

Wayne County Industrial Development Agency
Special Board Meeting – 11/14/2013
Minutes

The special board meeting of the WCIDA was called to order at 10:32 a.m. on Thursday, 11/14/2013 by Chairman David Spickerman. It was held in the first floor conference room, 16 William Street, Lyons. Members present: David Spickerman, Willard Milliman, James Hoffman and Robert Havrilla. Also present: John Morell, Esq., Mark Williams, Esq., Bob McNary, Director of Planning & Economic Development, and M. Churchill, D. Richards and M. Leisenring.

On motion of Mr. Havrilla, seconded by Mr. Milliman, the minutes of 10/25/13 were approved.

RESOLUTION A -INITIAL PROJECT RESOLUTION (Walworth Plaza, LLC Project)

RESOLUTION OF THE WAYNE COUNTY INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) (i) ACCEPTING THE APPLICATION OF WALWORTH PLAZA, LLC (THE “COMPANY”) IN CONNECTION WITH A PROPOSED PROJECT (AS FURTHER DESCRIBED HEREIN) TO BE LOCATED WITHIN THE TOWN OF WALWORTH, NEW YORK; (ii) AUTHORIZING THE SCHEDULING AND CONDUCT OF A PUBLIC HEARING; AND (iii) DESCRIBING THE FORMS OF FINANCIAL ASSISTANCE BEING CONTEMPLATED BY THE AGENCY WITH RESPECT TO THE 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, the Agency is contemplating providing financial assistance to the Company with respect to the Project (collectively, the “Financial Assistance”) in the form of: (A) an exemption from all State and local sales and use taxes with respect to qualifying personal property included in or incorporated into the Facility or used in the acquisition, construction or equipping of the Facility; (B) mortgage recording tax exemption(s) relating to financings undertaken by the Company in furtherance of the Project, and (C) a partial real property tax abatement through a payment-in-lieu-of-tax agreement (the “PILOT Agreement”), pursuant to which the Company would make payments in lieu of real property taxes to each affected tax jurisdiction (the “Affected Tax Jurisdictions”); and

WHEREAS, the Agency intends to describe the Project, accept the Application, describe the forms of Financial Assistance contemplated by the Agency and authorize the scheduling and conduct of public hearing(s) pursuant to and in accordance with the Act.

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 Owner pursuant to a lease agreement or sale agreement to be negotiated, and (iii) enter into a Straight Lease Transaction; and

(C) Subject to the terms and conditions set forth within Section 4, hereof, 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 Town of Ontario, 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

Section 2. The proposed financial assistance being contemplated by the Agency includes (i) an exemption from all state and local sales and use taxes with respect to the qualifying personal property included within the Project or used in the acquisition, construction or equipping of the Project; (ii) mortgage recording tax exemption(s) relating to financings undertaken by the Company in furtherance of the Project, and (iii) a partial real property tax abatement through a payment-in-lieu-of-tax agreement (the "PILOT Agreement"), pursuant to which the Company would make payments in lieu of real property taxes to the Affected Tax Jurisdictions.

Section 3. The Agency further authorizes the scheduling and conduct of a public hearing as required by Section 859-a of the Act (the "Public Hearing")

Section 4. The Agency's formal inducement to undertake the Project and approve the Financial Assistance shall be by one or more further resolutions of the Agency and shall be subject to the terms and conditions as are set forth therein. The Agency's provision of Financial Assistance to the Company shall be conditioned upon: (i) the Agency's finding pursuant to Section 862(2)(b)(i) of the Act that 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; (ii) the Agency's finding pursuant to Section 862(2)(c) of the Act and following the Public Hearing that undertaking the Project will serve the public purposes of the Act by preserving permanent, private sector jobs or increasing the overall number of permanent, private sector jobs in the State; and (iii) prior to the Agency's provision of the Financial Assistance, the Agency secures the confirmation of the Chairman of the Board of Supervisors of the County of Wayne in accordance with Section 862(2)(c) of the Act.

