

Warren County Board of Supervisors

RESOLUTION NO. 397 OF 2012

Resolution introduced by Supervisors Taylor, Conover, Monroe, Wood and Mason

ADOPTING THE DECLARATION OF USES AND RESTRICTIONS FOR THE QUEENSBURY BUSINESS PARK

WHEREAS, Warren County is the owner of six (6) lots located in the Queensbury Business Park and identified as tax map parcel numbers 303.16-1-76; 303.16-1-77; 303.12-1-9.6; 303.12-1-9.7; 303.12-1-9.3; and 303.12-1-9.4 and which the Hudson River Local Development Corporation (“HRLDC”) holds an option agreement on said parcels pursuant to Resolution No. 707 of 2007, and

WHEREAS, the HRLDC is requesting that Warren County adopt the Declaration of Uses and Restrictions, attached hereto as Schedule “A”, for the Queensbury Business Park and that the same be executed by the Chairman of the Warren County Board of Supervisors for recording in the Warren County Clerk’s office, now, therefore, be it

RESOLVED, that the Warren County Board of Supervisors hereby adopts the Declaration of Uses and Restrictions for the Queensbury Business Park attached hereto as Schedule “A”, and the Chairman of the Board of Supervisors be, and hereby is, authorized to execute the Declaration of Uses and Restrictions for the Queensbury Business Park, with minor revisions, if determined necessary by the County Attorney, in a form approved by the County Attorney, so that the same can be recorded in the Warren County Clerk’s office.

DECLARATION OF USES AND RESTRICTIONS

PURPOSE

It is the desire and intention of Warren County (“County”) to develop a business park for low impact, non-polluting technology and light industrial enterprises to create jobs and increase the tax base, to impose covenants, conditions and restrictions upon the land for the benefit of both the property and the community of which it is a part; and to ensure that the property is developed in ways that are compatible with both the natural and developed environments of the area. To these ends, County has adopted standards to:

- A. Insure property use and appropriate development of the park as a whole and for the improvement of each building site in the park;
- B. Protect the owners and tenants of building sites therein against any use which may be incompatible with the purposes of the park;
- C. Guard against the erection of structures built of improper or unsuitable materials;
- D. Encourage erection of harmoniously located, attractive improvements in the park;
- E. Secure and maintain proper setbacks from streets and provide adequate free space between structures;
- F. Provide ample uncontested space and circulation for all owners and tenants; and
- G. Provide maximum flexibility for expansion, changes in use and adaptation for owners and tenants.

The following standards are to be used by architects, engineers and builders when preparing plans for structures to be located within the industrial park. Nothing below is to be construed, however, as allowing exceptions to any local, state or federal statute, law or ordinance, nor does it guarantee approval.

ARTICLE I

DEFINITIONS

The following words shall have the following meanings when used in this Declaration of Uses and Restrictions:

- 1.01 "County" shall mean Warren County, a municipal and political subdivision established under the laws of the State of New York, with a mailing address of Warren County Municipal Center, 1340 State Route 9, Lake George, New York 12845.
- 1.02 "Lot" shall mean any parcel in the park heretofore or hereafter created by the subdivision or re-subdivision of the property or any part thereof.

- 1.03 "Owner" shall mean any person, corporation or other legal entity holding title or record in and to any lot or portion thereof and any person, corporation or other legal entity holding any security interest in and to any lot or portion thereof, including without limitation, any mortgagee, any trustee under a deed of trust, any beneficiary of a deed of trust, or any long term lessee holding under County.
- 1.04 "Park" "Property" or "Tract" shall mean those certain tracts or parcels of land containing, in the aggregate, acres of land, more or less, situate, lying and being in the Town of Queensbury, Warren County and State of New York, lying and being described in Exhibit "A" hereto and made a part hereof.
- 1.05 "Structure" shall mean any building, fixture, installation or other improvement erected or placed upon a lot.
- 1.06 "Tenant" shall mean any person, corporation or other legal entity to whom any owner shall grant a possessory interest in and to any lot or portion thereof.

ARTICLE II

LAND USE

Section 2.01 USE

No land shall be used for any purpose other than office, office/warehouse, light manufacturing, assembly and distribution, research, or laboratory operations or other use in keeping with the nature of the Queensbury Business Park as may be permitted by County from time to time. Any change in use requires prior approval by County.

Section 2.02 LOT SIZE AND FRONTAGE

The minimum lot size for any development parcel in the industrial zone shall be in excess of one (1) acre per plot, and the frontage shall not be less than two hundred (200) feet, unless approved by County in the manner set forth in Article IV hereof.

ARTICLE III

USE OF PROPERTY: RESTRICTIONS

Section 3.01 UNDERGROUND UTILITIES, PIPES, ETC.

No pipe, conduit cable, line or the like for water, gas, sewage, drainage, steam, electricity or any other utility or service shall be installed or maintained upon any lot (outside of any building) above the surface of the ground. Any exception to the above conditions can only be in such manner and upon such conditions as may be specifically approved by County. External HVAC and other process units which

require a service connection to the building which the unit services are allowable exceptions.

Section 3.02 PARKING

All parking areas on each lot shall be provided by owner. No on-street parking shall be permitted. Parking areas of such lot shall be paved so as to provide dust-free, all-weather surfaces. No parking spaces shall be located on and no parking shall be permitted within designated front setback areas, nor within the designated side setback area when such side setback area is adjacent to a street unless such parking shall be screened from the street by approved trees or shrubbery. The number of parking spaces required for each lot, and the specific location of the same, shall be as designated in plans for each lot which shall be submitted for approval in the manner set forth in Article IV hereof. In determining the number of parking spaces and the location thereof for each lot, County shall consider the exact nature of the use proposed for the lot, the anticipated number and manner of employment of persons on the lot, the nature and location of proposed structures on the lot and such other matters as it shall deem relevant.

Section 3.03 LOADING

All provisions for vehicle loading shall be provided on the lot. No on-street vehicle loading shall be permitted. Vehicle loading shall be permitted only at the rear of buildings or on a side; except that such loading performed on a side shall be screened from front street visibility and adjacent properties in a manner approved by County.

Section 3.04 OUTSIDE STORAGE

No outside storage or operations of any kind shall be permitted on any lot, unless such activity is visually screened from all streets and adjacent properties in a manner approved by County. No outside storage shall extend above the top of such screening. Outside storage of loose items, product or materials, i.e. winter sand, sand and salt mix, shall be prohibited even if contained in a bin or other remote structure.

Section 3.05 SIGNS

The location, size, design and construction of signs must be in keeping with the character of the property and all signs must be approved in writing by County.

Section 3.06 VIBRATION

Buildings and other structures shall be constructed and machinery and equipment installed and insulated on each lot so that the ground vibration inherently and recurrently generated is not perceptible without instruments at any point along any of the exterior lot lines.

If vibration and/or concussion are either a constant or intermittent part of any operation, a report

prepared by a licensed geotechnical engineer shall be presented to County during the design process. This report shall state the probably effect of the operation and proposed mitigating measures. Such report shall be one factor to be considered by County when determining whether to grant approval.

Section 3.07 AIR QUALITY

Air pollutants, including but not limited to, dust, smoke odors, gases and fumes shall not be released to the atmosphere without the proper permits from the New York State Department of Environmental Conservation or other body having jurisdiction.

Section 3.08 MAINTENANCE, REFUSE OR TRASH

The owner of every lot shall keep it and all buildings, parking lots and roadways, and all improvements used in connection with the lot in a safe, clear, neat and sanitary condition and shall comply in all respects with all government zoning, health, fire and police requirements. Each owner shall remove at owner's expense any rubbish of any character which may accumulate on owner's lot. During construction of any improvements on any lot, the owner thereof shall keep any construction site free of unsightly accumulations of rubbish and scrap materials; and construction materials, trailers, shacks and the like employed in connection with such construction shall be kept in a neat and orderly manner.

Section 3.09 LANDSCAPING

County agrees to maintain all undeveloped land owned by it within the park in a manner compatible with the provisions of these covenants and restrictions.

Section 3.10 SOLID WASTE DISPOSAL

It shall be the responsibility of each owner to (1) individually contract for removal and disposal of all waste material, (2) secure necessary permits for disposal of potentially toxic materials and (3) secure proper transportation of all waste materials to protect the health, safety and well being of the public. Disposal of any waste material at the park is prohibited. All landfills are specifically prohibited in the park.

Section 3.11 TEMPORARY STRUCTURES

No temporary structure shall be installed or maintained on any lot without the specific written approval of County. Each application for approval of any temporary structure shall contain a specific date prior to which such temporary structure will be dismantled and removed from the lot in question.

Section 3.12 UNFINISHED BUILDING

No building shall be allowed to remain with its exterior unfinished for a period longer than nine (9) months from the commencement of construction. All buildings shall have a lawn and be suitably landscaped

within one (1) year from the commencement of construction.

Section 3.13 ANIMALS

No livestock, poultry, or other animals shall be kept on any lot except as required for research and development establishments and testing laboratories, and in no event shall any stable, hutch, barn, coop, or other housing or shelter for animals or for the storage of materials be placed or maintained upon any lot, except as approved by County.

Section 3.14 NOISE

Offensive noise shall not be permitted. Noise shall be measured on any boundary of the lot on which the use generating the noise is located. Noise shall be muffled so as not to become objectionable due to intermittence, beat frequency, shrillness, intensity, or other cause.

If any planned operation involves either a constant or intermittent noise, a report prepared by a qualified professional engineer, with credible experience in noise modeling, measurement and evaluation, shall be presented to County during the design process. This report shall state the probable effect of the operation and proposed mitigating measures. Such report shall be one factor to be considered by County when determining whether to grant approval.

Section 3.15 RADIOACTIVE MATERIALS

Any operation requiring licensing by the Nuclear Regulatory Commission (or its successor) shall also require the written approval of County.

ARTICLE IV

County CONTROL

Section 4.01 GENERAL

County shall have the right in its sole discretion to approve or disapprove every proposal for development and any change in use. County shall maintain a policy of assisting owners and prospective owners in obtaining approvals of the various permits required for each development. County will also extend assistance to prospective owners during the design phase of proposed facilities to assure that the entire development conforms to County's general purposes and objectives for the park.

Section 4.02 SUBMISSIONS

No structure shall be constructed, altered or moved onto any lot, nor shall any new use be commenced on any lot, unless plans and specifications (including a description of any proposed new use) shall have been submitted to and approved in writing by County. Plans and specifications shall be organized and such other drawings as are necessary to show the nature, exterior color scheme, kind, shape, height, type

RESOLUTION NO. 397 OF 2012

PAGE 7 OF 12

of materials and location with respect to the particular lot (including proposed front, rear and side setback and open spaces) of all structures and with reference to other structures on other portions of the property; and the number and location of all parking spaces and driveways on the lot; (2) a grading plan for the lot; (3) a planting plan; (4) a site lighting plan; (5) a plan of storm drainage facilities; (6) a sign program; (7) a proposed time of commencement and substantial completion shall be submitted by the architect retained by the owner; and such other details as may be required by County from time to time.

Section 4.03 APPROVAL/DISAPPROVAL/REVISION

A. Following submission of plans to County pursuant to Section 4.02, County shall cause the plans to be carefully examined by its authorized representatives and with reasonable promptness shall:

1. Accept the plans as submitted; or
2. Return the plans with suggestions for revisions, or
3. Reject the plans with reasons therefor in writing.
4. County may reject the plans or return them for revision for any of the following reasons as set forth in "B":

B. Failure to comply with any of the standards contained herein;

1. Failure to include information in plans and specifications as may have been reasonable requested by County;
2. Objection to the exterior design, appearance or spec materials of any proposed structure;
3. Objection on the ground of incompatibility of any proposed structure or use with existing or proposed structures or uses on other lots in the property;
4. Objection to the location of any proposed structure on any lot or with reference to other lots in the property;
5. Objection to the grading, lighting, and/or storm drainage plan for any lot;
6. Objection to the color scheme, finish, proportions, style of architecture, height, bulk or appropriateness of any structure;
7. Objection to the number or size of parking spaces, or to the design or location of parking areas proposed for any lot;
8. Objection to the proposed signage;
9. Objection to the time of commencement and substantial completion; or
10. Any other matter which, in the judgement of County would render the proposed

structure or structures or use in harmonious with the general plan of improvement of the park.

In any case, where County disapproves any plans and specifications, or approves the plans and specifications with modifications or with specified conditions, that disapproval or qualified approval will be accompanied by a statement of the grounds upon which the action was based.

Section 4.04 APPROVAL

Upon approval by County of any plans and specifications, a copy of those plans and specifications, as approved, shall be retained for permanent record by County and a copy of the plans and specifications bearing the approval, in writing, will be returned to the applicant.

Section 4.05 RULES AND REGULATIONS

County may from time to time promulgate rules and regulations governing the form and content of plans and specifications to be submitted for approval, and may issue statements of policy with respect to approval or disapproval of the architectural styles or details, or other matters, which require approval. These rules and statements of policy may be amended or revoked by County at any time. Approval of any plans and specifications will not be deemed a waiver of County's right, in its discretion, to disapprove those plans or specifications or any of the features or elements included therein if such plans, specifications, features or elements are substantially submitted for use on any other lot or lots.

Section 4.06 CONSTRUCTION COMMENCEMENT AND COMPLETION

The owner must begin construction and complete construction in accordance with the time of commencement and substantial completion submitted with the plans and specifications required under Section 4.02.

If the owner fails to complete construction in accordance with the time of commencement and substantial completion, or, if for reasons outside his control, the owner is unable to begin or substantially complete the construction, it shall be considered a violation of covenants, and the terms of Section 5.03 Violation of Covenants shall apply.

Section 4.07 CERTIFICATE OF COMPLIANCE

Upon completion of the construction or alteration of any structure in accordance with the plans and specifications approved by County, County shall, upon written request of the owner thereof, issue a Certificate of Compliance in form suitable for recordation, identifying such structure and the lot on which such structure is placed, and stating that the plans and specifications, the location of such structure and the use or uses to be conducted thereon have been approved and that such structure complies therewith.

Preparation and recording of such certificate shall be at the expense of such owner. Any Certificate of Compliance issued in accordance with the provisions of this Section shall be prima fascia evidence of the facts therein stated and as to any purchaser or encumbrancer in good faith and for value, or as to any title insurer, such certificate shall be conclusive evidence that all structures on the lot, and the use or uses described therein comply with all the requirements of this Article IV, and with all other requirements of this Declaration as to which County exercises any discretionary or interpretive powers.

Section 4.08 INSPECTION

Any authorized representative of County may at any reasonable time enter and inspect any lot and any improvements for the purpose of determining whether the maintenance of the lot and the maintenance, construction, or alteration of structures and the use or uses conducted on the lot are in compliance with these standards. This right of inspection reserved to County will be subject to any security requirements of the United States Government.

ARTICLE V

COVENANTS & REVERSION

Section 5.01 COVENANTS RUN WITH LAND

The foregoing covenants and restrictions shall run with, bind and inure to the benefit of the land in the park and County covenants and agrees to hold such land retained by it, subject to all the terms, provisions and conditions of this Declaration of Use and Restrictions. Any and all sales, leases, mortgages, or other dispositions of such land or any part thereof shall be subject to this Declaration of Uses and Restrictions. County reserves the right, however, from time to time hereafter to delineate, plat, grant or reserve within the park, public streets, road, sidewalks, ways and appurtenances thereof, and such easements for drainage for the development of the park (and from time to time to change the location of the same).

Section 5.02 ENFORCEABILITY OF COVENANTS

Said covenants and restrictions shall be enforceable by County, its successors and assigns, and shall be for the benefit of all present and future owners.

Section 5.03 VIOLATION OF COVENANTS

Violation of any of said restrictions or conditions or breach of any covenant or agreement herein contained shall give County, in addition to any other remedy under the Laws of the United States, the State of New York, Warren County, or the Town of Queensbury, (but not the obligation) to enter upon the lot as to which such violation or breach exists and summarily to abate and remove any erection or thing or correct any condition that may constitute such violation or breach at the expense of the then owner or tenant of such

land, which expense shall be a lien on such lot enforceable in equity; provided, however, that no such entry shall be made unless the violation or breach has not been remedied and corrected within thirty (30) days after the mailing by first class mail, postage prepaid, of notice of such violation or breach from County or their assigns to the occupant of the lot on which the violation or breach has occurred.

Section 5.4 REVERSION OF TITLE

Conveyances of lots by County are made contingent upon the condition that the owner will commence construction of the project in a timely manner and a substantially complete construction within twelve (12) months of the date of the deed to owner unless extended in writing by County in its sole discretion. Should owner fail to substantially complete construction within twelve (12) month period, or any extension thereof, County shall have the right to re-enter and take possession of the property and to terminate (and re-vest in County) the estate conveyed by the deed. This condition subsequent shall be contained in the deed to the owner.

ARTICLE VI

TERM OF COVENANTS

Section 6.01 Term

This Declaration of Uses and Restriction shall continue in force for a period of fifty (50) years from the date hereof, at which time the aforesaid agreement shall cease and terminate and be of no further force and effect, unless extended as hereinafter provided.

This Declaration of Uses and Restrictions may be extended for a period of twenty (20) years from said expiration date, and thereafter for two successive periods of twenty (20) years each, provided that prior to the initial expiration date, and prior to the expiration of any such extension, appropriate instruments in writing consenting to such extension shall be filed for record signed, executed and acknowledged by County provided, however, that in the event that on the date ninety (90) days prior to the initial expiration date or the date of the expiration of any such extension, as the case may be, County shall not hold title to a lot or lots having an area, in the aggregate, at least equal to twenty-five percent (25%) of the area of the property, then and in that event, this Declaration of Uses and Restrictions may only be extended, if, prior to the initial expiration date or the date of the expiration of any such extension, appropriate instruments in writing consenting to such extension shall be filed for record, signed, executed and acknowledged by each of the owners or any combination of owners who hold title to, or have a security interest in, lots having an area, in the aggregate, at least equal to seventy-five percent (75%) of the area of the property.

ARTICLE VII

AMENDMENT

Section 7.01 Amendment

So long as County shall hold title to a lot or lots having an area, in the aggregate, of at least twenty-five percent (25%) of the area of the property, County may be written declaration signed and acknowledged by it and recorded among the Land Records of Warren County, alter, amend or revoke any or all of said conditions, restrictions and covenants, and such declaration may provide for further amendment, alteration or revocation as herein provided or in any other manner. At such time as County shall cease to hold title to a lot or lots having an area, in the aggregate, at least equal to twenty-five percent (25%) of the area of the property, this Declaration of Uses and Restrictions may thereafter be altered or amended only if appropriate instruments in writing consenting to such alterations or amendments shall be filed for record, signed, executed and acknowledged by each of the owners or any combination of owners who hold title to, or have a security interest in lots having an area, in the aggregate, at least equal to seventy-five percent (75%) of the area of the property. Notwithstanding anything herein to the contrary, (i) no such alteration or amendment of this Declaration of Uses and Restrictions shall affect any plans, specifications or use theretofore approved by County under Article II or Article IV hereof or any improvements theretofore or thereafter made pursuant to such approval; and (ii) no such alteration or amendment of this Declaration of Uses and Restrictions shall modify or delete the provisions of Article IX hereof.

ARTICLE VIII

WAIVER AND APPROVALS

Section 8.01 Waiver of Invalidation

Any waiver or future to enforce any provision of this Declaration of Uses and Restrictions in a particular situation shall not be deemed a waiver or abandonment of such provision as it may apply in any other situation or to the same or a similar situation at any other location in the park or of any other provision of this Declaration of Uses and Restrictions. Invalidation by Court adjudication of any provisions of this Declaration of Uses and Restrictions shall not affect the validity of any other provision, and all other provisions hereof shall remain in full force and effect.

Section 8.02 Approvals

All matters requiring approval of or waiver by County shall be submitted to County in writing.

ARTICLE IX

NOMINEES AND SUCCESSORS OF County

Section 9.01 Nominees and Successors of County

County may from time to time, delegate any or all of its rights, powers, discretion and duties hereunder to such agent or agents as it may nominate, which approval shall not be unreasonably withheld. It may also permanently assign any or all of its powers and duties, obligations, rights, title, easements, and estates reserved to it, to any one or more corporations, associations or persons that will accept the same, which approval shall not be unreasonably withheld. Any such assignment shall be in writing recorded among the Land Records of Warren County and the assignee shall join therein for the purpose of evidencing its acceptance of the same, and, such assignee shall thereupon have the same rights, title, powers, obligations, discretion and duties as are herein reserved to County, and County shall thereupon be released from any and all obligations set forth in this Declaration of Uses and Restrictions, as amended from time to time.

ARTICLE X

BINDING EFFECT

Section 10.01 Binding Effect

This Declaration of Uses and Restrictions shall be binding upon and shall inure to the benefit of the parties hereto and their respective successors and assigns.