

**SUPREME COURT OF THE STATE OF NEW YORK
APPELLATE DIVISION: FOURTH DEPARTMENT**

**BOWERS DEVELOPMENT, LLC and ROME
PLUMBING & HEATING SUPPLY CO. INC.,**

Petitioners,

-against-

**ONEIDA COUNTY INDUSTRIAL DEVELOPMENT
AGENCY and CENTRAL UTICA BUILDING, LLC,**

Respondents.

**REPLY
AFFIRMATION OF
LAURA L. SPRING, ESQ.**

Case No.: OP 22-00744

Laura L. Spring, Esq., hereby affirms under penalty of perjury and pursuant to CPLR 2106:

1. I am an attorney duly admitted to practice in the State of New York and a member of Cohen Compagni Beckman Appler & Knoll, PLLC, attorneys for Central Utica Building, LLC ("CUB"), one of the Respondents in this matter.

2. I submit this Affirmation in Reply to Petitioner's Opposition dated February 7, 2023 to the joint motion of CUB and Oneida County Industrial Development Agency ("OCIDA") for an order granting reargument of and/or leave to appeal to the Court of Appeals from this Court's Memorandum and Order dated December 23, 2022 ("Order").

3. CUB submits this Reply Affirmation and incorporates by reference herein the arguments and supporting case law set forth in the Reply Affirmation of Paul J. Goldman dated February 10, 2023, the attorney for OCIDA.

4. It is respectfully submitted that this Court grant Respondents' motion for leave to reargue and/or leave to appeal to the Court of Appeals because the majority of this Court overlooked and misapprehended the controlling law in this matter.

5. Simply put, it is undisputed that the subject property in this matter is a public parking lot to be used by a private medical office building whose tenants are commercial enterprises. This Court has held that a private medical building is a "commercial enterprise". See *Matter of Genesee Hosp. v. Wagner*, 47 A.D. 2d 37, 46 (4th Dept. 1975), *affirmed* 39 N.Y. 2d 863 (1976). Therefore, OCIDA has the requisite authority to acquire the property under General Municipal Law and further, this Court should give deference to that authority so long as it is reasonable. See *Matter of Nearpass v. Seneca County Indus, Dev. Agency*, 152 A.D. 3d 1192, 1193 (4th Dept. 2017).

6. Moreover, Petitioners fail to meet their burden to establish that OCIDA's determination was baseless and without foundation. *Matter of Butler v. Onondaga County Legislature*, 39 A.D. 3d 1271 (4th Dept. 2007). In effect, the majority has redefined the parking lot as a "project related to a hospital or healthcare facility" which it is not. The case law supports that an agency can acquire a parking lot through eminent domain as a commercial use under GML § 858 (4), and therefore, OCIDA's determination here was not baseless and reasonable.

7. Finally, it is important that this Court review the holding in this matter. This is a matter of utmost importance for an IDA to be able to exercise their corporate powers by relying on the standard embodied in *Nearpass* in order to assist in a larger economic vision for this community.

WHEREFORE, CUB requests an Order granting the Respondents' motion for leave to reargue and/or leave to appeal to the Court of Appeals from the December 23, 2022 Order of this

Court pursuant to CPLR 2221, Rule 1250.16(d) and CPLR 5602(a)(1)(i), together with such other and further relief as may be just and equitable.

Dated: March 6, 2023

**COHEN COMPAGNI BECKMAN
APPLER & KNOLL, PLLC**

By: 

Laura L. Spring, Esq.