Development Shoppingtown Mall. \*Announced by Exec. Ryan McMahon July 29, 2021.

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**Please acknowledge this email and send these records. I appreciate OCIDA's immediate attention to this Important and Justified Request.**

**Seeking Justice,  
Desiree Yagan**

---

**Attached to Email are Documents:**

**In Support of Objection to Eminent Domain as Not Lawful, OHB Redev, LLC Violation NY Finance Law Requiring Proposer Submit "Affidavit of Non-Collusion" and Desiree Yagan Property Interest.**

**Be Advised: New video on OCIDA Published on YouTube Last Night. Video had Editing and Audio Problems, Published "as is" due to the Importance.**

**States OCIDA Eminent Domain Use Not Lawful on Macy's & Sears at Shoppingtown. \*My YouTube Channel created to Report Public Corruption and Matters of Public Concern.**

**Desiree Yagan**

D

r

c

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**18 USC § 3057 Evid. (Reason requested) Audio 341 Meeting # 19-BK-23178 and Related #21-BK-20020. Please Verify CD Sent. Thank You.**

**2 messages**

Desiree Yagan <desireeyagan@gmail.com>

Fri, Nov 5, 2021 at  
6:44 PM

To: "UST Asst. Joseph S. Sica" <Joseph.S.Sica@usdoj.gov>, "USTP Pasniewski, Sharon" <Sharon.Pasniewski@usdoj.gov>, ustpregion03.pl.ecf@usdoj.gov  
Cc: "Larry E. Wahlquist Esq." <larry.e.wahlquist@usdoj.gov>

*Desiree Yagan Cell (316) 4406133  
1162 West Belden Ave Syracuse New York 13204  
desireeyagan@gmail.com*

*Sharon Pasniewski Legal Assistant  
Office of the United States Trustee  
1001 Liberty Avenue, Suite 970  
Pittsburgh, PA 15222*

Nov 4, 2021 Amended Nov 10, 2021  
with Evid & Statement by Desiree Yagan

*United States Trustee Office Region 3  
Assistant US Trustee Joseph S. Sica*

*United States Trustee Andrew R. Vera*

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Subject was Follow-Up to conversation with Madeline who returned my call. \* Responding to message I left to United States Trustee's Office. I believe it was Monday when I left a message directed to attention of Sharon Pasniewski. Requested related Audio of 341 Creditors Meeting in Chapter 11 Bankruptcy Case involving Shawl Pryor. ⇒Following my discovery he LIED to Trustee Attorney Larry Wahlquist at 341 Meeting of Creditors. Held on Nov 6, 2020, Case No. 19-23178.

I, Desiree Yagan was Hit by a vehicle on Nov 30, 2017 in the Parking Lot at Shoppingtown Mall. Hospitalized at Upstate Medical Center with Fractured Tibia & Fibula. Claim was Not Slip & Fall.

**Shoppingtown Mall had direct, repeated Notice of serious injuries from Desiree Yagan. Notice of asserted right to give statement and demand to Preserve Surveillance camera Video of Parking lot. Shoppingtown Management I asserted Video must be preserved as Evidence in Vehicular assault. Security Video would show the motorist ⇒accelerated from her parking space into me.**

**Shawl Pryor had a direct and repeated Notice of Lawsuit and request to give a Statement for Incident Report on[the] Serious injury sustained in the vehicular assault on Nov 30, 2017.**

**Notices from Desiree Yagan given to CEO Steven Maksin, Senior VP Shawl Pryor and Moonbeam Capitol Investments. Notices Included demand to preserve Shoppingtown Mall Security Camera Surveillance video of the parking lot. Evidence of Vehicular Assault.**

**Shawl Pryor LIED, concealed and intentionally deceived Trustee Larry Wahlquist. When directly asked who is Desiree Yagan and what is the claim about? Shawl Pryor Lied about Desiree Yagan. Multiple Leg Fractures sustained ⇒after Hit by Vehicle in Parking Lot, transported by ambulance to Hospital is Not a Slip & Fall". Shoppingtown Mall VP Shawl Pryor were acutely aware of this fact.**

**AUDIO RECORDING OF 341 CREDITORS MEETING ON NOV 6, 2020 REVIEWED  
TO KNOW EXACTLY WHAT DEBTOR'S RESPONSE WHEN ASKED ABOUT DESIREE YAGAN**

**As Shoppingtown Mall Security and Management refused to take my statement, refused to file Incident Report -- this i know for a fact. Therefore, I knew If was listed as a creditor that the Debtor or his representative would be asked about creditor's claim. Circumstances of incident? Did he state claimant was transported by ambulance to Upstate Hospital. Was there an incident report by Shoppingtown Mall Security (*pursuant to security duties*) on Pedestrian injured in Parking Lot?**

**SHAWL PRYOR CONCEALED SEVERELY INJURED PEDESTRIAN HIT BY VEHICLE**

**DID NOT DISCLOSE SERIOUS INJURY TO PEDESTRIAN (CREDITOR) DESIREE YAGAN**

**I was outraged to discover my serious injuries caused by vehicle classified as Slip & Fall. False testimony by Shawl Pryor implicates Debtor Shoppingtown Mall. Creditors the Taxing Bodies, Dewitt town attorneys: Thomas Cerio Esq. and David Herkala Esq., and Onondaga County knew Desiree Yagan was hit by vehicle, injuries sustained were serious. Claim was Not Slip & Fall.**

**Listening to the Audio that revealed Shoppingtown Mall CEO Owner and Management intentional Deception of Serious Injury by vehicle, Exacerbated PTSD. Unable to suppress the vivid recollection of vehicle accelerating from parking space towards me. The Incapacitating pain when struck down by an SUV on Nov 30, 2017. Then shock and Outrage that Dewitt Police would not send officer to take my statement. FULLY AWARE I WAS SEVERELY INJURED IN SHOPPINGTOWN PARKING LOT.**

**Dewitt Police would never arrest motorist who hit (this) pedestrian. Never arrest motorist who outright Lied -- said Pedestrian Fell. Dewitt Police adamantly refused to take DESIREE YAGAN'S Statement. Police officer Kevin Skibinski's Filed Police Accident Report (MV-104A) Nov 30, 2017. Report is False and Narrative Physically Impossible and Outrageous. False Report Not signed until 25 days later by Sgt. Andrew Fusco. False report Discovered when Dewitt police clerk James Emm, (at my request) Faxed Dewitt Police Accident Report to me at Van Duyn Rehab Center, weeks later.**

**\*Shoppingtown Mall Management in lock step with town of Town of Dewitt Police refused to take victim's statement. Shoppingtown Mall Security and Management refused repeated requests to file report on serious injury Incident on the Property.**

Refused to document and preserve the videotape of the parking lot. Shoppingtown Mall Security supervisor "Mike" said there is No video to preserve. Reason: Surveillance Cameras Not Operating. Dewitt Police with full knowledge of Police Chief John Anton ⇒together with Shoppingtown Mall Management displayed collective contempt for my life. Evidenced by brazen refusal to take [my] the victim's statement. Dewitt Police would Not arrest driver who struck me down then called 911. Said she Did Not Hit me – that she saw me stopped her vehicle then I Fell.

Dewitt Police refused I to perform duty in serious injury to pedestrian in act of retaliation against private citizen is coverup vehicular assault is a crime. No investigation into motorist whose vehicle is found next to pedestrian on wrong side of road at an angle(Depicted in diagram). Shoppingtown Mall Security, Management and Town of Dewitt Police all refused to take victim's statement has consumed my life. How Dewitt Police showed blatant disregard for my life. Protecting motorist who ⇒ severely injured me in the parking lot of Shoppingtown Mall.

Shawl Pryor CEO Senior VP, Steven Maksin, owner Moonbeam Capital Investments, Town of Dewitt Police who Hired Officer Kevin Skibinski, Dewitt Town Attorney Thomas Cerio Esq, and David Herkala Esq who sued Officer Skibinski in 2010, Town of Camillus and Camillus PD and Onondaga County Attorneys - - All were served repeated Notice of lawsuit.

All parties Knew Tremendous Liability existed from Severe Injuries sustained when Desiree Yagan was Struck in the parking lot of Shoppingtown Mall on Nov 30, 2017.

***"SLIP & FALL- - KIND OF THING"***

FALSELY CITED AS SLIP & FALL ⇒CALCULATED TO CONCEAL SERIOUS INJURY AND OBVIOUS QUESTIONS. I was overcome with outrage that Shoppingtown Mall Lied about Desiree Yagan.

**No question Trustee Attorney Larry Wahlquist would have asked for details. Requested records about Desiree Yagan had Shawl Pryor stated the truth. As Serious Physical Injury to a pedestrian occurring on the Shoppingtown Mall parking lot would have involved a potentially significant claim.**

**US TRUSTEE WOULD NEED TO INQUIRE INTO THE CIRCUMSTANCES OF THE INCIDENT**

**When person seriously injured is transported from the property ⇒by ambulance to the Hospital. Close scrutiny would be required. Review Incident records, Town of Dewitt Police Accident Report, Allied Universal Security's incident report, Shoppingtown Mall's Surveillance Camera videotape. Pursuant to Trustee's duties in such case request report to Insurance company required by policy.**

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**NOTICE TO UNITED STATES TRUSTEE'S OFFICE REGION 3**

**To Asst. US Trustee Joseph S. Sisca.**

**Pursuant 18 USC §3057 and 28 USC §586 US Trustee has statutory Duty to Investigation into suspected times and perjury committed by Debtor Shoppingtown Mall NY, LLC. C**

**CEO Shawl Pryor also represents debtor in another Chapter 11 case Filed in W.D. Pa (Jan 2021). Salem Consumer Square OH, LLC. Case No. 21-BK-20020. Both having same parties. Creditor BELFOR USA Group, Inc obtained LIEN against Debtor for theft of Insurance Proceeds. Evidence presented by BELFOR USA Group, Inc (Doc 102) *"Expedited Motion for Appointment of US Trustee"*. (40 pp).**

Shoppingtown Mall NY, LLC 341 Creditors Meeting concealment of Desiree Yagan's Serious Injury,  
Salem Consumer Square OH, LLC unquestionable Conversion of Allstate Insurance Proceeds to  
BELFOR USA Group and ⇒ *Onondaga County Supreme Court Judge Anthony Paris Finding of bad  
faith litigation by Shoppingtown Mall NY, LLC* , Evidenced in 3649 Erie, LLC v Shoppingtown Mall  
NY, LLC Index No. 2017EF1271 ⇒ Evidence: Debtor's Bad Faith litigation & Chapter 11 Filings.  
US Trustee Appointment (11 USC § 1104) required when Debtor Engages in Concerted Deception,  
Fraud, and Crimes. \*\* \*Update Nov 10, 2021: Salem Consumer Square OH, Audio was received.

Thank you,

Desiree Yagan

*Desiree Yagan*

---

**\*Attachments (5) is Evidence US Trustee (Region 3) Asst. Joseph S. Sisca.**

- **Desiree Yagan Notice of Lawsuit and demand preserve Videotape. Hand-delivered to Shoppingtown management's Office Attn: Steve Maksin & VP Shawl Pryor Oct 2018.**
- **Desiree Yagan Letter to 911 Emergency Commissioner William Bleyle. Faxed 3-14-18 from Van Duyn Rehab Center. Stated 911 Tapes are Evid Veh. assault. Must preserve.**
- **3649 Erie, LLC v Shoppingtown Mall NY, LLC Affidavit of Jon Crain Esq.**
- **3649 Erie, LLC v. Shoppingtown Mall NY, LLC Affidavit of Robert F. Julian Esq.**

***Affidavits Filed In Support of Motion to Jail Steve Maksin for Contempt of court. Failure to comply with court order to pay \$9.7 Million in back taxes;***

- **Notice of Motion For Order Holding Steven Maksin in Jail for Contempt. For refusal to comply with of court's order to pay 9.7 Million Dollars in Delinquent Taxes. (Doc 135).**  
**Motion for Contempt Order upon Affidavit of John E. Crain Esq. and Robert F. Julian Esq.**  
***\*Filed In support with prior pleadings & Affidavit of Donald Weber Esq. Notice of Motion Filed July 23, 2019 Onondaga County Supreme Court, Index No. 2017EF 1271. (PARIS J.)***

**Endnote: Larry Wahlquist Esq., Trustee in both Chapter 11 cases and Held 341 Creditors Meeting is notified accordingly. Notes during both 341 Creditors Meetings are also important evidence. NOTES by Trustee during 341 Meeting on Debtor's responses and follow up documentation.**

**Cc: BELFOR USA Group, Inc Creditor in Chapter 11 Case No. 21-20020. Filed in Western District of PA. Filed by Salem Consumer Square OH, Inc corroborating Debtor's Crimes and Bad Faith Filing Chapter 11.**

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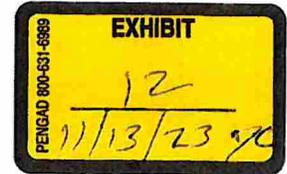
**5 attachments**

- To Shoppingtown Mall CEO Steve Maksin & V.P. Shawl Pryor (Oct 23, 2018) Notice Serious Bodily Injury Lawsuit & Preserve Video. (5).pdf**  
124K
- To 911 Commissioner Bleyle Faxed (3-15-17) DYagan states Tapes Evid. Veh Assault Shoppingtown Mall & False Report Fell.pdf**  
167K
- 3649 Erie, LLC Jon Crain Esq. Affidavit Judge Paris Order Defs Pay \$9.7 M Declared\_\_Shoppingtown Mall (Years) Bad Faith Litigation.pdf**  
244K
- 3649 Erie, LLC Robert F. Julian Esq. Affidavit (Doc 128) Onon. County Will Not Accept Less than \$9,744,515.00 (Filed 6-28-19).pdf**  
96K
- 3649 Erie, LLC \_ Motion to Jail Steve Maksin For Contempt of Court's Order to Pay Taxes (Doc 135) Filed 7-23-19.pdf**  
163K



# OFFICE OF THE MAYOR

MAYOR BEN WALSH



November 20, 2023

Robert Petrovich, Executive Director  
Onondaga County Industrial Development Agency  
335 Montgomery Street, 2<sup>nd</sup> Floor  
Syracuse, NY 13202

Dear Mr. Petrovich,

On behalf of the City of Syracuse, I am writing to express my support for the use of eminent domain by the Onondaga County Industrial Development Agency (OCIDA) of ShoppingTown Mall for redevelopment in the Town of DeWitt, known as "District East."

The proposed development team behind the project, known as Redev CNY, includes several individuals who have successfully completed projects in Syracuse. These include the adaptive reuse of historic buildings, creating new mixed-use development with commercial and residential opportunities that have resulted in new job creation and affordable and market rate housing. The proposed redevelopment will create hundreds of new residential units that will help meet the critical shortage of quality affordable housing within our region, spanning well beyond the border of the City of Syracuse.

I am pleased to support this use of eminent domain by OCIDA in order to facilitate the successful redevelopment of this project that is a priority for Onondaga County and the Central New York region. If you have any questions or wish to discuss this matter further, you are welcome to contact my office, or Eric Ennis, who serves as the City's Deputy Commissioner of Business Development at 315-448-8100.

Thank you for your consideration of this request.

Sincerely,

Ben Walsh  
Mayor

Office of the Mayor  
233 E. Washington St.  
201 City Hall  
Syracuse, N.Y. 13202

Office 315 448 8005  
Fax 315 448 8067

[www.syr.gov.net](http://www.syr.gov.net)