

STATE OF NEW YORK
 SUPREME COURT COUNTY OF ONONDAGA

In the Matter of the Application of the
 ONONDAGA COUNTY INDUSTRIAL DEVELOPMENT
 AGENCY, pursuant to Article 4 of the Eminent Domain
 Procedure Law, to acquire fee title and related property
 interests in the property located at 3649 Erie Boulevard East
 and identified as tax map lot 63.-01-02.3 in the Town of
 Dewitt, Onondaga County, New York, which parcel and
 interests comprise a portion of the site for the phased
 redevelopment of the former Shoppingtown Plaza.

DECISION
 Index #010419/2025

Presently before the Court is a Verified Petition brought before the Court pursuant to §402(b)(3) of the Eminent Domain Procedure Law (“EDPL”), seeking to acquire fee title and all related property interests in the property located at 3649 Erie Boulevard East, Dewitt, New York and further identified as SBL 063.-01-02.3 (“Property”).

EDPL §402(B)(3) requires a Petition seeking to acquire fee title by power of eminent domain to set forth:

- (a) a statement providing ... compliance with the requirements of article two of this law, including a copy of the condemnor’s determination and findings ...;
- (b) a copy of the proposed acquisition map to be filed and the names and places of residence of the condemnees of the property to be acquired;
- (c) a description of the real property to be acquired and its location, either by metes and bounds of each individual parcel, or section, block and lot number, and by reference to the acquisition map and notice of pendency attached to the petition;
- (d) the public use, benefit or purpose for which the property is required;

- (e) a request that the court direct entry of an order authorizing the filing of the acquisition map in the office of the appropriate county clerk or register and that upon such filing, title shall vest in the condemnor;
- (f) ... [and] notice that it shall deposit a bond or undertaking with the clerk of the court prior to vesting of title to the real property described in such petition...

In compliance with EDPL §402(B)(3)(a), the Petition herein reflects the EDPL §204 Determination and Findings with respect to the proposed acquisition, the validity of which were subsequently confirmed by the Fourth Department Appellate Division. *See 3649 Erie, LLC v. Onondaga County Industrial Development Agency et al.*, Appellate Division Case No. OP 24-00426, *lv denied* 2025 N.Y. LEXIS 1576 (Ct App, Sept. 18, 2025), and *Transform Saleco LLC v. Onondaga County Industrial Development Agency*, Appellate Division Case No. OP 24-00449, *lv denied* 2025 N.Y. LEXIS 1957 (Ct App, Sept. 18, 2025). Proposed maps comporting with EDPL §402(B)(3)(b) were attached to the Petition and filed herein at NYSCEF Doc. 4.

The property at issue is described in the Petition as “Property and related real property interests in the Project Site being acquired in this proceeding are located at 3649 Erie Boulevard East and Agway Drive in Dewitt, New York more particularly identified as tax map lot 063.-01-02.3 including, but not limited to, all Property associated reciprocal easement interests in the Project Site....[as] depicted and described by the Acquisition Map [Ex. 3 which]...consists of a survey and legal description of the Property.” (NYSCEF #1 at 12-13) The property owners, as well as any and all recorded interests in the property, are further set forth in the Verified Petition. (NYSCEF #1 at 14-15) As such, Petitioner has complied with EDPL §402(B)(3)(c).

Pursuant to EDPL §402(B)(3)(d), Petitioner set forth the following public uses, benefits and purposes to be achieved in connection with the proposed acquisition, as contained within the Determinations and Findings (NYSCEF #3):

- Promoting purposes of the Act;
- Advancing the job opportunities, general prosperity and economic welfare of the people of the State and County in furtherance of the purposes of the Act;
- Eliminate the blighted conditions created at the Project Site by the vacant, physically deteriorating land and building improvements of the derelict former Shoppingtown Mall which has been empty for 4± years with no progress to rehabilitate or redevelop the Project Site. The fact that title to the majority of the Project Site was acquired by the County as a result of tax foreclosure proceedings for failure of the prior owners to pay real property taxes on such property (64.46± acres) and bankruptcy proceedings involving the prior owners and the passage of 4 years underscores both the deteriorating conditions and lack of redevelopment activity at the Project Site;
- Redevelopment of a blighted section of the Town into a walkable, mixed-use town center development, inclusive of retail, entertainment, office, residential, and open space, including 1.96 million square feet of leasable space including 912 dwelling units in 33 structures of up to six stories in height, office, grocery, retail and hospitality, hotels, entertainment including, but not limited to, movie theatres, restaurants, bars, and bowling, and mixed-use buildings across the site. Such development is consistent with the Town's vision and its planning documents including, but not limited to, the Town of DeWitt Sustainability Plan (2014), Comprehensive Plan (2017), and Zoning Code;
- Provide affordable housing in the County through the development of apartments, senior housing, condos, and single-family townhomes which will address the growing need for housing in the Town and County resulting from the decrease in housing inventory, growth in the number of renters and smaller households, and growth in senior households. Development of such housing will promote employment opportunities, prevent economic deterioration, and further economic growth by addressing the need for multi-family housing in the County and creating a healthy residential environment that will draw workers and businesses to the area;
- Development of a new street grid at the Project Site that will incorporate primary, secondary and shared/festival streets, sidewalks, bicycle infrastructure, pedestrian scale lighting, street trees, sewers, parks and green spaces;

- Development of both on-street parking and surface parking areas as well as utilizing the existing parking garage in order to provide up to 4,105 parking spaces; • Expansion of employment opportunities for residents of the County and the State in the form of a substantial number of both temporary construction and permanent private sector jobs in connection with the ongoing construction and development of the Project;
- Promoting tourism and enhancing the status of Central New York and the Finger Lakes region as a regional tourism destination by attracting visitors from outside the economic development region in which the Project is located by complementing the attractions which already draw visitors to this region including the Empire State Trail, Finger Lakes Wine Country and New York State Fair, sporting events at Syracuse University, arts and cultural venues such as the Everson Museum of Art and Landmark Theatre, shopping destinations such as DestinyUSA, and special events such as Discover NYS Blues Festival and Syracuse JazzFest;
- Generating additional sources of revenue for the Town and County including property taxes, permitting and inspection fees, and sales tax revenues;
- High caliber land uses planned and executed in a coordinated manner in an area that is economically under-utilized and blighted at present;
- An eventual increase in the tax base for the Town, County, the Jamesville-DeWitt Central School District, and Town and County special districts;
- Increased sales tax revenues for the Town, County and the State estimated to be \$12,000,000;
- Substantially increase private investment in areas surrounding the Project which will thus serve to expand the property tax base; and
- Free municipal dollars for other necessary public projects. (NYSCEF #1 at 6)

In compliance with EDPL §402(B)(3)(f), Petitioner provided Notice that it will deposit a bond or undertaking with the Clerk of Court prior to vesting of title and proposed the amount of \$2,500,000 as just compensation/advance payment proceeds pursuant to EDPL §§303 and 304(D). EDPL §303 directs that Petitioner herein “establish an amount which it believes to

represent just compensation for the real property to be acquired” and that “[i]n no event shall such amount be less than the [Petitioner] condemnor’s highest approved appraisal.” Here, the Petitioner’s highest approved appraisal concludes a just compensation value of \$2,500,000.

The Court finds that the Petitioner herein satisfied the requirements set forth in §402(B)(3) and established its entitlement to acquisition of the Property by the power of eminent domain. Petitioner having met its statutory burden, it was incumbent upon any appearing condemnee to file a Verified Answer setting forth specific denial(s) of each material allegation of the petition being controverted, “or of any knowledge or information thereof, sufficient to form a belief, or a statement of new matter constituting a defense to the proceeding.” EDPL §402(B)(4)

A Verified Answer was filed on behalf of condemnee 3649 Erie LLC (hereinafter “Respondent”). Respondent failed to deny any of the material allegations set forth in the Petition, instead setting forth three “affirmative defenses.” The affirmative defenses fail to raise a meritorious objection to the *in rem* relief sought in the instant Petition.

Respondent’s first affirmative defense sets forth that the Petition fails to state a cause of action. Respondent argues that Petitioner “lacks the statutory authority to exercise its power of eminent domain to take Respondent’s valuable real property interests for the predominantly-residential project described in its Determination and Findings.” (NYSCEF #14) This argument has already been rejected by the Appellate Division in Respondent’s appeal of the Determination and Findings. *See 3649 Erie, LLC v. Onondaga County Industrial Development Agency et al.*, Appellate Division Case No. OP 24-00426, *lv denied* 2025 N.Y. LEXIS 1576 (Ct App, Sept. 18, 2025)

Respondent next argues that the Petition should be dismissed for failure to join a necessary and indispensable party, namely the developer-applicant OHB Redev LLC (“OBH”). Again, this issue was addressed by the Appellate Division which cited to Petitioner’s resolution adopting the Determination and Findings, *inter alia*, committing to post a bond or undertaking as required in an Article 4 proceeding. *3649 Erie, LLC*, 232 AD3d at 1233. Additionally, the Petition herein is an *in rem* proceeding, i.e., against the land. *See Mtr of NYS Urban Dev. Corp. (Atlantic Yards Land Use Improvement & Civic Project – Phase 1)*, 26 Misc. 3d 1228(A)*, 907 NYS2d 438, 2010 NY Misc. LEXIS 364 (Sup. Ct, Kings County, Mar. 1, 2010) Further, the Petition need only describe the property sought to be acquired, file the proposed maps, and identify the owners pursuant to EDPL §402(B)(3). *Id.*

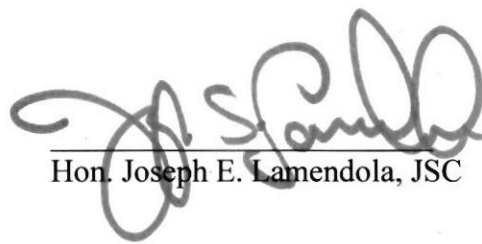
Respondent’s third affirmative defense seeks the alternative relief of asking that the Court Order Petitioner to post a bond/undertaking in the amount of \$2,500,000, Petitioner’s highest approved appraisal for the Property. (NYSCEF #14 at 25-6) Respondent does not dispute that said amount is the highest approved appraisal. As Petitioner has proposed that same bond/undertaking, Respondent’s third affirmative defense does not bar the relief requested in the instant matter.

The Court is satisfied that the procedural requirements of EDPL §402 have been met and Petitioner is entitled to the immediate filing and entry of an order granting the Petition, which shall be filed and entered together with the acquisition map and the bond/undertaking in the amount of \$2,500,000 with the Office of the Onondaga County Clerk pursuant to EDPL §402(B)(5). A separate Order shall issue granting said relief.

This is the decision of the Court.

ENTER

Dated: March 30, 2026
Syracuse, New York



Hon. Joseph E. Lamendola, JSC