

Wayne County Industrial Development Agency
Minutes – Regular Meeting
December 20, 2013

The regular meeting of the WCIDA was called to order at 9:30 a.m. on Friday, 12/20/13 by Chairman David Spickerman. The meeting was held in the first floor conference room, 16 William Street, Lyons. Members present: Pamela Heald, David Spickerman, Willard Milliman and Robert Havrilla. Also present: Ken Miller, Palmyra Town Supervisor; John Morell, Esq., Bob McNary, Director of Planning & Economic Dev.; M. Churchill, D. Richards and M. Leisenring.

On motion of Mr. Havrilla, seconded by Mr. Milliman, the minutes of 12/13/13 were approved.

Resolution A- agricultural micro loan

Whereas, staff and the loan committee have reviewed the application for a microenterprise loan for \$80,000 to Calvin & Decker/Theravet and find it is acceptable and have referred it to the WCIDA board recommending approval; be it hereby

Resolved, that the board of the WC IDA hereby approves a microenterprise loan for \$80,000 to this project, providing all normal contingencies have been met along with any additional requirements recommended by staff and the loan committee.

Moved: Ms. Heald

Second: Mr. Havrilla

Ayes: Ms. Heald and Messrs. Havrilla, Spickerman and Milliman

Nays: None

Resolution B-authorizing Walworth Plaza 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, (the "Act"), the **WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY** (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, WALWORTH PLAZA, LLC, for itself and/or a related entity or entity to be formed (collectively, the "Company"), has submitted an application to the Agency requesting the Agency's assistance with a certain project (the "Project") consisting of (i) the acquisition by the Agency of a leasehold interest in approximately 7.00 acres of real property located at 2140 Walworth Penfield Road in the Town of Walworth, New York (the "Land", being more particularly described as a portion of tax parcel 63114-00-480495) along with the existing improvements thereon (the "Existing Improvements"); (ii) the planning, design, construction, and operation of an approximately 50,000 square foot commercial facility to be primarily leased by the Company to Tops Markets, LLC for operation as a full service grocery store, along with external parking lots, access and egress improvements, signage, curbage, sidewalks, and landscaping improvements (collectively, the "Improvements"); (iii) the acquisition of and installation in and around the Existing Improvements and Improvements by the Company of machinery, equipment, fixtures and other items of tangible personal property (the "Equipment" and, collectively with, the Land, the Existing Improvements and the Improvements, the "Facility"); and (iv) entering into a straight lease transaction (within the meaning of subdivision (15) of Section 854 of the Act), pursuant to which the Agency will retain a leasehold interest in the Facility for a period of time and sublease such interest in the Facility back to the Company (the "Straight Lease Transaction"); and

WHEREAS, on November 14, 2013, the Agency adopted an initial resolution (the "Initial Project Resolution") which (i) accepted the Company's application, (ii) authorized the scheduling and conduct of a public hearing in compliance with the Act, (iii) described the contemplated forms of financial assistance to be provided by the Agency (the "Financial Assistance", as described herein); and (iv) authorized the negotiation of an agent agreement (the "Agent Agreement"), lease agreement (the "Lease Agreement"), leaseback agreement (the "Leaseback Agreement") and payment-in-lieu-of-tax agreement (the "PILOT Agreement") to be entered into with respect to the Project; and

WHEREAS, in accordance with the Initial Project Resolution, the Agency published and forwarded a Notice of Public Hearing to the Town of Walworth (the "Town"), the County of Wayne (the "County"), and the Wayne Central School District (the "School", and together with the Town and County, the "Affected Tax Jurisdictions) at least thirty (30) days prior to said Public Hearing are attached hereto as **Exhibit A**; and

WHEREAS, as a component of the Notice of Public Hearing delivered to the Affected Tax Jurisdictions, the Agency delivered a notice of proposed deviation (the "Deviation") from the Agency's Uniform Tax Exemption Policy ("UTEP")

regarding the proposed PILOT Agreement being considered by the Agency, such Notice having been transmitted at least 30 days prior to the date hereof; and

WHEREAS, the Town of Walworth Planning Board 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 Environmental Assessment Form ("EAF") and issued a negative declaration, dated _____, 2013 (the "Negative Declaration"), a copy of which, along with the EAF, are attached hereto as **Exhibit B**; and

WHEREAS, pursuant to Section 859-a of the Act, the Agency held a public hearing on December 18, 2013 at the Town of Walworth Town Hall, 3600 Lorraine Drive, Walworth, New York 14568 with respect to the Project (the "Public Hearing") and the proposed Financial Assistance (as further defined herein) being contemplated by the Agency whereat interested parties were provided a reasonable opportunity, both orally and in writing, to present their views, a copy of the minutes of the Public Hearing; and

WHEREAS, in furtherance of the foregoing, the Agency desires to authorize (i) the appointment of the Company as agent of the Agency to undertake the Project; (ii) the execution and delivery of the Agent Agreement, Lease Agreement, the Leaseback Agreement, the PILOT Agreement, and related documents; and (iii) the provision of the Financial Assistance to the Company, which shall include (a) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included in or incorporated into the Facility or used in the construction and equipping of the Facility, (b) mortgage recording tax exemptions in connection with financings undertaken by the Company for the Project, and (c) a partial real property tax abatement through the execution of an agreement with the Agency regarding payments in lieu of real property taxes to be made for the benefit of the Affected Tax Jurisdictions.

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

Section 1. Based upon the representations made by the Company to the Agency in the Application, 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 (i) acquire title to or other interest in the Land, the Existing Improvements, Improvements and the Equipment constituting the Facility, (ii) lease or sell the Agency's interest in the Land, Existing Improvements, Improvements and Equipment constituting the Facility to the Company pursuant to a lease agreement or sale agreement to be negotiated, and (iii) enter into a Straight Lease Transaction with the Company; 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 undertake the Project, thereby increasing employment opportunities in the Village of Palmyra, which is located within Wayne County, New York, 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 the Agency's prior review of the Application submitted by the Company, along with supporting materials, and in accordance with the findings of the Agency within the Initial Project Resolution, the Project will include facilities or property that are primarily used in making retail sales, as defined within Section 862(2) of the Act, to customers who personally visit the Facility. Notwithstanding the foregoing, and based upon the Application and supporting materials prepared and presented by the Company to the Agency, and pursuant to Section 862(2)(b) of the Act, the predominant purpose of the Project will be to make available goods or services which would not, but for the Project, be reasonably accessible to the residents of the Town of Walworth because of a lack of reasonably accessible retail trade facilities offering such goods or services. In accordance with the foregoing, and pursuant to Section 862(2)(c) of the Act, the Agency hereby finds that the undertaking of the Project will serve the public purposes of

the Act by preserving permanent, private sector jobs and/or increasing the overall number of permanent, private sector jobs in the State; and

(G) Based upon a review of the Application, the EAF and the Negative Declaration issued by the Planning Board of the Town of Walworth and submitted to the Agency, the Agency hereby:

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

(ii) ratifies the proceedings undertaken by the Town of Walworth Planning Board as Lead Agency under SEQRA with respect to the construction and equipping of the Facility pursuant to SEQRA; and

(iii) finds that the Project involves an “unlisted action” (as such quoted term is defined under SEQRA). The review is “uncoordinated” (as such quoted term is defined under SEQRA). Based upon the review by the Agency of the EAF and related documents delivered by the Company to the Agency and other representations made by the Company to the Agency in connection with the Project, the Agency hereby finds that (i) the Project will result in no major impacts and, therefore, is one which may not cause significant damage to the environment; (ii) the Project will not have a “significant effect on the environment” (as such quoted term is defined under SEQRA); and (iii) no “environmental impact statement” (as such quoted term is defined under SEQRA) need be prepared for this action. This determination constitutes a “negative declaration” (as such quoted terms are defined under SEQRA) for purposes of SEQRA.

(H) Upon consideration of the Deviation, as outlined within the Public Hearing Notice and Deviation letter issued to the Affected Tax Jurisdictions, and upon consideration of the Project and comments received from the Affected Tax Jurisdictions, the Agency hereby authorizes the undertaking of the Deviation based upon the following factors: (i) the Company’s significant proposed investment in the Facility, (ii) the Company’s facilitation of job creating tenants within the Town and County, (ii) the retention and expansion of job opportunities within the Town and County. In addition, the Agency’s consideration of the foregoing includes the economic condition of the Land, Existing Improvements, and surrounding area at the time of the Company’s application and the economic multiplying effect that the Project will have on the County, including the retention and creation of permanent, private sector jobs and sales tax revenue generation.

Section 2. Subject to (i) the receipt by the Agency of a Confirming Certificate from the Chairman of the Board of Supervisors of the County pursuant to Section 862(2)(c) of the Act, (ii) the Company executing the Agent Agreement and Leaseback Agreement, and (iii) 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, renovation, construction, reconstruction, rehabilitation 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, 2014 (*unless extended for good cause by the Executive Director of the Agency*).

Section 3. Based upon the representation and warranties made by the Company the Application, the Agency hereby authorizes and approves the Company, as its agent, to make purchases of goods and services relating to the Project and that would otherwise be subject to New York State and local sales and use tax in an amount up to approximately **\$6,400,000.00**, which result in New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed **\$512,000.00**. The Agency agrees to consider any requests by the Company for increase to the amount of sales and use tax exemption benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services, and, to the extent required, the Agency authorizes and conducts any supplemental public hearing(s).

Section 4. Pursuant to Section 875(3) of the Act, the Agency may recover or recapture from the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, any sales and use tax exemption benefits taken or purported to be taken by the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, if it is determined that: (i) the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, is not entitled to the sales and use tax exemption benefits; (ii) the sales and use tax exemption benefits are in excess of the amounts authorized to be taken by the Company, its agents, consultants,

subcontractors, or any other party authorized to make purchases for the benefit of the Project; (iii) the sales and use tax exemption benefits are for property or services not authorized by the Agency as part of the Project; (iv) the Company has made a material false statement on its application for financial assistance; (v) the sales and use tax exemption benefits are taken in cases where the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project; and/or (vi) the Company obtains mortgage recording tax benefits and/or real property tax abatements and fails to comply with a material term or condition to use property or services in the manner approved by the Agency in connection with the Project (collectively, items (i) through (vi) hereby defined as a "Recapture Event").

As a condition precedent of receiving sales and use tax exemption benefits and real property tax abatement benefits, the Company, its agents, consultants, subcontractors, or any other party authorized to make purchases for the benefit of the Project, must (i) if a Recapture Event determination is made by the Agency, cooperate with the Agency in its efforts to recover or recapture any sales and use tax exemption benefits, mortgage recording tax benefits and/or real property tax abatements abatement benefits, and (ii) promptly pay over any such amounts to the Agency that the Agency demands, if and as so required to be paid over as determined by the Agency.

Section 5. The Chairman, Vice Chairman and/or Executive Director of the Agency are hereby authorized, on behalf of the Agency, to execute and deliver the Agent Agreement, Lease Agreement, Leaseback Agreement, PILOT Agreement and related documents with such changes as shall be approved by the Chairman, Vice Chairman, the Executive Director and counsel to the Agency upon execution.

Section 6. The officers, employees and agents of the Agency are hereby authorized and directed for and in the name and on behalf of the Agency to do all acts and things required and to execute and deliver all such certificates, instruments and documents, to pay all such fees, charges and expenses and to do all such further acts and

things as may be necessary or, in the opinion of the officer, employee or agent acting, desirable and proper to effect the purposes of the foregoing resolutions and to cause compliance by the Agency with all of the terms, covenants and provisions of the documents executed for and on behalf of the Agency.

Whereas, the commitment to lend has expires and the SBA 504 Loan approval is still pending; be it therefore

Resolved, that WCIDA extends its commitment from December 1, 2013 to February 1, 2013 in order to allow for processing of the SBA 504 Loan.

Moved: Mr. Milliman Second: Mr. Havrilla
Ayes: Ms. Heald and Messrs. Havrilla, Milliman and Spickerman
Nays: None

Resolution E- Bella Design

Whereas, the company is under a PILOT with WCIDA and due to the downturn in purchases of art and custom furniture has not been able to meet its payments or job numbers; and

Whereas, the company has recently obtained a contract for a large number of items and will be hiring again and expects to be back on its earlier growth pattern; and

Whereas the company has made a partial payment of its PILOT to the affected school district and the district has agreed to accept a payment plan of the PILOT; be it hereby

Resolved, that the WC IDA is authorized to enter into a payment plan for the PILOT regarding school taxes (2013-2014) that will bring the PILOT payments up to date prior to the end of the school's year, June 30, 2014.

Moved: Mr. Milliman Second: Ms. Heald
Ayes: Ms. Heald and Messrs. Milliman, Havrilla and Spickerman
Nays: None

A brief project update was given. At 10:14 a.m. the board went into executive session to discuss a potential project. The regular board meeting resumed at 10:18 a.m.

OTHER BUSINESS RESOLUTIONS - OB-1

Whereas, the WC IDA has determined that it is in the best interest of the agency to separate the positions of executive director and CEO, and, the changes to the WC IDA by-laws to allow this to be changed were put upon the desks of the members via electronic notice eight days prior to today's meeting; be it hereby

