

Oyster Bay Gardens PILOT Deviation Resolution

A regular meeting of the Nassau County Industrial Development Agency (the "Agency") was convened in public session at the Theodore Roosevelt Executive & Legislative Building, Ceremonial Chambers, 1550 Franklin Avenue, Mineola, Nassau County, New York on May 8, 2018 at 6:30 p.m., local time.

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

PRESENT:

Richard Kessel	Chairman
Lewis M. Warren	Vice Chairman
Anthony Simon	2nd Vice Chairman
Timothy Williams	Secretary
Amy Flores	Treasurer

NOT PRESENT:

Chris Fusco	Asst. Secretary
John Coumatos	Asst. Treasurer

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Joseph J. Kearney	Executive Director
Joseph Foarile	Chief Financial Officer
Colleen Pereira	Administrative Director
Paul O'Brien, Esq.	Bond/Transaction Counsel

The attached resolution no. 2018-17 was offered by T. Williams, seconded by L.

Warren:

Resolution No. 2018-17

RESOLUTION AUTHORIZING A DEVIATION FROM THE UNIFORM
TAX EXEMPTION POLICY OF THE NASSAU COUNTY
INDUSTRIAL DEVELOPMENT AGENCY WITH RESPECT
TO A PROJECT FOR OYSTER BAY GARDENS LLC

WHEREAS, the Nassau County Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title I 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 674 of the 1975 Laws of New York, as amended, constituting Section 922 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 manufacturing, industrial and 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

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

WHEREAS, OYSTER BAY GARDENS LLC, a limited liability company organized and existing under the laws of the State of New York (the "Applicant"), has submitted an application for financial assistance (the "Application") to the Agency, which Application requests that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 3.66 acre parcel of land located at 857 South Oyster Bay Road, Bethpage, Town of Oyster Bay, County of Nassau, New York (currently part of Section: 46; Block: G; Lot: 66) (collectively, the "Land"), (2) the construction of an approximately 40,000 square foot, three-story building on the Land, together with related improvements to the Land (collectively, the "Building"), and (3) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment"), all of the foregoing for use by the Applicant as a 48-unit residential rental facility consisting of thirty-six (36) units which shall constitute "Housing for Older Persons" (i.e., intended for, and solely occupied by, persons 62 years of age or older in accordance with the Fair Housing Act and other applicable laws prohibiting discrimination in housing) and twelve (12) units designated for individuals with intellectual and developmental disabilities, all of which units shall be affordable units (collectively, the "Project Facility"); (B) the

granting of certain “financial assistance” (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of a potential exemption or partial exemption from real property taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency; and

WHEREAS, the Application states that the Applicant is seeking an exemption from real property taxes with respect to the Project Facility that constitutes a deviation from the Agency’s Uniform Tax Exemption Policy (the “Tax Exemption Policy”); and

WHEREAS, pursuant to Section 874(4) of the Act, (A) the Executive Director of the Agency caused a letter dated April 20, 2018 (the “Pilot Deviation Notice Letter”) to be mailed to the chief executive officer of each affected tax jurisdiction, informing said individuals that the Agency would, at its meeting on May 8, 2018 (the “IDA Meeting”), consider a proposed deviation from the Tax Exemption Policy with respect to the payments in lieu of real property taxes to be made pursuant to a payment in lieu of taxes agreement to be entered into by the Agency with respect to the Project Facility; and (B) the members of the Agency conducted the IDA Meeting on the date hereof and reviewed any comments and correspondence received with respect to the proposed deviation from the Tax Exemption Policy; and

WHEREAS, the Agency desires to provide for compliance with the provisions of Section 874(4) of the Act with respect to the proposed deviation from the Tax Exemption Policy;

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

Section 1. Prior to making the determinations set forth in this resolution, the members of the Agency have considered the following factors set forth in the Tax Exemption Policy: (1) the extent to which the Project would create or retain permanent jobs; (2) the extent to which the Project would create construction jobs; (3) the estimated value of tax exemptions to be provided with respect to the Project; (4) the amount of private sector investment generated or likely to be generated by the Project; (5) the likelihood of the Project being accomplished in a timely manner; (6) the extent of new revenue that would be provided to affected tax jurisdictions as a result of the Project; (7) whether affected tax jurisdictions would be reimbursed by the Applicant if a Project does not fulfill the purposes for which an exemption was provided, (8) the impact of the Project on existing and proposed businesses and economic development projects in the vicinity, (9) the demonstrated public support for the Project, (10) the effect of the Project on the environment, (11) the extent to which the Project would require the provision of additional services, including, but not limited to, additional educational, transportation, police, emergency, medical or fire services, and (12) any other miscellaneous public benefits that might result from the Project.

Section 2. The Agency hereby determines that the Agency has fully complied with the requirements of Section 874(4) of the Act relating to the proposed deviation from the Tax Exemption Policy.

Section 3. Having reviewed all comments and correspondence received at or prior to the IDA Meeting, the Agency hereby approves the proposed deviation from the Tax Exemption Policy as described in the Pilot Deviation Notice Letter (a copy of which is attached hereto as Exhibit A) because the proposed deviation is necessary to induce the Applicant to undertake the Project and because the PILOT payments would not be lower than the real property taxes that should otherwise apply with respect to the Land and the existing improvements thereon as of the closing date of the transaction.

Section 4. The Chairman, Vice Chairman, Administrative Director and Executive Director of the Agency are each hereby authorized and directed, acting individually or jointly, to distribute copies of this Resolution to the Applicant and to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this Resolution. If the Agency hereafter adopts appropriate final approving resolutions with respect to the proposed straight-lease transaction with the Applicant (the "Transaction"), the Chairman, Vice Chairman, Executive Director and Administrative Director of the Agency are each hereby authorized and directed, acting individually or jointly, to cause the Agency to (A) enter into a Payment in Lieu of Taxes Agreement with the Applicant, providing, among other things, that the Applicant shall make payments in lieu of taxes consistent with the formula set forth in the Pilot Deviation Notice Letter, and (B) file an application for real property tax exemption with the appropriate assessor(s) with respect to the Project Facility.

Section 5. This Resolution shall take effect immediately, but is subject to and conditioned upon the closing of the Transaction.

ADOPTED: May 8, 2018

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

Richard Kessel	VOTING	Aye
Lewis M. Warren	VOTING	Aye
Anthony Simon	VOTING	Aye
Timothy Williams	VOTING	Aye
Chris Fusco	EXCUSED	
Amy Flores	VOTING	Aye
John Coumatos	EXCUSED	

The foregoing Resolution was thereupon declared duly adopted.

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

We, the undersigned ~~[Vice]~~ Chairman and ~~[Assistant]~~ Secretary of the Nassau County Industrial Development Agency (the "Agency"), do hereby certify that we have compared the foregoing extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on May 8, 2018 with the original thereof on file in our office, and that the same is a true and correct copy of said original and of such Resolution set forth therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

WE 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.

WE 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, we have hereunto set our respective hands and affixed the seal of the Agency this 7th day of May, 2018.



[Assistant] Secretary



[Vice] Chairman

(SEAL)

EXHIBIT A

Pilot Deviation Notice Letter

See Attached



NASSAU COUNTY INDUSTRIAL DEVELOPMENT AGENCY

1 WEST STREET, SUITE 326

MINEOLA, NY 11501

TELEPHONE (516) 571-1945 FAX (516) 571-1076 April 20, 2018

www.nassaida.org

**CERTIFIED MAIL, RETURN
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County Executive Laura Curran
County of Nassau
1550 Franklin Avenue
Mineola, NY 11501

**NOTICE OF PROPOSED DEVIATION FROM
UNIFORM TAX EXEMPTION POLICY**

Dear County Executive Laura Curran:

Notice is hereby given that at a meeting of the Nassau County Industrial Development Agency (the "Agency") to be held on May 8, 2018, at 6:30 p.m. local time at the offices of the Agency at One West Street, Mineola, New York, the Agency will consider whether to approve the application of the Applicant (as defined below), for certain "financial assistance" which, if granted, would deviate from the Agency's Uniform Tax Exemption Policy (the "Policy") with respect to the payment of real property taxes. The meeting of the Agency will be open to the public.

OYSTER BAY GARDENS LLC, a limited liability company organized and existing under the laws of the State of New York (the "Applicant"), has submitted an application for financial assistance (the "Application") to the Agency, which Application requests that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of an interest in an approximately 3.66 acre parcel of land located at 857 South Oyster Bay Road, Bethpage, Town of Oyster Bay, County of Nassau, New York (currently part of Section: 46; Block: G; Lot: 66) (collectively, the "Land"), which Land is more particularly described on Schedule A attached hereto, (2) the construction of an approximately 40,000 square foot, three-story building on the Land, together with related improvements to the Land (collectively, the "Building"), and (3) the acquisition of certain furniture, fixtures, machinery and equipment necessary for the completion thereof (the "Equipment"), all of the foregoing for use by the Applicant as a 48-unit residential rental facility consisting of thirty-six (36) units which shall constitute "Housing for Older Persons" (i.e., intended for, and solely occupied by, persons

62 years of age or older in accordance with the Fair Housing Act and other applicable laws prohibiting discrimination in housing) and twelve (12) units designated for individuals with intellectual and developmental disabilities, all of which units shall be affordable units (collectively, the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the General Municipal Law) with respect to the foregoing in the form of a potential exemption or partial exemption from real property taxes, mortgage recording taxes and sales and use taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase), license or sale of the Project Facility to the Applicant or such other entity as may be designated by the Applicant and agreed upon by the Agency.

Based upon preliminary negotiations between representatives of the Applicant and the Agency, the parties contemplate that the Agency may agree to grant an approximately thirty-two (32) year real property tax exemption (the "Property Tax Exemption") with respect to the Project Facility as follows: payments equal to five percent (5%) of the estimated annual "effective gross income" of the completed and fully operational Project Facility (the "Base Year PILOT Amount"), as determined by the Agency, which Base Year PILOT Amount would be subject to annual increases of two percent (2%) per year (compounded) after the second (2nd) year of the PILOT term.

Thereafter, and through the end of the term of the lease or installment sale agreement with respect to the Project Facility, the payments would be equal to the real property taxes and assessments that would be payable as if the Project Facility were returned to the tax rolls as taxable property and subject to taxation at its then current, full assessed value, as the same may be reassessed from time to time, and subject to tax rate increases imposed by the affected tax jurisdictions.

The Property Tax Exemption, if approved by the Agency, would constitute a deviation from the Policy.

The reasons for the deviation are that (i) the Property Tax Exemption, if approved by the Agency, is necessary to induce the Applicant to undertake the Project, and (ii) the PILOT payments would not be lower than the real property taxes that otherwise apply with respect to the Land and any improvements thereon immediately prior to the closing of the proposed transaction.

Sincerely,

NASSAU COUNTY INDUSTRIAL
DEVELOPMENT AGENCY

By: 

Joseph J. Kearney
Executive Director