

**TOWN OF NIAGARA
TOWN BOARD MEETING
7105 Lockport Road
Niagara Falls, NY 14305**

MINUTES

Tuesday, May 23, 2023

6:30 PM

PUBLIC HEARING

OPEN MEETING (Pledge, Prayer, Roll Call)

Supervisor Lee Wallace called the meeting to order with the Pledge of Allegiance.

Deputy Supervisor Teixeira recited a prayer. Attached is a Memorial Page of all the deceased Town residents who passed away recently.

Roll Call:

Present: Supervisor Lee S. Wallace, Charles F. Teixeira, Deputy Supervisor Councilman Richard A. Sirianni, Councilman Sam Gatto, Councilman Marc M. Carpenter

Absent: none

Excused: Also, present Sylvia Virtuoso, Town Clerk

PRIVILEGE OF THE FLOOR (Announce changes to agenda, if any)

(§50-3 Privilege of the floor. Only members of the public sector are allowed to speak at this time and may address any agenda or non-agenda item.

(3-minute limit)

No speakers.

APPROVAL OF MINUTES

1. Town Board Meeting of April 18, 2023

Motion to approve by Councilman Gatto, second by Councilman Carpenter.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

PAYMENT OF BILLS

General Fund prepay vouchers [A] \$15,512.85

General Fund vouchers [A] \$123,505.14

Sewer Fund prepay vouchers [G] \$873.23

Sewer Fund vouchers [G] \$1,162.17

Water Fund vouchers [F] \$2,333.36

Water Fund vouchers prepay [F] \$1,813.97

Highway Fund vouchers [DA] \$420.59

Highway Fund prepay vouchers [DA] 28,840.28

Fire Protection prepay vouchers [SF]

Fire Protection [SF] \$135.22

Street Lighting vouchers [SL]

Street Lighting Pre-Pay vouchers [SL]

Trust & Agency Pre-Pay vouchers [TA] \$45.85

Trust & Agency vouchers [TA] \$4,692.26

Capital Projects prepay vouchers [H] \$5,258.18

Capital Projects vouchers [H] \$365,912.76

Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

AGENDA

1. Resolution authorizing the commencement of a proceeding to order the repair, vacation, and/or demolition of the unsafe structure located at 3032 Birch Avenue and directing the Town Attorney to obtain a title search to enable notification of all necessary parties to the proceeding. (Risman)

Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

2. Resolution to schedule and hold a public hearing before the Town Board on June 20, 2023 at 6:30 p.m. to determine whether the structure at 3032 Birch Avenue should be ordered to be repaired, vacated, or demolished pursuant to Chapter 121 of the Town of Niagara Town Code. (Risman)

Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

3. Resolution to call for a Public Hearing on June 20, 2023 at 6:30 pm for the Special Use Permit request of Bret Flory NCARB, agent for Caliber Collision to operate an auto body/paint repair garage facility 2749 Military Road/Tax Map #145.11-2-3.1. (Haseley)

Motion to approve by Councilman Gatto second by Councilman Teixeira.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

4. Resolution to declare a negative declaration on the associated SEQR of the final site plan of Steves Heating at 3001 Military Road, Tax Map # 145.07-4-81. (Haseley)

Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

5. Resolution to approve the Final Site Plan request of Steves Heating at 3001 Military Road, Tax Map # 145.07-4-81. (Haseley)

Motion to approve by Councilman Gatto, second by Councilman Sirianni.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

6. Resolution to approve the second amendment of the lease agreement with T-Mobile Northeast, LLC for use of the Town Water Tower by increasing the rent by \$300 per month due to T-Mobile upgrading its facilities and adding additional antennas, and authorizing the Town Supervisor to sign the lease agreement. Additional revenue to be shared equally with Crescendo Trust pursuant to our existing agreement with Crescendo.(Risman)

Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

7. Resolution to approve Supplement 1 2023 Section 284 agreement to spend Highway Funds for Permanent Road Improvements and Maintenance. Project not to exceed \$159,196.18. (Herman)

Motion to approve by Councilman Carpenter, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

8. Resolution to declare a Negative Declaration on the associated SEQR for the final site plan request of Kristen L. Savard, P.E. of Advanced Design Group, agent to Art Jocoy, Tax Map #145.15-2-3.1. (Haseley)

Motion to approve by Councilman Teixeira, second by Councilman Carpenter.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

9. Resolution to approve the final site plan request of Kristen L. Savard, P.E. of Advanced Design Group, agent to Art Jocoy, Tax Map #145.15-2-3.1. (Haseley)

Motion to approve by Councilman Carpenter, second by Councilman Teixeira.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

10. Resolution to approve the annual special use permit renewal request of:
1. Joseph Casale III for in home occupation 7431 Sunnydale Rd.
 2. Matts Collision 5021 Saunders Settlement Rd.
 3. Austin Auto Sale 3003 Military Road

Motion to approve by Councilman Gatto, second by Councilman Sirianni.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

11. Resolution to declare a negative declaration on the associated SEQR for the Special Use permit and approve the request of a Special Use Permit of Nixon Peabody, agent for Verizon wireless to install and operate a small cell facility Military Road (ROW) adjacent to 2430 Military Road, Tax Map #145.16-1-4.

(Haseley)

Motion to approve by Councilman Teixeira, second by Councilman Carpenter.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

12. Resolution to declare a negative declaration on the associated SEQR for the Special Use permit and approve the request of a Special Use Permit of Nixon Peabody, agent for Verizon wireless to install and operate a small cell facility Military Road (ROW) 3550 Haseley Drive, Tax Map #132.17-2-21

(Haseley)

Motion to approve by Councilman Teixeira, second by Councilman Sirianni.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

13. Resolution to declare a negative declaration on the associated SEQR for the Special Use permit and approve the request of a Special Use Permit of Nixon Peabody, agent for Verizon wireless to install and operate a small cell facility Military Road (ROW) 2730 Military Road, Tax Map # 145.11-1-28

(Haseley)

Motion to approve by Councilman Carpenter second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

14. Resolution to declare a negative declaration on the associated SEQR for the Special Use permit and approve the request of a Special Use Permit of Nixon Peabody, agent for Verizon wireless to install and operate a small cell facility Military Road (ROW) 7730 Packard Road, Tax Map # 145.08-2-23 (Haseley)
Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

15. Resolution to confirm consistency with the existing negative declaration for the minor subdivision and approve the minor subdivision request of Matt Fitzgerald of Phillips Lytle LLP, agent for JB2 Partners LLC, on behalf of Gotham Homes 18, LLC, Tax Map # 146.01-1-9.
(Haseley)

Motion to approve by Councilman Teixeira, second by Councilman Sirianni.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

16. Resolution to post and hire one part time employee for summer help for the Highway Dept. from June 5th, to August 27th, 2023. (Herman)

Motion to approve by Councilman Carpenter second by Councilman Teixeira.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

17. Town Board approval request to hire Roberta Mojeski, part time as the Assessor Clerk from May 1, 2023 until December 31, 2023. Hours are not to exceed 18.75 per week, at a pay rate of \$23.82 per hour. (Wallace)

Motion to approve by Councilman Teixeira, second by Councilman Carpenter.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

18. Resolution to post and hire 1 water and 1 sewer seasonal employee to work for the water and sewer department starting June 5, 2023 for a period of 12 weeks. Both positions are in the 2023 budget. (Beiter)

Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

19. Resolution to accept the 20th Annual Town of Niagara SWPP Report for the year ending on March 31, 2023 authorizing the require Town dignitaries to sign the Document and once duly signed file the report with the proper State agencies. (Haseley)

Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

20. Resolution to schedule a public hearing on June 20, 2023 at 6:30 p.m. to consider proposed Town of Niagara Local Law No. 2023-2 establishing a six-month moratorium on Applications, Approvals, and/or Construction and/or Installation of Solar and Wind Energy Systems and/or Solar and/or Wind Farms and/or Solar and Wind Energy Storage Systems in the Town of Niagara and directing the Town Clerk to publish all required notices for such public hearing.

Motion to approve by Councilman Sirianni second by Councilman Gatto.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

21. Resolution to increase the hourly rate for the following recreation department positions effective Wednesday, May 24, 2023.

Summer Recreation Rec Leaders: From \$16.00/hr to \$16.50/hr.

Austin Sauer/Senior Recreation Leader: From \$17.00/hr to \$19.00/hr.

Motion to approve by Councilman Teixeira, second by Councilman Gatto.

Ayes – Wallace, Teixeira, Gatto, Carpenter

Noes – Sirianni

Abstain – none

Motion carried.

22. Resolution to approve Mr. Ventry’s 10051 Niagara Falls Blvd as a pre-pay vendor for pizza purchased for the Recreation Dept. concession stand. (Haseley)

Motion to approve by Councilman Carpenter, second by Councilman Teixeira.

Ayes – Wallace, Teixeira, Sirianni, Gatto, Carpenter

Noes – none

Abstain – none

Motion carried.

TABLED

1. Resolution to declare a Negative Declaration on the associated SEQR for the special use permit request of Bret Flory, NCARB agent for Caliber Collision to operate an auto body paint and repair shop at 2749 Military Road, Tax Map # 145.11-2-51. (Haseley)
2. Resolution to approve the special use request of Bret Flory, NCARB agent for Caliber Collision to operate an auto body paint and repair shop at 2749 Military Road, Tax Map # 145.11-2-51. (Haseley)
3. Resolution to accept the 2022 Annual Audit from Drescher and Malecki LL. (Wallace)

COMMENTS

Councilman Gatto reminded everyone be safe, watch for motorcycles.

Town Clerk Virtuoso stated many speeding and not obeying stop sign complaints, officers will be out to enforce. Slow down, obey signs for everyones safety.

Motion to adourn by Councilman Gatto, second by Councilman Teixeira. All in favor. Meeting adourned at 6:45pm.

Respectfully submitted,

Sylvia Virtuoso

Sylvia Virtuoso
Town Clerk

THE MONTHLY AGENDA IS ON THE TOWN WEBSITE

www.townofniagara.com

IN MEMORIAM

Wayne Nottingham

Pamela M. Haag

Shirley Ann Lorenti

Joanne Mitzler

**RESOLUTION
TOWN OF NIAGARA TOWN BOARD**

WHEREAS, Article 16 of the New York Town Law and Section 10 of the Municipal Home Rule Law of the State of New York provides for the adoption and enactment of local laws, and

WHEREAS, the Attorney for the Town has prepared a proposed Local Law to Establish a Six-Month Moratorium on Applications, Approvals, and/or Construction or Installation of Solar and Wind Energy Systems and/or Solar or Wind Farms, and/or Solar or Wind Energy Storage Systems, and

WHEREAS, the Town Board has reviewed the proposed Local Law and the Town of Niagara believes it is in the public interest to consider enacting a Local Law of the year 2023 which reads as follows:

A LOCAL LAW OF THE YEAR 2023 which shall be known and may be cited as the “Town of Niagara Commercial Solar and Wind Energy Moratorium.” The proposed Local Law shall be applicable within the confines of the municipal boundaries of the Town of Niagara.

Chapter 245, Article XVI

Purpose and Intent.

The purpose of this Local Law is to protect the health, safety, and welfare of the residents of the Town of Niagara and to maintain the status quo as to certain solar and wind energy uses, as the present zoning regulations of the Town of Niagara do not adequately address this type of use. This moratorium will temporarily stop the processing of applications for and the issuance of permits, certificates of occupancy, and approvals for certain land uses related to solar and wind energy, included but not limited to, solar and wind farms. The moratorium is for a period of six (6) months, allowing the Town Board to analyze and determine potential appropriate revisions and amendments to the Town of Niagara Zoning Code concerning this use.

Legislative Findings.

The Town of Niagara Town Board hereby finds that without a temporary halt on the processing, permitting, and approval for certain solar and wind land uses there is a potential that such uses could be located in unsuitable areas within the Town and/or on particular lots without adequate dimensional regulations in place. The potential for the unsuitable location of and lack of proper dimensional regulations for such uses would have materially adverse impacts on the Town. The Town Board also finds that time is required to perform the necessary analysis of the potential types of solar and wind energy facilities that could be located in the Town. By maintaining the status quo regarding such uses, the Town Board can provide for the planned orderly growth and development of the Town.

Moratorium Imposed; Applicability.

For a period of six (6) months following the effective date of this Local Law, no application may be processed, and no permits, certificates of occupancy, approvals, variances, denials, determinations or interpretations may be issued or granted for any land uses relating to solar and wind energy, including but not limited to, solar and wind farms.

The term “land uses relating to solar energy” shall be broadly construed to include any facility designed to generate or store electric power to be marketed, sold or used for other than the power demands of the improvements on the property on which such facility is located. Not included within the scope of this moratorium

are solar and wind energy facilities designed to generate electric power solely for the use of the improvements located on the same property. The term “solar or wind farm” shall mean a collection of solar panels or wind turbines covering one-quarter (1/4) acre or more of land that are designed to capture sunlight or wind and transform it into electricity. This definition includes freestanding and ground pole-mounted photovoltaic and parabolic solar installations. This definition does not include photovoltaic panels that are mounted on or affixed to residential dwellings for their use or municipal buildings or existing panels mounted on commercial or industrial buildings.

This Local Law shall be binding on the Town Board, Planning Board, Zoning Board of Appeals, Building Inspector/Code Enforcement Officer, all Town officials and employees, and any applicant or real property owner in the Town desiring to apply for or receive a permit, certificate of occupancy, or approval in the Town of Niagara.

During the period of the moratorium, the Town Board shall endeavor to complete all reasonable and necessary review, study, analysis and, if warranted, revisions to the Town of Niagara Zoning Code. During the period of the moratorium, no applications will be accepted nor permits, certificates of occupancy or approvals issued which would authorize development within the Town for land uses relating to solar and wind energy as described above.

Term.

This moratorium shall be in effect for a period of six (6) consecutive months from its effective date. This term may be extended for a cumulative period of up to an additional six (6) months, if necessary, by resolutions of the Town Board.

Effect on Other Laws.

To the extent that any law, ordinance, rule or regulation, or parts thereof are in conflict with the provisions of this Local Law, including all provisions of Article 16 of the New York State Town Law concerning special use permit, site plan, building permit, and certificate of occupancy procedure and requirements, this Local Law shall control and supersede such law, ordinance, rule, or regulation.

Variance.

An application for a variance from the terms of this moratorium may be submitted, with a \$200 fee, to the Town Clerk. Notwithstanding the provisions of Article 16 of the Town Law and the Zoning Code of the Town of Niagara, such variance requests shall be considered by the Town Board in accordance with the requirements for a use variance.

Severability.

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Effective Date.

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

WHEREAS, pursuant to the Town of Niagara Code and the Municipal Home Rule Law, a public hearing is required on the proposed Local Law;

NOW, THEREFORE, BE IT RESOLVED by the Town Board of the Town of Niagara that:

A public hearing for the proposed Local Law is hereby set for the 20th of June, 2023 at 6:30 p.m.
The Town Clerk is directed to provide notice of the public hearing as required by law.
This resolution is effective immediately.

**Town of Niagara
Local Law No. 2 of 2023**

**A Local Law Establishing a Six Month Moratorium on Applications,
Approvals, and/or Construction or Installation of Solar and Wind Energy Systems
and/or Solar and Wind Farms and/or Solar and Wind Energy Storage Systems**

Be it hereby enacted by the Town Board of the Town of Niagara as follows:

Chapter 245 of the Town of Niagara Town Code, is hereby amended to add a new Article XVI to read in its entirety as follows:

Chapter 245, Article XVI

Purpose and Intent.

The purpose of this Local Law is to protect the health, safety, and welfare of the residents of the Town of Niagara and to maintain the status quo as to certain solar and wind energy uses, as the present zoning regulations of the Town of Niagara do not adequately address this type of use. This moratorium will temporarily stop the processing of applications for and the issuance of permits, certificates of occupancy, and approvals for certain land uses related to solar and wind energy, included but not limited to, solar and wind farms. The moratorium is for a period of six (6) months, allowing the Town Board to analyze and determine potential appropriate revisions and amendments to the Town of Niagara Zoning Code concerning this use.

Legislative Findings.

The Town of Niagara Town Board hereby finds that without a temporary halt on the processing, permitting, and approval for certain solar land uses there is a potential that such uses could be located in unsuitable areas within the Town and/or on particular lots without adequate dimensional regulations in place. The potential for the unsuitable location of and lack of proper regulations for such uses would have materially adverse impacts on the Town. The Town Board also finds that time is required to perform the necessary analysis of the potential types of solar and wind energy facilities that could be located in the Town and where such uses should be located. By maintaining the status quo regarding such uses, the Town Board can provide for the planned orderly growth and development of the Town.

Moratorium Imposed; Applicability.

For a period of six (6) months following the effective date of this Local Law, no application may be processed, and no permits, certificates of occupancy, approvals, variances, denials, determinations or interpretations may be issued or granted for any land uses relating to solar and wind energy, including but not limited to, solar and wind farms.

The phrase “land uses relating to solar and wind energy” shall be broadly construed to include any facility designed to generate or store electric power to be marketed, sold or used for other than the power demands of the improvements on the property on which such facility is located. Not included within the scope of this moratorium are solar and wind energy facilities designed to generate electric power solely for the use of the improvements located on the same property. The term “solar and/or wind farm” shall mean a collection of solar panels and/or wind turbines covering one-quarter (1/4) acre or more of land that are designed to capture sunlight and wind and transform it into electricity. This definition includes freestanding and ground pole-mounted photovoltaic and parabolic solar installations. This definition does not include photovoltaic panels that are mounted on or affixed to residential dwellings for their use or municipal buildings or existing panels mounted on commercial or industrial buildings.

This Local Law shall be binding on the Town Board, Planning Board, Zoning Board of Appeals, Building Inspector/Code Enforcement Officer, all Town officials and employees, and any applicant or real property owner in the Town desiring to apply for or receive a permit, certificate of occupancy, or approval in the Town of Niagara.

During the period of the moratorium, the Town Board shall endeavor to complete all reasonable and necessary review, study, analysis and, if warranted, revisions to the Town of Niagara Zoning Code. During the period of the moratorium, no applications will be accepted nor permits, certificates of occupancy or approvals issued which would authorize development within the Town for land uses relating to solar and wind energy as described above.

Term.

This moratorium shall be in effect for a period of six (6) consecutive months from its effective date. This term may be extended for a cumulative period of up to an additional six (6) months, if necessary, by resolutions of the Town Board.

Effect on Other Laws.

To the extent that any law, ordinance, rule or regulation, or parts thereof are in conflict with the provisions of this Local Law, including all provisions of Article 16 of the New York State Town Law concerning special use permit, site plan, building permit, and certificate of occupancy procedure and requirements, this Local Law shall control and supersede such law, ordinance, rule, or regulation.

Variance.

An application for a variance from the terms of this moratorium may be submitted, with a \$200 fee, to the Town Clerk. Notwithstanding the provisions of Article 16 of the Town Law and the Zoning Code of the Town of Niagara, such variance requests shall be considered by the Town Board in accordance with the requirements for a use variance.

Severability.

Should any provision of this Local Law be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of this Local Law as a whole or any part thereof other than the part so decided to be unconstitutional or invalid.

Effective Date.

This Local Law shall be effective upon its filing with the Secretary of State in accordance with the Municipal Home Rule Law.

RESOLUTION OF THE TOWN OF NIAGARA TOWN BOARD CONCERNING MINOR SUBDIVISION APPLICATION FOR PROJECT FIFI

WHEREAS, JB2 Partners, LLC ("**Applicant**") proposes construction and operation of an approximately 3,075,950 square foot e-commerce storage and distribution facility for consumer products ("**Facility**" or "**Project**") on an approximately 216 acre site located at 8995 Lockport Road (Tax Map #-146.01-1-9) ("**Site**") in the Town of Niagara, New York; and

WHEREAS, the Site is owned by Gotham Homes 18, LLC ("**Owner**"), which has authorized the Applicant to file all applications necessary for the development, construction and operation of the Project as well as for the subdivision of any portion of the Site; and

WHEREAS, the Site is a New York State Empire State Development certified "Shovel-Ready" property located in the HI - Heavy Industrial District, which authorizes a storage and distribution facility as a permitted use as well as freight forwarding, long-distance trucking terminals and distribution facilities;

WHEREAS, in connection with the Project, on February 15, 2022 Applicant submitted an application to the Town Board of the Town of Niagara ("**Town Board**"), Town of Niagara Zoning Board of Appeals ("**ZBA**"), and Town of Niagara Planning Board ("**Planning Board**") to request Site Plan approval and resubdivision/lot consolidation in accordance with Town of Niagara Code ("**Code**") § 245 Appendix B and 135-126/132, and area variances in accordance with Code § 245 Appendix B(2)(B)(2), 245-33(D), 204-5(B)(2); § 204-5(C)(1), 204-5(C)(3)(a); and § 204-5(B)(1) (collectively with the supplemental materials submitted on April 12 and June 2, 2022, the "**Site Plan and Lot Consolidation Application**") requesting approval of a Facility that includes 55 loading docks, 415 trailer parking stalls (469 total trailer locations), and 1,755 car parking stalls (including 16 motorcycle parking spaces), two water tanks, two guard buildings, stormwater management basins and improvements, accessory site driveways, lighting, landscaping, signage, and other related improvements, and will employ approximately 1,000 people;

and

WHEREAS, at a public meeting held on June 7, 2022 the Town Planning Board recommended approval of the Site Plan and Lot Consolidation Application to the Town Board and ZBA, including recommendation that the Town Board issue a negative declaration for the Project pursuant to the State Environmental Quality Review Act (“SEQRA”); and

WHEREAS, by resolution dated June 21, 2022 the Town Board as lead agency in a coordinated review issued a negative declaration pursuant to SEQRA for the Project (“**Negative Declaration**”), thereafter on July 12, 2022 the ZBA approved all requested variances for the Project, and on July 19, 2022 the Town Board approved the Site Plan and Lot Consolidation Application (“**Project Approval**”); and

WHEREAS, in connection with the Project on April 18, 2023 the Applicant submitted a further application to the Town Board for a minor resubdivision to divide an approximately 15.45 acre portion of the Site into a separate tax parcel pursuant to Code Article VIII (“**Minor Subdivision Application**”), which included a survey and proposed legal description for two proposed lots consisting of a new approximately 15.45 acre lot (“**Lot R-1B**”) and the proposed approximately 201 acre remainder of the Site (“**Lot R-1A**”) (together lots Lot R-1B and Lot R-1A are the “**Lots**”); and

WHEREAS, as detailed in the Minor Subdivision Application, the Owner is engaged in discussions with certain federal agencies regarding the possible future development of Lot R-1B; and

WHEREAS, the Minor Subdivision Application is necessary to complete the Project and the proposed Lots will not result in changes or impairments to the Project as approved by the Project Approval, and all potential environmental impacts from development at the Site have been fully assessed for the Project consistent with the Negative Declaration, and the Lot R-1B was never a part of Project-related improvements nor critical to Facility design, and accordingly the Negative Declaration issued by the Town Board is conclusive of the environmental review for the Project such that no further SEQRA review is necessary for the Minor Subdivision Application; and;

WHEREAS, to the extent necessary: (i) a segmented review of the Minor Subdivision Application is warranted as there is a lack of details available about the possible future action on Lot R-1B, including timeline for any federal project, and even determining whether any action will occur is speculative, and (ii) a segmented review is no less protective of the environment because the Town or other involved agency will conduct a separate review for any prospective future action if and when such action is proposed; and

WHEREAS, on April 18, 2023, the Town Building Inspector provided the Planning Board with a memorandum (“**BI Memo**”) confirming that “the original parcel and the newly created parcel will continue to be code compliant” and that the Lots are “consistent with all applicable lot requirements listed in the Town of Niagara Zoning ordinance and other applicable code sections found elsewhere in the Town of Niagara Code;” and

WHEREAS, the Minor Subdivision Application is appropriately classified as a minor subdivision pursuant to Code § 135-131; and

WHEREAS, pursuant to Code § 135-123 prior to any final decision on a minor subdivision application the Planning Board is authorized to review and recommend to the Town Board approval, approval with modification, or disapproval of such subdivision request in accordance with the standards in Article VIII; and

WHEREAS, at a public meeting held on May 3, 2023 the Town Planning Board classified the

minor subdivision pursuant to Code § 135-131 as a minor subdivision and recommended approval of the Minor Subdivision Application to the Town Board; and

WHEREAS, a thorough analysis of the Minor Subdivision Application demonstrates that it is consistent with the Code's minor resubdivision standards in Article VIII.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE TOWN BOARD OF THE TOWN OF NIAGARA AS FOLLOWS:

Section 1. The Minor Subdivision Application is classified as a minor subdivision pursuant to Code § 135-131(B)(2) as Applicant proposes the division of a single lot into two lots, on existing streets serviced by existing municipal facilities along Lockport Road & Tuscarora Road.

Section 2. The Project now requires a minor subdivision approval from the Town Board, with a recommendation from the Planning Board, based on the Code standards found in Code § 135-140 and 135-141. Based upon a thorough review and examination of the Project and the Minor Subdivision Application, the Town Board makes the following findings with respect to the criteria for minor subdivision:

A. Character of land. Land to be subdivided shall be of such character that it can be used safely for building purposes without danger to health or peril from fire, flood or other menace.

Lot R1-A's approximately 201 acres are suitable for the Project and the reduction in acreage from the division of Lot R1-B from the Site does not impact Project related improvements as approved by the Town. The Lots can be used safely for building purposes, including construction of the Facility on Lot R1-A, without danger to health or peril from fire, flood, or other menace.

B. Conformity of Official Map and Master Plan. Subdivisions shall conform to the Official Map of the Town and shall be in harmony with the Comprehensive Master Plan.

As detailed in the Town Board's Project Approval, the Town acknowledged the suitability of the Site for the Project and that the Project conforms to the Town's Official Map as well as the Comprehensive Plan. Based on the Town Board's review of the Minor Subdivision Application, the proposed Lot R1-A is suitable for the Project as approved, and Lot R1-B is a suitable separate lot for future prospective development that will not impair Project related improvements. Thus, the Minor Subdivision Application conforms with the Town's Official Map as well as the Comprehensive Plan

C. Specifications for required improvements. All required improvements shall be constructed or installed to conform to the Town specifications, which may be obtained from the Town Building Department.

As shown in the Project's site plans as approved in the Project Approval and as detailed in the Town Building Inspector's April 13, 2022, memorandum regarding the Project, the Applicant proposes to construct all improvements to conform to the Town's specifications. Based upon the Town Board's review of the Minor Subdivision Application as well as the BI Memo, the proposed Lot R-1A is sufficient to accommodate the Project as approved and without impairment from the division of Lot R-1B. The Project situated upon Lot R-1A would remain in compliance with setback regulations in the Code, be sufficiently buffered, and the requested variances approved in the Project Approval are not exacerbated by the proposed subdivision. Lot R-1B's 15.45 acres are a sufficient location for future development there to be in conformity with Town specifications. Accordingly, the Minor Subdivision Application provides for conformity with Town Specifications.

D. Stormwater management. Subdivisions that are subject to the requirements of Article XIV of Chapter 245, Zoning, of the Town Code, shall comply with the performance and design criteria and standards set forth in such article, in order to minimize stormwater runoff pollution, flooding, and erosion.

As detailed in the Site Plan and Lot Consolidation Application, the Applicant prepared a SWPPP for the Project, which was thoroughly reviewed and approved consistent with the Project Approval. The SWPPP complies with the performance and design criteria and standards set forth in the Code and the New York State Stormwater Management Design Manual. The Town Board reviewed the Lots as proposed in the Minor Subdivision Application and finds that Project related improvements including the SWPPP would not be impaired by the Minor Subdivision Application.

A. Lots to be buildable. The lot arrangement shall be such that, in constructing a building in compliance with the Zoning Law, there will be no foreseeable difficulties for reasons of topography or other natural conditions. Lots should not be of such depth as to encourage the later creation of a second building lot at the front or rear.

As shown on the survey and legal description of the Lots as submitted in support of the Minor Subdivision Application, the subdivision would not impact the constructability of the Project. The Site is certified Build-Now NY Shovel Ready and the Lots as proposed in the Minor Subdivision Application are both suitable for building and development in conformity with the Code. The Town Board has considered the Lots as proposed and has not identified foreseeable difficulties for reasons of topography or other natural conditions upon the Lots.

B. Side lines. All side lines of lots shall be at right angles to straight street lines and radial to curved street lines, unless a variance from this rule will give a better street or lot plan.

The side lines of the Lots as described in the survey and legal description submitted by the Applicant in support of the Minor Subdivision Application are at right angles to straight streets with the exception of the northern lot line of Lot R-1B and the Town Board finds that such layout as proposed provides a desirable lot plan.

C. Corner lots. In general, corner lots should be larger than interior lots to provide for proper building setback from each street and provide a desirable building site.

As depicted in the survey and legal description submitted in support of the Minor Subdivision Application, the Lots as proposed do not create corner lots and each Lot provides a desirable building site that provides for proper setbacks from each street.

D. Driveway access. Driveway grades between the street and the setback line shall not exceed 10%.

The Project as approved features access drives with grades between the street and setback line that do not exceed 10%, and the Minor Subdivision Application does not impact those Project related improvements. Accordingly, the Minor Subdivision Application provides for sufficient driveway access to the Lots.

E. Access from private streets. Access from private streets shall be deemed acceptable only if such streets are designed and improved in accordance with these regulations.

The Lots as proposed in the Minor Subdivision Application each connect directly to public rights of way and do not rely upon private streets for access.

F. Monuments and lot corner markers. Permanent monuments meeting specifications approved by the Town Engineer as to size, type and installation shall be set at such block corners, angle points, points of

curves in streets and other points as the Town Engineer may require, and their location shall be shown on the final subdivision plat.

The Applicant has confirmed that, to the extent necessary, the Applicant shall install such monuments as required by the Town Engineer.

Section 3. Based upon the Town Board's review of the Minor Subdivision Application, the Project is consistent with the minor subdivision standards set forth in the Code, and further the Planning Board recommended approval of the Minor Subdivision Application pursuant to Code § 135-123

Section 4. Since the Minor Subdivision Application is consistent with the minor subdivision standards set forth in the Code, the Town Board hereby approves the Minor Subdivision Application.

Section 5. Town staff are hereby further authorized on behalf of the Town Board, 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, which is adopted by a majority vote of the Town Board, shall serve as the Town Board's approval with respect to the Minor Subdivision Application for the Project, and is issued by the Town Board pursuant to and in accordance with the Code, and shall take effect immediately.