

MINUTES OF PUBLIC HEARING
April 25, 2013
Lockport Town Hall
6560 Dysinger Road, Lockport NY

PRESENT:

Thomas A. Sy, Chairman
Duncan N. Carlson
Sallie Reed
Thomas Weeks
Eric Connor
Robert Lipp
Daniel E. Seaman, Board Attorney, Assistant Secretary
David R. Kinyon, Administrative Director

ABSENT: Robert Runk

In addition, the following were in attendance: Edwina Luksch, Margie Swan, Todd Fragale, Andrea Sammarco, Glen Miller, Marc Smith, Jane Dent, Luke Kantor, Mark Albiez, Donald Hobel, Jim and Glenda Cronkhite, Michael Norris, Patricia Dufour, Paul McCollum, Bonnie Stafford, Mark Crocker, Dave Mongielo, Tom Prohaska, Joe Olenick, David Cay Johnston, Paul Bonaro and Karen Gyulbudaghyan.

The Special Meeting of the IDA was called to Order by Mr. Sy at 9:00 AM. It was noted that Notice of the Meeting had been given to all Members, and that a quorum was present; Mr. Kinyon reported that Member Robert Runk had submitted a Waiver of Notice and consent to action taken at said meeting. The Notice of Public Hearing to consider the inducement of the Yahoo! Expansion Project was read by Board Attorney Daniel Seaman. Chairman Sy opened the Public Hearing.

Mr. Sy stated that written statements had been received in advance, and he read a statement in support of the project from Linda E. Castellano, Relationship Development Manager for UNYTS and from Christine J. Tibbetts, Superintendent of Newfane School District. They are all entered into the Public Hearing Record.

Paul Bonaro, Yahoo's Lockport Datacenter Manager, presented the plan for the Yahoo! 170,000 sq. ft. expansion project, which will be built in two phases and explained the project as applied for.

Edwina Luksch spoke in opposition to the incentives requested by Yahoo!, stating she felt the tax abatements were excessive.

Margie Swan spoke in opposition to the incentives requested by Yahoo!, noting Niagara County's high level of public assistance payments.

Todd Fragale spoke in favor of the project, stating that Yahoo! is an outstanding corporate citizen.

Andrea Sammarco presented a five-page letter on behalf of Glen Miller in opposition to the incentives requested by Yahoo! and reiterated its contents. A copy of the letter is included in the Public Hearing Record.

Marc Smith spoke in favor of the project, noting the potential for even more future growth by Yahoo! and the positive economic impact on the Town and Niagara County.

Jane Dent spoke in favor of the project, pointing to Yahoo's support for the American Cancer Society's Relay for Life and other promotions.

Mark Albiez spoke in favor of the project, stating that Yahoo! helps to make the community better through the involvement by Yahoo! personnel in such programs as Camp Kenan.

Donald Hobel spoke in opposition to the incentives requested by Yahoo! and questioned the amount of fees to be earned by the IDA.

Bonnie Stafford spoke in favor of the project, noting how Yahoo! had assisted Starpoint's Fricano Elementary School when the school had not qualified for the "Home Pages for Home Rooms" grant.

Mark Crocker spoke in favor of the project, citing the immediate and long-term gain resulting from development of a currently vacant field.

David Mongiello spoke in opposition to the incentives requested by Yahoo!, noting his opposition to tax breaks.

Mr. Sy closed the Public Hearing at 9:55 AM.

Continuing with Board Business, Mr. Seaman reviewed with the Board the completed SEQRA Supplemental Findings Statement for the Yahoo! expansion project, copies of which were in the Board Member's possession. On a motion by Mr. Weeks seconded by Mr. Connor, the Board approved the following resolution:

WHEREAS the Town of Lockport Industrial Development Agency has reviewed the Proposed Supplemental Findings Statement and has considered the Generic Environmental Impact Statement for the Town of Lockport Industrial Park and the Supplemental Findings Statement for the proposed Yahoo! Project, now therefore be it

RESOLVED:

1. The requirements of 6 N.Y.C.R.R. Part 617 have been met;
2. Consistent with the social, economic, and other essential considerations from among the reasonable alternatives available, the action is one which avoids or minimizes adverse

environmental impacts will be avoided or minimized by incorporating as conditions to the decision those mitigation measures which were identified as practicable, and be it further

RESOLVED:

That the Chairman execute the Certification of Findings to approve supplemental findings for the Yahoo! Project in the Lockport Industrial Park.

Mr. Weeks moved and Mr. Connor seconded the following resolution:

RESOLUTION OF THE TOWN OF LOCKPORT INDUSTRIAL DEVELOPMENT AGENCY (THE AGENCY) AUTHORIZING YAHOO! INC. (THE LESSEE) TO CONSTRUCT APPROXIMATELY 190,000 SQUARE FEET OF BUILDINGS CONSISTING OF A DATA STORAGE CENTER, ADMINISTRATIVE BUILDING, CALL CENTER AND NECESSARY APPURTENANT STRUCTURES ON AN APPROXIMATELY THIRTEEN ACRE PARCEL OF REAL PROPERTY LOCATED AT 5319 ENTERPRISE DRIVE IN THE TOWN OF LOCKPORT AND TO ACQUIRE AND INSTALL MACHINERY, EQUIPMENT, FURNISHINGS AND FIXTURES REQUIRED IN CONNECTION THEREWITH AND AUTHORIZING THE MODIFICATION OF THE PREMISES FROM TIME TO TIME AS NEEDED FOR SUCH PURPOSES AND AUTHORIZING THE EXECUTION AND DELIVERY OF A MORTGAGE AND SECURITY AGREEMENT, IF NECESSARY, AND THE EXECUTION AND DELIVERY OF OTHER DOCUMENTS REQUIRED IN CONNECTION THEREWITH.

WHEREAS, Yahoo! Inc. (the Lessee) has entered into negotiations with the Town of Lockport Industrial Development Agency (the Agency) for the acquisition and equipment by the Agency with a lease with mortgage or alternatively through a lease only transaction of a data center facility consisting of the utilization of a premises consisting of the construction of approximately 190,000 feet of buildings consisting of a data storage facility, administrative building, call center and necessary appurtenant structures on approximately thirteen acres in the Town of Lockport Industrial Park located adjacent to and east of its existing facility at 5319 Enterprise drive in the Town of Lockport, New York, and authorizing the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith and authorizing the modification of said premises as needed for said purpose both during the initial phase of the Project and at subsequent phase(s) of the Project, and as equipment is added or replaced during the life of the Project through the year 2032, and real property tax abatement in deviation from previously existing Agency Uniform Tax Exemption Policy and Guidelines, as amended, to wit, the requested tax abatement will consist of abatement of real property taxes, a Payments in Lieu of Taxes of 0% during years 1 through 10, 20% during years 11 and 12, 40% during years 13 and 14, 60% during years 15 and 16, 80% during years 17 and 18 and 100% thereafter (the "Project") and the lease of the project to the Lessee; and

WHEREAS, the Lessee has submitted an 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 to purchase the Project for a data storage center, call center, administrative buildings and related purposes with resultant increase in employment in the Town of Lockport; the Lessee will employ approximately 115 full-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 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 13 acres +/- of land located in the Town of Lockport located adjacent to and east of its existing facility at 5319 Enterprise Drive, Lockport, New York.

WHEREAS, to finance the project the Agency intends to enter into a lease with mortgage or in the alternative a lease only transaction to provide for the aforesaid,

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

Section 1. The Agency hereby determines that the 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 at a cost not to exceed \$170,000,000, which Project will be financed, if requested, through a lease with mortgage or in the alternative through a lease only transaction.

Section 3. The Chairman, Treasurer, Administrative Director, Secretary, Assistant Secretary and any member or officer of the Agency and its agents and employees are hereby authorized and directed to take any steps that may be necessary and to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 4. The Lessee is authorized to initiate the construction of buildings on land already acquired by the Lessee and to commence with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connect therewith and to advance such funds as may be necessary to accomplish such purposes. The Agency is authorized to enter such agreements with the Lessee as the Chairman, Treasurer, Administrative Director, Secretary or Assistant Secretary of the Agency may deem necessary to accomplish the above.

Section 5. The execution and delivery of an Agent Agreement, a Lease to Agency and a Leaseback Agreement between the Agency and the Lessee, and a Mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by an appropriate officer of the Agency, in an amount not to exceed \$170,000,000 and other mortgage financing documents as may be required in connection with the Mortgage, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Treasurer, Administrative Director, Secretary or Assistant Secretary is hereby authorized. The appropriate officers of the Agency are authorized to execute, seal, acknowledge and deliver such agreements 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 and proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 6. All covenants, stipulations, obligations and agreements of the Agency contained in this resolution, the mortgage financing documents, UCC-1 Financing Statements, the Lease to Agency and the Leaseback 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 mortgage financing documents, the UCC-1 Financing Statements, the Lease to Agency and the Leaseback Agreement, as the case may be, 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 mortgage financing documents, the UCC-1 Financing Statements, the Lease to Agency, the Leaseback 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 mortgage financing documents, UCC-1 Financing Statements, the Lease to Agency and the Leaseback 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, Assistant 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 mortgage financing documents, the UCC-1 Financing Statements, the Lease to Agency and the Leaseback Agreement.

Section 7. The provisions of the new Section 875 of the General municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, the agent, project operator or other person or entity shall comply with all the provisions of section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 8. Agency will undertake, as soon as it is furnished with sufficient information as to provisions of the proposed mortgage financing transaction, use its best efforts to proceed, subject to agreement among the Agency, the Lessee and the lender selected by the Lessee and approved by a representative of the Agency, as to terms in all agreements to be entered in to with respect to the Project, in the alternative as soon as particular terms

and conditions of a Lease to Agency and Leaseback Agreement are determined enter into a lease only transaction.

Section 9. Any such action heretofore taken by the Lessee in initiating the acquisition 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 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 11. This resolution is subject to Agency approval of payment in lieu of taxes agreement (PILOT Agreement) for municipal services as specifically set forth above. 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, or in the alternative, at a level established by deviation from its standard policy, at all times while it holds title to or leasehold interest in the Project.

Section 12. 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) provided 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 enter into a lease with mortgage or lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project, or (d) the Lessee shall commence construction of the Project without financing, or continue work toward such construction.

Section 13. This resolution is also subject to (a) continued control of land located in the Town of Lockport Industrial Park, Lockport, New York, limited to the parcel herein described by the Applicant and (b) approval by the Agency of the Lease to Agency and Leaseback Agreement including any information that the Agency deems necessary to verify compliance with the New York State Industrial Development Agency Act and (c) 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 14. The Agency has determined by prior resolution, 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, by separate Supplemental Findings Statement, the Agency has determined that no further action is required pursuant to SEQRA.

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 notes will be sufficient to pay the cost of the acquisition, renovation and installation 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.

Mr. Sy called for a roll-call vote on the above resolution:

NAME:	VOTE:
SALLIE P. REED	<u>AYE</u>
ROBERT M. RUNK	<u>ABSENT</u>
ROBERT A. LIPP	<u>AYE</u>
DUNCAN N. CARLSON	<u>AYE</u>
ERIC W. CONNOR	<u>AYE</u>
R. THOMAS WEEKS	<u>AYE</u>
THOMAS A. SY	<u>AYE</u>

Respectfully Submitted,
Duncan N. Carlson, Secretary

Att. Sammarco Miller Statement