

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Agenda – 519th Meeting
Friday, August 21, 2020-8:30 am

James J. Allen Boardroom
Agency Offices – 4287 Main Street, Amherst, NY 14226

1. Roll Call of Members
2. Reading and Approval of Minutes
3. Bills & Communications
4. Treasurer's Report
5. Executive Director's Report
6. Committee Reports
7. Unfinished Business
8. New Business
 - I. Authorization Resolution – 6790 Main, LLC
9. Adjournment

TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY
Minutes of the 518th Meeting
June 19, 2020 – 8:30 am
James J. Allen Boardroom
Agency Offices, 4287 Main Street

Due to the Covid-19 Pandemic and pursuant to Governor Andrew Cuomo’s Executive Order No.202.1, the Amherst IDA Board of Directors meeting was conducted through Zoom.com and live streamed at www.AmherstIDA.com. In physical attendance at the meeting at AIDA offices was Executive Director David Mingoia. A video recording of the meeting can be accessed and viewed at www.AmherstIDA.com.

PRESENT via Zoom.com:	Carlton N. Brock, Jr. Steven Sanders William Tuyn Hon. Timothy J. Drury Hadar Borden Kevin J. Zanner, Hurwitz & Fine PC
ABSENT:	Anthony Agostino Philip Meyer
GUESTS via Zoom.com:	AIDA Staff

Chairman Carlton Brock called the meeting to order.

MINUTES

Upon a motion by Hadar Borden, seconded by Timothy Drury and unanimously carried, the minutes of the May 2020 meeting were approved as presented.

BILLS & COMMUNICATIONS

The board was provided a copy of the Town of Amherst 2020 PILOT Exemption Report which found that the PILOTS collected in 2020 were in order and that there were no reportable findings. There were no comments.

TREASURER’S REPORT

Upon a motion by William Tuyn, seconded by Hadar Borden and unanimously carried, the Treasurer’s Report for May 2020 was approved as presented.

PUBLIC COMMENT

There was no Public Comment at this meeting.

EXECUTIVE DIRECTOR’S REPORT

The Executive Director’s Report is attached to these minutes.

COMMITTEE REPORTS

There were no Committee Reports presented at this meeting.

UNFINISHED BUSINESS

There was no Unfinished Business at this meeting.

NEW BUSINESS

I. Authorization Resolution – Capital Fence, Inc.

The applicant requested an authorization resolution for a project having a total cost of up to \$2,145,000 for the acquisition, construction and equipping of a 2,400 square foot office and 9,600 square foot warehouse facility located at 68 & 74 North Ellicott Creek Road. The project is located within the Sweet Home Central School District.

Financial Assistance to be provided includes a sales tax exemption for project costs up to approximately \$1,500,000, a mortgage tax exemption and real property tax abatement in accordance with the Agency's standard Uniform Tax Exemption policy. A project profile detailing costs and benefits was reviewed by the Board.

Steven Sanders made a motion to approve the Capital Fence, Inc. project. William Tuyn seconded the motion. There was a brief discussion. A roll call was taken for approval of the Capital Fence, Inc. project:

Carlton N. Brock, Jr. - aye

Steven Sanders – aye

William Tuyn – aye

Timothy Drury – aye

Hadar Borden – aye

The motion to approve the project passed 5-0.

II. 2020 Versel Contract – Economic Recovery Study related to the Covid-19 Pandemic

The Amherst IDA, along with the Town of Amherst, has begun a planning process to manage its recovery from the public health and economic crisis caused by the COVID-19 pandemic. This proposed contract is designed to support and complement the planning exercise and consists of three major elements: 1) Baseline Data Collection and Analysis; 2) Survey Design and Analysis; 3) Scoping Exercise Support.

The cost of services for the proposed contract is \$13,000 along with an additional not to exceed amount of \$2,000.

Steven Sanders made a motion to approve the 2020 Versel Contract. Hadar Borden seconded the motion. There was a discussion. A roll call was taken for approval of the 2020 Versel Contract:

Carlton N. Brock, Jr. – aye

Steven Sanders – aye

William Tuyn – aye

Timothy Drury – aye

Hadar Borden – aye

The motion to approve the 2020 Versel Contract passed 5-0.

9:00 am – Upon a motion by Steven Sanders, seconded by Hadar Borden and unanimously carried, the meeting was adjourned.

August 2020 Executive Director's Report

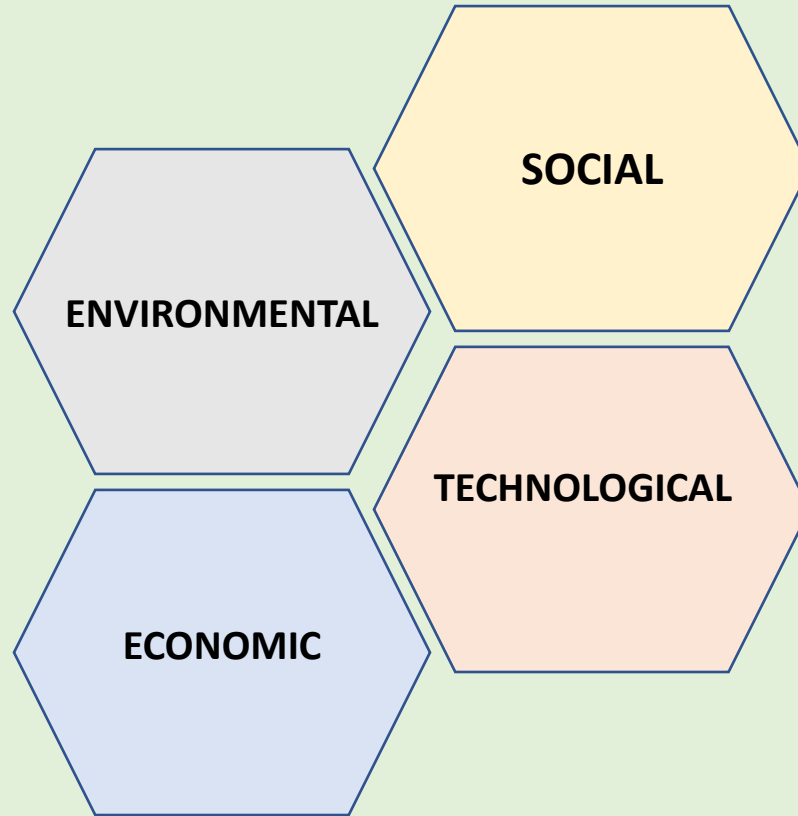
- Business Development Activities continue, with work progressing on Amherst Central Park and Boulevard Central District Projects nearing initial applications.
- Various Task Force Meetings held, including Advance Amherst (details in slide presentation), and the Golf Task Force.
- Golf Task Force
 - Survey of golfers and recreation users is complete, indicating a strong desire for a quality 18-hole course and additional youth and adult training and programming. The Town is proceeding on a path that would ensure an 18-hole course is available along with enhanced practice areas and new golf developments (i.e. Top Golf, Putting Course).
 - Golf will continue at Audubon through 2021 and maybe longer.

Advance Amherst Workshop

- Recovery Plan – Transition from Immediate Response to Long-Term Recovery
- Recover Fully from COVID-19
- Build Resiliency from Next “Shock”
- Be Positioned for Success in Rapidly Changing Environment
- Workshop Exploring Emerging Trends that are Driving Change
- Implications for Amherst and the Region
- Identify Priority Items to Address In Recovery Planning

Drivers of Change

- Climate Change
- Changing Energy
- Natural Resource
- Globalization vs. Localization

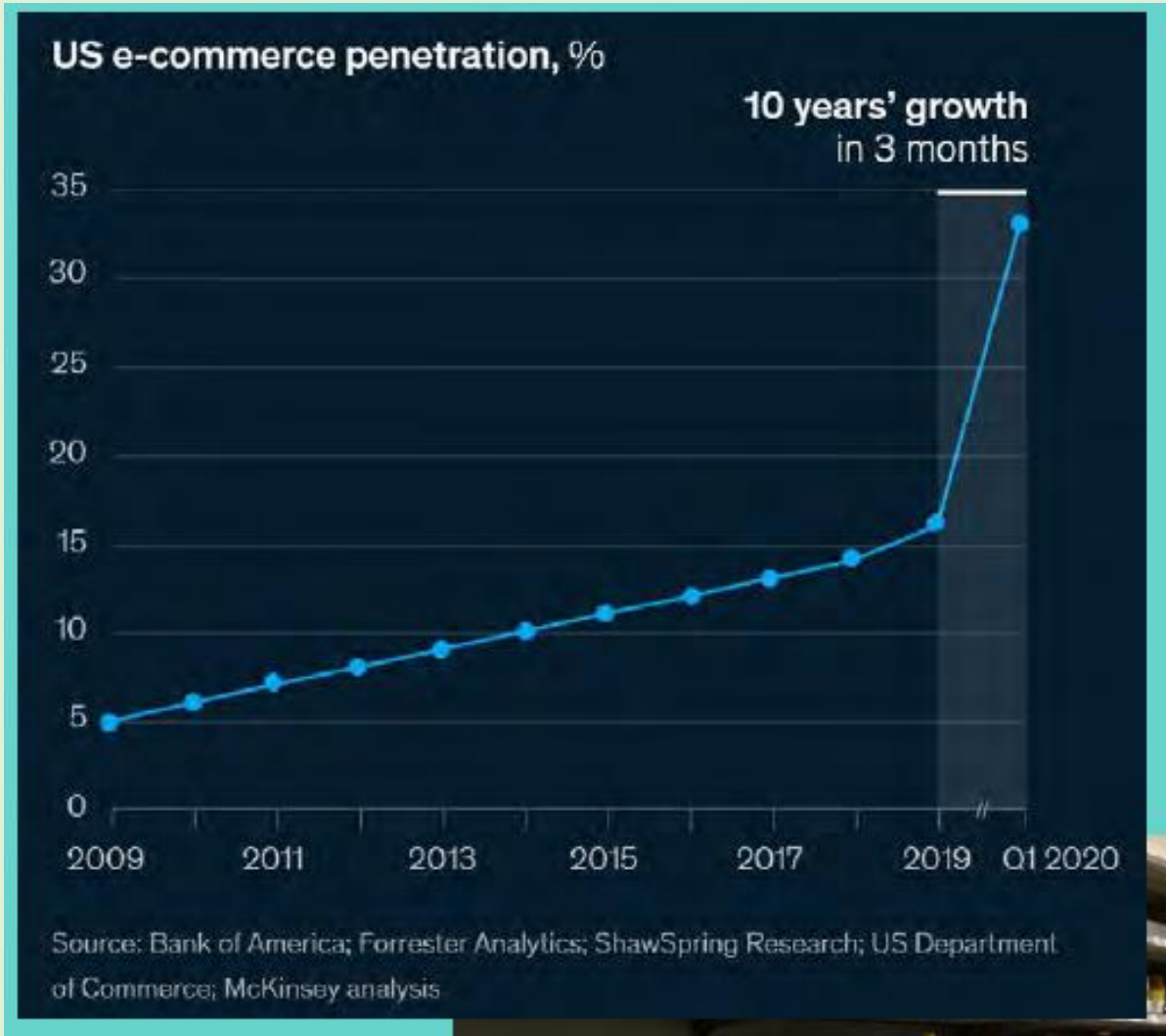


- Automation
- E-Commerce
- Ethical Consumption
- Sharing Economy

- Aging Population
- Declining Health
- Equity, Diversity, Inclusion
- Education Changes

- Artificial Intelligence
- Autonomous Vehicles
- New Mobility
- Smart Cities

E-Commerce & Retail



- Will new e-commerce behaviors stick?
- What happens to small businesses?
- Repurposing activity centers of past is accelerated

Sample Implications for Amherst

Dependency Ratio

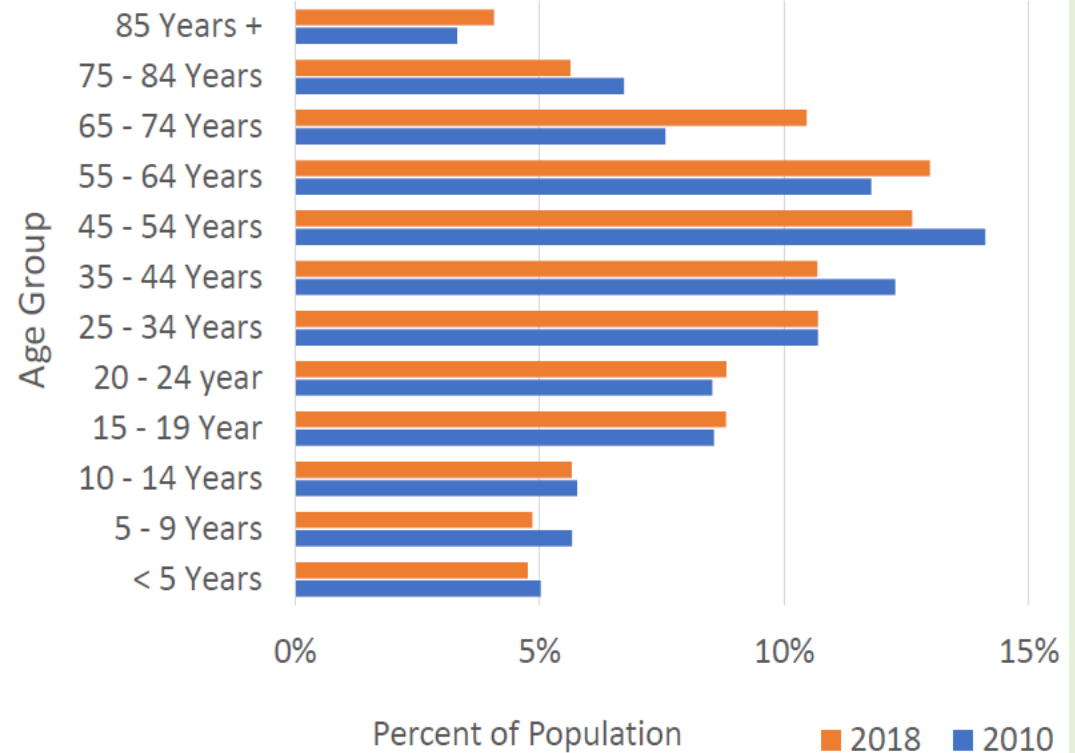
Amherst (2000)	66.2
Amherst (2010)	61.4
Amherst (2018)	65.3

Percent Population 65 and older (2018)

Amherst	8.3%
New York State	6.7%
US	6.8%

Source: Social Explorer 5-year Estimates, 2010 and 2018

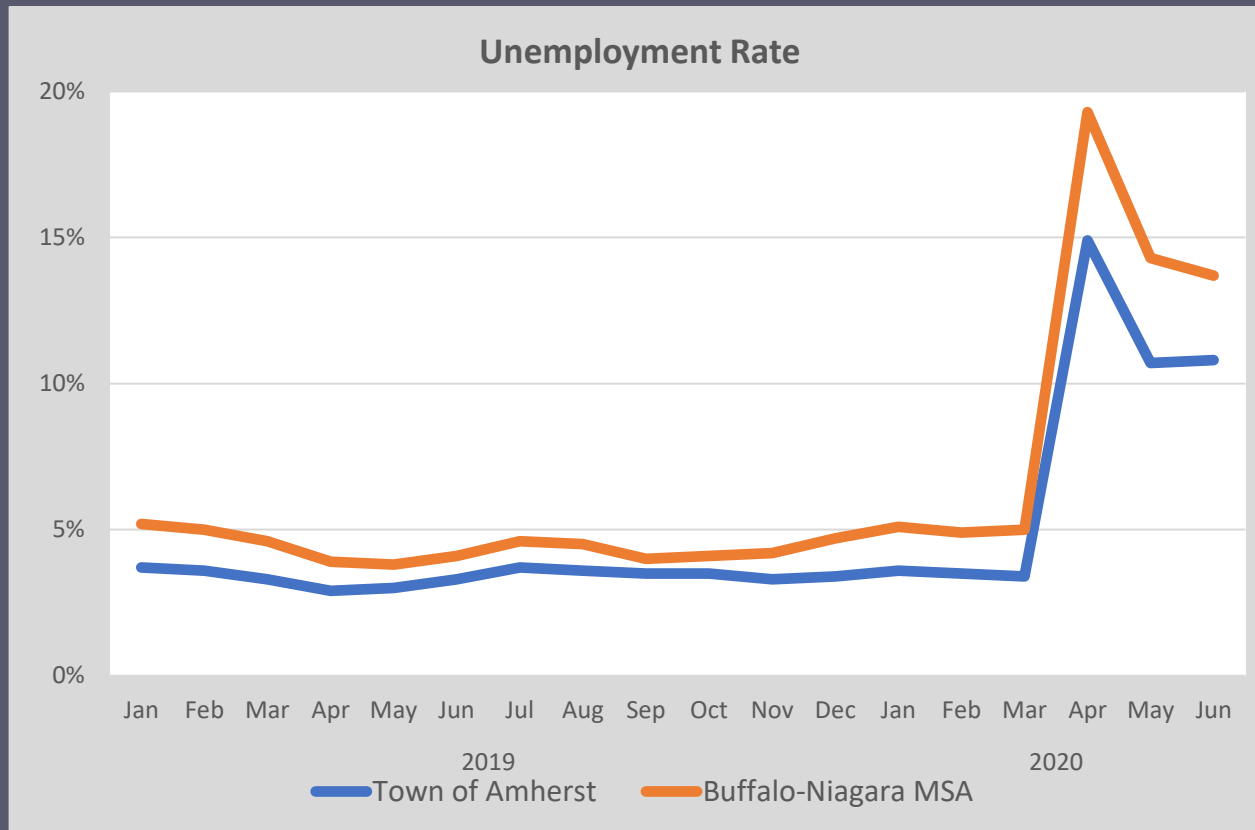
Amherst Population by Age Group 2010 and 2018



PURPOSE

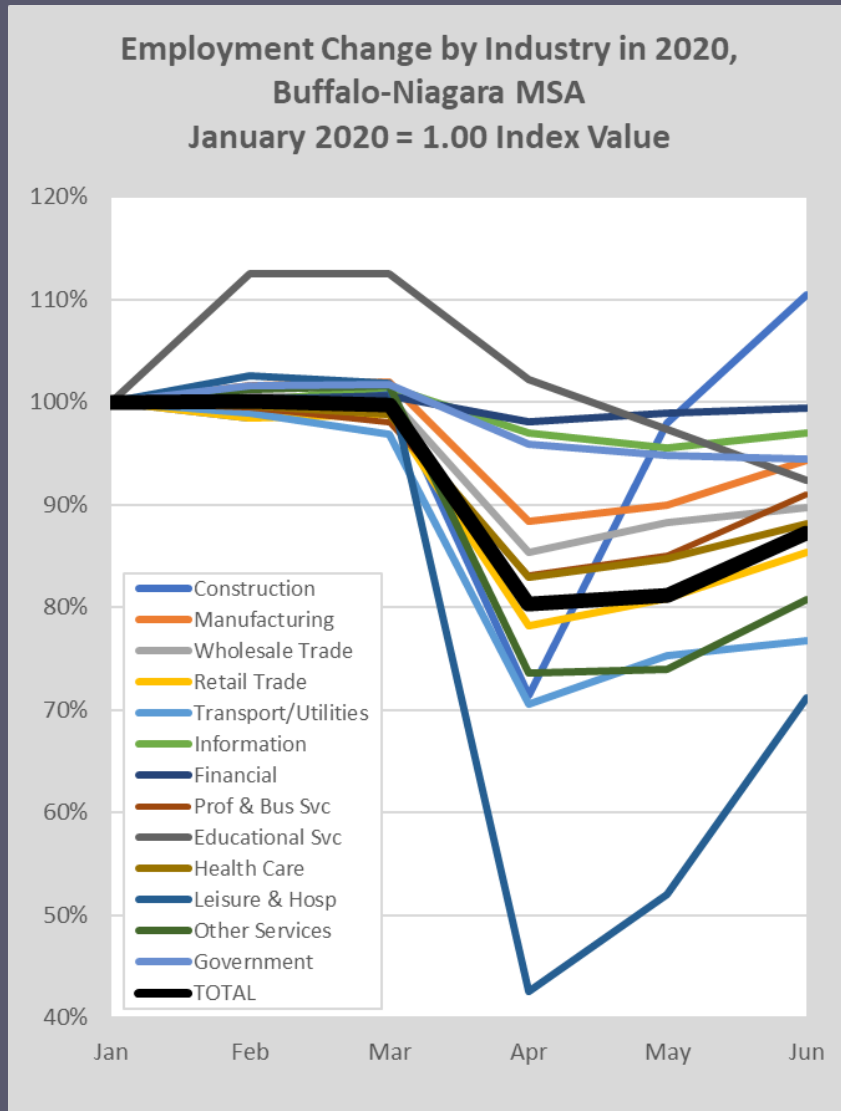
- Typical demographic and economic indicators are of limited value at the present time.
 - Need to have “real time” understanding of the situation
 - Reporting is done annually/quarterly
 - Most come with a lag time or are retroactively adjusted
- Need to use high-frequency indicators that are reported on a real-time, daily, or weekly basis
- Need to identify non-traditional data sources to inform immediate policy decisions
 - Employment & Unemployment
 - Business Activity
 - Mobility
 - Transportation
 - Real Estate Market

Unemployment Rate



- Amherst unemployment rate spiked from 3.4% in March 2020 to 14.9% in April 2020, then came back down to 10.7% in May 2020 and held at 10.8% in June 2020
- Unemployment in Amherst has consistently remained below the Buffalo-Niagara metro average

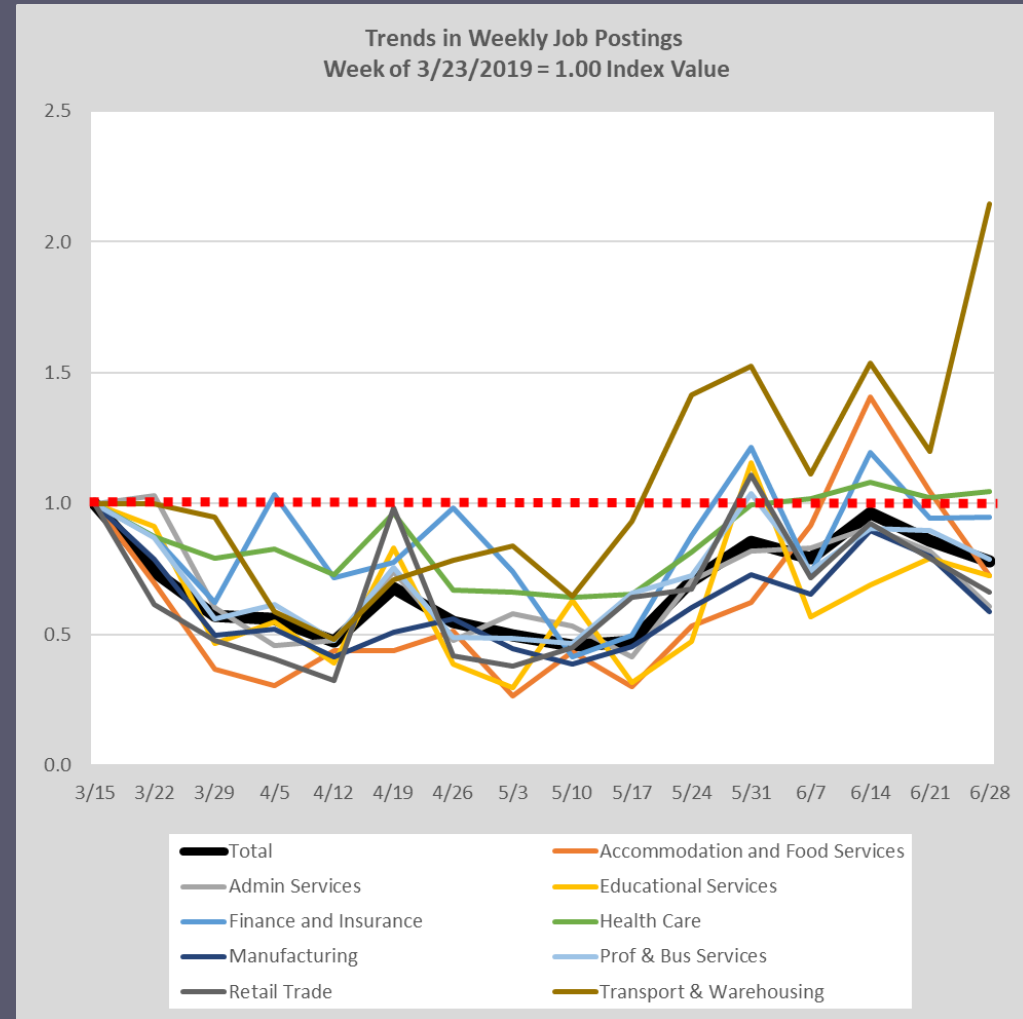
Employment Change by Industry



- Total employment declined 20% from March to April 2020 (loss of 109,000 jobs)
- 39,000 jobs were regained from April to June; region is still down 13% from March
- Leisure & Hospitality lost 57% of its jobs (-32,000) in one month, but gained back half of those lost by June
- Construction sector was hard hit in April but rebounded immediately
- Education, Information, and Financial Services only had minor job losses

Job Postings

- Job postings in the Buffalo-Niagara MSA declined 53% from March 15 to April 12
- Postings remained down more than 50% through mid-May
- Postings returned to pre-COVID level at end of May, but have declined to 78% of pre-COVID level at end of June
- Transportation & Warehousing and Health Care sectors have surpassed pre-COVID levels
- Manufacturing, Administrative Services, and Retail Trade remain more than 30% below pre-COVID levels



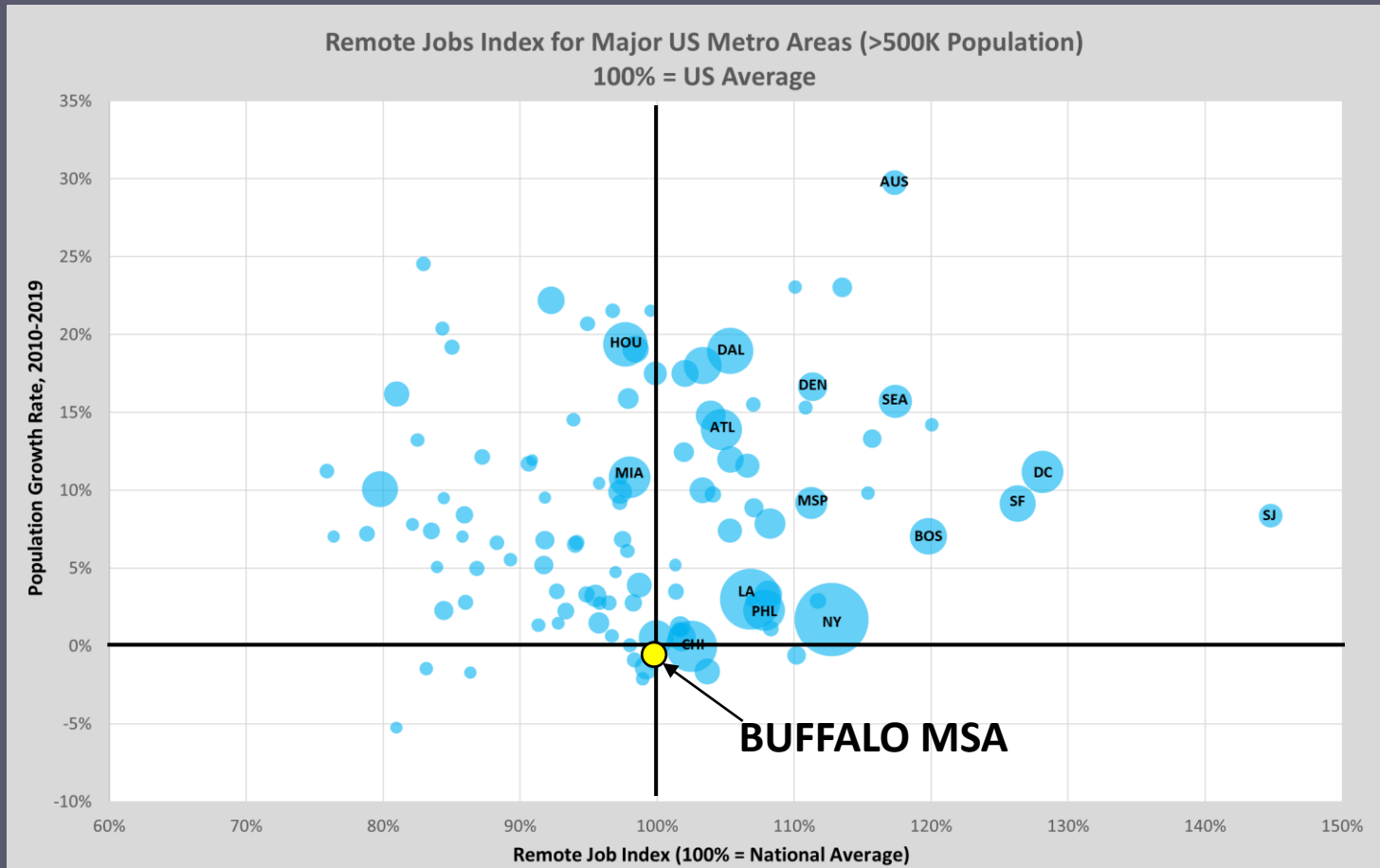
Hourly Workers

Hourly Work Activity Compared to January 2020 Levels for Buffalo-Niagara MSA



- Number of hours worked by hourly workers immediately declined 64% from March 14 to March 21, then bottomed out at 90% during week of April 13
- Activity has steadily increased and was back to 70% of pre-COVID level as of July 2

Remote Jobs Index



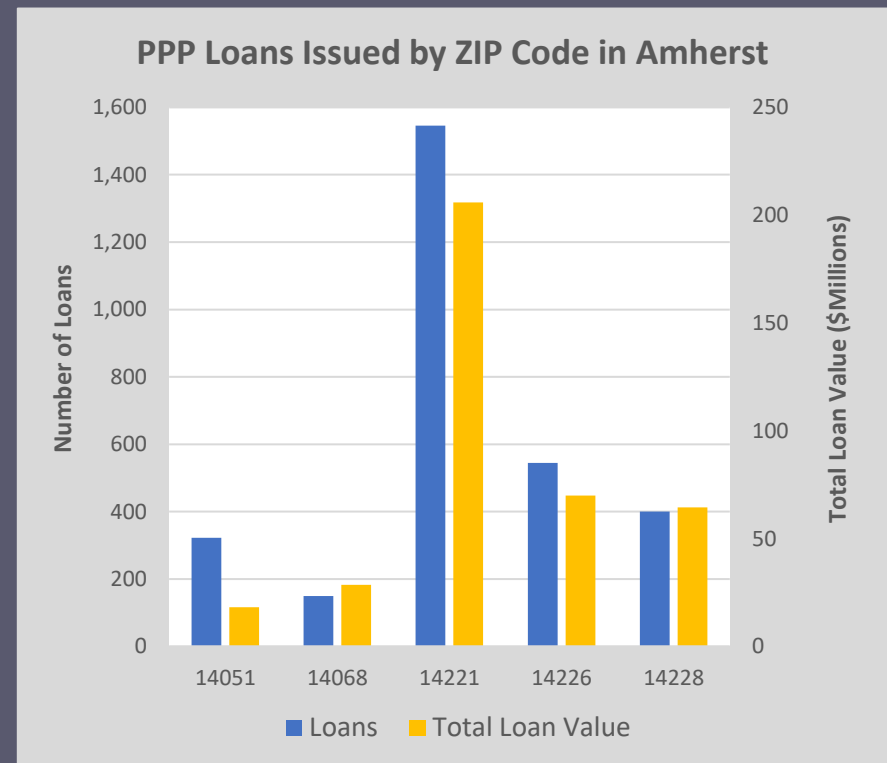
- Buffalo MSA has Remote Jobs Index of 100%, or exactly the US average
- Buffalo ranks #47 among 110 largest metro areas
- Top areas are SF/Silicon Valley, Washington, several university cities

Paycheck Protection Program (PPP)

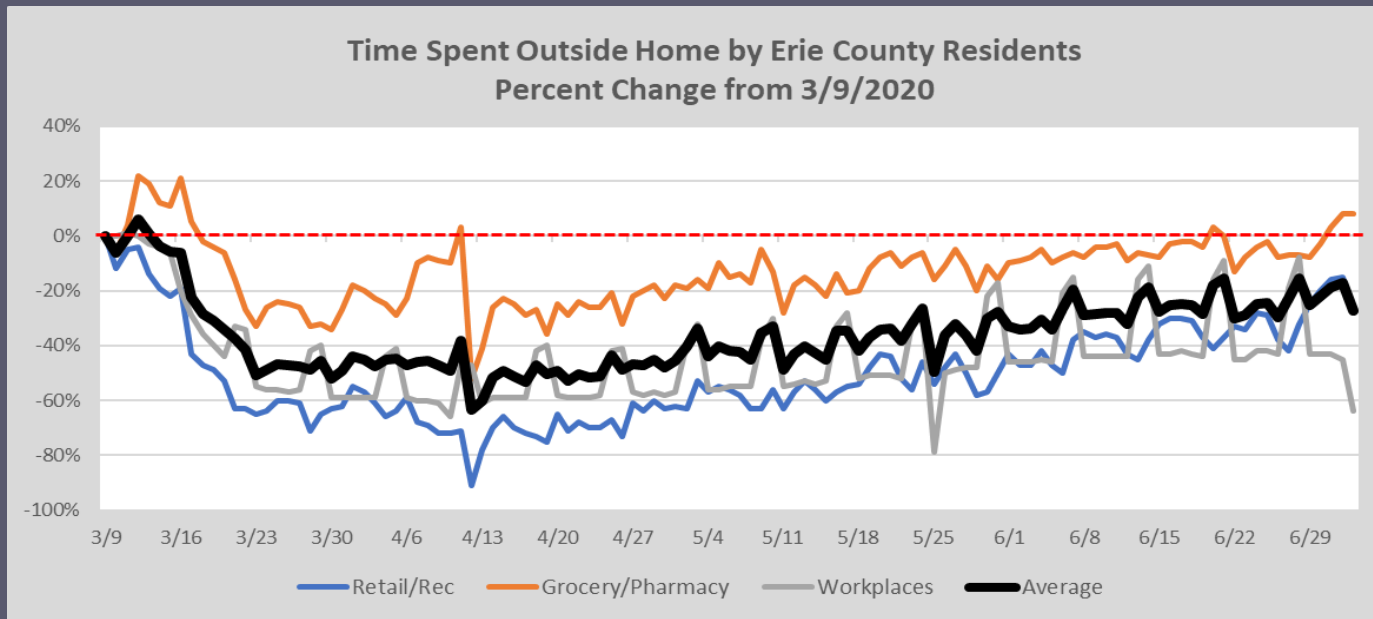
- A total of 2,962 loans were issued from the Small Business Administration's Paycheck Protection Program to businesses located in Amherst ZIP codes
- The average loan value was \$130,670
- 83 percent of PPP loans to local businesses were for less than \$150,000
- More than half of the loans were awarded to businesses located in the 14221 ZIP code area

Paycheck Protection Program Loans Issued in Amherst ZIP Codes

ZIP Code	Loans	Total Loan Value	Avg Amount	Jobs Retained
14051	322	\$18,135,418	\$56,321	1,851
14068	149	\$28,566,450	\$191,721	3,782
14221	1,546	\$205,842,643	\$133,145	21,970
14226	545	\$69,979,678	\$128,403	7,007
14228	400	\$64,520,406	\$161,301	6,130
Total	2,962	\$387,044,596	\$130,670	40,740

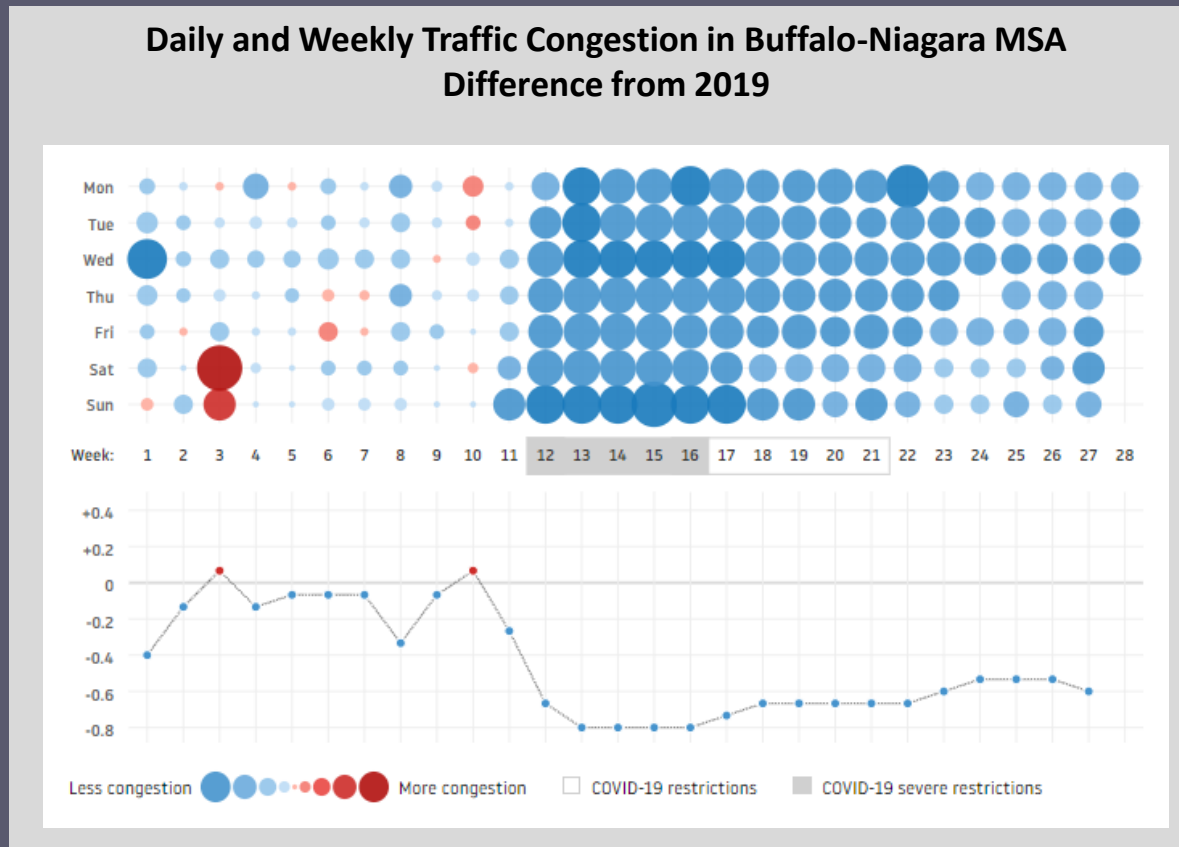


Time Spent Outside the Home



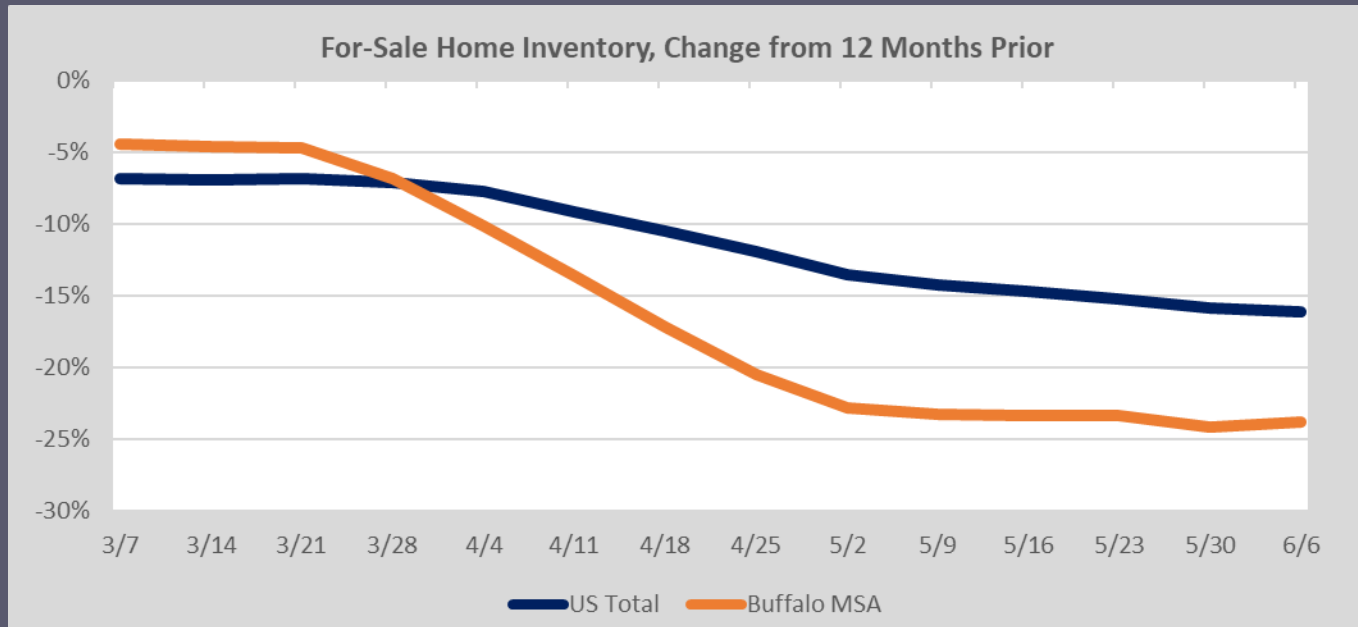
- The amount of time spent away from home among all Erie County residents declined to 37 percent of pre-COVID levels on April 12
- The greatest decline was for Retail & Recreation, which initially declined by 90 percent and was still 74 percent below the pre-COVID level as of July 3
- Grocery & Pharmacy shopping was the least affected, as it only dipped by about 30 percent and surpassed pre-COVID level by July 1
- Time spent at workplaces has not recovered and was still more than 40 percent below pre-COVID level as of June 30

Traffic Congestion



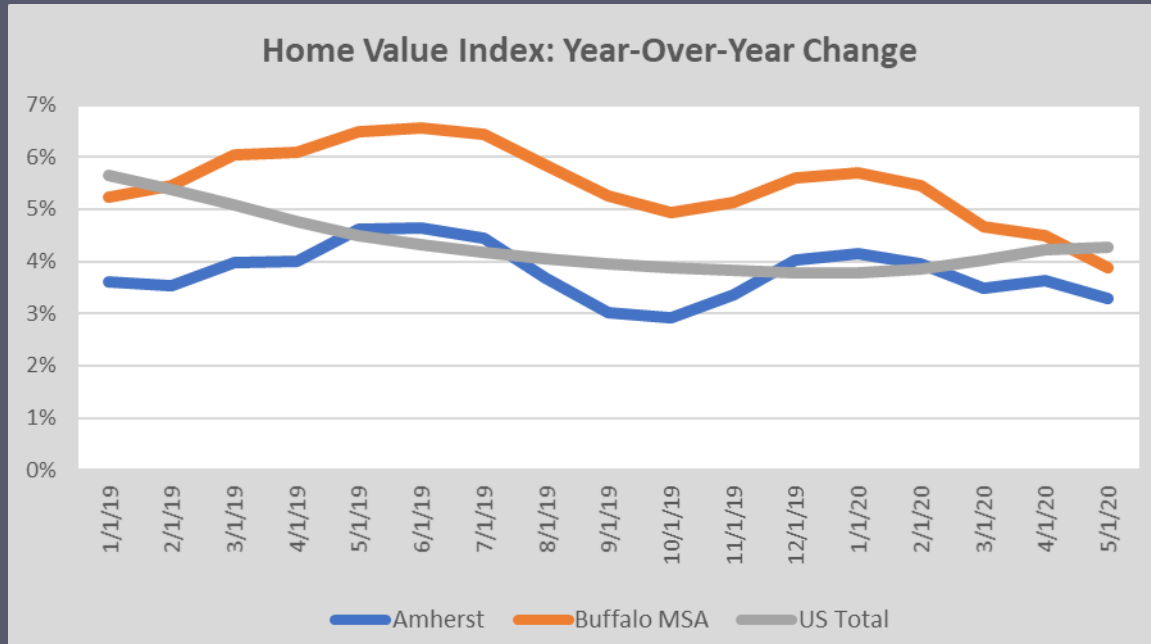
- Traffic congestion in the Buffalo region fell to a level 80 percent below its 2019 average during the early weeks of the lockdown
- Congestion has remained at very low levels and remained 60 percent below 2019 levels at the end of June 2020

For-Sale Home Inventory



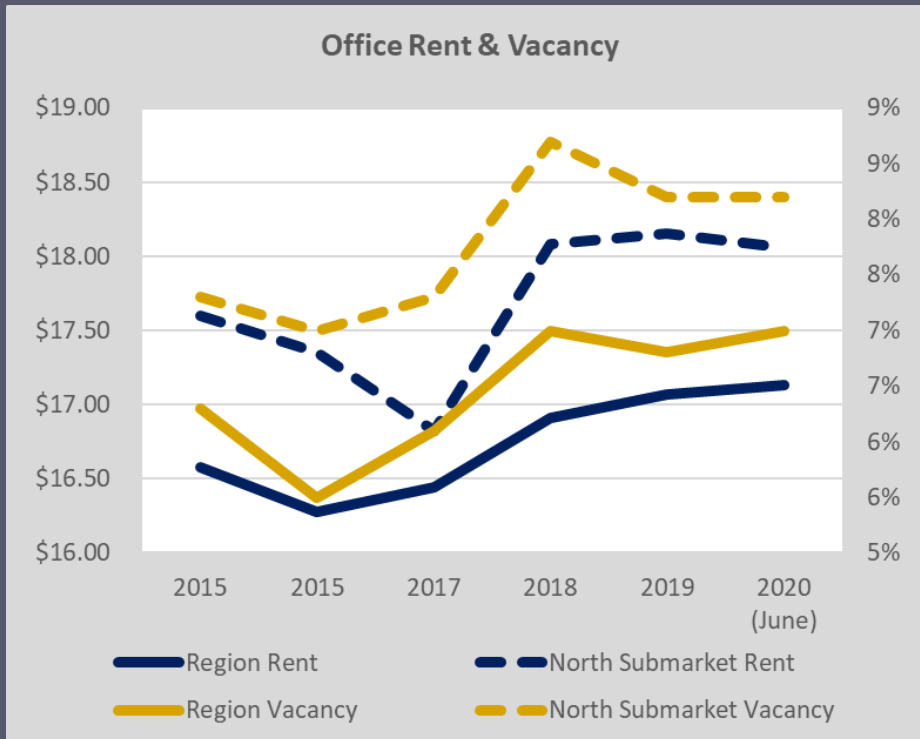
- In 2019, the inventory of homes listed for sale in the Buffalo MSA increased 23 percent between March 1 and June; in 2020, the inventory declined by 1.7 percent during the same period
- As a result, the inventory as of June 2020 was 25 percent below the June 2019 level
- For the US as a whole, the for-sale home inventory in June 2020 was only down 15 percent from June 2019

Zillow Home Value Index



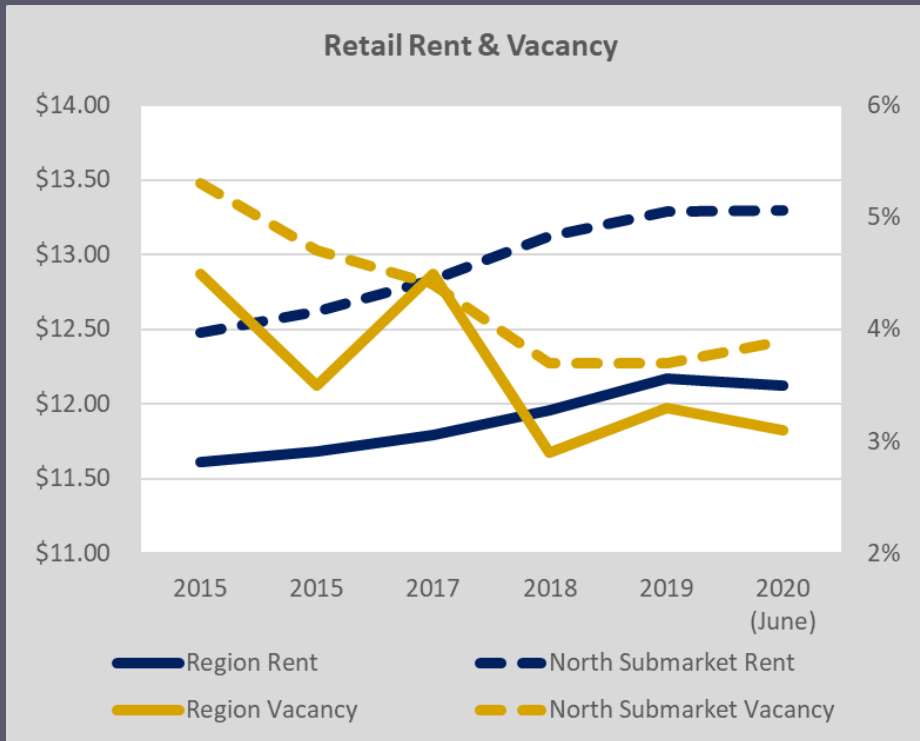
- Home values have continued to increase during the COVID-19 crisis, due in large measure to the low inventory of homes for sale
- The median value of a home in the Town of Amherst was \$248,100 as of May 2020, which was up 3.3 percent from the May 2019 value of \$240,200
- Home value increases in Amherst have trailed the Buffalo MSA by 1-2 percent over the past two years and have generally trailed US growth

Office Market Trends



- Office rents in the Buffalo region and the North submarket have not yet been significantly affected by the COVID-19 crisis
- Rents are actually up slightly as of June 2020 from 2019 levels
- Vacancy has increased slightly but is at the same level as 2018
- The North Submarket has seen a slight increase in vacancy but rents are stable

Retail Market Trends



Source: CoStar

- Similarly to office, the retail market has not yet been significantly impacted by the COVID-19 crisis
- Retail rents have declined very slightly in 2020 but vacancy remains very low
- Overall regional retail vacancy is at just 3.1 percent as of June 2020
- The North Submarket has seen a slight increase in vacancy but rents are stable

PROJECT PROFILE:
6790 MAIN STREET, LLC
\$5,600,000
August 21, 2020



ELIGIBILITY

- Commercial Project under NYS Law
- 485-b equivalent PILOT schedule

COMPANY INCENTIVES (EST.)

- Property Tax = \$246,000
- Sales Tax = \$192,500
- MRTE=\$33,000

PROJECT BENEFITS (EST.)

- Property Taxes = \$648,000
- Income Taxes = \$111,000
- Sales Taxes = \$69,000
-

EMPLOYMENT

- Construction Jobs Created-35

PROJECT SCHEDULE (EST.)

- Work to begin Sept 2020
- Project completion June 2021

Project Address:

6770 Main St.
 Amherst, New York 14221
 (Clarence School District)

Investment:

Acquisition: \$400,000
 Construction: \$4,400,000
 Equipment:
 Soft/Other Costs: \$800,000



Company Description:

The project developer is Paul Bliss, who has focused on specialty, typically mixed-use, projects throughout the Town of Amherst. Mr. Bliss’s projects are known for their quality and he enjoys a solid relationship with all of the relevant departments within the town.

Project Description:

The applicant acquired the property at 6770 Main St, next to his recently completed mixed-use building at 6790 Main St. The site contained a former photography studio that was in poor repair. The parcel currently generates \$9,390 in annual town, county & school taxes (\$93,900 over the abatement period).

The project is located within a Town Designated Enhancement Zone and will include construction of a new three-story building similar in size and scope to the structure at 6790 Main. The 2nd & 3rd floors will contain 12 market rate apartments while the first floor will provide space for commercial tenants.

The applicant has received Site Plan approval from the Town as well as a Neg Dec under SEQR. Due to design upgrades (sought by the town and neighbors), financing challenges in the current economic environment and increased construction costs driven by COVID-19 issues; AIDA assistance has become critical in making this a viable improvement to the community.

A scarcity of residential space, the town’s desire to add mixed-use close to the street with no parking in front plus the lenders desire to see a commercial element in this type of project; all reinforce the positive nature of this development despite the challenges noted above.

PROJECT PROFILE:

6790 MAIN STREET, LLC

\$5,600,000

AIDA COMPANY HISTORY:

None

MATERIAL TERMS:

1. Investment of not less than \$4,760,000 in the project location as noted in the application.
2. Compliance with the Agency's Local Labor Policy in connection with the construction of the Project

**Cost-Benefit Analysis for Mixed Use Enhancement Area Project - 6790
Main Street LLC**

Prepared by Amherst IDA using InformAnalytics

Executive Summary

INVESTOR
6790 Main Street LLC

TOTAL INVESTED
\$5.6 Million

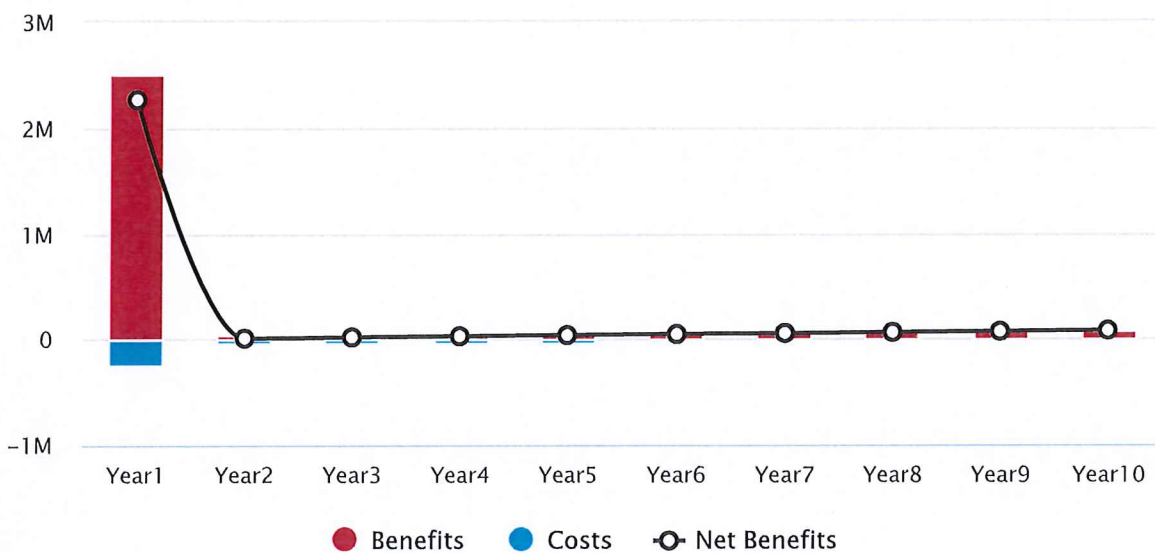
LOCATION
**6770 Main Street,
Amherst, NY 14221**

TIMELINE
10 Years

F1 FIGURE 1

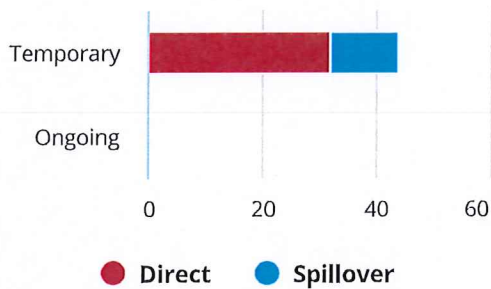
Discounted* Net Benefits for Mixed Use Enhancement Area Project - 6790 Main Street LLC by Year

Total Net Benefits:
\$2,685,000



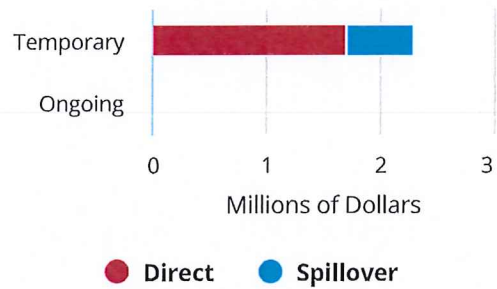
F2 FIGURE 2

Total Jobs



F3 FIGURE 3

Total Payroll



Proposed Investment

6790 Main Street LLC proposes to invest \$5.6 million at 6770 Main Street, Amherst, NY 14221 over 10 years. Amherst IDA staff summarize the proposed with the following: Proposed three-story mixed-use building consisting of 20,745 sq. ft. and related site improvements

T1 TABLE 1

Proposed Investments

Description	Amount
CONSTRUCTION SPENDING	
	\$4,400,000
OTHER SPENDING	
Land Acquisition	\$400,000
Soft Costs	\$800,000
Total Investments	\$5,600,000
Discounted Total (2%)	\$5,600,000

F4 FIGURE 4

Location of Investment

May not sum to total due to rounding.

Cost-Benefit Analysis

A cost-benefit analysis of this proposed investment was conducted using InformAnalytics, an economic impact model developed by CGR. The report estimates the impact that a potential project will have on the local economy based on information provided by Amherst IDA. The report calculates the costs and benefits for specified local taxing districts over the first 10 years, with future returns discounted at a 2% rate.

T2 TABLE 2

Estimated Costs or Incentives

Amherst IDA is considering the following incentive package for 6790 Main Street LLC.

Description	Nominal Value	Discounted Value*
Property Tax Exemption	\$246,000	\$232,000
Sales Tax Exemption	\$190,000	\$190,000
Total Costs	\$436,000	\$422,000

May not sum to total due to rounding.

* Discounted at 2%

T3 TABLE 3

State & Regional Impact (Life of Project)

The following table estimates the total benefits from the project over its lifetime.

Description	Direct	Spillover	Total
REGIONAL BENEFITS	\$2,367,000	\$596,000	\$2,963,000
To Private Individuals	\$1,691,000	\$587,000	\$2,278,000
Temporary Payroll	\$1,691,000	\$587,000	\$2,278,000
To the Public	\$676,000	\$10,000	\$685,000
Property Tax Revenue	\$648,000	N/A	\$648,000
Temporary Sales Tax Revenue	\$28,000	\$10,000	\$37,000
STATE BENEFITS	\$107,000	\$37,000	\$144,000
To the Public	\$107,000	\$37,000	\$144,000
Temporary Income Tax Revenue	\$83,000	\$29,000	\$111,000
Temporary Sales Tax Revenue	\$24,000	\$8,000	\$32,000
Total Benefits to State & Region	\$2,473,000	\$633,000	\$3,107,000
Discounted Total Benefits (2%)	\$2,473,000	\$633,000	\$3,107,000

May not sum to total due to rounding.

T4 TABLE 4

Benefit to Cost Ratio

The following benefit to cost ratios were calculated using the discounted totals.

Description	Benefit*	Cost*	Ratio
Region	\$2,963,000	\$334,000	9:1
State	\$144,000	\$88,000	2:1
Grand Total	\$3,107,000	\$422,000	7:1

May not sum to total due to rounding.

* Discounted at 2%

CGR has exercised reasonable professional care and diligence in the the production and design of the InformAnalytics™ tool. However, the data used is provided by users. InformAnalytics does not independently verify, validate or audit the data supplied by users. CGR makes no representations or warranties with respect to the accuracy of the data supplied by users.

RESOLUTION OF THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING THE CONSTRUCTION AND EQUIPPING OF AN APPROXIMATELY 20,745 SQUARE FOOT MIXED USE BUILDING BY 6790 MAIN STREET, LLC TO BE LOCATED AT 6770 MAIN STREET, AMHERST, NEW YORK, FOR SALE OR LEASE TO THE AGENCY AND SUBSEQUENT LEASE OR RECONVEYANCE PURSUANT TO A LEASE OR INSTALLMENT SALE CONTRACT TO 6790 MAIN STREET, LLC, THE EXECUTION OF A MORTGAGE AGREEMENT, LEASE AGREEMENT AND/OR INSTALLMENT SALE CONTRACT AND PILOT AGREEMENT AND THE TAKING OF OTHER ACTIONS.

WHEREAS, the Town of Amherst Industrial Development Agency (the “Agency”) is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, and Section 914-a of the General Municipal Law, as amended (collectively, the “Act”), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial and research facilities and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, 6790 Main Street, LLC, for itself or for related individuals or entities (the “Company”), has entered into negotiations with officials of the Agency with respect to the construction and equipping by the Agency without the proceeds of a bond issue of a three-story 20,745+/- square foot mixed-use building, consisting of approximately 6,915 square feet of first floor commercial space (of which no more than 5,000 square feet shall be used for retail purposes) and 13,830+/- square feet of space for twelve (12) upper-floor market-rate apartments and related improvements, which include three (3) single-story garage buildings and a parking area (the “Project”) and conveyance of the Project pursuant to a lease of the Project to the Company, such Project to be located at 6770 Main Street, Amherst, New York (the “Premises”); and

WHEREAS, the Company submitted an application and other materials and information (collectively, the “Application”) to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Application sets forth certain information with respect to the Company and the Project, including the following: that the Company desires Agency financing for the Project located at the Premises, at a cost of approximately \$5,600,000.00; that the Project consists of the construction and equipping of a three-story building for commercial, mixed-use and retail purposes; that the Project will provide substantial capital investment; that if Agency financing is disapproved, the Company would likely not proceed with the Project; and that, therefore, Agency financing is necessary to encourage the Company to proceed with the Project; and

WHEREAS, the Project is located in a Neighborhood Enhancement Area within the Town of Amherst and is therefore eligible pursuant to the Countywide Industrial Development Agency Uniform Tax Exemption Policy (the “Countywide Eligibility Policy”) for an abatement from real property taxes in accordance with the ten (10) year exemption schedule set forth in

Section 485-b of the New York State Real Property Tax Law; and

WHEREAS, after the giving of all required notices (including published notice), the Agency held a public hearing on the Project on August 6, 2020, and has considered all oral and written presentations made at or in connection with said public hearing; and

WHEREAS, the Agency has reviewed the Application and a cost-benefit analysis with respect to the Project, and considered the extent to which the Project will create and retain permanent, private-sector jobs, the value of tax exemptions to be provided, the amount of private sector investment generated or likely to be generated by the Project, the likelihood of accomplishing the proposed Project in a timely fashion, the extent to which the proposed Project will provide additional sources of revenue for the municipalities and school district and other public benefits that might occur as a result of the Project; and

WHEREAS, the Agency desires to encourage the Company with respect to the consummation of the Project, if by doing so it is able to induce the Company to proceed with the Project in the Town of Amherst; and

WHEREAS, the Company is expected to undertake and complete the Project by obtaining a conventional loan from a third party lender, and the Company has requested that the Agency execute any and all documents required by the parties, including any collateral mortgages on the Project given to secure a loan(s) obtained by the Company to finance the cost of the Project; and

WHEREAS, the Company has completed and submitted to the Agency Part 1 of an Environmental Assessment Form (“EAF”) in accordance with the provisions of the State Environmental Quality Review Act and regulations adopted pursuant thereto (collectively, “SEQRA”); and

WHEREAS, the Agency has completed Part 2 of the EAF and has considered the proposed Project and reviewed the EAF and the criteria set forth in SEQRA in order to determine whether the Project will have a significant effect on the environment and wishes to make the findings required of an agency under SEQRA.

NOW, THEREFORE, THE TOWN OF AMHERST INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby resolves that the proposed Project will not have a significant impact on the environment for the reasons more particularly set forth in the negative declaration prepared by the Agency and, in accordance with SEQRA, hereby adopts such negative declaration with regard to the Project.

Section 2. The Project is described in the recitals to this Resolution. The financial assistance to be provided in connection therewith includes: (i) an exemption from sales and use taxes for building materials and machinery, equipment, fixtures and furnishings purchased for incorporation into or use at the Project location having a total cost not to exceed \$2,200,000.00, (ii) an exemption from mortgage recording taxes for one or more mortgages having an aggregate

principal amount not to exceed \$4,400,000.00 and (iii) an abatement from real property taxes in accordance with the ten-year exemption schedule set forth in Section 485-b of the New York State Real Property Tax Law (collectively, the “Financial Assistance”). In addition to any other covenants, obligations and agreements which may be contained in the Project Documents (as hereinafter defined), the provision by the Agency of the Financial Assistance is made subject to the agreement by the Company throughout the period during which the Company is receiving Financial Assistance from the Agency (the “Compliance Period”) to comply with the following covenants and agreements, each of which shall constitute a “Material Factor”:

(a) compliance with the Agency’s Local Labor Policy in connection with the construction of the Project; and

(b) investment of not less than 85% of the total Project cost of \$5,600,000.00 in the construction and equipping of the Project prior to Project completion.

Section 3. The Agency hereby determines that the Project and the financing thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency makes the following findings and determinations with respect to the Project:

(a) The Project is for a commercial purpose within meaning of the Act and Project will promote employment opportunities and prevent economic deterioration in the area in which the Project is to be located. The Project will be located in a part of the Town of the Amherst that has been identified as appropriate for mixed-use development of the kind proposed by the Company. The Project is consistent with Town of Amherst objectives for the revitalization of this part of the Town. The construction of the Project will promote employment opportunities by providing housing to attract and retain residents to live within the Town, which will promote economic growth and improve the neighborhood. The Project will help prevent economic deterioration through the reuse of a currently vacant and unused site.

(b) A portion of the Project is expected to include facilities or property that are primarily used in making retail sales to customers who personally visit such facilities within the meaning of Section 862(2)(a) of the General Municipal Law. However, based on the representation of the Company in the Application, such facilities or property constitute less than one-third of the total project cost.

(c) The Project is located in the Transit Road Neighborhood Enhancement Area within the Town of Amherst and is therefore eligible pursuant to the Countywide Eligibility Policy for an abatement from real property taxes in accordance with the ten-year exemption schedule set forth in Section 485-b of the New York State Real Property Tax Law.

Section 4. The Agency hereby authorizes the Company as agent for the Agency, to proceed with the Project as herein authorized. The Agency is hereby authorized to acquire an interest in the Project site and the buildings thereon, if any, and to make renovations or additions thereto. The Company is authorized to proceed with the acquisition and construction of the Project as set forth in any Project Agreement, the Agency Lease Agreement or Installment Sale Contract (as hereinafter defined).

Section 5. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary of the Agency, and other appropriate officials of the Agency and its agents and employees, are hereby authorized and directed to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution and to complete the Project in cooperation with the Company.

Section 6. The Company is authorized, as agent of the Agency, to initiate the construction of the building and improvements constituting the Project, and the acquisition of machinery and equipment which will be a part thereof or will be used in connection therewith, and to advance such funds as may be necessary to accomplish such purposes. The designation of the Company as agent hereunder is limited to purchases of sales-taxable tangible personal property and services in connection with the Project which do not exceed a total cost of \$2,200,000.00 and shall not apply to any other purchase by the Company or any operating expenses of the Company. The Company shall report to the Agency, at such times as the Agency shall require, or as may otherwise be prescribed by the Commissioner of the New York State Department of Taxation and Finance (the "Commissioner"), the value of all sales and use tax exemptions claimed by the Company or agents of the Company or any operators of the Project, including, but not limited to, consultants or subcontractors of such agents or Project operators under the authority granted pursuant to this Resolution. A failure to report may result in the revocation of the designation of the Company as agent and repayment of any sales and use tax exemptions claimed.

Section 7. The Agency is hereby authorized to enter into a Project Agreement with respect to the provision of the Financial Assistance authorized herein (the "Project Agreement") and to acquire an interest in the Project site and construct a facility thereon, and the execution and delivery of a lease by the Lessee to the Agency (the "Company Lease"), an Agency Lease Agreement (the "Agency Lease Agreement") or Installment Sale Contract (the "Installment Sale Contract") between the Agency and the Company, a Payment in Lieu of Tax Agreement between the Agency and the Company (the "PILOT Agreement"), and such other documents as may be necessary to fulfill the intent of the parties to the transaction (collectively, the "Project Documents"), in form satisfactory to Agency counsel, are hereby authorized. The PILOT Agreement shall provide for payments in accordance with the ten-year exemption schedule set forth in Section 485-b of the New York State Real Property Tax Law. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, or any Assistant Secretary are each authorized to execute such documents and to make or approve such amendments or modifications to the Project Agreement, Company Lease, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement and such other documents executed and delivered in connection therewith as they deem necessary under the circumstances provided, however, that such modifications do not materially alter the risk to the Agency.

Section 8. In the event the Company obtains one or more conventional loans to finance the cost of the Project, the Agency is hereby authorized to execute and deliver to the lender(s) one or more collateral mortgages on the Project given to secure such loans ("Mortgage Agreement"), and such other documents as may be necessary to fulfill the intent of the parties to the transaction in form satisfactory to Agency counsel provided that the aggregate amount of such mortgages shall not exceed \$4,400,000.00. The Chairman, Vice Chairman, Executive Director, Secretary, Treasurer, and any Assistant Secretary are each authorized to execute such collateral mortgages and to make or

approve such amendment(s) or modifications to such collateral mortgages and other documents executed and delivered in connection therewith as they may deem necessary under the circumstances, provided, however, that such modifications do not materially alter the risk to the Agency.

Section 9. Any such action heretofore taken by the Company initiating the acquisition, installation and construction of the Project is hereby ratified, confirmed and approved.

Section 10. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Company. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such persons harmless against claims for losses, damage or injury or any expenses or damages incurred as a result of action taken by or on behalf of the Agency with respect to the Project and the financing thereof.

Section 11. In the event a lease is not executed between the Company and the Agency by the expiration date of this Resolution (as such date may be extended as provided herein) or the termination of this Resolution, the Company shall then be required to pay all sales taxes which would have been levied in connection with the acquisition, construction and installation of all improvements of the real property and the machinery and equipment which constitute the Project, as if the Agency did not have an interest in the Project from the date the Company commenced its acquisition, construction and installation. In addition, in the event, because of the involvement of the Agency, the Company claims an exemption from state sales or use tax in connection with the Project, and such exemption is claimed with respect to property or services not authorized hereunder, or which exemption is in excess of the amounts authorized hereunder, or is otherwise not permitted under this Resolution, or if the Company shall fail to comply with a material term or condition regarding the use of property or services acquired by the Company as agent for the Agency as set forth in this Resolution or in any document authorized hereunder, then the Company shall each be required to remit to the Agency an amount equal to the amount of state sales and use taxes for which such exemption was improperly claimed. A failure to remit such amounts may result in an assessment against the Company by the Commissioner of state sales and use taxes, together with any relevant penalties and interest. In addition to the foregoing, in the event the Agency determines that Company is in violation of a Material Factor, or in the event that the Company closes the Project or relocates its operations to a location outside of the Town of Amherst within the time period during which the Company is receiving Financial Assistance from the Agency or in the event the Agency determines, in its judgment, that the Company knowingly and intentionally submitted false or intentionally misleading information in its application to the Agency or in any report or certification submitted to the Agency for the purpose of obtaining or maintaining any Financial Assistance from the Agency (each referred to herein as a “Recapture Event”), the Agency may, in accordance with its policies and procedures then in effect, (i) revoke the designation of the Company and any agents of the Company (including, but not limited to, consultants, sub-contractors or equipment lessors of the Company) as agents for the Agency in connection with the Project and terminate the exemption from New York State and local sales and use taxes conferred with respect to the Project and/or (ii) require that the Company, commencing with the tax fiscal year next following such Recapture Event make payments in lieu of taxes on the Project with respect to all applicable taxing authorities in such

amounts as would be payable as real estate taxes levied on the Project if the Agency did not have an interest in the Project or otherwise modify the amount or terms of any Financial Assistance being provided by the Agency in connection with the Project and/or (iii) require that the Company pay to the Agency an amount equal to all or a portion (as determined by the Agency in its discretion) of the total value of (x) all sales tax exemptions claimed by the Company and any agents of the Company, including, but not limited to, consultants, sub-contractors, or any equipment lessors of the Company under the authority granted under this Resolution and the Project Agreement, (y) any exemption from real estate taxes received by reason of the Agency's leasehold interest in the Project and/or (z) any exemption from mortgage recording tax received by reason of the Agency's involvement with the Project. If the Agency makes any of the foregoing determinations and requires a repayment of all or a portion of the Financial Assistance received by the Company, the Company shall (i) cooperate with the Agency in its efforts to recover or recapture any or all Financial Assistance obtained by the Company and (ii) promptly pay over any or all such amounts to the Agency that the Agency demands in connection therewith. Upon receipt of such amounts, the Agency shall then redistribute such amounts to the appropriate affected tax jurisdiction(s) unless otherwise agreed to by any affected tax jurisdiction.

Section 12. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Company's purposes or needs. The Company is satisfied that the Project is suitable and fit for its purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Company hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 13. Should the appropriate officers of the Agency determine, in their absolute discretion, that there is reason to believe that the activities of any past or present owner or operator of the Premises have resulted in the generation of any "hazardous substance" (as the term has been defined from time to time in any applicable federal or state law, rule or regulation), or that any party has stored, disposed or released any such substance on the Premises or within a one (1) mile radius thereof, the Agency shall be under no obligation to enter into a lease as contemplated by this Resolution.

Section 14. No covenant, stipulation, obligation or agreement herein contained or contained in the Project Agreement, Company Lease, the Mortgage Agreement, the Agency Lease Agreement, Installment Sale Contract, the PILOT Agreement or other documents, nor the breach thereof, shall constitute or give rise to or impose upon the Agency a pecuniary liability or a charge upon its general credit, nor shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his or her individual capacity.

Section 15. Should the Agency's participation in the Project be challenged by any party,

in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursements of the Agency’s counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Company hereunder or otherwise.

Section 16. This Resolution shall take effect immediately and shall continue in full force and effect for one (1) year from the date hereof and on or after such one (1) year anniversary, the Agency may, at its option (a) terminate the effectiveness of this Resolution (except with respect to the obligations of the Company and Lessee pursuant to Sections 10 and 11 of this Resolution which shall survive any expiration or termination) or (b) allow the Company additional time in which to close the transactions contemplated by this Resolution based upon affirmative actions taken by the Company and Lessee to complete such transactions. Upon any allowance of additional time to close, the Agency may charge the Company an extension fee in accordance with the Agency’s fee schedule.

Section 17. This Resolution is subject to compliance with all local building and zoning requirements.

ADOPTED: August ____, 2020

ACCEPTED AND AGREED TO: _____, 2020

6790 MAIN STREET, LLC

By: _____