

TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY

BOARD OF DIRECTORS  
Meeting Minutes June 16, 2011  
9:00 AM – IDA Conference Room

**1.0 General Business**

Chairman Thomas Sy called the meeting to order and welcomed Sallie Reed as a member of the Board of Directors.

**1.1 Roll Call**

**Present** – Chairman – Thomas Sy, Vice Chairman – Paul Haber, Treasurer – Robert Lipp, Secretary – Duncan Carlson, Directors – Eric Connor, Sallie Reed and Thomas Weeks, Administrative Director – David Kinyon, and Legal Counsel – Daniel Seaman.

**1.2 Secretary’s Report**

Duncan Carlson presented the Minutes for the May 19 Board of Directors meeting, which were approved on a motion by Paul Haber seconded by Thomas Weeks.

**1.3 Treasurer’s Report**

Treasurer Robert Lipp presented the Financial Statements for the period ending May 31, 2011. He noted that the Balance Sheet reflected the sale of property in the Lockport Industrial Park to Introl Design, and that the Income Statement recorded the receipt of the final \$235,117 Administrative Fee from Yahoo. Current savings account interest rates of .65% will result in Mr. Lipp again evaluating other forms of increasing the Agency’s Interest Income. The Financial Statements were approved on a motion by Duncan Carlson seconded by Paul Haber. On a motion by Duncan Carlson seconded by Thomas Weeks, the current invoices presented were approved for payment.

**2.0 Administrative Director’s Report**

In addition to his regular written report, Administrator Director David Kinyon had distributed a report summarizing the NYSECD Conference in Cooperstown. He reported that the Meteorological Tower has not been dismantled at its site in the Lockport Industrial Park. No proposals have been received to date for the purchase of the former Electruk Battery facility. Mr. Kinyon reminded the Board that the sale of 4 acres of previously IDA-owned land in the Industrial Park to Introl Design reduces IDA owned land to 63 acres. Removal of dead bushes in the landscape bed at the intersection of IDA Drive and Upper Mountain Road has been completed by Swick Landscaping.

**3.0 Old Business**

**3.1 Introl Design Property Description**

Daniel Seaman presented the following resolution to revise the property description on the property sold by the IDA to Introl Design. Due to the fact that Introl did not wish to acquire the portion of land made of the IDA Drive roadway, this property will be conveyed to the Town of Lockport.

WHEREAS, a small parcel of land adjacent to IDA Park Drive was paved at the time at the time that IDA Park Drive was paved, and

WHEREAS, the description of said parcel of land is as follows:

All that tract or parcel of land, situate in the Town of Lockport, County of Niagara and State of New York, being part of Lot 12, Township 14, Range 7 of the Holland Lane Company survey, bounded and described as follows:

Beginning at a point in the easterly line of IDA Park Drive at the northwest corner of lands conveyed to the Town of Lockport Industrial Development Agency by deed recorded in the Niagara County Clerk’s Office in Liber 2190 of deeds at Page 219, being 266.73 feet southerly from the centerline of Upper Mountain Road being 66.0 feet wide;

Thence easterly, along the north line of said lands conveyed to the Town of Lockport Industrial Development Agency, a distance of 6.00 feet to a point;

Thence southwesterly, along a line, a distance of 52.00 feet to a point in the easterly line of IDA Park Drive;

Thence northerly, along the easterly line of IDA Park Drive, a distance of 51.55 feet to the point or place of beginning, containing 0.003 acres more or less.

WHEREAS above parcel is owned by the Town of Lockport Industrial Development Agency (“IDA”), now therefore be it

RESOLVED, that the Town of Lockport IDA be and is hereby authorized to dedicate the parcel as described below to the Town of Lockport for highway purposes, and be it further

RESOLVED that the administrative director or any other official of the IDA is hereby authorized to execute dedication documents.

This change was approved on a motion by Duncan Carlson seconded by Robert Lipp.

### **3.2 Scapelliti Super Store**

Daniel Seaman presented the following resolution regarding the request for IDA assistance for the Scapelliti Super Store Project:

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AUTHORIZING SCAPELLITI’S, INC. AND/OR A RELATED ENTITY TO BE FORMED(THE LESSEE) TO DEMOLISH AN EXISTING CONVENIENCE STORE LOCATED AT 7084 CHESTNUT RIDGE ROAD, LOCKPORT, NEW YORK, AND TO CONSTRUCT A NEW CONVENIENCE STORE AND MEAT MARKET ON THE PREMISES TO BE UTILIZED AS A CONVENIENCE STORE AND MEAT MARKET AND A FRANCHISED COFFEE AND BAKE SHOP WITH DRIVE THROUGH AND TO ACQUIRE AND INSTALL MACHINERY AND EQUIPMENT REQUIRED IN CONNECTION THEREWITH, AND FOR THE MODIFICATION OF THE PREMISES AS NEEDED FOR THAT PURPOSE, AND AUTHORIZING THE EXECUTION AND DELIVERY OF A BOND, OR IN THE ALTERNATIVE, MORTGAGE AND SECURITY AGREEMENT AND THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH.

WHEREAS, Scapelliti’s, Inc. and/or a related entity to be formed (the Lessee) has entered into negotiations with the Town of Lockport Industrial Development Agency (the Agency) for assistance in the demolition of an existing building and construction of a new building on the premises to be utilized as a convenience store and meat market and a franchised coffee and bake shop with drive through, and for the acquisition and installation of equipment by the Agency with a bond issue or alternatively through a lease only transaction of, at 7084 Chestnut Ridge Road, Lockport, New York, with financial assistance from the Agency, and to utilize said premises for the operation of a convenience and meat market store, a franchised coffee and bake shop with drive through, and a gas station to accommodate expansion of the convenience store business, its storage facilities, update deli and refrigeration equipment, coolers, air conditioning and heating apparatuses, and allow the Lessee to remain competitive in today’s market (the “Project”) and the lease of the project to the Lessee; and

**WHEREAS**, the Lessee has submitted a Project Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the “Eligibility Questionnaire”) to initiate the accomplishment of the above; and

**WHEREAS**, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: the Lessee desires Agency financing for demolition and construction of the Project for a new convenience store and meat market and a franchised coffee and bake shop with drive through and related purposes with resultant increase in employment in the Town of Lockport; the Lessee presently employs five full-time employees and seven part-time employees and will cause to be employed approximately eight full-time employees and twelve part-time employees by the Franchisee after the Project is fully completed and to directly employ six full-time employees and eleven part-time employees after the Project is fully completed; that but for the availability of financing and/or other assistance by the Agency, the Lessee and any Sublessee would not locate the Project and expand its business within the Town of Lockport, there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Lockport, and the Project will provide substantial increased employment and substantial capital investment; if Agency financing or other assistance is disapproved, the Lessee and the Sublessee would likely not proceed with the Project; and that, therefore, Agency financing or other assistance is necessary to encourage the Lessee and the sublessee to proceed with the Project in the Town of Lockport; and

**WHEREAS**, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

**WHEREAS**, the Agency desires to further encourage the Lessee with respect to the acquisition of the Project, if by so doing it is able to induce the Lessee, to proceed with the Project in the Town of Lockport; and

**WHEREAS**, the Agency has determined that the project be limited to the parcel depicted and known as Town of Lockport Real Property Tax Map SBL Number 110.01-1-33; and

**WHEREAS**, to finance the project the Agency intends to execute and deliver a bond, or in the alternative, a mortgage to allow for the project as aforesaid,

**NOW, THEREFORE BE IT RESOLVED BY THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:**

Section 1. The Agency hereby determines that the acquisition and installation of the Project and the financing or other assistance 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 further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee as follows: (a) it would not have assisted the Project except to induce the location of the Project in the area to be served by the Project as there is a demonstrable need for the Project and the services it offers; (b) but for the availability of Agency assistance for the Project in such area, the Project would not be economically feasible; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; and (d) the Project will provide substantial employment and substantial capital investment. The Agency further determines, on the basis of the Lessee’s Eligibility Questionnaire that (e)

the Project as represented is reasonably necessary to provide the purposes of the Act, and (f) the Project is an integral part of the Lessee's plan to proceed with the Project in the Town of Lockport.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized, which Project will be financed through the issuance of the bonds, or in the alternative, mortgage financing, will be special obligations of the Agency payable solely from the revenues and other amounts derived pursuant to a lease of the Project or, in the alternative, through a lease only transaction, or in the alternative the execution and delivery of the Bond, or in the alternative, mortgage financing in the principal amount not to exceed \$1,000,000.00 and from the Agency and the Lessee or its successor to a bank to be designated, its agents or assigns, (the "Lender") UCC-1 Financing Statements to the Lender and a Lease Agreement between the Agency and the Lessee each in substantially the same form approved by the Agency for prior transactions or in form approved by the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to execute, acknowledge and deliver each such Instrument and the Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby authorized to affix the seal of the Agency on each such instrument, as applicable, and attest the same. All other provisions of the Resolution relating to the Bond, or in the alternative, mortgage financing and the Lease Agreement, shall apply to such Instruments.

All covenants, stipulations, obligations and agreements of the Agency contained in this resolution and contained in the Bond, or in the alternative, mortgage financing, UCC-1 Financing Statements and the Lease Agreement shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement, as the case maybe, shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement or any other agreement or instrument executed and delivered by the Agency in furtherance of this resolution shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agency or employee of the Agency in his individual capacity and neither the members of the Agency or any officer executing the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement shall be liable personally thereon or be subject to any personal liability or accountability by reason of the execution and delivery thereof.

The Chairman, Treasurer, Administrative Director, Secretary and any member or officer of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver any and all agreements, papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this Resolution, the execution and delivery of the Bond, or in the alternative, mortgage financing, the UCC-1 Financing Statements and the Lease Agreement.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information as to the particular amount, interest rate, maturities, redemption and other terms, the purchaser, the security and other conditions to permit the authorization, issuance and sale of the bonds, or in the alternative, mortgage financing, to use its best efforts to proceed, subject to agreement among the Agency, the Lessee and the purchaser of the bonds, or in the alternative, mortgage financing, as to terms in all agreements to be entered in to with respect to the Project, with the issuance of the bonds, or in the alternative, mortgage financing to finance the Project in an amount not to exceed \$1,000,000.00, if bonds, or in the alternative, mortgage financing, is utilized or in the alternative undertake as soon as particular terms and conditions of a Lease Agreement are determined enter into a lease only transaction.

Section 4. The Chairman, Administrative Director, Treasurer of the Agency and other appropriate officials or Board Members of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition of the Project.

Section 5. The Lessee is authorized for construction of a new convenience store and meat market building with franchised coffee and bake shop with drive through on the site located at 7084 Chestnut Ridge Road, Lockport, New York, and acquisition and installation of machinery and equipment required in connection therewith and to advance such funds as may be necessary to accomplish such purposes, subject to reimbursement for all qualifying expenditures out of the proceeds of the bonds to be issued by the Agency, if applicable. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, or Administrative Director may deem necessary in order to accomplish the above.

Section 6. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project is hereby ratified, confirmed and approved.

Section 7. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the bonds, or, in the alternative, mortgage financing, or in the event such proceeds are insufficient after payment of other costs of the Project or bonds are not issued by the Agency due to inability to consummate the transaction herein contemplated (other than by fault of the Agency), shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, 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 in good faith with respect to the Project and the financing thereof.

Section 8. This resolution is subject to Agency approval of payment in lieu of taxes agreement (PILOT Agreement) for municipal services. Should the Lessee or any of its subtenants vacate the premises prior to the expiration of the arrangement for payment in lieu of taxes, the Lessee shall use its best efforts to obtain new subtenants, so that no application will be necessary for reduction in assessed value, it being the intent of the Agency that payments in lieu of taxes will be maintained at the level called for by its standard policy at all times while it holds title to or leasehold interest in the Project.

Section 9. Should the Agency approve a five-year PILOT Agreement, providing an exemption of Eighty Percent (80%) (on Town, County and School District taxes) declining a Twenty Percent (20%) per year from 2012 or for the first year upon completion to 2016 as shown:

Year	Amount of Exemption
2012	80%
2013	60%
2014	40%
2015	20%
2016	0%

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall continue to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency shall adopt a resolution authorizing the issuance of the Agency's bonds or notes to finance the costs of the Project as herein authorized or enters into a lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. This resolution is also subject to (a) approval by the Agency or its attorney of the Lease and Sublease including any information that the Agency deems necessary to verify compliance with the New York State Industrial Development Agency Act and (b) provision in any Sublease for use of the Project only for those purposes specified above or otherwise permitted by the New York State Industrial Development Agency Act and approved by the Agency.

Section 12. The execution and delivery of a lease or a lease and lease back between the Agency and the Lessee, being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Administrative Director or any member of the Board of Directors is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The Agency hereby determines, based upon information furnished to the Agency by the Lessee and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant adverse effect on the environment, and the action is an Unlisted action, pursuant to SEQRA, and SEQRA has been addressed previously for the Project by Town reviewing boards.

Section 14. The bond or bonds or, in the alternative, mortgage financing to be issued shall not be exempt from Federal Income Taxation. Therefore, this resolution is not subject to compliance with the provisions of Section 103 of the Internal Revenue Code of 1954 as amended (the "Code") or to an appropriate allocation under the State law pursuant to the Deficit Reduction Act of 1984.

Section 15. 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 Lessee's purposes or needs or the extent to which proceeds derived from the sale of the bonds will be sufficient to pay the cost of the construction of the Project. The Lessee is satisfied that the Project is suitable and fit for lessee's 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 Lessee hereby indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. This resolution shall take effect immediately.

On a motion by Robert Lipp seconded by Thomas Weeks, the above resolution was approved on a roll call vote as follows:

Paul Haber	NO	Duncan Carlson	NO
Thomas Weeks	YES	Thomas Sy	YES
Eric Connor	YES	Sallie Reed	ABSTAIN
Robert Lipp	YES		

#### **4.0 New Business**

##### **4.1 Project Review Criteria**

Board members commented on the proposed Project Review Criteria prepared by David Kinyon. The Board will use this criteria as a guide.

##### **4.2 Fam Tour Sponsor**

On a motion by Paul Haber, seconded by Duncan Carlson, the Board voted to become a Silver Sponsor for the 2011 Niagara Business Familiarization Tour at a cost of \$250.

#### **5.0 Executive Session**

On a motion by Robert Lipp seconded by Thomas Weeks, the Board voted to enter Executive Session for the purpose of consultation with attorney. On a motion by Paul Haber seconded by Robert Lipp, the Board voted to leave Executive Session.

**Adjournment** On a motion by Paul Haber seconded by Thomas Weeks, the Board voted to adjourn at 9:45 AM.

Respectfully submitted,  
Duncan N. Carlson, Secretary