

**COMMERCIAL FINDINGS RESOLUTION  
WALDEN CONSTRUCTION ENTERPRISE LLC PROJECT**

A meeting of the Town of Montgomery Industrial Development Agency (the "Agency") was convened in public session at the Town of Montgomery Town Hall located at 110 Bracken Road in the Town of Montgomery, Orange County, New York on November 8, 2021 at 1:00 p.m., local time.

The meeting was called to order by the Chair of the Agency and, upon roll being called, the following members of the Agency were:

PRESENT:

Jeffrey D. Crist	Chair
John Dickson	First Vice Chair and Member
J. Thomas Jones	Second Vice Chair and Member
Matthew P. Stoddard	Treasurer and Member
Robert Santo	Member
Edwin Williams	Member

ABSENT:

AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:

Conor Eckert	Executive Director
Richard Golden	Agency Counsel
Ashley Torre	Agency Counsel
Meghan Hurlburt	Secretary

Resolution No. 1121-01

RESOLUTION (A) DETERMINING THAT THE PROPOSED WALDEN CONSTRUCTION ENTERPRISE LLC PROJECT IS A COMMERCIAL PROJECT, AND (B) MAKING CERTAIN FINDINGS REQUIRED UNDER THE GENERAL MUNICIPAL LAW.

WHEREAS, the Town of Montgomery Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 527 of the 1974 Laws of New York, as amended, constituting Section 911-c of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

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

WHEREAS, in June, 2021, Walden Construction Enterprise LLC, a New York limited liability company (the “Company”), submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of the Company, said Project consisting of the following: (A) (1) the acquisition of an interest in an approximately 6.2 acre parcel of land located at 120 and 126 North Montgomery Street in the Village of Walden, Town of Montgomery, Orange County, New York (tax map nos. 302-1-5.1 and 302-1-6) (collectively the “Land”), (2) the construction on the Land of an approximately 99,075 square foot senior citizen (age 55+) market rate rental housing building with sixty-nine (69) dwelling units and amenities and the reconstruction and the improvement of an approximately 1,040 square foot existing building to be used as an office for the senior housing building and an existing garage to be used as a maintenance shed all with related site work and exterior improvements (collectively, the “Facility”) and (3) the acquisition and installation therein and thereon of related fixtures, machinery, equipment and other personal property (the “Equipment”), all of the foregoing to constitute a market rate senior rental housing facility (the Land, the Facility, and the Equipment being collectively referred to as the “Project Facility”); (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real property taxes, real property transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on July 13, 2021 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Chief Executive Officer of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on July 19, 2021 to the chief executive officers of the county and of each town, village and school district in which the Project Facility is to be located, (B) caused notice of the Public Hearing to be posted on a public bulletin board on July 15, 2021 at Town Hall located at 110 Bracken Road in the Town of Montgomery, Orange County, New York, as well as on the Agency’s website, (C) caused notice of the Public Hearing to be published on July 22, 2021 in the Wallkill Valley Times, a newspaper of general circulation available to the residents of the Town of Montgomery, New York, (D) conducted the Public Hearing on August 18, 2021 at 5:30 p.m., local time at the Town of Montgomery Town Hall located at 110 Bracken Road, Town of Montgomery, Orange County, New York, and (E) caused a transcript to be prepared of the Public Hearing (the “Public Hearing Transcript”) reciting the statements made at such Public Hearing and caused copies of said Public Hearing Transcript to be made available to the members of the Agency; and

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WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on September 14, 2021 (the “SEQR Resolution”), the Agency (A) found that the Project constitutes an “Unlisted Action” (as said quoted term is defined in SEQRA) and therefore coordinated review is not required; (B) declared lead agency status in an “uncoordinated” review (as said quoted term is defined in SEQRA); and (C) determined that the Project will not have a significant adverse impact on the environment and issued a negative declaration pursuant to SEQRA and, therefore, that an environmental impact statement is not required to be prepared with respect to the Project; and

WHEREAS, by letter from the Applicant dated October 5, 2021, the application was amended to withdraw the request for real property tax exemptions and limiting the Financial Assistance to potential exemptions from certain sales and use taxes and mortgage recording taxes; and

WHEREAS, the Company seeks the Financial Assistance as a commercial project, relying on the Agency’s Uniform Tax Exemption Policy, which recognizes senior housing projects as eligible for financial assistance, as well as the Opinion of the State Comptroller Number 85-51, in which the State Comptroller indicated that the determination whether a project that consists of the construction of an apartment complex is a commercial activity within the meaning of the Act is to be made by local officials based upon all of the facts relevant to the proposed project, and that any such determination should take into account the stated purpose of the Act, that is, the promotion of employment opportunities and the prevention of economic deterioration; and

WHEREAS, an Opinion of the State Comptroller Number 85-51 was cited by the Supreme Court of the State of New York, Nassau County, in upholding an industrial development agency’s grant of financial assistance to a new residential apartment complex in the case of *Ryan, et al., v. Town of Hempstead Industrial Development Agency, Supreme Court, Nassau County*, Index No. 5324/16; and

WHEREAS, the Agency sought guidance from the State of New York Authorities Budget Office (“ABO”), the State regulatory office that oversees public authorities including the Agency, regarding the Project’s eligibility for financial assistance as a commercial project, and the ABO declined to issue any opinion and instead suggested that the Agency contact the Office of the New York State Comptroller (“Comptroller’s Office”) and New York State Attorney General’s Office (“Attorney General’s Office”); and

WHEREAS, on July 20, 2021 the Agency wrote to both the State Comptroller’s Office and the Attorney General’s Office to request an opinion on whether a proposed residential senior housing development constitutes a project eligible for Industrial Development Agency financial assistance as a “commercial” project or otherwise; and

WHEREAS, by letter dated July 29, 2021, the Attorney General’s Office declined to issue an opinion and instead referred the Agency’s request to the State Comptroller’s Office; and

WHEREAS, by email on September 30, 2021, the Comptroller’s Office declined to opine on whether the Project constitutes a commercial activity under operative law and instead referred the Agency to Comptroller Opinion No. 85-51; and

WHEREAS, to aid the Agency in determining whether the Project qualifies for Financial Assistance as a commercial project within the meaning of the Act, the Agency has reviewed the following (collectively, the “Project Qualification Documents”): (A) the Application with the Project Cover

Letter/Synopsis, (B) the expert report of Cynthia G. Falk, Ph.D. dated May 2021, (C) the Agency's Uniform Tax Exemption Policy and precedent related to the approval of tax exempt financing for a rental housing project, (D) the Memorandum to the Agency from Counsel for the Applicant dated June 3, 2021, (E) the report of the National Association of Home Builders entitled "The Economic Impact of Home Building in a Local Area - Comparing Costs to Revenue for Local Governments" dated April 2015, (F) the engineering plans drafted by the engineering firm of Mercurio-Norton-Tarolli-Marshall and approved by the Village of Walden Planning Board, (G) correspondence from Counsel for the Applicant dated July 8, 2021 and July 20, 2021 with supplemental materials including census data related to senior housing availability and affordability and population statistics and a listing of more than eighty-five housing projects recently approved throughout the State of New York for Industrial Development Agency financial assistance, (H) correspondence from the ABO, (I) correspondence from the Attorney General's Office, (J) email correspondence from the Comptroller's Office, (K) the Agency's Cost Benefit Analyses, dated July 7, 2021 and October 5, 2021, (L) Letter from the Village of Walden dated August 17, 2021, (M) Letter from the Applicant dated August 18, 2021 in response to the Village of Walden's August 17, 2021 letter, (N) the Full Environmental Assessment Form and related environmental studies, (O) Letter from the Applicant dated October 5, 2021, amending the application, and (P) the "Economic and Fiscal Impact" Report of Camoin Associates dated October 7, 2021; and

WHEREAS, having complied with the requirements of SEQRA and of the Act with respect to the Project, the Agency now desires to make its final findings with respect to the Project and its final determination whether to proceed with the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN OF MONTGOMERY INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Based upon an examination of the Project Qualification Documents and based further upon the Agency's knowledge of the area surrounding the Project and such further investigation of the Project and its economic effects as the Agency has deemed appropriate, and in consideration of the factors set forth in the Opinion of the State Comptroller Number 85-51 and the Short Form Order in *Ryan, et al., v. Town of Hempstead Industrial Development Agency, Supreme Court, Nassau County*, Index No. 5324/16, dated January 25, 2017, the Agency makes the following findings and determinations with respect to the Project:

A. The Project Qualification Documents make the following comments/findings regarding senior rental housing in the Village of Walden:

(1) *The municipality needs senior housing to retain population:*

Roughly one quarter of the population of the Village of Walden is age 50 or above, but only eight percent are age 65 or above. American Community Survey data suggests that following retirement many people may leave the Village of Walden. By comparison, in the Poughkeepsie-Newburgh-Middletown, NY Metro Area as a whole, more than 15 percent of the population is age 65 or older.

(2) *The municipality needs a healthy residential environment to further economic growth by retaining population:*

The vacancy rate within the Village of Walden is one half of the vacancy rate in the State of New York as a whole, which is 12 percent. More importantly, the types of housing located within the Village of Walden are

limited. The vast majority of housing units, 72 percent, are single units. As a result of the type of housing availability, the cost of housing is escalated and the opportunity for housing mobility is diminished.

(3) *The municipality lacks senior housing:*

The lower percent of those age 65 and older in the Village of Walden suggests a lack of appropriate amenities, including housing, for seniors living within the Village.

(4) *The project would provide a nucleus of a healthy residential environment for seniors, and would be instrumental and vital in the further growth of the municipality:*

The availability of senior housing within the Village of Walden would create reasonable accessibility for those who would like to remain in the Village but transition away from ownership of large single-family houses.

(5) *The acquisition and construction of the project would promote and maintain job opportunities, health, general prosperity and economic welfare of the citizens of the municipality and State:*

Construction costs are expected to be just shy of \$12 million. The purchase price for parcels 302-1-5.1 and 302-1-6 is \$1,787,500, giving an overall estimated project cost for land acquisition and construction of \$13,768,000. Annual costs of financing and expenses for furniture, office equipment, and gym equipment bring the project total to \$14,788,000. The proposed project is expected to create an estimated 4 permanent jobs, 3 independent contractor positions and 170 construction jobs over the two-year construction period (85 construction jobs annually).

(6) *The acquisition and construction of the project would improve the local standard of living and thereby serve the public purposes of the Industrial Development Agency Act:*

In order to keep rents at affordable rates to Village of Walden and Town of Montgomery residents, it is critical for the IDA to provide incentives through reduced taxes that will allow the project to move forward. Without tax exemptions the developers would not be able to make the rental units reasonably accessible to the residents of the Village of Walden and Town of Montgomery, and without the project, Walden will continue to lack in senior housing.

(7) *The project is consistent with the municipality's comprehensive plan:*

The 2019 updates to the Village of Walden's Comprehensive Plan recognize the need for senior housing and other amenities geared toward people age 50 and above. Using 2016 American Communities Survey data, the Comprehensive Plan stated: "Walden's population by age group is comparable to that of Orange County. Roughly 28% of the Village's population is 50 years of age or older. As this population ages, services to

meet the needs of its senior population will grow.”(internal citations omitted). The decrease in the percent of people age 50 and older between 2016 and 2019 suggests that this goal has not yet been met.

B. Undertaking the Project is consistent with the Project Qualification Documents and will advance commercial development by increasing senior rental housing for residents in the Village of Walden and the Town of Montgomery.

C. The Company has informed the Agency that one hundred seventy (170) construction jobs are expected to result directly from the Project over the two-year construction period. Additionally, the Project is expected to create an estimated four (4) permanent job positions and three (3) independent contractor positions at the Project Facility.

D. The Company has informed representatives of the Agency that the Company is not aware of any adverse employment impact caused by the undertaking of the Project.

Section 2. Based upon the foregoing review of the Project Qualification Documents and based further upon the Agency’s knowledge of the area surrounding the Project Facility and such further investigation of the Project and its economic effects as the Agency has deemed appropriate, and in consideration of the factors set forth in the Opinion of the State Comptroller Number 85-51 and the Short Form Order in *Ryan, et al., v. Town of Hempstead Industrial Development Agency, Supreme Court, Nassau County*, Index No. 5324/16, dated January 25, 2017, the Agency makes the following findings and determinations with respect to the Project:

A. That (1) the completion of the Project Facility will have an impact upon the creation, retention and expansion of employment opportunities in the Village of Walden, Town of Montgomery and in the State of New York, and (2) the completion of the Project will assist in promoting employment opportunities and assist in preventing economic deterioration in the Village of Walden, Town of Montgomery and in the State of New York.

B. That the acquisition, construction and installation of the Project Facility will promote and maintain employment opportunities, health, general prosperity and economic welfare of the citizens of the Village of Walden and Town of Montgomery and improve their standard of living and thereby.

C. That the Project constitutes a “commercial” project within the meaning of the Act.

D. That the undertaking of the Project will serve the public purposes of the Act by preserving and creating permanent private sector jobs in the State of New York.

Section 3. Having considered all comments presented by members of the public and based upon the findings contained in Section 1 above, the Agency hereby determines to proceed with the Project and the granting of certain financial assistance described in the notice of the Public Hearing in the form of exemptions from certain sales and use taxes and mortgage recording taxes.

Section 4. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

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Jeffrey D. Crist	VOTING	Aye
John Dickson	VOTING	Aye
J. Thomas Jones	VOTING	Nay
Matthew P. Stoddard	VOTING	Aye
Robert Santo	VOTING	Aye
Edwin Williams	VOTING	Aye

The foregoing Resolution was thereupon declared duly adopted.

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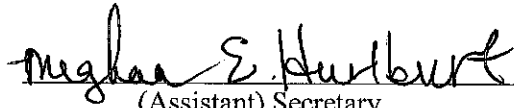
STATE OF NEW YORK            )  
  ) SS.:  
COUNTY OF ORANGE         )

I, the undersigned (Assistant) Secretary of the Town of Montgomery Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on November 8, 2021 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 8<sup>th</sup> day of November, 2021.

  
(Assistant) Secretary

(SEAL)

