

**Resolution adopting a determination and finding under the New York State
Environmental Quality Review Act**

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 26, 2022 at 6:48 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
John Coumatos	Asst. Treasurer
Chris Fusco	Asst. Secretary
Reginald A. Spinello	Member
William H. Rockensies	Member

THE FOLLOWING ADDITIONAL PERSONS WERE PRESENT:

Anne LaMorte	Chief Financial Officer
Carlene Wynter	Compliance Assistant
Nicole Gil	Administrative Assistant
Andrew Komaromi	Bond/Transaction Counsel

EXCUSED:

Timothy Williams	Member
Catherine Fee	Director of Business Development/Chief Marketing Officer

The attached resolution no. 2022-41 was offered by John Coumatos, seconded by Reginald Spinello.

RESOLUTION FINDING THAT AN ACTION TO UNDERTAKE THE ACQUISITION AND STRAIGHT LEASING OF A CERTAIN PROJECT FOR TERWILLIGER & BARTONE PROPERTIES LLC WILL NOT HAVE A SIGNIFICANT ADVERSE IMPACT ON THE ENVIRONMENT

Project Name: TERWILLIGER & BARTONE PROPERTIES LLC 2022

Location: 425 Railroad Avenue, Village of Westbury, Town of North Hempstead, Nassau County, New York (Section: 10; Block: 229; Lot: 32)

SEQRA Status: Unlisted

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, TERWILLIGER & BARTONE PROPERTIES LLC, a limited liability company organized and existing under the laws of the State of Delaware and duly authorized to do business in the State of New York, together with entities formed or to be formed on its behalf (collectively, the “Applicant”) has presented 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 a 0.61 acre parcel of land located at 425 Railroad Avenue, Village of Westbury, Town of North Hempstead, Nassau County, New York (Section: 10; Block: 229; Lot: 32) (the “Land”), (2) the construction of an approximately 46,334 square foot building (collectively, the “Building”) on the Land, together with related improvements to the Land, including surface parking spaces, (3) the acquisition of certain furniture, fixtures, machinery and equipment (the “Equipment”) necessary for the completion thereof (collectively, the “Project Facility”), all of the foregoing for use by the Applicant as a multi-family apartment building consisting of approximately fifty-nine (59) residential rental apartment units, including eight (8) affordable residential rental apartments; (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 potential exemptions or partial exemptions 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; and

WHEREAS, pursuant to Article 8 of the New York Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 N.Y.C.R.R. Part 617.1, et. seq., as amended (the “Regulations” and collectively “SEQRA”), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to undertake the Project; and

WHEREAS, pursuant to SEQRA, to aid the Agency in determining whether the Project may have a significant adverse impact upon the environment, the Agency has completed, received and/or reviewed (1) Part 1 of a Full Environmental Assessment Form (“EAF”), dated November 8, 2021, and attachment thereto; (2) NYSDEC’s Environmental Resource Mapper; (3) New York State Historic Preservation Office’s Cultural Resources Mapper; (4) SEQRA Resolution of the Village of Westbury Board of Trustees’ (the “Village Board”) Resolution, dated May 19, 2022; and (5) other relevant environmental information (collectively, 1, 2, 3, 4 and 5 shall be referred to as the “Environmental Information”); and

WHEREAS, pursuant to SEQRA, the Agency is an involved agency in the SEQRA review of the Project, and as an involved agency is required to analyze the Project to determine whether it has the potential to have a significant adverse impact on the environment; and

WHEREAS, on or about February 18, 2022, the Village Board sent a Lead Agency Coordination Review letter to all involved agencies, advising of the intent of the Village Board to declare itself the lead agency under SEQRA with respect to undertaking a review of the Project Facility; and

WHEREAS, on or about February 24, 2022, the Agency received notice of the Village Board’s notice of an intent to declare lead agency and did not object to and/or contest the same; and

WHEREAS, pursuant to 6 N.Y.C.R.R. 617.6 [b] [3] [iii] “if a lead agency exercises due diligence in identifying all other involved agencies and provides written notice of its determination of significance to the identified involved agencies, then no involved agency may later require the preparation of an EAF, a negative declaration or an EIS in connection with the action. The determination of significance issued by the lead agency following coordinated review is binding on all other involved agencies”; and

WHEREAS, the Court of Appeals has held that when an involved agency is properly identified as a party to a coordinated SEQRA review, it is bound by the negative declaration issued by the lead agency (*Gordon v. Rush*, 100 N.Y.2d 236, 243 (2003) citing 6 N.Y.C.R.R. 617.6 [c] [Nov. 1987 regulations] and 6 N.Y.C.R.R. 617.6 [b] [3] [current regulations]); and

WHEREAS, the Village Board declared itself as lead agency under SEQRA on April 21, 2022; and

WHEREAS, on May 19, 2022, pursuant to a resolution, the Village Board, as lead agency, unanimously determined that the Project Facility would not have a significant adverse impact and issued a Negative Declaration; and

WHEREAS, the Agency is granting financial assistance to the Project Facility, the environmental impacts of which were reviewed and analyzed by the Village Board, as lead agency; and

WHEREAS, the Project involves a plan, alternatives, and proposed zoning actions which were previously analyzed by the Village Board, as lead agency, as detailed in the Findings Statement prepared in connection herewith; and

WHEREAS, the Agency, as an involved agency, is bound by the negative declaration issued by the Village Board, as lead agency, and, further, concurs with the determination of the Village Board, as lead agency; and

WHEREAS, the Applicant has agreed to indemnify the Agency against certain losses, claims, expenses, damages and liabilities that may arise in connection with the transaction contemplated by the leasing of the Facility by the Agency to the Applicant;

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

Section 1. Based upon the Full Environmental Assessment Form completed by the Applicant and reviewed by the Agency and other representations and information furnished by the Applicant regarding the Project, the Agency determines that the action relating to the acquisition, construction, equipping, furnishing and operation of the Project Facility is a "Type 1" action, as that term is defined in the SEQRA.

Section 2. Pursuant to 6 N.Y.C.R.R. 617.6 [b] [3] [iii], the determination of non-significance by the Village Board, as lead agency, is binding on the Agency.

Section 3. Based upon a thorough review and examination of the Environmental Information and upon the Agency's knowledge of the area surrounding the Land and such further investigation of the Project and its environmental effects as the Agency has deemed appropriate, the Agency concurs with the Village Board, as lead agency, and makes the following findings with respect to the Project:

1. Impact on Land. The Project is not anticipated to create any potentially significant adverse impacts to land resources or land use. The Project Facility is consistent with its surrounding use in downtown Westbury and the Land was rezoned by the Village Board to permit uses, such as the Project Facility. The zoning and land use classification will not change as a result of the Project. Accordingly, the Project is not anticipated to create any potentially significant adverse impacts to land resources or land use.

2. Impact on Water. No wetlands in the area of the Land are anticipated to be impacted as renovation will be undertaken on property which previously housed similar uses. In addition, the Project is not located in a designated 100 or 500 year floodplain. The property has been previously disturbed and the renovation will not physically alter, or encroach into, any existing wetland or waterbody. Although the Project site is located over the Nassau-Suffolk sole source aquifer, no activities proposed for the Project are anticipated to impact groundwater or the aquifer, nor is renovation or operation of such project anticipated to expose such aquifer to the undue threat of contamination. The Land is also not within a 100 year or 500 year flood plan.
3. Impact on Air. The Project will not be a significant source of air emissions. The Project does not entail the types of activities or operations that require the Applicant to acquire an Air Facility Permit or that are associated with a significant potential for air emissions. In addition, any increase in traffic including vehicle trips associated with the Project is not anticipated to materially impact air quality as more specifically discussed in the Transportation section below, including based on various analyses completed regarding traffic. Any potential impact on air as a result of construction activities will be minor, and temporary in nature.
4. Impact on Health or Safety. The environmental conditions at the Land have been impacted by past land uses. As provided in EAF, the remediation of the Property is complete for the one (1) historic spill reported by the NYSDEC. The Project also does not entail the types of activities or operations that are associated with a significant potential for affecting public health. Accordingly, the Project will not create any significant adverse impact to public health, air, land or water resources.
5. Impact on Plants and Animals Including to Threatened or Endangered Species. The Land does not appear to contain any habitats of significance as it is fully developed and located in a well-developed residential and industrial area. The Proposed Action does not present the potential for removal or destruction of large quantities of vegetation or fauna; substantial interference with the movement of any resident or migratory fish or wildlife species; impacts on a significant habitat area; substantial adverse impacts on a threatened or endangered species of animal or plant, or the habitat of such a species; or other significant adverse impacts to natural resources.
6. Impact on Agricultural Land Resources. The Project is located in an area currently devoted to industrial / residential uses. As a result it will not involve the conversion or loss of agricultural land resources. Accordingly, the Project will not create any significant adverse impacts to agricultural land resources.
7. Impact on Aesthetic Resources. The Project will not be within 500 feet from any officially designated federal, state or local scenic or aesthetic resource. The property is situated in a developed industrial and residential area, as indicated with is zoned for uses consistent with the Project with is also consistent with

surrounding uses. As the Village of Westbury concluded that the Project Facility is consistent with its surroundings, it is not anticipated to create any significant adverse impacts to aesthetic resources.

8. Impact on Historic and Archeological Resources. The Land is not adjacent to any historic building or an archeological area deemed sensitive by the State Historic Preservation Office. The Land, itself, is improved with structures and contains no visible historical, archeological, architectural or aesthetic resources that will be impaired by the development of the Project Facility. The Project would redevelop an underutilized warehouse property as the existing building on the site is currently degraded, detracting from the overall character of the site and surrounding area. The Project Facility has been designed to be respectful of the character of the surrounding area and the scale of existing development, thereby improving the overall character of the site and surrounding area. Accordingly, the Project will not create any significant adverse impacts to historical or archaeological resources.
9. Impact on Open Space and Recreation. The Land on which the Project is to be located and adjacent areas around it do not comprise public open space as it was devoted to industrial uses. Further, the density of the Project Facility is not anticipated to create an adverse impact of local parkland. Accordingly, the Project will not create any significant adverse impacts to open space or recreational resources.
10. Impact on Critical Environmental Areas. The Land on which the Project is to be developed is not located in or substantially contiguous to any Critical Environmental Area (“CEA”) based on a review of the EAF. Accordingly, the Project will not create any significant adverse impacts to any CEA.
11. Impact on Transportation. Based on the EAF, the Project will not result in a substantial increase in traffic above capacity of current traffic infrastructure, nor is it expected to generate substantial new demand for transportation facilities or services/infrastructure. Any impacts to transportation from construction activities associated with the Project will be minor and temporary in nature. Further, the Village Board’s SEQRA Resolution notes that, based on the information and analysis provided in the traffic analysis and report, as well as the supplement thereto, its independent expert traffic engineering consultant opined that the traffic generated by the Project would be consistent with the Generic Environmental Impact Statement the Village Board prepared to analyze the maximum development potential under the T.O.D. Zone that the Land was previously rezoned by the Village Board to be within. Based on this independent expert opinion obtained by the Village Board and the EAF, the Agency concludes that the Project will not have an adverse impact on transportation.
12. Impact on Energy. The Project may result in an increase in energy usage, however, existing utilities serve the area where the Project will be developed and are anticipated to have adequate capacity to serve it. As a result, the Project will not create any significant adverse impacts to energy.

13. Impact on Noise and Odor and Impacts from Light. The Project is not expected to materially increase ambient noise levels or to create odors of consequence particularly in light of such project setting including the Project site location. As a result, it is not anticipated that operation of the Project will result in undue noise impacts. Further, any impacts to noise and/or odor from construction activities will be minor, and temporary in nature. In addition, any such noise from construction will be undertaken during work hours and as such is not anticipated to be significant. Accordingly, the Project will not create any significant adverse impacts to noise or odors.

14. Impact on Growth and Character of the Community and Neighborhood. The Village of Westbury has approved the development and concluded that the Project Facility will be consistent with other improvements in the surrounding area. The Project Facility would be consistent with the stated purposes of the Village of Westbury's Maple Union Transit Oriented District, which are, among other things, intended to "[f]oster reasonable and prudent transit-oriented development that allows for increased density, mixed-use development in the Maple/Union area", "[a]ttract new residential and job-creating uses near the train station", "[r]etain the existing diverse population and attract new residents", "[e]ncourage the development of diverse housing options", and "[e]stablish a retail mix that supports and complements the existing business district and promotes the sustainability and diversity of the community" given the mixed use nature of the proposed action and the location of the subject property adjacent to the LIRR station. Accordingly, the Project is not anticipated to create any significant adverse impacts to the growth or character of the community.

NOW THEREFORE BE IT FURTHER RESOLVED:

Section 4. Based on the foregoing, the Agency finds that the Project will not have any significant adverse impact on the environment in accordance with the New York State Environmental Quality Review Act, Article 8 of the New York Environmental Conservation Law and, in particular, pursuant to the criteria set forth at 6 NYCRR §617.7(b)-(c) of the SEQRA regulations and as such, no environmental impact statement shall be prepared. This determination constitutes a negative declaration for the purposes of SEQRA.

Section 5. The Chairman, the Vice Chairman, the Executive Director and the Administrative Director of the Agency are hereby further authorized on behalf of the Agency, or acting together or individually, 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.

Section 6. 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:

Richard Kessel	VOTING	AYE
Chris Fusco	VOTING	AYE
John Coumatos	VOTING	AYE
Timothy Williams	VOTING	ABSENT
Reginald A. Spinello	VOTING	AYE
William H. Rockensies	VOTING	AYE

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 26, 2022 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 26th day of May 2022.


[Assistant] Secretary


[Vice] Chairman

(SEAL)