



SCHEDULED

RESOLUTION 2019-445

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Marguerite Greco

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**Motion: Approve the Land Acquisition of a Portion of the Former Huntley Power Plant, 3500 River Road, Tonawanda, New York Tax Parcel ID#: 64.16-1-1.2, as Set Forth in the Agenda Before You.**

WHEREAS, on October 22, 2018 the Town of Tonawanda Town Board commenced a condemnation process pursuant to Article 2 of the New York Eminent Domain Procedure Law (“EDPL”) over the approximately 94 acre parcel located at 3500 River Road and the approximately 117 acre parcel at 4293 River Road, Tonawanda, New York, formerly the Huntley Power Plant (the “Properties”); and

WHEREAS, pursuant to the EDPL Section 202, public notice was provided in the Ken-Ton Bee, the Town’s official paper, and a public hearing was held on December 3, 2018 at 7:00 p.m. in Council Chambers of the Town of Tonawanda Municipal Building, 2919 Delaware Avenue, Kenmore, New York 14217 and a public comment period was held open until December 31, 2018 to solicit comments regarding the proposed acquisition of the Properties owned by Huntley Power, LLC; and

WHEREAS, after further consideration, pursuant to the EDPL Section 202, a second public notice was provided in the Ken-Ton Bee, the Town’s official paper, and in the Buffalo News, and a Public Hearing was held on April 8, 2019 at 7:00 p.m. to consider the acquisition of a portion of the 94 acre parcel at 3500 River Road (the “Acquisition Area”) as depicted in Exhibit “A” hereto. The public comment period was held open until April 8, 2019 to solicit comments regarding the proposed acquisition of property owned by Huntley Power LLC; and

WHEREAS, this area of the Town’s waterfront had previously been used for industrial purposes; and

WHEREAS, the 2014 Comprehensive Plan found that the past industrial usages have left large sections degraded and subject to environmental remediation and that the historic failure to do so in a timely basis has left underutilized or vacant Brownfield sites creating a blight on the Town and stalling the redevelopment and productive use of these properties; and

WHEREAS, the Comprehensive Plan specifically calls out the need to ensure the remediation of former industrial sites and promote the redevelopment of the 3500 River Road parcel; and

WHEREAS, the Comprehensive Plan encouraged the transformation of the waterfront area from heavy industrial and vacant lands to mixed uses with a specific emphasis on public access and mixed use; and

WHEREAS, the existing raw water system on the Acquisition Area provides a critical supply of water to users such as PeroxyChem, 3M, Sumitomo Rubber and Dupont. Without this critical water supply, numerous jobs could be put at risk; and

WHEREAS, the 3500 River Road parcel is part of the Town of Tonawanda Local Waterfront Revitalization Program area (“LWRP”) which specifically called on the Town to intervene in the transition of the waterfront area from industrial to recreational and lower intensity uses; and

WHEREAS, the LWRP identifies the need to have increased public access and open space in the region to help change the character of the area and realize its potential due to its adjacency to the

Niagara River; and

WHEREAS, the LWRP also recognizes that the 3500 River Road parcel is a critical area of transition and recommends the redevelopment of the site into mixed uses including commercial, park land, retail, and light industrial; and

WHEREAS, the LWRP identified the failure to redevelop large parcels such as the Property as a major impediment to redevelopment; and

WHEREAS, drastic underutilization or outright abandonment of industrial facilities is common in Western New York. This is not a local phenomenon and underutilized industrial waterfront property in Tonawanda must be viewed in the context of all industrial waterfront land in the Buffalo metropolitan area. The Town Board is keenly aware of the Cities of Buffalo and Lackawanna grappling with the underutilization of the former Bethlehem Steel property and the local surplus of industrial property; and

WHEREAS, balanced against this surplus of industrial property is the demand for mixed use and public access to waterfront property which is still largely tied up in former industrial sites; and

WHEREAS, it is critical for the Town of Tonawanda to ensure the revitalization and redevelopment of former industrial properties, especially those on the Town's waterfront; and

WHEREAS, without Town intervention, construction of private facilities which physically prevent the provision of public access to the waterfront diminishes the value of these lands and isolates the public from a critical natural resource; and

WHEREAS, the LWRP envisioned water-dependent and water-enhanced recreation be encouraged and facilitated; and

WHEREAS, the Town has also developed a Brownfield Opportunity Area intended to restore the waterfront and provide sustainable development that balances environmental, economic, and community needs; and

WHEREAS, the Brownfield Opportunity Area identified the critical need to manage and develop these former industrial areas to generate both jobs and tax revenue, and again it is critical that the Town take the lead in these goals; and

WHEREAS, the Town Board after soliciting public comment on the proposal has determined that there is a clear public need for the acquisition of a portion of the 3500 River Road parcel; and

WHEREAS, the Town Board has determined that the 3500 River Road parcel, consisting of 94 total acres, with nearly 3,300 linear feet of waterfront, is a lynchpin parcel for the continued redevelopment and re-envisioning of the Town's waterfront; and

WHEREAS, the Town Board has determined that the history of underutilized or undeveloped former industrial sites acts as a blight on the Town and it must take a proactive approach toward the redevelopment of this critical parcel; and

WHEREAS, the Town Board has determined that history has shown that private redevelopment efforts and the lack of progress of NRG's lack of redevelopment of the Properties since it's closing in 2016 has and will continue to have unacceptable negative impacts on the Town which requires the Town's intervention; and

WHEREAS, the Town has also determined that the critical raw water supply to significant industrial employers in the Town must be maintained and uninterrupted so as to not risk thousands of jobs which rely on this supply of raw water; and

WHEREAS, the Town Board has determined that the only way to ensure the proper and adequate

redevelopment of the 3500 River Road parcel as set forth above and maintenance of the raw water supply is for the Town to acquire the Acquisition Area by Eminent Domain so that it can manage and control the proper and expeditious redevelopment of this critical asset; and

WHEREAS, in accordance with Article 8 of the Environmental Conservation Law ("SEQRA") and 6 NYCRR Part 617 of the implementing regulations, the action under consideration is a Type 1 Action; and

WHEREAS, on June 24, 2019, the Town Board, as Lead Agency pursuant to SEQRA and a Notice of Intent adopted on November 19, 2018, determined that the acquisition of the decommissioned Huntley property and operating raw water supply system would not have any significant adverse environmental impacts and has issued a Negative Declaration reflecting the same;

WHEREAS, the Town Board made this determination with the understanding and intent that any future redevelopment or construction at the acquired property would be subject to further environmental review, but at this time, such potential redevelopment is undetermined; and

WHEREAS, pursuant to the EDPL, the Town Board must publish its findings before exercising its power of Eminent Domain.

NOW, THEREFORE, BE IT RESOLVED, that, pursuant to EDPL, after having held a public hearings on December 3, 2018 and April 8, 2019 and allowing public comment regarding the proposed acquisition of 3500 River Road and 4293 River Road by the Town, the Town Board, upon due consideration, hereby determines and finds that:

1. It is hereby necessary and appropriate to acquire by condemnation the following real property described as an approximately 65 acre portion of 3500 River Road (as depicted in Exhibit "A"), including all buildings and improvements thereon situated, lying, and being in the Town of Tonawanda, County of Erie, known as 3500 River Road, tax parcel 64.16-1-1.2; and
2. The Acquired Area should be acquired by the Town for the public use, benefit, and purpose set forth herein; and

BE IT FURTHER RESOLVED, that the Town Board hereby authorizes the Supervisor to direct the Town Clerk to publish notice of the foregoing determinations and findings in accordance with the Eminent Domain Procedure Law.