

Town of Colonie Industrial Development Agency

Board Minutes
April 11, 2016 Meeting

Public Hearing: Chairman Kearney opened the public hearing related to the proposed payment in lieu of taxes agreement between the Agency and Colonie Senior Service Centers, Inc. at 6:30. The public hearing was closed at 6:35 pm with no comments made.

Meeting called to order by Chairman Kearney at 6:40 pm.

Members in attendance:

John Kearney, Chairman

David DeLuca

Gary Rinaldi

Robert Tengeler

Eric Phillips

Benjamin Syden

Members absent:

Carm Basile

Agency Counsel: M. Cornelia Cahill, Barclay Damon, LLP

Chief Executive Officer: Joseph LaCivita

Chief Fiscal Officer: Christopher Kelsey

Guests: Edward Neary, Colonie Senior Service Centers, Inc.

Richard Rowlands, Rowlands & LeBrou, attorneys to Colonie Senior Service Centers, Inc.

Mr. LaCivita stated that Mr. Basile sent an e-mail stating he would not be here this evening due to his conflict of interest related to the Colonie Senior Service Centers, Inc. project. He is a member of the board of Colonie Senior Service Centers, Inc.

Chairman Kearney welcomed Mr. Neary and Mr. Rowlands from Colonie Senior Service Centers, Inc.

Approval of the Minutes

Mr. Kearney indicated the draft of the February 1, 2016 and March 21, 2016 minutes were in the Board packets for review. The minutes from the February 1, 2016 meeting were tabled at the March meeting because there was not a quorum of the members in attendance at that meeting. Mr. LaCivita noted correction of the spelling of Mr. Basile's last name within the March 21, 2016 minutes.

MOTION: To accept the February 1, 2016 minutes as provided. Motion offered by David DeLuca and seconded by Robert Tengeler. Mr. Rinaldi and Mr. Syden recused themselves as they were not present at the meeting. Motion approved by the remaining members in attendance.

MOTION: To accept the March 21, 2016 minutes, with the noted correction. Motion offered by Eric Phillips and seconded by Benjamin Syden. Mr. Tengeler recused himself as he was not present at the meeting. Motion approved by the remaining members in attendance.

Committee Reports

Governance –Mr. Syden indicated there was nothing to report this evening.

Ms. Cahill noted that changes to New York State Laws that go into effect in late June 2016 will affect the Agency. There will be need for the Governance committee to have a meeting prior to the June 20, 2016 regular Agency meeting to discuss the changes and be able to make recommendations to the Agency board at the June 20th meeting. She indicated it would probably be a lengthy meeting.

The committee members discussed time and coordinated calendars to have the meeting on May 9, 2016 at 5:30 at 347 Old Niskayuna Road, Latham, NY 12110.

Audit and Finance – Mr. DeLuca indicated the PARIS reports have been filed, and deferred to Mr. Kelsey. He stated that Mr. LaCivita certified the reports on March 30, 2016, in advance of the April 1st deadline, and two corrections were noted by Mr. LaCivita that Chris made before it was certified. The Investment Report and Audit Report information had been entered into the 2016 year-end report rather than the 2015 year-end report.

Executive Director Report

Mr. LaCivita indicated his report would cover older items and had no new items evening.

Chamber Loan Fund: Mr. Landry from the Albany Colonie Chamber will make a presentation to the Agency on June 20, 2016. The presentation will provide a history of the loan fund, current loan portfolio, and future plans. They will be looking for guidance from the Board as to the later as we have given them instructions to cease issuing new loans at this time.

Old Business

- 1) Colonie Senior Service Centers, Inc.: Ms. Cahill stated there is a resolution before the Agency this evening to execute a lease agreement and payment in lieu of tax (PILOT) agreement in connection with this project. The PILOT agreement will be a deviation from the Agency's s uniform tax exemption policy, which was communicated to each of

the tax jurisdictions. . The public hearing was held earlier this evening. Both the Town and North Colonie Central Schools met previously with representatives of Colonie Senior Service Centers, Inc. and are aware of the terms of the PILOT, other than the escalation clause requested by the Agency. Ms. Cahill discussed certain provisions of the PILOT related to maintenance of affordable rents.

RESOLUTION 2016-003: Authorizing the execution of an underlying lease, lease agreement, and payment in lieu of tax agreement in connection with a certain project for Colonie Senior Service Centers, Inc. and determining other matters in connection therewith. Resolution offered by Benjamin Syden, seconded by Robert Tengeler, and approved by all members in attendance. (See attached resolution 2016-003)

The Board temporarily adjourned the meeting to allow the Local Development Corporation to take action on similar items before them this evening from 6:55 to 7:05.

- 2) RFP for Consulting Services: Mr. Kearney indicated the draft request for proposal (RFP) developed by Mr. Tengeler and Ms. Cahill is included in the board packets this evening. An RFP review committee needed to be formed. After considerable discussion it was determined that the RFP review committee would be Chaired by Mr. LaCivita and would include the members of the Governance Committee, as they initiated the request for an RFP for consulting services.

Discussion ensued as to the timing of responses to the RFP so the Agency could take action at the June 20th meeting. It was also determined that the Agency would issue a request for qualifications (RFQ) with a separate sealed envelope to include rates and price quotes. This will allow the review committee to select the most qualified candidates without initially reviewing cost. It was also stated that the review committee may suggest developing a list of multiple approved vendors based on expertise in different fields. This will allow Mr. LaCivita to select the most qualified consultants based on his assessment of his current needs.

New Business

None

Meeting adjourned at 7:30 pm.

Next meeting will be June 20, 2016 at 6:30 pm at 347 Old Niskayuna Road, Latham, NY 12110.

RESOLUTION 2016-003 - RESOLUTION AUTHORIZING THE EXECUTION OF AN UNDERLYING LEASE, LEASE AGREEMENT AND PAYMENT IN LIEU OF TAX AGREEMENT IN CONNECTION WITH A CERTAIN PROJECT FOR COLONIE SENIOR SERVICE CENTERS, INC. ("COMPANY") AND DETERMINING OTHER MATTERS IN CONNECTION THEREWITH.

WHEREAS, Town of Colonie Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of Laws of 1969 of New York, constituting Title 1 of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended (the "Enabling Act") and Chapter 232 of the Laws of 1977 of New York, as amended, constituting Section 911-d of said General Municipal Law (said Chapter and the Enabling Act being hereinafter collectively referred to as the "Act") to promote, develop, encourage and assist in the acquiring, constructing, renovating, improving, maintaining, equipping and furnishing of commercial facilities, among others, for the purpose of promoting, attracting and developing economically sound commerce and industry to advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York, to improve their prosperity and standard of living, and to prevent unemployment and economic deterioration; and

WHEREAS, to accomplish its stated purposes, the Agency is authorized and empowered under the Act to acquire, construct, reconstruct and install "projects" (as defined in the Act) or to cause said projects to be acquired, constructed, reconstructed and installed, and to convey said projects or to lease said projects with the obligation to purchase; and

WHEREAS, Colonie Senior Service Centers, Inc. (the "Company") has presented an application (the "Application") to the Agency, requesting that the Agency consider undertaking a project (the "Project") consisting of the following: (A)(1) the acquisition of a leasehold interest in approximately 21.2 acres of land located at 17 Elks Lane in the Town of Colonie, Albany County, New York (the "Land"), and the existing building located thereon (the "Existing Building"), (2) the demolition of the Existing Building, (3) construction of one 3-story building consisting of (a) 96 units of affordable housing for senior citizens of low and moderate income, and (b) an approximately 5,000 square foot senior center (collectively, the "Facility"), and (4) the acquisition and installation therein and thereon of various machinery and equipment (the "Equipment") (the Land, the demolition of the Existing Buildings, the Facility and the Equipment being collectively referred to as the "Project Facility"); (B) the granting of certain "financial assistance" (within the meaning of Section 854(14) of the New York State General Municipal Law) with respect to the foregoing, including potential exemptions from real estate transfer taxes and real property taxes (collectively, the "Financial Assistance"); and (C) the lease (with an obligation to purchase) or sale of the Project Facility to the Company or such other person as may be designated by the Company and agreed upon by the Agency; and

WHEREAS, in compliance with the provisions of Section 859-a of the Act, the Preliminary Inducement Resolution indicated that the undertakings of the Agency contained therein are contingent upon the Agency making a determination to proceed with the Project following compliance by the Agency with the public notice and public hearing requirements set forth in Section 859-a of the Act; and

WHEREAS, pursuant to the authorization contained in the Preliminary Inducement Resolution, the Agency (A) caused notice of public hearing of the Agency (the “Public Hearing”) pursuant to Section 859-a of the Act, to hear all persons interested in the Project and the Financial Assistance being contemplated by the Agency with respect to the Project, to be mailed to the chief executive officers of the county, the town and the school district in which the Project Facility is, or is to be located (each an “Affected Tax Jurisdiction” and collectively, the “Affected Tax Jurisdictions”), (B) caused notice of the Public Hearing to be published on March 26, 2016 in the Times Union, a newspaper of general circulation available to the residents of the Town of Colonie, Albany County, New York, and (C) conducted the Public Hearing on April 11, 2016 at 6:30 p.m. at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, New York; and

WHEREAS, pursuant to the authorization contained in the Preliminary Inducement Resolution the Agency caused a letter dated April 1, 2016 (the “PILOT Deviation Letter”) to be mailed to the chief executive officers of each Affected Tax Jurisdiction, informing said individuals that the Agency would, at its meeting to be held on April 11, 2016, consider a proposed deviation from the Agency’s uniform tax exemption policy with respect to the payment in lieu of tax agreement to be entered into by the Agency with respect to the Project Facility upon the terms set forth in the PILOT Agreement, a draft of which was available at this meeting; and

WHEREAS, in order to consummate the Project and the granting of the Financial Assistance described in the notice of the Public Hearing, the Agency proposes to enter into the following documents: (A) an underlying lease agreement (and a memorandum thereof) dated as of May 1, 2016 (the “Underlying Lease”) by and among the Company and the Agency, pursuant to which, among other things, the Agency will acquire a leasehold interest in the Land and the improvements now or hereafter located on the Land from the Company; (B) a lease agreement (and a memorandum thereof) dated as of May 1, 2016 (the “Lease Agreement”) by and between the Agency and the Company, pursuant to which, among other things, the Company will agree to undertake and complete the Project as agent of the Agency and the Company will further agree to lease the Project Facility from the Agency and, as rental thereunder, to pay the Agency’s administrative fee relating to the Project and to pay all expenses incurred by the Agency with respect to the Project; (C) a payment in lieu of tax agreement dated as of May 1, 2016 by and between the Agency and the Company, pursuant to which the Company will agree to make payments in lieu of taxes; and (D) various certificates relating to the Project; and

WHEREAS, in order to secure the performance by the Company of its obligations under the PILOT Agreement, the Company will execute a mortgage and assignment of leases and rents dated as of May 1, 2016 (the “PILOT Mortgage”) in favor of the Agency granting to the Agency a mortgage lien on the Company’s leasehold interest in the Project Facility; and

WHEREAS, in order to finance the costs of the Project, at the request of the Company, the Town of Colonie Local Development Corporation (the “Colonie LDC”) is expected to issue not to exceed \$14,000,000 aggregate principal amount of tax-exempt revenue bonds (the “Bonds”) and to loan the proceeds of the Bonds to the Company; and

WHEREAS, the Company has requested that the Agency join with the Company in the execution of a mortgage and assignment of rents dated as of May 3, 2016 (the “Bank Mortgage” and, collectively, with the Underlying Lease, the Lease Agreement, the PILOT Agreement and any other document executed by the Agency in connection with the Project, the “Agency Documents”) from the Agency and the Company to Berkshire Bank (the “Bank”) granting to the Bank a mortgage lien on the Project Facility and granting to the Bank certain other rights with respect to such Project Facility; and

WHEREAS, prior to the date hereof, the Agency responded to all communications and correspondence received from the Affected Tax Jurisdictions regarding the proposed deviation from the Policy; and

WHEREAS, the Agency allowed representatives from the Affected Tax Jurisdictions present at this meeting to address the Agency regarding such proposed deviation; and

WHEREAS, the Company is a not-for-profit corporation pursuant to Section 501(c)(3) of the Internal Revenue Code of 1986, as amended; and

WHEREAS, notwithstanding the not-for-profit status of the Company, the assessor for the Town of Colonie (the “Assessor”) has determined that the Project Facility is not eligible for listing on the exempt rolls for real property tax purposes (the “Determination of the Assessor”); and

WHEREAS, the Agency desires to grant Financial Assistance to the Company in the form of a real property tax exemption pursuant to the terms of the PILOT Agreement; and

WHEREAS, the Agency will file with the assessor and mail to the chief executive officers of each “affected tax jurisdiction” (within the meaning of such quoted term in Section 854(16) of the Act) a copy of a New York State Board of Real Property Services Form RP-412-a (the form required to be filed by the Agency in order for the Agency to obtain a real property tax exemption with respect to the Project Facility under Section 412-a of the Real Property Tax Law) (a “Real Property Tax Exemption Form”) relating to the Project; and

WHEREAS, pursuant to Article 8 of the Environmental Conservation Law, Chapter 43-B of the Consolidated Laws of New York, as amended (the “SEQR Act”) and the regulations (the “Regulations”) adopted pursuant thereto by the Department of Environmental Conservation of the State of New York (collectively with the SEQR Act, “SEQRA”), the Project had been subject to an environmental review pursuant to the requirements of the State Environmental Quality Review Act and the regulations thereunder, resulting in the issuance of a Negative Declaration by the Agency by resolution dated September 28, 2015; and

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

Section 1. The Agency, based upon the representations made by the Company to the Agency in the Application and the Determination of the Assessor, 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) The Project is not a “civic facility” and constitutes a “project” within the meaning of the Act; and

(C) The Project will advance the job opportunities, health, general prosperity and economic welfare of the people of the State of New York and will improve their prosperity and standard of living; and

(D) The Agency, based upon its review of the following factors, finds and determines that it is desirable and in the public interest of the Agency to deviate from its uniform tax exemption policy and to approve the execution and delivery of the PILOT Agreement:

1. The nature of the proposed Project (e.g., manufacturing, commercial, warehouse):

The Land is currently owned by the Colonie Elks Lodge #2192 (the “Elks”) and will be developed by the Company into 96 units of affordable senior housing for senior citizens of low and moderate income, and an approximately 5,000 square foot senior center. The Project Facility will fill a need within the Town for additional housing for senior citizens of low and moderate income. The senior center will enable the Company to coordinate senior services in the Town including, but not limited to, transportation, recreation and wellness.

2. The nature of the property before the Project begins (e.g., vacant land, vacant buildings):

The Land is owned by the Elks and is predominantly vacant.

3. The economic condition of the area at the time of the Application:

The Land is predominantly vacant land that is part of the Elks property.

4. The extent to which a project will create or retain permanent, private sector jobs:

The Project will create four (4) full time equivalent positions.

5. The estimated value of tax exemptions to be provided:

The estimated value of the real property tax exemptions are estimated to be approximately \$5.3 million over the term of the PILOT Agreement. This estimate is based on an estimated taxable assessed value and current tax rates.

6. The extent to which the proposed Project will provide additional sources of revenue for municipalities and school districts in which the project is located:

The Project will generate four (4) full time equivalent jobs for the community. In addition, tenants of the Project Facility are likely to do much of their shopping within the Town thus generating sales and use tax revenue.

7. The impact of the Project and the proposed tax exemptions on affected tax jurisdictions:

The Project will generate increased revenue to the affected tax jurisdictions. If the Company did not undertake this Project the property would remain vacant.

Moreover, the Project consists of 96 units of affordable senior housing for senior citizens of low and moderate income and will have no impact on the utilization of the School District.

8. The impact of the proposed project on existing and proposed business and economic development projects within the vicinity:

There is a need within the Town for affordable senior housing for senior citizens of low and moderate income. Senior citizens represent thirty (30%) percent of the Town's population. At the present time there are no mid-range senior housing options in the Town. The Project will support local vendors and will generate four (4) full time equivalent positions. Residents of the Project Facility will be patronizing local businesses.

9. The amount of private sector investment generated or likely to be generated by the proposed Project:

The cost of the Project build out is in excess of \$15 million with a significant equity investment being made by the Company.

10. The likelihood of accomplishing the proposed Project in a timely fashion:

The Project has received all zoning and planning approvals and attained predevelopment milestones so closing of the financing is expected to be in April, 2016. Construction is expected to commence shortly after closing of the financing.

11. The effect of the proposed project on the environment:

The Town Planning Board has issued a negative declaration for the Project pursuant to the New York State Environmental Quality Review Act.

12. The extent to which the proposed Project will require the provision of additional services including, but not limited to, additional educational, transportation, police, emergency medical or fire services:

The Project will require no provision for educational or transportation services. The Company expects that many of the residents will own cars but that the residents are unlikely to be driving during peak hours. The Project also provides transportation for residents so it has the positive effect of alleviating the need for additional transportation. Buildings are fully sprinkled and security services will be provided by the Project. The Project likely will have a demand on fire and emergency medical services (EMT) and the payments under the Proposed PILOT Agreement are intended to reimburse the Town for the costs of those services. Minimal demand for police services is anticipated.

13. The extent to which the proposed Project will follow local input from local planning agencies:

The Town was heavily involved in and influenced the Project planning. The Project attained a Planned Development District (PDD) designation after extensive review by the Town Planning Board and all other Town departments such as Latham Water, Pure Waters, Building and Town Public Works, and Engineering, as well as the Town Board.

14. The extent to which the proposed Project will provide needed benefit (economic or otherwise) not otherwise available within the Town:

The Project provides needed affordable housing for an aging population not otherwise readily available within the Town.

15. The extent to which the Company or occupant will enter into apprenticeship agreements within the meaning of Section 816 of the Labor Law of the State of New York with respect to the construction, reconstruction or operation of the Project:

The Agency will encourage the Company to enter into apprenticeship agreements.

Section 2. In consequence of the foregoing, the Agency hereby determines to: (A) proceed with the Project; (B) acquire a leasehold interest in the Land and all improvements now or hereafter located on the Land from the Company; (C) lease the Project Facility to the Company pursuant to the Lease Agreement; (D) acquire, construct and install the Project Facility, or cause the Project Facility to be acquired, constructed and installed, as provided in the Lease Agreement; (E) grant a mortgage lien on and security interest in its interest in the Project Facility to the Bank; and (F) grant to the Company an exemption from real property taxes upon the terms set forth in the PILOT Agreement.

Section 3. The Agency is hereby authorized to acquire a leasehold interest in the Project Facility pursuant to the Underlying Lease and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 4. The Agency is hereby authorized to acquire, construct and install the Project Facility as described in the Lease Agreement and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such acquisition, construction and installation are hereby ratified, confirmed and approved.

Section 5. The Agency is hereby authorized to join with the Company and grant a mortgage lien on and security interest in its interest in the Project Facility to the Bank as described in the Bank Mortgage and to do all things necessary or appropriate for the accomplishment thereof, and all acts heretofore taken by the Agency with respect to such mortgage lien and security interest are hereby ratified, confirmed and approved.

Section 6. The form and substance of the Agency Documents (in substantially the forms presented to this meeting and which, prior to the execution and delivery thereof, may be redated) are hereby approved.

Section 7. (A) The Chairman (or Vice Chairman) of the Agency is hereby authorized, on behalf of the Agency, to execute and deliver the Agency Documents, and, where appropriate, the Secretary (or Assistant Secretary) of the Agency is hereby authorized to affix the seal of the Agency thereto and to attest the same. The Agency Documents shall be in substantially the forms thereof presented to this meeting with such changes, variation, omissions and insertions as the Chairman (or Vice Chairman) shall approve, the execution thereof by the Chairman (or Vice Chairman) to constitute conclusive evidence of such approval.

(B) The Chairman of the Agency is hereby further authorized, on behalf of the Agency, to designate any additional Authorized Representatives of the Agency.

Section 8. 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 or provided for by the provisions of the Agency Documents, and to execute and deliver all such additional 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 resolution and to cause compliance by the Agency with all of the terms, covenants and provisions of the Agency Documents binding upon the Agency.

Section 9. This resolution shall take effect immediately upon adoption.