# Village of Port Chester
# Industrial Development Agency

222 Grace Church Street, Port Chester, New York 10573


Board of Trustees
Village of Port Chester
222 Grace Church Street
Port Chester, New York 10573

RE: United Hospital Redevelopment Project
Draft Environmental Impact Statement, updated as of July, 2015
Comment Submission by Village of Port Chester Industrial Development Agency

Dear Mayor and Honorable Trustees:

On behalf of the Village of Port Chester Industrial Development Agency (the "Agency"), please accept this letter as comments to the Draft Environmental Impact Statement, updated as of July, 2015(the "DEIS"), as prepared by PC 999 High Street Corp. and PC 406 BPR, LLC (collectively, the "Applicant") and accepted by the Village Board of Trustees (the "BOT") on July 20, 2015. We understand that the BOT is serving as Lead Agency for purposes of reviewing the Applicant's proposed project (the "Project", as defined within the DEIS) pursuant to and in accordance with the State Environmental Quality Review Act, as codified under Article 8 of the Environmental Conservation Law and Regulations adopted pursuant thereto by the Department of Environmental Conservation of the State (collectively, "SEQRA"). As an Involved Agency, we look forward to working with you closely as you continue to review the Project pursuant to SEQRA.

We have reviewed the DEIS and would like to provide comments that include (i) technical corrections that should be incorporated prior to accepting a Final Environmental Impact Statement ("FEIS") for the Project so that the Agency, as an Involved Agency pursuant to SEQRA, has identified and clarified legal and procedural issues to assist the BOT with undertaking a hard look at the facts and record of proceedings under SEQRA; and (ii) an outline of Agency policies, procedures and standard practices undertaken in connection with processing Applications for Financial Assistance and the provision of financial assistance, including PILOT Agreements. It is our hope that the latter will provide the BOT, Applicant and general public with guidelines and broader understanding of the potential structure of one or more PILOT Agreements for the proposed Project, along with a means to measure the cost-benefit impact of financial assistance that the Agency may provide to the Applicant and Project if one or more applications to the Agency are submitted by the Applicant and thereafter accepted, processed and approved. As noted within, the Agency has not yet been provided with a formal application from the Applicant, nor has a sufficient amount of project information and data been provided to allow the Agency to respond to the proposed amounts of PILOT Payments or term of any proposed PILOT Agreement proposed by the Applicant.

I. Technical Corrections and Comments to DEIS.

The Agency has reviewed the DEIS and in particular those sections relating to a potential role the Agency may play in providing forms of financial assistance to the Applicant in connection with the Proposed Project (See, Executive Summary at E5-E7 and Section III.F-24-41) relating to potential financial assistance that may be requested from the Agency, including a PILOT Agreement.

At the outset, and for the reasons set forth in greater detail below, please be advised that the Agency cannot at this point, without receipt of a formal Application for Financial Assistance and supporting materials, provide any specific comment or response to the $2.975M proposed PILOT payment outlined within the DEIS. However, we offer the following technical and legal corrections that should be made within the Executive Summary and to DEIS Section III.F at pages 24-41:

1) Reference to the Westchester County Industrial Development Agency (sic) on page III.F-25 should be removed with all references to the involved IDA consistently referencing the Agency.
2) Generally, the Agency is empowered to provide forms of financial assistance that include (i) sales and use tax exemptions, (ii) mortgage recording tax exemptions, (iii) real property tax abatements in the form of PILOT Agreements, and (iv) for qualified projects, taxable and tax exempt financing through the issuance of bonds and notes. With respect to the DEIS language relating to sales tax exemptions for the construction and fit-up of the proposed Project, the estimated materials purchases figures should be revisited for confirmation of total potential savings to be realized and the resultant amount of revenue loss to the local municipalities (County, Town and Village). The Applicant's $172.8M material cost estimate should be utilized as a top-of-the line working figure, with the amount of exemption and resultant impact measured based upon the Agency's Sales Tax Exemption Assumptions, a form of which is attached as **Exhibit A**, hereto.
3) The Applicant does not provide any information regarding anticipated financing(s) associated with the proposed Project, therefore the Agency is unable to assume whether the Applicant will request this benefit or estimate the revenue impacts of same. The Agency recommends that the BOT investigate the Applicant's proposed project financing plans in order to fully understand same. In addition, the Agency stands ready to work directly with the Applicant to develop one or more Applications for Financial Assistance as a means to develop this component of financial impact. In all events, the Agency will utilize its Mortgage Recording Tax Exemption Assumptions, a form of which is attached as **Exhibit B**, hereto.
4) Pro-rata Distribution of PILOT Payments. All of the Applicant's statements and estimates regarding distribution of PILOT Payments need to be corrected.

Specifically, the Applicant's statement that "The other taxing jurisdictions (County, Town, Sewer, and Solid Waste) would not receive a PILOT payment of ad velorem taxes under the proposed PILOT Agreement." is legally incorrect. The Agency notes that there is no "proposed PILOT agreement" and that Section 858(15) of the General Municipal Law ("GML") states, in part, that "Unless otherwise agreed to by the affected taxing jurisdictions, any such agreement shall provide that payments in lieu of taxes shall be allocated among affected tax jurisdictions in proportion to the amount of real property tax and other taxes which would have been received by each affected tax jurisdiction had the project not been tax exempt due to the status of the agency involved in the project. Therefore, unless each of the County, Town, School and Village all authorize a distribution formula other than pro-rata, then a pro-rata distribution will be required. As such, the Applicant's DEIS assumptions and tables should reflect pro-rata distribution of PILOT payments (and resultant losses of tax revenues).

5) Special District Charges. The Agency's exemption from taxation under GML Section 874 and Section 412-a of the Real Property Tax Law ("RPTL") does not include the power to exempt special district taxes. Therefore, the Applicant should assume, and the FEIS should reflect, the fact that the Applicant would be responsible for payment of all applicable special district charges for the proposed Project based upon full assessed valuation (whether a PILOT Agreement is entered into or not).
6) Impacts on Municipal Services and Costs. As a general observation and clarification, IDA PILOT Agreements are generally tailored for specific project categories and become effective following applicable taxable status dates. In other words, the IDA real property exemption may be granted pursuant to timely application to applicable assessor(s) with Form RP-412-a on or before the applicable taxable status date. Thereafter, the subject real property is exempt from ad velorem taxes (but not special district charges) and the terms of a PILOT Agreement dictate the amount and timing of PILOT Payments. With this said, and while the Applicant states in the DEIS that the proposed Project will be built in one phase, several phases may be required due to logistical, financing and legal constraints. We further understand that pursuant to the Conceptual Development Plan (See, Exhibit #II-2), the proposed Project will include various end uses, including market rate housing, age restricted housing, hotel, retail, medical offices and a variety of parking infrastructure. As such, it is doubtful that any proposed PILOT structure would be spread across the entire proposed Project, rather, there will more likely be a number of individual PILOT Agreements that are entered into and relate to individual project elements – and commence individually based upon timing of construction and commencement of operations. As outlined below, any meaningful analysis of the potential impacts of IDA financial assistance will not only require an accurate delineation of IDA purposes, powers and procedures under GML Article 18-A, but also require more detail from the Applicant regarding proposed subdivision plans for the site, along with project development, finance and construction details relating to each phase and

component of the proposed Project. The Agency's Application for Financial Assistance and project review and approval process will properly elicit these details at the appropriate time.

7) Assessment Assumptions. We have reviewed the assessment assumptions contained within the DEIS and encourage the BOT and Applicant to revisit all Project assessment assumptions contained within the DEIS. Specifically, any assessment assumptions should take into account the standard approach to assessment of commercial properties in New York State, which include not only consideration of comparable ratables, but also income and replacement value methodologies. In the instant case, accurate assumptions cannot be derived from purported comparable ratables located within the Village (for which there are none), rather a broader geographic base must be reviewed for comparison purposes. In addition, an accurate assessment estimate will also require more detail with respect to capital costs and projected operational income associated with each Project element. Given the disparate end uses of each building improvement associated with the Project, there will likely be differing formulas and assumptions appropriately utilized for each. Until this level of analysis is completed, the assessment figures contained within the DEIS, much like the proposed amount of PILOT Payment included by the Applicant, should be considered as hypothetical only.

8) Additional study and evaluation is required to weigh the Project's potential impacts upon and needs for municipal services, including water, sewer, solid waste, police and fire protection. As noted above, the Project will be required to pay all applicable special district taxes whether or not the Agency provides any financial assistance for the Project. This being said, the Project would generate special district taxes based upon full assessment as the Project is developed and operated. This will include water, sewer and solid waste. Notwithstanding, the BOT should fully weigh and consider all infrastructure and resource requirements as part of the FEIS for purposes of weighing all potential impacts, including new infrastructure and related ongoing maintenance costs. With respect to Police and Fire protection, these elements are paid for out of general tax levy imposed by the Village and therefore must be weighed in connection with any potential PILOT Agreement.

## II. General Discussion of Agency Policies, Procedures and Standard Practices.

By way of background, the Agency was established as a public benefit corporation pursuant to Title 1 of Article 18-A of the GML, as amended, and Chapter 632 of the Laws of 1972 of the State of New York, as amended (hereinafter collectively called the "Act") and granted with the authority and power to own, lease and sell property for the purpose of, among other things, acquiring, constructing and equipping industrial, manufacturing and commercial facilities as authorized by the Act. Based upon our review of the proposed Project as detailed within the DEIS, the Agency possesses sufficient purposes and powers to undertake all contemplated aspects of the proposed Project as one or more individual "projects" as defined pursuant to the Act. It should be noted that while the Agency is empowered to undertake and provide financial assistance for for-rent housing as an ongoing commercial activity, the Agency is not empowered to provide financial assistance for-sale housing projects. Furthermore, the Agency's ability to undertake and provide financial assistance for the contemplated retail aspects of the proposed Project will have to be analyzed and confirmed given the retail restrictions contained within GML Section 862.

The Agency has adopted certain requisite applications and policies as required pursuant to the Act, including a Uniform Tax Exemption Policy ("UTEP") that applies to all applicants and projects to be considered by the Agency. Generally, all Agency project considerations begin with the submission of a completed Application for Financial Assistance, which includes specific project details on all contemplated capital expenditures, financing plans, job estimates and other relevant details. The Agency's UTEP and form of Application for Financial Assistance can be accessed at:

http://www.portchesterny.com/Pages/PortChesterNY_BComm/IDA/index

Once a completed Application is received by the Agency (including certified Project cost figures), the Agency typically adopts an initial resolution accepting the Application and authorizing the scheduling and conduct of a public hearing required pursuant to the Act. At this public hearing, the Agency is required to disclose a detailed cost-benefit analysis relating to the proposed project's capital investment, job numbers and all estimated tax exemptions being contemplated by the Agency. This includes an estimate of all contemplated exemptions from sales, mortgage recording and real estate taxes associated with a proposed project. Due to this requirement, the Agency cannot schedule or conduct the public hearing until all aspects of proposed financial assistance (including all PILOT details) are fully agreed to by the Agency and the applicant.

As noted above, the cost-benefit analysis for sales and mortgage recording tax, along with corresponding estimates of revenue loss for local municipalities, is fairly formulaic and can be determined through use of Exhibits A and B, hereto. The negotiation of terms for PILOT Agreements, however, along with related cost-benefit estimates for comparing proposed PILOT Payments to estimated tax revenue loss, is a more complicated process that involves estimating likely project assessed valuation following completion of construction, along with likely future trends in assessment rates. This task is best undertaken with known and established tax parcels within previously subdivided lands and a known and detailed project description. However, and in this case, the lack of a proposed subdivision plan delineating individual project pads and areas that will ultimately be dedicated to the Village, along with the absence of detailed project description(s), makes any current analysis or review extremely premature. We would note at this point that the Agency's UTEP generally structures PILOT Agreements such that existing assessed valuations are frozen for the term of the PILOT Agreement (the "Base Value"), with a graduated abatement formula applied to the assessed value attributable to the as-completed project elements (the "Added Value"). This being said, our assumption is that the Applicant will certainly reconsider the proposed PILOT structure contained within the DEIS and seek to establish multiple PILOT Agreements for individual elements of the proposed Project that are timed to best fit their development needs, timing and phases. Furthermore, and based upon the Agency's existing projects and experience, each element of the Applicant's proposed Project (age–restricted housing, market rate housing, hotel, retail, medical facilities, parking infrastructure) will have differing ownership interests, equity structures, financing strategies and individual financial risks that suggest that they can and should be taken on as individual Agency projects. And in corresponding fashion, the Agency would consider each element on an individual basis for purposes of considering the extent to which financial assistance can and would be conferred.

Once the Agency is prepared for and conducts the requisite public hearing, and following completion of the SEQRA process, the Agency would be in a position to consider formal approval of a project. At that time, a formal resolution would be adopted by the Agency that includes a final detailed project description and all elements of contemplated financial assistance. Thereafter, the Agency undertakes projects through structuring a "straight-lease" transaction with the applicant whereby the entire property is leased to the Agency and immediately leased back to the applicant for a period of years matching the term of the contemplated PILOT Agreement. The PILOT Agreement becomes effective for applicable tax years following the next applicable taxable status date (typically March 1 or May 1 each year). The applicant indemnifies the Agency for all liabilities associated with this nominal ownership interest and is required to carry affirmative insurance coverages protecting the Agency. During the term of the straight-lease transaction, the applicant has affirmative requirements to provide annual exemption and job reports to the Agency. In addition, the Agency charges an initial and continuing annual administrative fee for each transaction (the Agency's fee schedule is contained within the Application, which is available in the link above.)

We appreciate the opportunity to provide the within comments to the DEIS and trust that the foregoing will assist the Applicant and Village with the development of an accurate, robust and meaningful FEIS in connection with the Applicant's proposed Project. The Agency stands ready to work closely with the Village and Applicant toward a mutually agreeable and beneficial work product and the possibility of a very substantial and transformative economic development project within the Village.

Respectfully Submitted,

VILLAGE OF PORT CHESTER
INDUSTRIAL DEVELOPMENT AGENCY

By: Frank Ferrara
Title: Chairman

Cc: Village Manager
Village Attorney
Village Clerk
Agency Board Members and Staff
Agency Counsel

**Exhibit A**

Sales Tax Exemption Analysis

# Village of Port Chester
# Industrial Development Agency

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**New York State/Westchester County Sales Tax Explained - January 2015**

New York State levies 4%.
Counties levy 3%, by State mandate, and may lobby the State for a higher rate.
NYC and close in counties levy a 0.375% Metropolitan Transit Authority surcharge.

Westchester County levies only 3%, which is broken down as follows:

Westchester County retains the first 1.5% in its entirety.
Designated Cities retain the other 1.5% and may charge more.
For all other local entities, the balance 1.5% is allocated accordingly:

*Table 1 - Breakdown of Westchester County's 1.5% Shared Portion of its Sales Tax*

| Percentage | County Share | Total | Local Gov Share | Total | Local School Share | Total |
|---|---|---|---|---|---|---|
| 1.00% | 1/3 | 0.3333% | 1/2 | 0.5000% | 1/6 | 0.1667% |
| 0.50% | 7/10 | 0.3500% | 1/5 | 0.1000% | 1/10 | 0.0500% |
| 1.50% | | 0.6833% | | 0.6000% | | 0.2167% |
| %age of 1.5% | | 45.5% | | 40% | | 14.5% |

*Source - "Local Government Sales Taxes: 2010 Update," Office of the NYS Comptroller, April 2010*

The allocation is based on population.

Westchester County has four cities that retain the second 1.5% in its entirety:
Yonkers, White Plains, New Rochelle, Mount Vernon
Therefore the populations of these cities are excluded from the Westchester County population baseline for purposes of calculating distributions to the various taxing jurisdictions.

*Table 2 - Allocation of 1.5% Sales Tax Shared by Westchester County With Local Taxing Districts*

| Jurisdiction | Adjusted* Population | %age of ** Adjusted County | Sales Tax Distributed to local Taxing Jurisdictions | PC Share of Sales Tax based on population |
|---|---|---|---|---|
| Westchester County | 551,929 | 100% | 0.6833% | NA |
| Village of PC | 28,967 | 5.25% | 0.6% | **0.0315%** |
| PC-Rye UFSD | 31,910 | 5.78% | 0.2167% | **0.0125%** |
| | | | 1.5% | |

* - All figures from the 2010 US Census Bureau
** - County population adjusted for the populations of Yonkers, White Plains, New Rochelle and Mount Vernon.

**Exhibit B**

Mortgage Recording Tax Exemption Analysis

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**Westchester County/Town of Rye Mortgage Recording Tax Explained – January 2015**

*Table 1: Mortgage Recording Tax in Westchester County*

| Tax Name | Tax | Tax | Explanation |
|---|---|---|---|
| Basic | 0.50% | | distributed to towns |
| Westchester | 0.25% | | retained by county |
| Additional | 0.30% | | for the MTA |
| Metropolitan Transportation Authority | 0.25% | | if property is up to 6 family |
| Special Additional - SONYMA | | 0.25% | if property is not 1 - 6 family |
| Yonkers | | 0.50% | levied on all Yonkers properties |
| **Westchester County ex-Yonkers** | **1.30%** | **1.80%** | **Yonkers only** |

Exemption - $30 deduction for a 1-2 family dwelling
Exemption - 0.25% (MTA/SONYMA) if mortgagee is a NATURAL PERSON or FEDERAL CREDIT UNION
*Source: Mortgage Tax Deputy, Westchester County Clerk's office*

Basic is distributed to the Town or Rye, which then shares it with the municipalities under its jurisdiction as follows:

*Table 2: Distribution of Basic 0.50% MRT in the Town of Rye*

| Taxing Jurisdiction | Retained MRT |
|---|---|
| Rye Town | 0.25% |
| Port Chester | 0.10% |
| Rye Brook | 0.10% |
| Rye Neck | 0.05% |
| **Basic Total** | **0.50%** |

*Sources - Rye Town Clerk/Village of Port Chester Treasurer*

Revenue is distributed by the above formula regardless of where in the Town of Rye a property is mortgaged. For example, a property mortgaged in Rye Brook will generate 0.10% MRT for Port Chester.