

RESOLUTION

A recessed meeting of the County of Sullivan Industrial Development Agency ("Agency") was convened on February 24, 2022 at 12:00 p.m. local time via videoconference as authorized by Chapter 417 of the Laws of 2021, which took effect on September 2, 2021 and was amended effective January 14, 2022 and further amended effective February 14, 2022.

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

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[✓]	[]
Edward T. Sykes	[✓]	[]
Carol Roig	[✓]	[]
Howard Siegel	[✓]	[]
Scott Smith	[✓]	[]
Paul Guenther	[✓]	[]
Sean Brooks	[]	[✓]

The following persons were also present:

Jennifer M. Flad, Executive Director
John W. Kiefer, Chief Executive Officer
Julio Garaicoechea, Project Manager
Walter F. Garigliano, Agency General Counsel

The following resolution was duly offered by Howard Siegel, and seconded by Paul Guenther, to wit:

Resolution No. 08 - 22

***RESOLUTION OF THE AGENCY AMENDING AND SUPERCEDING
RESOLUTION NO. 04-22 AUTHORIZING A STRAIGHT LEASE
TRANSACTION BETWEEN THE AGENCY AND THE SUNSET LAKE
LOCAL DEVELOPMENT CORPORATION AND EXECUTION OF A
PAYMENT IN LIEU OF TAX AGREEMENT ("PILOT AGREEMENT") AND
RELATED DOCUMENTS WITH RESPECT TO THE COUNTY OF
SULLIVAN ADULT CARE CENTER***

WHEREAS, the Agency adopted Resolution No. 04-22 at its February 14, 2022 meeting and intend these resolutions to amend and supercede Resolution No. 04-22; and

WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York ("State"), as amended, and Chapter 560 of the Laws of 1970 of the State, as amended and

codified as Section 960 of the General Municipal Law (collectively, the "Act"), the Agency was created with the authority and power to own, lease and sell property as authorized by the Act; and

WHEREAS, on January 24, 2022, Sunset Lake Local Development Corporation, a New York Not-for-Profit Corporation (the "Company"), submitted an application to the Agency (the "Application"), a copy of which Application is on file at the office of the Agency, requesting that the Agency consider undertaking a project (the "Project") for the benefit of the Company, said Project consisting of the following: (A) the acquisition of an interest in a fifty (50.00) acre parcel of land depicted on the Town of Liberty Tax Map as Section 23, Block 1, Lot 126.6 ("Land") improved by the 146 bed County of Sullivan Adult Care Center ("ACC" and together with the Land, the "Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the Act) with respect to making provision for a fixed amount payment in lieu of real property taxes; and (C) the lease of the Agency's interest in the Facility back to the Company or such other entity as may be designated by the Company and agreed upon by the Agency and

WHEREAS, the Agency established a procedure for deviation from its Uniform Tax Exemption Policy ("UTEP") as required by GML §874(4)(b); and

WHEREAS, the Application requested the Agency to deviate from its UTEP since the UTEP has no provision for a fixed amount payment in lieu of real property taxes and the overall term of the PILOT proposed by the Company would exceed twenty (20) years; and

WHEREAS, on January 24, 2022 by resolution #03-22 the Agency authorized and directed the Executive Director of the Agency to send a letter to the Affected Taxing Jurisdictions informing them of the proposed deviation from the Agency's UTEP; and

WHEREAS, by letter dated January 25, 2022 (the "UTEP Deviation Notice"), Jennifer Flad, the Agency's Executive Director, notified the Affected Taxing Jurisdictions of the proposed deviation from the Agency's UTEP including the reasons for the deviation by hand delivering the UTEP Deviation Notice to:

Joshua Potosek, County Manager
County of Sullivan ("County")

Robert A. Doherty, Chairman
Sullivan County Legislature

and by mailing the UTEP Deviation Notice to:

Frank DeMayo, Supervisor
Town of Liberty ("Town")

Dr. Patrick Sullivan, Superintendent
Liberty Central School District
("School District")

John L. Nichols, President
Board of Education

; and

WHEREAS, it is contemplated that the Agency will (i) enter into a straight lease transaction with the Company; (ii) negotiate and enter into a PILOT Agreement with the Company pursuant to which the Company shall make a fixed amount payment in lieu of real property taxes; (iii) hold a leasehold interest in the Facility; and (iv) sublease the Agency's leasehold interest back to the Company; and

WHEREAS, the total financial assistance being contemplated by the Agency is less than ONE HUNDRED THOUSAND and 00/100 (\$100,000.00) Dollars and therefore the proposed action was not subject to a public hearing; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law and the regulations adopted pursuant thereto by the Department of Environmental Conservation of the State of New York ("SEQR"), the Agency constitutes a "State Agency"; and

WHEREAS, the action involves no construction activity or physical changes to the Land and the Agency has determined that the Project is a Type II Action under SEQR; and

WHEREAS, the Agency has considered all of the factors set forth in Section 203 of the Agency's UTEP which are applicable to the deviation request and in addition has analyzed each of the following matters when considering the deviation request:

- A. Permanent private sector job retention;
- B. Estimated value of the future PILOT payments compared to future real estate taxes;
- C. The benefit to the Company and taxing jurisdictions of resolving the dispute over the Project's entitlement to an exemption;
- D. The amount of private sector investment generated or likely to be generated by the Project if and when transferred by the Company to a private operator;
- F. Support of the Application by the County and Town;
- G. Extent to which the Project will serve the public purposes of the Act by preserving permanent jobs in the State;

; and

WHEREAS, the Agency has obtained an independent analysis of the benefits and costs associated with the arrangement contemplated by the Application; and

WHEREAS, by letter dated January 27, 2022, Shepstone Management Company, Inc. has issued its opinion and concluded that benefits of approving the Application are greater than the cost associated therewith; and

WHEREAS, the County and Town have each supported the proposed deviation; and

WHEREAS, by letter dated February 10, 2022, the School District objected to the proposed deviation; and

WHEREAS, by letter dated February 23, 2022, the School District withdrew its objection and indicated "the School District has no further objection to the proposed deviation"; and

WHEREAS, the Executive Director has negotiated a Lease to Agency, Leaseback to Company and the PILOT Agreement with the Company ("Transaction Documents"); and

WHEREAS, the Transaction Documents have been drafted by Agency counsel.

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF THE AGENCY AS FOLLOWS:

Section 1. The Company has presented to the Agency, among other things, an Application in form acceptable to the Agency.

Section 2. Based upon the representations made by the Company to the Agency, the Agency hereby determines that the Project is a Type II under the SEQR.

Section 3. The Agency has determined that the proposed financial assistance is less than ONE HUNDRED THOUSAND and 00/100 (\$100,000.00) Dollars and therefore was not subject to a public hearing.

Section 4. In considering the deviation request from the Agency's UTEP, the Agency has considered each of the following sections of the Agency's UTEP:

"203(a) Permanent private sector job creation and retention, and business retention. The Agency will consider the number of permanent jobs created or retained in the private sector and also business retention when it considers approval of a project."

Agency Finding: The prospects of the ACC being effectively transitioned to operation by a private operator result in jobs being retained at the Facility.

"203(b) Estimated value of the tax exemption. The Agency will consider the value of all the tax exemptions when it considers approval of a project."

Agency Finding: The tax exemption will be a one hundred (100%) percent exemption; provided, however, that the fixed amount PILOT Payment for the first year of the PILOT Agreement term will be approximately equal to what taxes were for the immediately prior tax periods. The PILOT Payments increasing at two (2%) percent per year are likely to exceed what real estate taxes would be if the Agency was not involved in the Project over the term unless the assessed value of the Facility is reduced.

"203(c) Whether the affected tax jurisdiction shall be reimbursed by project occupant if the project does not fulfill the purposes for which exemption was

granted. The Agency will consider the recapture of tax exemptions granted in appropriate cases. The Agency will require reduction or revocation of any tax exemption granted or increase in or cancellation of any PILOT payment where the use of a project is substantially changed or abandoned or agreed upon goals are not satisfied because of the fault of the project occupant.”

Agency Finding: The purpose for which the exemption is granted is to resolve a dispute over the taxable status of the Facility. While a dispute remains an issue for taxes paid on account of the removal of the exemption on the 2021 Assessment Roll, the Agency’s exempt status will effectively resolve that dispute for the remainder of the period when the Facility is owned by the Company and operated under the authority of the County’s Certificate of Need (“CON”). Accordingly, recapture of tax exemptions is not applicable under these circumstances.

“203(d) Impact of project on existing and proposed business or economic development projects. The Agency will consider the needs of the community and the impact on existing and proposed businesses or economic development projects when it considers approval of a project for the particular area where the project is located.”

Agency Finding: The determination of the need for the Facility was made by the New York State Department of Health (“DOH”) when the CON was issued to the County. It is the responsibility of DOH to determine local health care needs. Assuming a need for the Facility continues, the Agency’s assistance in resolving the dispute over the exemption status will have a positive impact on the business of operating the Facility. Resolving the dispute by providing for a fixed amount PILOT Payment will also bring more certainty to municipal budgeting than the “all or nothing” outcome of a final determination of taxable status of the Facility.

“203(e) The amount of private sector investment generated or likely to be generated by the proposed project. The Agency will consider and favor projects which are likely to generate substantial private investment in the project and in related businesses in the area where the project is located.”

Agency Finding: Sunset Lake Consulting, LLC (“Consultant”) has agreed to make a considerable capital investment in needed upgrades at the Facility.

“203(f) Demonstrated public support for the proposed project. The Agency will consider the needs of the community and the demonstrated support for the proposed project by the public, government agencies and private organizations when it

considers approval of a project. The Agency will accommodate in its consideration of an application for financial assistance those industries that apply for financial assistance and desire to locate in areas which are evidenced by high unemployment, high commercial real estate vacancies or other adverse economic conditions, or are industries which fulfill a need of such community or location.”

Agency Finding: The operation of the Facility as a skilled nursing facility fulfills a critical healthcare need of the community. The Town and County have supported the deviation request by the Company. The Agency is mindful of the School District’s opposition to the deviation but believes the overall public interest is supported by approval of the Company’s application.

“203(g) Likelihood of accomplishing the proposed project in a timely fashion. The Agency will consider the capital available to a project occupant and the ability of the project occupant to complete the project in a timely fashion.”

Agency Finding: The Facility has operated at this location since 1978. Accomplishing the proposed Project is, therefore, not relevant to this deviation request.

“203(h) Environmental impact. The Agency shall comply with all applicable laws related to determining the impact of a proposed project on the environment.”

Agency Finding: The Application relates to a Facility constructed more than forty-three (43) years ago. The Application to which the deviation relates involves no construction activity or physical changes to the Land and is a Type II action under SEQRA.

“203(i) Extent to which the proposed project will require additional services including but not limited to educational, police, transportation, EMS, and fire. The Agency will consider the impact of the project on community services and may require payment of other taxes, fees and charges where a project will require such additional services arising from such project.”

Agency Finding: The Application and deviation will have no impact on the level of necessary community services.

“203(j) Extent to which proposed project will provide additional revenues. The Agency shall consider the size of the project and the revenues otherwise paid to the Agency or any other agency or organization.”

Agency Finding: The Facility prior to the tax rolls governed by the 2021 assessment roll paid no ad valorem real estate taxes. The Facility was exempt from taxation under Real Property Tax Law §406. If an exemption is granted or obtained by the Company, no ad valorem real estate taxes will be paid for the period of Company ownership and operation under the County's CON. The fixed amount PILOT Payment provides a predictable revenue stream from the Project.

"203(k) A Cost Benefit Analysis. To be submitted by the applicant, the Agency shall consider an overall analysis of the costs and benefits of the proposed project as it affects the effected taxing jurisdictions."

Agency Finding: An independent cost/benefit analysis was prepared by Shepstone Management Company, Inc. and was considered by the Agency in deciding on the application and deviation request.

Section 5. Based upon representations made by the Company to the Agency, the Agency hereby makes, finds and determines as follows:

- (A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act;
- (B) It is desirable and in the public interest for the Agency to (i) acquire a leasehold interest in the Land and improvements constituting the Project; (ii) lease the Land and improvements constituting the Project back to the Company pursuant to the Lease and subject to the Leaseback; and (iii) enter into a PILOT Agreement with a fixed amount payment in lieu of real estate taxes of THREE HUNDRED FIFTY THOUSAND and 00/100 (\$350,000.00) Dollars due January 1, 2023, with the amount of the PILOT payment increasing two (2%) percent annually;
- (C) The Agency has the authority to take the actions contemplated therein under the Act; and
- (D) The action to be taken by the Agency will assist with resolution of a dispute as to the taxable status of the Project.

Section 6. The Transaction Documents which were negotiated by the Executive Director, are hereby approved as to form and substance on condition that: (i) the payments under the Leaseback include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) while the terms of the PILOT Agreements are not consistent with the Agency's Uniform Tax Exemption Policy a deviation therefrom has been approved by the Agency.

Section 7. The Chairperson, Executive Director or Chief Executive Officer of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Transaction Documents in the form presented at this meeting all with such changes, variations, omissions and insertions as the Chairperson, Executive Director or Chief Executive Officer of the Agency shall approve, the execution thereof by the Chairperson, Executive Director or Chief Executive Officer of the Agency to constitute conclusive evidence of such approval.

Section 8. The officers, employees and agents of the Agency are hereby authorized and directed in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of this resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Section 9. It is hereby found and determined that all formal actions of the Agency concerning and relating to the adoption of this resolution were adopted in an open meeting of the Agency; and that all deliberations of the Agency and of any of its committees that resulted in such formal action were in meetings open to the public, in compliance with all legal requirements.

Section 10. The Executive Director, Chief Executive Officer or Counsel to the Agency is hereby authorized and directed (i) to distribute copies of this resolution to the Company; and (ii) to do such further things or perform such acts as may be necessary or convenient to implement the provisions of this resolution.

Section 11. 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:

Suzanne Loughlin	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Edward T. Sykes	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Carol Roig	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Howard Siegel	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Scott Smith	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Paul Guenther	<input checked="" type="checkbox"/> Yes	<input type="checkbox"/> No	<input type="checkbox"/> Absent	<input type="checkbox"/> Abstain
Sean Brooks	<input type="checkbox"/> Yes	<input type="checkbox"/> No	<input checked="" type="checkbox"/> Absent	<input type="checkbox"/> Abstain

The resolution was thereupon duly adopted.

STATE OF NEW YORK :
:SS
COUNTY OF SULLIVAN :

I, the undersigned Secretary of the Agency DO HEREBY CERTIFY THAT:

1. I have compared the foregoing copy of a resolution of the Agency with the original thereof on file in the office of the Agency, and that the same is a true and correct copy of such resolution and of the proceedings of the Agency in connection with such matter.
2. Such resolution was passed at a meeting of the Agency duly convened via videoconference on February 24, 2022 at 12:00 p.m. at which the following members were present:

	<u>PRESENT</u>	<u>ABSENT</u>
Suzanne Loughlin	[<input checked="" type="checkbox"/>]	[]
Edward T. Sykes	[<input checked="" type="checkbox"/>]	[]
Carol Roig	[<input checked="" type="checkbox"/>]	[]
Howard Siegel	[<input checked="" type="checkbox"/>]	[]
Scott Smith	[<input checked="" type="checkbox"/>]	[]
Paul Guenther	[<input checked="" type="checkbox"/>]	[]
Sean Brooks	[]	[<input checked="" type="checkbox"/>]

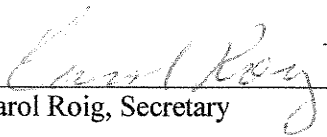
3. The question of the adoption of the foregoing resolution was duly put to a vote on roll call which resulted as follows:

Suzanne Loughlin	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Edward T. Sykes	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Carol Roig	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Howard Siegel	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Scott Smith	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Paul Guenther	[<input checked="" type="checkbox"/>] Yes	[] No	[] Absent	[] Abstain
Sean Brooks	[] Yes	[] No	[<input checked="" type="checkbox"/>] Absent	[] Abstain

and therefore, the resolution was declared duly adopted.

I FURTHER CERTIFY that (i) all members of the Agency had due notice of said meeting, (ii) pursuant to Sections 103(a) and (c) and 104 of the Public Officers Law (Open Meetings Law), said meeting was open to the general public via videoconference and public notice of the time and place of said meeting was duly given in accordance with such Sections 103(a) and (c) and 104, (iii) the meeting in all respects was duly held via videoconference as authorized by Chapter 417 of the Laws of 2021, and (iv) there was a quorum present throughout.

IN WITNESS WHEREOF, I have hereunto set my hand and seal on the 24th day of February, 2022.



Carol Roig, Secretary