

**COMMERCIAL/RETAIL FINDINGS RESOLUTION  
A. PHILLIPS HARDWARE, INC. PROJECT**

A special meeting of Town of Guilderland Industrial Development Agency (the “Agency”) was convened in public session in the Town Board Legislative Chambers Room of the Guilderland Town Hall located on Western Turnpike in the Town of Guilderland, Albany County, New York on March 11, 2019 at 7:00 p.m., local time.

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

**PRESENT:**

William N. Young, Jr.	Chairman
Christopher Bombardier	Treasurer/Assistant Secretary
Kelly Flanagan	Member
William H. Smart	Member

**ABSENT:**

Vera Dordick	Member
Kevin Hicks	Member
Sean M. Maguire	Member

**AGENCY STAFF PRESENT INCLUDED THE FOLLOWING:**

Donald Csaposs	Chief Executive Officer
Linda Cure	Administrative Assistant
Lee Carman	Town Board Liaison
A. Joseph Scott, III	Agency Counsel

The following resolution was offered by Christopher Bombardier seconded by William H. Smart, to wit:

Resolution No. 0319-

**RESOLUTION (A) DETERMINING THAT THE PROPOSED A. PHILLIPS HARDWARE, INC. PROJECT IS A COMMERCIAL PROJECT, AND (B) MAKING CERTAIN FINDINGS REQUIRED UNDER THE GENERAL MUNICIPAL LAW.**

WHEREAS, Town of Guilderland Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of the 1969 Laws of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the “Enabling Act”) and Chapter 146 of the 1973 Laws of New York, as amended, constituting Section 909-a of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the “Act”) to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of commercial, manufacturing and industrial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York,

to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct and install one or more “projects” (as defined in the Act) or to cause said projects to be acquired, constructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, A. Phillips Hardware, Inc. (the “Applicant”), has submitted an application (the “Application”) to the Agency, a copy of which Application is on file at the office of the Agency, which Application requested that the Agency consider undertaking a project (the “Project”) for the benefit of Phillips Family Realty Associates, LLC, a New York limited liability company (the “Company”), said Project consisting of the following: (A) (1) the acquisition of an interest in a parcel of land containing approximately 4.5 acres and located at 6495 State Route 158 in the Town of Guilderland, Albany County, New York (the “Land”), together with the existing improvements located thereon containing approximately 7,000 square feet of space (the “Existing Facility”), (2) the demolition of the Existing Facility, (3) the construction on the Land of approximately two (2) new buildings to range in size from approximately 4,000 to 15,000 square feet of space (collectively, the “Facility”), and (4) the acquisition and installation therein and thereon of certain machinery and equipment (the “Equipment”) (the Land, the Existing Facility, the Facility and the Equipment hereinafter collectively referred to as the “Project Facility”), all of the foregoing to be owned and operated by the Company as a hardware store facility, together with ancillary facilities consisting of a gas station, convenience store and quick food shop; (B) the granting of certain “financial assistance” (within the meaning of Section 854(14) of the Act) with respect to the foregoing, including potential exemptions from certain sales and use taxes, real estate transfer taxes and mortgage recording taxes (collectively, the “Financial Assistance”); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, by resolution adopted by the members of the Agency on January 29, 2019 (the “Public Hearing Resolution”), the Agency authorized a public hearing to be held pursuant to Section 859-a of the Act with respect to the Project; and

WHEREAS, pursuant to the authorization contained in the Public Hearing Resolution, the Executive Director of the Agency (A) caused notice of a public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the financial assistance being contemplated by the Agency with respect to the Project, to be mailed on February 15, 2019 to the chief executive officers of the county and of each city, town, village and school district in which the Project is or is to be located, (B) caused notice of the Public Hearing to be posted on February 15, 2019 on a bulletin board located at Town Hall in the Town of Guilderland, Albany County, New York, and on the Agency’s website; (C) caused notice of the Public Hearing to be published on February 18, 2019 in the Times Union, a newspaper of general circulation available to the residents of the Town of Guilderland, Albany County, New York, (D) conducted the Public Hearing on February 28, 2019 at 7:00 o’clock p.m., local time at the Town of Guilderland Town Hall located at 5209 Western Avenue, Route 20 in the Town of Guilderland, Albany County, New York and (E) prepared a report of the Public Hearing (the “Hearing Report”) fairly summarizing the views presented at such Public Hearing; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), by resolution adopted by the members of the Agency on March 11, 2019 (the “Confirming SEQR Resolution”), the Agency (A) concurred in the determination of the Town

of Guilderland Zoning Board of Appeals (the “Zoning Board”) by resolution dated February 15, 2017 that the acquisition, construction, reconstruction and installation of the Project Facility will not have a “significant effect on the environment” with respect to the SEQRA and (B) acknowledged receipt of a negative declaration from the Zoning Board (the “Negative Declaration”), in which the Zoning Board determined that the Project would not have a significant adverse environmental impact on the environment, and therefore, that an environmental statement need not be proposed with respect to the Project; and

WHEREAS, in Opinion of the State Comptroller Number 85-51, the State Comptroller indicated that the determination whether a project that consists of the construction of an apartment house is a commercial activity within the meaning of the Act is to be made by local officials based upon all of the facts relevant to the proposed project, and that any such determination should take into account the stated purpose of the Act, that is, the promotion of employment opportunities and the prevention of economic deterioration; and

WHEREAS, to aid the Agency in determining whether the Project qualifies for Financial Assistance as a commercial project within the meaning of the Act, the Agency has reviewed the following (collectively, the “Project Qualification Documents”): (A) the Application, including the attached Cost Benefit Analysis; (B) a Staff Project Review and Recommendation (the “Staff Report”), and (C) a project qualification report dated February 2, 2019 prepared by Camoin Associates (the “Project Qualification Report”); and

WHEREAS, the Agency has given due consideration to the Project Qualification Documents, and to representations by the Company that although the Project constitutes a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost, the Project provides a good or service not otherwise reasonably accessible to the residents of the Town of Guilderland, New York; and

WHEREAS, pursuant to Section 862(2)(b) of the Act, the Agency would be authorized to provide financial assistance in respect of the Project provided that the obligation of the Agency to proceed with the Project was subject to certain conditions, including (1) following compliance with the procedural requirements of Section 859-a of the Act, a finding by the Agency that the Project would preserve permanent, private sector jobs in the State of New York or increase the overall number of permanent, private sector jobs in the State of New York and (2) confirmation by the Supervisor of the Town of Guilderland of the proposed action by the Agency with respect to the Project; and

WHEREAS, having complied with the requirements of SEQRA and Section 859-a of the Act with respect to the Project, the Agency now desires, pursuant to Section 862(2)(c) of the Act, to make its final findings with respect to the Project and its final determination whether to proceed with the Project;

NOW, THEREFORE, BE IT RESOLVED BY THE MEMBERS OF TOWN OF GUILDERLAND INDUSTRIAL DEVELOPMENT AGENCY, AS FOLLOWS:

Section 1. Based upon an examination of the Project Qualification Documents and based further upon the Agency’s knowledge of the area surrounding the Project and such further investigation of the Project and its economic effects as the Agency has deemed appropriate, the Agency makes the following findings and determinations with respect to the Project:

- A. The Project Qualification Report makes the following comments/findings regarding the Project:
- There are only four traditional hardware stores in the market area

- The Project is one of the only hardware stores on the western edge of the boundary of the Town and will likely serve consumers from beyond the boundary
- The Project will offer products and services not available at the big-box hardware stores
- The Project fills a unique need within the community as a local source for tools, services, small gifts and knick-knacks

B. The Company has informed representatives of the Agency that the Project is expected to create approximately 3 full time and 2 part time permanent, private sector jobs and retain approximately 3 full time and 2 part time permanent, private sector jobs.

C. The Company has informed representatives of the Agency that the Company is not aware of any adverse employment impact caused by the undertaking of the Project.

Section 2. Based upon the foregoing review of the Project Qualification Documents and based further upon the Agency’s knowledge of the area surrounding the Project Facility and such further investigation of the Project and its economic effects as the Agency has deemed appropriate, the Agency makes the following determinations with respect to the Project:

A. That although the Project does constitute a project where facilities or property that are primarily used in making retail sales to customers who personally visit such facilities constitute more than one-third of the total project cost, the Project provides a good or service not otherwise reasonably accessible to the residents of the Town of Guilderland, New York.

B. That (1) the completion of the Project Facility will have an impact upon the creation, retention and expansion of employment opportunities in the Town of Guilderland and in the State of New York, and (2) the completion of the Project will assist in promoting employment opportunities and assist in preventing economic deterioration in the Town of Guilderland and in the State of New York.

C. That the Project constitutes a “commercial” project, within the meaning of the Act.

D. That the undertaking of the Project will serve the public purposes of the Act by preserving and creating permanent private sector jobs in the State of New York.

Section 3. Having reviewed the Public Hearing Report, and having considered fully all comments contained therein, and based upon the findings contained in Section 1 above, the Agency hereby determines to proceed with the Project and the granting of the financial assistance described in the notice of the Public Hearing; provided, however, that no financial assistance shall be provided to the Project by the Agency unless and until the Supervisor of the Town of Guilderland, New York, as chief executive officer of the Town of Guilderland, New York, shall, pursuant to Section 862(2)(c) of the Act, confirm the proposed action of the Agency with respect to the Project.

Section 4. 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:

William N. Young, Jr.	VOTING	<u>YES</u>
Christopher Bombardier	VOTING	<u>YES</u>
Vera Dordick	VOTING	<u>ABSENT</u>
Kelly Flanagan	VOTING	<u>YES</u>
Kevin Hicks	VOTING	<u>ABSENT</u>
Sean M. Maguire	VOTING	<u>ABSENT</u>
William H. Smart	VOTING	<u>YES</u>

The foregoing Resolution was thereupon declared duly adopted.

STATE OF NEW YORK                    )  
  ) SS.:  
COUNTY OF ALBANY                    )

I, the undersigned (Assistant) Secretary of Town of Guilderland Industrial Development Agency (the "Agency"), DO HEREBY CERTIFY that I have compared the foregoing annexed extract of the minutes of the meeting of the members of the Agency, including the Resolution contained therein, held on March 11, 2019 with the original thereof on file in my office, and that the same is a true and correct copy of said original and of such Resolution contained therein and of the whole of said original so far as the same relates to the subject matters therein referred to.

I FURTHER CERTIFY that (A) all members of the Agency had due notice of said meeting; (B) said meeting was in all respects duly held; (C) pursuant to Article 7 of the Public Officers Law (the "Open Meetings Law"), said meeting was open to the general public, and due notice of the time and place of said meeting was duly given in accordance with such Open Meetings Law; and (D) there was a quorum of the members of the Agency present throughout said meeting.

I FURTHER CERTIFY that, as of the date hereof, the attached Resolution is in full force and effect and has not been amended, repealed or rescinded.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of the Agency this 11<sup>th</sup> day of March, 2019.

  
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(Assistant) Secretary

(SEAL)