APPENDIX

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APPENDIX A

SUPREME COURT, APPELLATE DIVISION,
FOURTH DEPARTMENT, NEW YORK

No. 22-0074, 764/22

IN THE MATTER OF
BOWERS DEVELOPMENT, LLC, ET AL.,

Petitioners,

v.

ONEIDA COUNTY
INDUSTRIAL DEVELOPMENT AGENCY ET AL.,

Respondents.

February 2, 2024

Appeal from the Appellate Division of the
Supreme Court in the Fourth Judicial Department,
New York

Before Curran, Bannister and Montour *Appellate Judges for the Fourth Judicial Department*.

Gerald J. Whalen, *Appellate Judge for the Fourth Judicial Department*:

Proceeding pursuant to Eminent Domain Procedure Law § 207 (initiated in the Appellate Division of the Supreme Court in the Fourth Judicial Department) to annul the determination of respondent Oneida County Industrial Development Agency to condemn certain real property. The determination was annulled and the petition was granted by order of this Court entered December 23, 2022 (211 AD3d 1495 [2022]), and respondents were granted leave to appeal to the Court of Appeals from the order of this Court (214 AD3d 1417 [2023]), and the Court of Appeals on December 14, 2023 reversed the order and remitted the case to this Court for consideration of the issues raised but not determined on the appeal to this Court (40 NY3d 1061 [2023]).

Now, upon remittitur from the Court of Appeals and having considered the issues raised but not determined on the appeal to this Court,

It is hereby ordered that, upon remittitur from the Court of Appeals, the determination is unanimously confirmed without costs and the petition is dismissed.

Memorandum: This case is before us upon remittitur from the Court of Appeals (*Matter of Bowers Dev., LLC v Oneida County Indus. Dev. Agency*, 40 NY3d 1061 [2023], *revg* 211 AD3d 1495 [4th Dept 2022]). We previously annulled the determination of respondent Oneida County Industrial Development Agency (OCIDA) to acquire by eminent domain certain property in the City of Utica. A majority of this Court concluded that, although OCIDA's determination and findings indicated that the property was to be acquired for use as a surface parking lot, the

primary purpose of the acquisition was not a commercial purpose, and thus OCIDA lacked the requisite authority to acquire the property (*Bowers Dev., LLC*, 211 AD3d at 1495-1496; *see* General Municipal Law § 858). The Court of Appeals reversed our order, holding that OCIDA "had a rational basis for concluding that the use of the property was for a 'commercial' purpose," and that "its determination was not 'without foundation' " (*Bowers Dev., LLC*, 40 NY3d at 1064). The Court of Appeals remitted the matter to this Court "for consideration of issues raised but not determined" previously (*id*.).

We reject petitioners' contention that OCIDA's determination should be annulled because OCIDA's financial assistance to the project violated the anti-pirating provisions contained in General Municipal Law § 862 (1). That contention does not fall within the limited scope of this Court's statutory review (*see* EDPL 207 [C]; *see generally Matter of City of New York [Grand Lafayette Props. LLC]*, 6 NY3d 540, 546 [2006]; *Matter of Niagara Falls Redevelopment, LLC v City of Niagara Falls*, 218 AD3d 1306, 1309 [4th Dept 2023], *appeal dismissed* 40 NY3d 1059 [2023]). The proper procedural vehicle for raising such a contention is a proceeding pursuant to CPLR article 78 (*see* CPLR 7803 [3]; *Matter of Dudley v Town Bd. of Town of Prattsburgh*, 59 AD3d 1103, 1104 [4th Dept 2009]).

We also reject petitioners' contention that the acquisition at issue will not serve a public use, benefit or purpose (*see* EDPL 207 [C] [4]). "What qualifies as a public purpose or public use is broadly defined as encompassing virtually any project that may confer

upon the public a benefit, utility, or advantage" (*Matter of Syracuse Univ. v Project Orange Assoc. Servs. Corp.*, 71 AD3d 1432, 1433 [4th Dept 2010], *appeal dismissed & lv denied* 14 NY3d 924 [2010] [internal quotation marks omitted]; *see also Matter of PSC, LLC v City of Albany Indus. Dev. Agency*, 200 AD3d 1282, 1285 [3d Dept 2021], *lv denied* 38 NY3d 909 [2022]). Here, the acquisition of the property will serve the public use of mitigating parking and traffic congestion, notwithstanding the fact that the need for the parking facility is, at least in part, due to the construction of a private medical facility (*see Matter of Truett v Oneida County*, 200 AD3d 1721, 1722 [4th Dept 2021], *lv denied* 38 NY3d 907 [2022]; *see generally* General Municipal Law § 72-j [1]). We therefore conclude that OCIDA's determination to exercise its eminent domain power "is rationally related to a conceivable public purpose" (*Matter of Jackson v New York State Urban Dev. Corp.*, 67 NY2d 400, 425 [1986] [internal quotation marks omitted]).

Petitioners further contend that the determination must be annulled because OCIDA failed to comply with certain provisions of EDPL article 2. Contrary to petitioners' contention, we conclude that OCIDA fulfilled the requirements of EDPL 202 (C) (1) by serving notice of the hearing to the owners of record. Also contrary to petitioners' contention, we conclude that the location of the project was adequately identified for purposes of EDPL 203. On this record, petitioners have not demonstrated a basis, within the limited review identified by EDPL 207, on which to set aside the determination based on noncompliance with EDPL article 2 (*see Matter of Court St. Dev.*

Project, LLC v Utica Urban Renewal Agency, 188 AD3d 1601, 1604 [4th Dept 2020]).

We reject petitioners' contention that OCIDA failed to comply with the requirements of the State Environmental Quality Review Act (SEQRA) by relying on the findings set forth by the designated lead agency for the purposes of SEQRA (*see Truett*, 200 AD3d at 1722). Contrary to petitioners' further contention, OCIDA did not improperly segment its SEQRA review. " 'Segmentation occurs when the environmental review of a single action is broken down into smaller stages or activities, addressed as though they are independent and unrelated,' which is prohibited in order to prevent 'a project with potentially significant environmental effects from being split into two or more smaller projects, each falling below the threshold requiring full-blown review' " (*Court St. Dev. Project, LLC*, 188 AD3d at 1603). Here, OCIDA, as an involved agency for SEQRA purposes, adopted a resolution affirming the lead agency's review of the entire project constituting the action under SEQRA and did not improperly limit its review to only a portion of the project.

Finally, we have considered petitioners' remaining contentions and conclude that none warrants annulment of the determination. Present—Whalen, P.J., Curran, Bannister and Montour, JJ.

APPENDIX B

STATE OF NEW YORK
COURT OF APPEALS

Mo. No. 2024-415

IN THE MATTER OF
BOWERS DEVELOPMENT, LLC ET AL.,

Appellants,

v.

ONEIDA COUNTY
INDUSTRIAL DEVELOPMENT AGENCY ET AL.,

Respondents.

Decided and Entered on the nineteenth day of September, 2024

Present, Hon. Rowan D. Wilson*, Chief Judge, presiding*.

Appellants having moved for leave to appeal to the Court of Appeals in the above cause;

Upon the papers filed and due deliberation, it is ORDERED, that the motion is denied.

/s/ HDavis____

Heather Davis Deputy Clerk of the Court

APPENDIX C

COURT OF APPEALS OF NEW YORK

No. 89

IN THE MATTER OF
BOWERS DEVELOPMENT, LLC ET AL.,

Respondents,

v.

ONEIDA COUNTY
INDUSTRIAL DEVELOPMENT AGENCY ET AL.,

Appellants.

Decided December 14, 2023

Appeal from the Appellate Division of the Supreme Court in the Fourth Judicial Department, New York

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Before Rivera, Garcia, Singas, Troutman and Halligan, *Appellate Judges for the State of New York*

Hon. Rowan D. Wilson, *Appellate Chief Judge for the State of New York*

OPINION OF THE COURT

MEMORANDUM.

The order of the Appellate Division should be reversed, with costs, the matter remitted to the Appellate Division for consideration of issues raised but not determined by that Court, and the certified question answered in the negative.

Respondent Oneida County Industrial Development Agency (OCIDA) exercised its statutory eminent domain powers to condemn a parcel of property owned by petitioner Rome Plumbing & Heating Supply Co., Inc., which was the subject of a contract of sale to petitioner Bowers Development, LLC. Respondent Central Utica Building, LLC (CUB) planned to build a medical office building on an adjoining property and requested that OCIDA exercise its authority to take the property so that CUB could build a parking facility that would serve the medical office building during the day, and the public during off-hours. The medical office building itself would be used predominantly to house private, rent-paying doctors' offices and "other commercial and/or retail tenants to provide complementary services." The remaining portion was to be used as an ambulatory surgery center, also as a paying tenant. OCIDA determined it had the authority to take the property because "the surface parking to be constructed on the ... [p]roperty is a commercial use within OCIDA's statutory authority."

In an EDPL article 2 proceeding for review of the condemnor's section 204 determination,

"[t]he scope of review is very limited—the Appellate Division must 'either confirm or reject the condemnor's determinations and findings,' and its review is confined to whether (1) the proceeding was constitutionally sound; (2) the condemnor had the requisite authority; (3) its determination complied with SEQRA and EDPL article 2; and (4) the acquisition will serve a public use" (*Matter of City of New York [Grand Lafayette Props. LLC],* 6 N.Y.3d 540, 546, 814 N.Y.S.2d 592, 847 N.E.2d 1166 [2006], quoting EDPL 207[C]).

"If an adequate basis for a determination is shown 'and the objector cannot show that the determination was "without foundation," the agency's determination should be confirmed" ' (*Matter of Waldo's, Inc. v. Village of Johnson City,* 74 N.Y.2d 718, 720, 544 N.Y.S.2d 809, 543 N.E.2d 74 [1989], quoting *Matter of Jackson v New York State Urban Dev. Corp.,* 67 N.Y.2d 400, 418, 503 N.Y.S.2d 298, 494 N.E.2d 429 [1986]; *see Long Is. R.R. Co. v. Long Is. Light. Co.,* 103 A.D.2d 156, 168, 479 N.Y.S.2d 355 [2d Dept 1984], *affd* 64 N.Y.2d 1088, 489 N.Y.S.2d 881, 479 N.E.2d 226 [1985]).

General Municipal Law § 858(4) grants industrial development agencies the power to "acquire by purchase, grant, lease, gift, pursuant to the provisions of the [EDPL], or otherwise and to use, real property or rights or easements therein necessary for its corporate purposes." "The purposes of [an industrial development] agency are to promote, develop, encourage[,] and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping[,] and furnishing industrial, manufacturing, warehousing,

commercial, research, renewable energy[,] and recreation facilities" (General Municipal Law § 858). The question here is whether OCIDA appropriately determined that taking the property was necessary for a "commercial" purpose.

As a general matter, a parking facility used by the customers of a profit-making business plainly has a "commercial" purpose. Petitioners nevertheless argue, and the Appellate Division majority held, that the parking facility was not "commercial" because it was for "hospital" or "health-related facility" purposes (*see* 211 A.D.3d 1495, 1496, 181 N.Y.S.3d 412 [2022]; *cf.* 1981 Ops Atty Gen 55; 1980 Ops Atty Gen 139). However, the proposed use of the property as a parking facility was not for such purposes. The proposed parking facility functioned simply to satisfy the need for parking created by the medical office building and provide public parking at night. The proposed use did not serve any healthcare-related function. Moreover, though some paying tenants of the medical office building provided healthcare services, the building itself was an office building with space leased out to paying tenants. Even assuming some of its paying tenants could qualify as "hospitals" or "health-related facilities," this would not negate the commercial nature of the office building as a whole (*see* 211 A.D.3d at 1503, 181 N.Y.S.3d 412 [Curran, J., dissenting]). OCIDA therefore had a rational basis for concluding that the use of the property was for a "commercial" purpose (*see Matter of Kaur v New York State Urban Dev. Corp.,* 15 N.Y.3d 235, 244, 257–259, 907 N.Y.S.2d 122, 933 N.E.2d 721 [2010]; *see also Matter of Goldstein v New York State Urban Dev. Corp.,* 13

N.Y.3d 511, 526, 893 N.Y.S.2d 472, 921 N.E.2d 164 [2009], citing *Kaskel v. Impellitteri,* 306 N.Y. 73, 78, 115 N.E.2d 659 [1953]), and its determination was not "without foundation" (*see Grand Lafayette Props. LLC,* 6 N.Y.3d at 546, 814 N.Y.S.2d 592, 847 N.E.2d 1166).

Given that the Appellate Division did not reach petitioners' other arguments, we remit to that Court to consider those arguments in the first instance (*see J.P. Morgan Sec. Inc. v. Vigilant Ins. Co.,* 37 N.Y.3d 552, 569, 162 N.Y.S.3d 851, 183 N.E.3d 443 [2021]; *Schiavone v. City of New York,* 92 N.Y.2d 308, 317, 680 N.Y.S.2d 445, 703 N.E.2d 256 [1998]).

Chief Judge Wilson and Judges Rivera, Garcia, Singas, Cannataro, Troutman and Halligan concur.

Order reversed, with costs, matter remitted to the Appellate Division, Fourth Department, for consideration of issues raised but not determined by that Court and certified question answered in the negative, in a memorandum.

APPENDIX D

SUPREME COURT, APPELLATE DIVISION,
FOURTH DEPARTMENT, NEW YORK

No. 764

OP 22-00744

IN THE MATTER OF BOWERS DEVELOPMENT, LLC, AND ROME PLUMBING & HEATING SUPPLY CO., INC.,

Petitioners,

v.

ONEIDA COUNTY INDUSTRIAL DEVELOPMENT AGENCY AND CENTRAL UTICA BUILDING, LLC,

Respondents.

Entered: December 23, 2022

Appeal from the Appellate Division of the Supreme Court in the Fourth Judicial Department, New York

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Before Nemoyer, Curran, Bannister and Montour, *Judges for the Appellate Division, Fourth Judicial Department*

Gerald J. Whalen, *Presiding Judge for the Appellate Division, Fourth Judicial Department*

MEMORANDUM AND ORDER

It is hereby ORDERED that the determination is annulled on the law without costs and the petition is granted.

Memorandum: Petitioners commenced this original proceeding pursuant to EDPL 207 seeking to annul the determination of respondent Oneida County Industrial Development Agency (OCIDA) to condemn certain real property by eminent domain. Pursuant to EDPL 207 (C), this Court "shall either confirm or reject the condemnor's determination and findings." Our scope of review is limited to "whether (1) the proceeding was constitutionally sound; (2) the condemnor had the requisite authority; (3) its determination complied with [the State Environmental Quality Review Act (SEQRA)] and EDPL article 2; and (4) the acquisition will serve a public use" (*Matter of City of New York [Grand Lafayette Props. LLC]*, 6 N.Y.3d 540, 546, 814 N.Y.S.2d 592, 847 N.E.2d 1166 [2006]; *see* EDPL 207 [C]; *Matter of Syracuse Univ. v. Project Orange Assoc. Servs. Corp.*, 71 A.D.3d 1432, 1433, 897 N.Y.S.2d 335 [4th Dept. 2010], *appeal dismissed and lv denied* 14 N.Y.3d 924, 905 N.Y.S.2d 126, 931 N.E.2d 96 [2010]).

We agree with petitioners that OCIDA lacked the requisite authority to acquire the subject property. As an industrial development agency, OCIDA's statutory purposes are, inter alia, to "promote, develop, encourage and assist in the acquiring ... [of] ... commercial ...

facilities" (General Municipal Law § 858). OCIDA's powers of eminent domain are restricted by General Municipal Law § 858 (4), which provides, in relevant part, that an industrial development agency shall have the power "[t]o acquire by purchase, grant, lease, gift, pursuant to the provisions of the eminent domain procedure law, or otherwise and to use, real property ... therein necessary for its corporate purposes." The purposes enumerated in the statute do not include projects related to hospital or healthcare-related facilities (*see* § 858). While OCIDA's determination and findings indicate that the subject property was to be acquired for use as a surface parking lot, the record establishes that, contrary to respondents' assertion, the primary purpose of the acquisition was not a commercial purpose. Rather, the property was to be acquired because it was a necessary component of a larger hospital and healthcare facility project. We therefore annul the determination and grant the petition (*see Syracuse Univ.*, 71 A.D.3d at 1435, 897 N.Y.S.2d 335; *see generally Schulman v. People*, 10 N.Y.2d 249, 255-256, 219 N.Y.S.2d 241, 176 N.E.2d 817 [1961]; *Peasley v. Reid*, 57 A.D.2d 998, 999, 394 N.Y.S.2d 471 [3d Dept. 1977]).

In light of our determination, petitioners' remaining contentions are academic (*see Matter of Hargett v. Town of Ticonderoga*, 35 A.D.3d 1122, 1124, 826 N.Y.S.2d 819 [3d Dept. 2006], *lv denied* 8 N.Y.3d 810, 834 N.Y.S.2d 719, 866 N.E.2d 1048 [2007]).

All concur except Curran, J., who dissents and votes to confirm the determination and dismiss the petition in the following memorandum:

I respectfully dissent from the majority's conclusion that respondent Oneida County Industrial Development Agency (OCIDA) lacked the requisite statutory authority to acquire the subject property via eminent domain pursuant to its broad purposes as set forth in General Municipal Law § 858 because I conclude that OCIDA's determination that construction of a surface parking lot on the subject property constitutes a "commercial facility" is neither irrational nor unreasonable. Inasmuch as I agree with respondents that acquisition of the subject property serves a public purpose (*see generally Matter of Truett v. Oneida County*, 200 A.D.3d 1721, 1722, 155 N.Y.S.3d 913 [4th Dept. 2021], *lv denied* 38 N.Y.3d 907, 2022 WL 1573754 [2022]), and further agree that petitioners' remaining contentions are without merit, I would confirm the determination and dismiss the petition.

I.

Following an extensive review process that concluded in 2015, the Mohawk Valley Hospital System (MVHS) began the process of consolidating its healthcare services for Oneida, Herkimer, and Madison counties into an integrated healthcare campus to be located in a blighted section of the downtown area of the City of Utica. In 2017, MVHS received a $300 million grant from the New York State Department of Health to situate the integrated healthcare campus at the downtown location. The central feature of the new campus will be Wynn Hospital, which has received its certificate of need and is currently under construction. Since its inception, MVHS's plan for the healthcare campus has included a private medical office building (MOB) to be located on Columbia Street

behind Wynn Hospital. Also from its inception, the plan envisioned surface level parking to be located adjacent to the MOB. MVHS owns three of the four parcels along Columbia Street that would be leased to the MOB operator both for the MOB itself as well as for the adjacent surface level parking.

MVHS ultimately elected to have respondent Central Utica Building, LLC (CUB), a for-profit company founded by private physicians, own and operate the MOB. CUB's MOB would, in addition to servicing its own patients on a for-profit basis, provide outpatient services deemed valuable to MVHS for its integrated healthcare campus. CUB has specific occupancy plans for the MOB, including approximately 20,000 square feet dedicated to a group of cardiologist physicians, and 18,000 square feet for the purpose of operating "a [ ] [Public Health Law a]rticle 28 licensed, Medicare certified multi-specialty ambulatory surgery center with six operating rooms." CUB has secured financing for its MOB proposal.

The fourth parcel along Columbia Street—i.e., the subject property—is owned by petitioner Rome Plumbing & Heating Supply Co., Inc. The subject property is an approximately one-acre piece of real property that has, for years, been slated to be part of the surface level parking area located immediately adjacent to the MOB. Petitioner Bowers Development, LLC (Bowers) purports to be the contract vendee for the subject property. Bowers allegedly plans to construct its own MOB on the one-acre parcel, despite not having identified any physician group willing to service it, and not having any arrangement

with MVHS or any ability to use the adjacent parcels owned by MVHS for parking.

Meanwhile, CUB submitted an application with OCIDA for financial assistance on the MOB project. It also requested that OCIDA take the subject property through the exercise of its eminent domain power under General Municipal Law § 858 (4). Before deciding whether to invoke its eminent domain powers to acquire the subject property, OCIDA conducted a public hearing during which Bowers agreed with CUB that a MOB located near the hospital would benefit downtown Utica, address urban blight, and enhance patient care. During the review process, one of petitioners' main objections was that OCIDA lacked the requisite statutory authority under General Municipal Law § 858 to use its eminent domain power because that statute "provides the current list of projects for which industrial development agencies have authority," and that list "does not include hospital or health-related projects." Further, inasmuch as "[t]he proposed CUB project is a hospital or health-related project ..., the CUB project is not a type of project [for] which OCIDA has jurisdiction or authority." In its determination and findings, OCIDA expressly rejected those contentions and concluded that taking the subject property was within its power because it was for a "commercial facility"—i.e., the surface parking lot—noting, inter alia, that its determination of what constitutes a commercial project is entitled to judicial deference so long as it is reasonable (*see Matter of Nearpass v. Seneca County Indus. Dev. Agency*, 152 A.D.3d 1192, 1193, 60 N.Y.S.3d 732 [4th Dept. 2017]). Thereafter, petitioners commenced this

original proceeding pursuant to EDPL 207 seeking to annul OCIDA's determination to condemn the subject property via eminent domain.

II.

In a proceeding brought pursuant to EDPL 207, "[t]he scope of our review is necessarily narrow since [the] exercise of the eminent domain power is a legislative function" (*Matter of West 41st St. Realty v. New York State Urban Dev. Corp.*, 298 A.D.2d 1, 6, 744 N.Y.S.2d 121 [1st Dept. 2002], *appeal dismissed* 98 N.Y.2d 727, 749 N.Y.S.2d 476, 779 N.E.2d 187 [2002], *cert denied* 537 U.S. 1191, 123 S.Ct. 1271, 154 L.Ed.2d 1024 [2003]; *see Kaskel v. Impellitteri*, 306 N.Y. 73, 80, 115 N.E.2d 659 [1953], *rearg denied and mot to amend remittitur granted* 306 N.Y. 609, 115 N.E.2d 832 [1953], *cert denied* 347 U.S. 934, 74 S.Ct. 629, 98 L.Ed. 1085 [1954]; *Matter of New York City Hous. Auth. v. Muller*, 270 N.Y. 333, 339, 1 N.E.2d 153 [1936]). As a result, this Court's review is limited to "whether (1) the proceeding was constitutionally sound; (2) the condemnor had the requisite authority; (3) its determination complied with SEQRA and EDPL article 2; and (4) the acquisition will serve a public use" (*Matter of City of New York [Grand Lafayette Props. LLC]*, 6 N.Y.3d 540, 546, 814 N.Y.S.2d 592, 847 N.E.2d 1166 [2006]; *see* EDPL 207 [C]). As noted above, the issue in dispute here is whether OCIDA had the requisite statutory authority to use its eminent domain power to take the subject property.

It is "well established that an [industrial development agency] is 'authorized by statute to exercise the

State's eminent domain powers' " (*Sun Co. v. City of Syracuse Indus. Dev. Agency*, 209 A.D.2d 34, 41, 625 N.Y.S.2d 371 [4th Dept. 1995], *appeal dismissed* 86 N.Y.2d 776, 631 N.Y.S.2d 603, 655 N.E.2d 700 [1995]; *see generally* General Municipal Law § 858 [4]). Thus, there is no dispute that OCIDA has the statutory authority to acquire the subject property. The particular point upon which the majority and I disagree is whether OCIDA has exercised that statutory power "for its corporate purposes" (General Municipal Law § 858 [4]).

The power of eminent domain—i.e., "[t]he right to take private property for public use"—"is an inherent and unlimited attribute of sovereignty whose exercise may be governed by the [l]egislature within constitutional limitations and by the [l]egislature within its power delegated to municipalities" (*Matter of Mazzone*, 281 N.Y. 139, 146-147, 22 N.E.2d 315 [1939], *rearg denied* 281 N.Y. 671, 22 N.E.2d 868 [1939]). Thus, in the context of an eminent domain proceeding such as this one, the courts have recognized "the structural limitations upon our review of what is essentially a legislative prerogative" (*Matter of Goldstein v. New York State Urban Dev. Corp.*, 13 N.Y.3d 511, 526, 893 N.Y.S.2d 472, 921 N.E.2d 164 [2009], *rearg denied* 14 N.Y.3d 756, 898 N.Y.S.2d 85, 925 N.E.2d 88 [2010]). Consistent with that limited scope of review, there also is a "longstanding policy of deference to legislative judgments in this field" (*Kelo v. City of New London*, 545 U.S. 469, 480, 125 S.Ct. 2655, 162 L.Ed.2d 439 [2005]; *see Matter of Kaur v. New York State Urban Dev. Corp.*, 15 N.Y.3d 235, 262, 907 N.Y.S.2d 122, 933 N.E.2d 721 [2010]). A

reasonable difference in opinion between the judiciary and the agency lawfully exercising the State's eminent domain power is an insufficient predicate for the courts to supplant the agency's essentially legislative determination (*see Goldstein*, 13 N.Y.3d at 526, 893 N.Y.S.2d 472, 921 N.E.2d 164). Ultimately, "a court may only substitute its own judgment for that of the legislative body authorizing the project when such judgment is irrational or baseless" (*Kaur*, 15 N.Y.3d at 254, 907 N.Y.S.2d 122, 933 N.E.2d 721).

To that end, "[t]he burden is on the party challenging the condemnation to establish that the determination was without foundation and baseless" (*Matter of Butler v. Onondaga County Legislature*, 39 A.D.3d 1271, 1271, 833 N.Y.S.2d 829 [4th Dept. 2007] [internal quotation marks omitted]; *see Matter of GM Components Holdings, LLC v. Town of Lockport Indus. Dev. Agency*, 112 A.D.3d 1351, 1352, 977 N.Y.S.2d 836 [4th Dept. 2013], *appeal dismissed* 22 N.Y.3d 1165, 985 N.Y.S.2d 466, 8 N.E.3d 842 [2014], *lv denied* 23 N.Y.3d 905, 992 N.Y.S.2d 794, 16 N.E.3d 1274 [2014]). "If an adequate basis for a determination is shown and the objector cannot show that the determination was without foundation, the agency's determination should be confirmed" (*Matter of Waldo's, Inc. v. Village of Johnson City*, 74 N.Y.2d 718, 720, 544 N.Y.S.2d 809, 543 N.E.2d 74 [1989] [internal quotation marks omitted]; *see Butler*, 39 A.D.3d at 1271-1272, 833 N.Y.S.2d 829).

Here, the sole basis upon which the majority rests its decision to annul OCIDA's determination—and thereby intervenes into what is effectively the legislative process—is its conclusion that, as a matter of law,

General Municipal Law § 858 does not authorize OCIDA to acquire the subject property via eminent domain. The majority grounds that conclusion on its determination that OCIDA's " 'corporate purposes' " do not include "projects related to hospital or healthcare-related facilities." It further concludes, in summary fashion and without any elaboration, that OCIDA's use of eminent domain here "was not [for] a commercial purpose." The majority's conclusion on that latter issue, however, gives no deference to OCIDA's express determination that it was exercising its lawful eminent domain power in furtherance of its express corporate purpose to "promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing," inter alia, "commercial" facilities, and "thereby advance the job opportunities, health, general prosperity and economic welfare of the people of the [S]tate of New York" (General Municipal Law § 858). Nowhere does the majority conclude that OCIDA's determination was irrational or that it lacked any foundation or basis (*see Kaur*, 15 N.Y.3d at 254, 907 N.Y.S.2d 122, 933 N.E.2d 721; *Waldo's, Inc.*, 74 N.Y.2d at 720-721, 544 N.Y.S.2d 809, 543 N.E.2d 74; *Butler*, 39 A.D.3d at 1271-1272, 833 N.Y.S.2d 829). Thus, by failing to address OCIDA's expressly stated basis for concluding that it had the statutory authority to exercise its eminent domain power—i.e., that it was done in furtherance of a commercial purpose—the majority has not only failed to afford OCIDA any deference with respect to its legislative determination (*see Goldstein*, 13 N.Y.3d at 526, 893 N.Y.S.2d 472, 921 N.E.2d 164), it has entirely supplanted OCIDA by improperly making its own de

novo determination of that question as a matter of law (*see Kaur*, 15 N.Y.3d at 254, 907 N.Y.S.2d 122, 933 N.E.2d 721; *Matter of Jackson v. New York State Urban Dev. Corp.*, 67 N.Y.2d 400, 418, 503 N.Y.S.2d 298, 494 N.E.2d 429 [1986]). In essence, the majority's conclusion makes it appear as though a legislative body—here, OCIDA—played no role at all in the exercise of the State's eminent domain power.

III.

In addition to the deference we generally accord legislative determinations made by agencies in the exercise of the eminent domain power, I note that this Court also follows established precedent requiring us to defer to an agency's interpretation of a broad ambiguous statutory term, provided that the agency's interpretation of that ambiguous term is not irrational or unreasonable (*see Nearpass*, 152 A.D.3d at 1193, 60 N.Y.S.3d 732; *Matter of Iskalo 5000 Main LLC v. Town of Amherst Indus. Dev. Agency*, 147 A.D.3d 1414, 1416, 47 N.Y.S.3d 546 [4th Dept. 2017], *lv denied* 29 N.Y.3d 919, 2017 WL 4051695 [2017]). Here, OCIDA expressly relied upon *Nearpass* in determining that it had the statutory authority to acquire the subject property because it was acting in furtherance of a "commercial" purpose—i.e. the same term involved in *Nearpass*. In my view, pursuant to *Nearpass*, we must defer to OCIDA's reasonable interpretation of the word "commercial" contained in General Municipal Law § 858, which OCIDA concluded gave it the power to condemn the subject property via eminent domain for the purpose of constructing the surface parking lot.

In *Nearpass*, the Seneca County Industrial Development Agency (SCIDA) granted tax abatement relief to a resort and casino. In the ensuing CPLR article 78 proceeding, the petitioners contested SCIDA's determination that the resort and casino served, inter alia, a "commercial" purpose within the definition of a "project" under General Municipal Law § 854 (4) (*Nearpass*, 152 A.D.3d at 1192-1193, 60 N.Y.S.3d 732). On appeal, this Court rejected the petitioners' contentions and affirmed the dismissal of the petition. Specifically, we held that "the broad statutory term[ ] 'commercial' ... [is] ambiguous insofar as [it is] susceptible to conflicting interpretations" (*id.* at 1193, 60 N.Y.S.3d 732). Thus, "SCIDA's interpretation [was] entitled to great deference, and must be upheld as long as it [was] reasonable" (*id.* [internal quotation marks omitted]). On that question, we concluded that SCIDA's interpretation that the project was commercial or recreational was not "irrational or unreasonable" (*id.* [internal quotation marks omitted]).

In my view, we should come to a similar conclusion here—the term "commercial" contained in General Municipal Law § 858 is just as broad and ambiguous as it is in section 854, and therefore OCIDA's interpretation of that term as encompassing the creation of the surface parking lot was reasonable. Thus, giving deference to OCIDA's interpretation of the relevant statute, we should conclude that it did not lack the requisite statutory authority to condemn the subject property via eminent domain. More specifically, there can be little doubt that the general purposes upon which an industrial development agency may exercise its "express powers" (*Matter of Madison*

County Indus. Dev. Agency v. State of N.Y. Auths. Budget Off., 151 A.D.3d 1532, 1534, 54 N.Y.S.3d 778 [3d Dept. 2017], *affd* 33 N.Y.3d 131, 99 N.Y.S.3d 755, 123 N.E.3d 239 [2019]; *see* General Municipal Law § 858) are set forth in broad terms. Indeed, this Court, as well as the Third Department, have expressly referred to those purposes as being broad in nature (*see Matter of Town of Minerva v. Essex County Indus. Dev. Agency*, 173 A.D.2d 1054, 1056, 570 N.Y.S.2d 391 [3d Dept. 1991]; *Matter of Grossman v. Herkimer County Indus. Dev. Agency*, 60 A.D.2d 172, 178, 400 N.Y.S.2d 623 [4th Dept. 1977]; *see also Matter of Kaufmann's Carousel v. City of Syracuse Indus. Dev. Agency*, 301 A.D.2d 292, 300, 750 N.Y.S.2d 212 [4th Dept. 2002], *lv denied* 99 N.Y.2d 508, 757 N.Y.S.2d 819, 787 N.E.2d 1165 [2003]). Thus, recognizing that the purposes contained in General Municipal Law § 858 are set forth in broad terms, I conclude that OCIDA's determination that acquisition of the subject property for the purpose of constructing a surface parking lot was in furtherance of a "commercial" purpose "is supported by a rational basis" and is "not 'irrational or unreasonable' " (*Iskalo 5000 Main LLC*, 147 A.D.3d at 1415-1416, 47 N.Y.S.3d 546; *see Nearpass*, 152 A.D.3d at 1193, 60 N.Y.S.3d 732). Indeed, I note that we are required to afford "statutes providing for improvements inuring to the public benefit" a liberal construction (McKinney's Cons Laws of NY, Book 1, Statutes § 342), and therefore we should not constrict General Municipal Law § 858 either by finding that the purpose here was not among its expressly included ones or that it was excluded by implication.

Here, the majority fails to address *Nearpass* and ignores its obvious application to the resolution of this appeal. Although this case and *Nearpass* arise out of slightly different contexts—i.e., interpreting different provisions of the General Municipal Law—they both ultimately involve the same question of statutory interpretation in the context of administrative decision-making. As noted, they also both involve the same broad and ambiguous statutory term—i.e., the word "commercial." It would be one thing if the majority acknowledged *Nearpass* and explained why, despite that case's central holding, OCIDA's determination that the project here was "commercial"—i.e., its interpretation of General Municipal Law § 858—was irrational or unreasonable. Although I would disagree with that bottom-line conclusion, at least the majority would have afforded OCIDA the deference required of its statutory interpretation of a broad ambiguous term, in the context of an eminent domain proceeding, where deference is already accorded to the overarching legislative determinations being made.

Furthermore, unlike the majority, I conclude that the absence of any express reference to hospitals or healthcare facilities among the purposes listed in General Municipal Law § 858 is ultimately irrelevant to whether OCIDA has the power to condemn the subject property in furtherance of a commercial purpose. The part of section 858 describing an industrial development agency's broad purpose lists certain types of projects but does so using the word "including." In other words, the list of project types contained in that paragraph is not exclusive. Thus, it makes no

difference that neither a hospital nor a healthcare-related facility is expressly listed in the purposes paragraph.

In any event, as OCIDA correctly contends, the MOB that would be serviced by the subject property for the development of a surface parking lot is neither a "hospital" nor a "health-related facility" as those terms are generally understood (*see* Public Health Law § 2994-a [18]; 10 NYCRR 700.2 [a] [4], [5]). Thus, the majority's generic reference to an undefined "healthcare-related facilit[y]" adds nothing to the exclusion it reads into General Municipal Law § 858. It appears that, in its essence, the majority's conclusion stands for the proposition that, if a proposed parking lot is part of a hospital's or healthcare-related facility's campus, however tangentially, an industrial development agency may not utilize its eminent domain power to acquire property for that purpose because a "hospital" or "health-related facility" is either not among the broadly defined purposes in section 858 or is somehow excluded from them. I know of no principle of statutory construction, or any precedent, that supports such a conclusion and I respectfully decline to follow it.