

Wayne County IDA
Minutes – April 22, 2011
Regular Board Meeting

The regular meeting of the Wayne County Industrial Development Agency was called to order at 9:33 a.m. on April 22nd, 2011 by Chairman David Spickerman. The meeting was held at 16 William Street, Lyons. Members present: David Spickerman, James Hoffman, Marvin Decker, Robert Havrilla and Willard Milliman. Also present: M. Churchill, D. Richards, J. VanDusen, M. Leisenring.

On motion of Mr. Decker, seconded by Mr. Milliman and carried the minutes of 3/25/2011 and 3/31/2011 were approved.

A- Optimax Project --- WHEREAS, by Title 1 of Article 18-A of the General Municipal Law of the State of New York, as amended, and Chapter 916 of the Laws of 1969 of the State of New York, (hereinafter collectively called the “Act”), the WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (hereinafter called the “Agency”) was created with the authority and power to promote, develop, encourage and assist in acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing industrial, manufacturing, warehousing, commercial, civic, research, and recreational facilities as authorized by the Act, and in connection therewith to issue its revenue bonds, and/or enter into straight lease transactions and provide other forms of financial assistance; and

WHEREAS, MAXPRO, LLC AND OPTIMAX SYSTEMS, INC. (collectively, the “Company”) have submitted an application (the “Application”) to the Agency requesting the Agency’s assistance with respect to a certain project (the “Project”) consisting of (i) the acquisition or retention by the Agency of an interest in an approximately 3.4 acre parcel of land located at 6367 Dean Parkway in the Town of Ontario, Wayne County (the “Land”, being more particularly described as TMID No. 61117-00-187799) and the existing approximately 35,000 square foot manufacturing facility located thereon (the “Existing Improvements”); (ii) the acquisition by the Agency of an approximately 4.12 acre parcel of land located adjacent to the Land on Dean Parkway in the Town of Ontario, County of Wayne (the “2011 Facility Land”, being more particularly described as a portion of TMID No. 61117-00-112760, such 2011 Facility Land to be merged with the Land); (iii) the construction on the Land and 2011 Facility Land of an approximately 20,000 square foot addition to the Existing Improvements (the “Improvements”) to expand the Company’s existing precision optical component manufacturing operations; (iv) the acquisition of and installation in and around the Existing Improvements and Improvements by the Company of machinery, equipment, furniture, fixtures and other items of tangible personal property (the “Equipment” and, collectively with, the Land, 2011 Facility Land, Existing Improvements, and Improvements, the “2011 Facility”); and (v) through a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), lease the 2011 Facility back to the Company (the “Straight Lease Transaction”); and

WHEREAS, the Agency previously undertook certain projects for the benefit of the Company (along with **OPTIPRO SYSTEMS, INC.**) in furtherance of the acquisition of the Land and Existing Improvements, as memorialized and governed by a certain Lease Agreement (the “1998 Lease

Agreement”) and related Payment-in-lieu-of-Taxes Agreement (the “1998 PILOT Agreement”), each dated as of April 1, 1998, along with related documents (collectively, the 1998 Lease Agreement and 1998 PILOT Agreement, along with related documents collectively referred to herein as the “1998 Facility Documents”), such 1998 Facility Documents having been entered into by the Agency and the Company in connection with the construction and equipping of an initial 15,000 square foot manufacturing facility on the Land (the “1998 Facility”) and thereafter amended and modified by the Agency and the Company as of October 1, 2000 (the “2000 Facility Documents”) in connection with the construction and equipping of an approximately 20,000 square foot addition to the 1998 Facility (the “2000 Facility”); and

WHEREAS, in connection with the Straight Lease Transaction, it is contemplated that the Agency and Company will terminate the 1998 Facility Documents and 2000 Facility Documents; and

WHEREAS, upon receipt of the Application and in furtherance of the Act, the Agency scheduled and issued notices regarding the conduct of a public hearing (the “Public Hearing”) to be held on Monday, May 16, 2011, at 9:30 a.m. local time, at the Town of Ontario Town Hall, 1850 Ridge Road, Ontario, NY 14519; and

WHEREAS, it is contemplated that the Agency will (i) designate the Company as its agent for the purpose of acquiring, constructing and equipping the Project pursuant to an agent agreement (the “Agent Agreement”), (ii) ratify the prior scheduling and notice thereof and conduct the Public Hearing pursuant to and in compliance with the Act; (iii) negotiate a lease agreement (the “Lease Agreement”), leaseback agreement (the “Leaseback Agreement”) and payment-in-lieu-of-tax agreement (the “PILOT Agreement”) with the Company in connection with the Project; and (iv) provide financial assistance to the Company in the form of a sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project; and

WHEREAS, pursuant to Article 18-A of the Act, the Agency desires to adopt a resolution describing the Project and all of the financial assistance that the Agency is contemplating with respect to the Project (the “Financial Assistance”), such financial assistance to include (a) the aforementioned sales and use tax exemption for purchases and rentals related to the acquisition, construction and equipping of the Project, (b) a partial real property tax abatement through the PILOT Agreement, and (c) a mortgage recording tax exemption for financing(s) related to the Project; and

WHEREAS, the Financial Assistance to be provided to the Company by the Agency shall not exceed \$100,000 until the Public Hearing is held and a subsequent authorizing resolution is adopted by the Agency; and

WHEREAS, the Town of Ontario Planning Board previously reviewed the proposed Project pursuant to 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”) and related Short Environmental

Assessment Form ("EAF") and adopted a negative declaration (the "Negative Declaration", dated March 8, 2011) a copy of which along with the EAF are attached hereto as Exhibit A.

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

Section 1. The Company has presented an application in a form acceptable to the Agency. Based upon the representations made by the Company to the Agency in the Company's application and a review of the Plans and Specifications for the Project by the members at this meeting, the Agency hereby finds and determines that:

(A) By virtue of the Act, the Agency has been vested with all powers necessary and convenient to carry out and effectuate the purposes and provisions of the Act and to exercise all powers granted to it under the Act; and

(B) It is desirable and in the public interest for the Agency to appoint the Company as its agent for purposes of acquiring, constructing and equipping the Project; and

(C) The Agency has the authority to take the actions contemplated herein under the Act; and

(D) The action to be taken by the Agency will induce the Company to develop the Project, thereby increasing employment opportunities in Wayne County and otherwise furthering the purposes of the Agency as set forth in the Act; and

(E) The Project will not result in the removal of a facility or plant of the Company or any other proposed occupant of the Project from one area of the State of New York (the "State") to another area of the State or result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Project located within the State; and the Agency hereby finds that, based on the Company's Application, to the extent occupants are relocating from one plant or facility to another, the Project is reasonably necessary to discourage the Project occupants from removing such other facility or plant to a location outside the State and/or is reasonably necessary to preserve the competitive position of the Project occupants in their respective industries; and

(F) Based upon a review of the Application, the EAF and the Negative Declaration adopted by the Town of Ontario Planning Board and submitted to the Agency, the Agency hereby:

(i) consents to and affirms the status of Town of Ontario Planning Board as Lead Agency for the Facility, within the meaning of, and for all purposes of complying with SEQRA;

(ii) determines that the proceedings undertaken by the Town of Ontario Planning Board as Lead Agency under SEQRA with respect to the acquisition, construction and equipping of the Facility satisfy the requirements of SEQRA; and

(iii) ratifies such proceedings by the Town of Ontario Planning Board as Lead Agency;

(iv) determines that all of the provisions of SEQRA that are required to be complied with in order to approve and undertake the Straight Lease Transaction and provide the Financial Assistance contemplated by the Agency with respect to the Project have been undertaken and satisfied. This determination constitutes a negative declaration for purposes of SEQRA and no further SEQRA review is necessary.

Section 2. The Agency hereby ratifies the prior scheduling and notice of the Public Hearing and authorizes the conduct of same in compliance with the Act.

Section 3. Subject to the Company executing the Agent Agreement attached hereto as Exhibit B and the delivery to the Agency of a binder, certificate or other evidence of liability insurance policy for the Project satisfactory to the Agency, the Agency hereby authorizes the Company to proceed with the acquisition, construction and equipping of the Project and hereby appoints the Company as the true and lawful agent of the Agency: (i) to acquire, construct and equip the Project; (ii) to make, execute, acknowledge and deliver any contracts, orders, receipts, writings and instructions, as the stated agent for the Agency with the authority to delegate such agency, in whole or in part, to agents, subagents, contractors, and subcontractors of such agents and subagents and to such other parties as the Company chooses; and (iii) in general, to do all things which may be requisite or proper for completing the Project, all with the same powers and the same validity that the Agency could do if acting in its own behalf; provided, however, the Agent Agreement shall expire on December 31, 2011 (unless extended for good cause by the Executive Director of the Agency). The Agency hereby authorizes the Chairman, Vice Chairman, the Executive Director and/or the Deputy Executive Director of the Agency, on behalf of the Agency, to execute and deliver the Agent Agreement and related sales and use tax exemption materials.

Section 4. The Chairman, Vice Chairman, the Executive Director and/or the Deputy Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate, but not execute: (A) the Lease Agreement whereby the Company leases the Project to the Agency, (B) the related Leaseback Agreement conveying the Project back to the Company, and (C) the PILOT Agreement, and (D) related documents associated with the Straight Lease Transaction (and collectively, the "Straight Lease Documents"); provided (i) the rental payments under the Leaseback Agreement include payments of all costs incurred by the Agency arising out of or related to the Project and indemnification of the Agency by the Company for actions taken by the Company and/or claims arising out of or related to the Project; and (ii) the terms of the PILOT Agreement are consistent with the Agency's Uniform Tax Exemption Policy or the procedures for deviation have been complied with. The final form of the proposed Straight Lease Documents shall be subject to approval by the Agency in a subsequent resolution to be held following the Public Hearing (the "Project Authorizing Resolution")

Section 5. The Chairman, Vice Chairman the Executive Director and/or the Deputy Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate, but not execute one or more deeds and other documents and instruments necessary to terminate the 1998 Facility Documents and 2000 Facility Documents (collectively, the "Termination Documents"), the final form of which shall be subject to approval by the Agency in the Project Authorizing Resolution and delivered commensurate with the Straight Lease Documents.

Section 6. The Chairman, Vice Chairman the Executive Director and/or the Deputy Executive Director of the Agency are hereby authorized, on behalf of the Agency, to negotiate, but not

Ms. Churchill discussed the joint strategic plan work session that was held 3/31/2011. Draft notes were distributed for the board to edit. A follow-up meeting will be held in the near future to address the items flagged at the work session. Ms. Churchill distributed plaques to all the town supervisors present at the work session.

Ms. Churchill informed the board of the Wayne County Business Council's legislative breakfast being held on Friday, 5/13/2011. To accommodate those attending the breakfast, a special meeting of the IDA will be held at 11:00 a.m. on 5/13/2011, followed by a Governance Committee meeting, with lunch provided.

Ms. Churchill circulated and discussed some recent newspaper articles. Mr. VanDusen gave an overview of some recent B,R&E visits.

Ms. Churchill discussed recent changes in the by-laws of the Greater Rochester Enterprise. It was the consensus of the Board that Wayne County participates at the \$25,000 level as previously approved.

There being no further business, the meeting adjourned at 11:20 a.m.

Respectfully submitted,

Marvin Decker
Secretary