

## Town of Colonie Local Development Corporation

Board Minutes  
April 11, 2016 Meeting

Public Hearing: Chairman Tengeler opened the public hearing for the Tax Equity and Fiscal Responsibility Act (TEFR) related to the proposed financing assistance for Colonie Senior Service Centers, Inc. at 6:35. The public hearing was closed at 6:40 pm with no comments made.

Meeting called to order by Chairman Tengeler at 6:56 pm.

Members in attendance:

Robert Tengeler, Chairman	
David DeLuca	John Kearney
Eric Phillips	Gary Rinaldi
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 for Colonie Senior Service Centers, Inc.

Chairman Tengeler welcomed Mr. Neary and Mr. Rowlands from Colonie Senior Service Centers, Inc. (CSSC).

Ms. Cahill introduced and discussed the financing the Corporation will facilitate for CSSC through Berkshire Bank.

### **Committee Reports**

**Audit and Finance** – Mr. DeLuca stated there was a meeting of the Finance Committee earlier this evening to review the proposal to undertake a tax exempt bond issuance on behalf of the Colonie Senior Service Centers, Inc. The members of the Finance Committee have determined that it is in the best interest of economic development in the Town of Colonie for the Corporation to issue up to \$14,000,000 in tax exempt bonds, and

recommend that the Corporation undertake the proposed project for CSSC. They further recommend the Corporation proceed with the issuance of the bonds upon the terms and conditions described in the Bond Purchase Agreement, the Loan Agreement and other documents to be executed and delivered in connection with the issuance of the bonds.

**RESOLUTION 2016-003: Authorizing the issuance and sale by the Town of Colonie Local Development Corporation of its tax-exempt revenue bonds (Colonie Senior Service Centers, Inc.), series 2016 in the aggregate principal amount of not to exceed fourteen million dollars (\$14,000,000) and the execution of related documents. Resolution offered by John Kearney, seconded by David DeLuca, and approved by all members in attendance. (See attached resolution 2016-003)**

The Board temporarily adjourned the meeting to allow the Industrial Development Agency to complete its meeting from 7:05 to 7:30.

### **Approval of the Minutes**

Mr. Tengeler 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.

**Audit and Finance, continued** –Mr. DeLuca also 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 1<sup>st</sup> deadline.

**Executive Director Report**

Mr. LaCivita indicated there was nothing to report at this time

**New Business**

None

**Old Business**

None

Meeting adjourned at 7:40 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 ISSUANCE AND SALE BY THE TOWN OF COLONIE LOCAL DEVELOPMENT CORPORATION OF ITS TAX-EXEMPT REVENUE BONDS (COLONIE SENIOR SERVICE CENTERS, INC. PROJECT), SERIES 2016 IN THE AGGREGATE PRINCIPAL AMOUNT OF NOT TO EXCEED FOURTEEN MILLION DOLLARS (\$14,000,000) AND THE EXECUTION OF RELATED DOCUMENTS.**

WHEREAS, Article 14 of the Not-for-Profit Law (“NFP Law”) of the State of New York (the “State”) was duly enacted into law as Chapter 1066 of the Laws of 1969 of the State; and

WHEREAS, the NFP Law provides for the incorporation of local development corporations to relieve and reduce unemployment, promote and provide for additional and maximum employment, for the bettering and maintaining job opportunities, instructing or training individuals to improve or develop their capabilities for such jobs, carrying on scientific research for the purpose of aiding a community or geographical area by attracting new industry to the community or area or by encouraging the development, or retention of, an industry in the community or area, and lessening the burdens of government and acting in the public interest; and

WHEREAS, the Town of Colonie Local Development Corporation (the “Issuer”) is authorized and empowered by NFP Law and a resolution (the “Resolution” and with the NFP Law, the “Act”) adopted by the Town Board of the Town of Colonie (the “Town”) to relieve and reduce unemployment, promote and provide for additional and maximum employment, better and maintain job opportunities in the Town of Colonie and lessen the burdens of government and act in the public interest; and

WHEREAS, to accomplish its stated purposes, the Issuer is authorized and empowered to construct, acquire, rehabilitate and improve for use by others, industrial or manufacturing plants in the Town; to assist financially in such construction, acquisition, rehabilitation and improvement; and to issue negotiable revenue bonds, notes and other obligations on behalf of the Town for the benefit of not-for-profit corporations and private entities to finance projects; and

WHEREAS, Colonie Senior Service Centers, Inc. (the “Company”) presented an application (the “Application”) to the Issuer, requesting that the Issuer consider undertaking a project (the “Project”) consisting of the following: the issuance of tax-exempt and taxable revenue bonds of the Issuer, in one or more issues or series, in an aggregate principal amount not to exceed \$14,000,000 (the “Bonds”) to finance (1) the acquisition of 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 a one 3-story building consisting of (a) 96 units of affordable senior housing for senior citizens of low and moderate income, and (b) an approximately 5,000 square foot senior center (the “Senior Center”) (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”); and

WHEREAS, pursuant to a resolution adopted by the Issuer on September 28, 2015 (the “Preliminary Inducement Resolution”), the members of the Issuer agreed, subject to numerous conditions, to accept the Application and enter into a preliminary agreement relating thereto (the “Preliminary Agreement”) with the Company; and

WHEREAS, the Agency has entered into the Preliminary Agreement with the Company dated September 28, 2015; and

WHEREAS, pursuant to the authorization contained in the Preliminary Inducement Resolution, the Issuer (A) caused notice of public hearing of the Issuer (the “TEFRA Hearing”) pursuant to Section 859-a of the Act and Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Code”), 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, and (B) conducted the Public Hearing on April 11, 2016, at 6:30 o’clock, p.m., local time at the office of the Issuer located at the Town of Colonie Public Operations Center, 347 Old Niskayuna Road, Latham, New York; 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 Issuer by resolution dated September 28, 2015; and

WHEREAS, as required by Section 2824(8) of the Public Authorities Law, the Issuer’s Finance Committee, on the date hereof, reviewed the proposal for the issuance of debt by the Issuer related to the Project, recommended that the Issuer undertake the Project and proceed with the issuance thereof, and determined that it is in the best interest of economic development in the Town for the Issuer to issue the Bonds (as hereinafter defined); and

WHEREAS, the Issuer will now issue the Issuer’s Tax-Exempt Revenue Bonds (Colonie Senior Service Centers, Inc. Project), Series 2016 in the aggregate principal amount of not to exceed \$14,000,000 (the “Bonds”) for the purpose of financing a portion of the costs of the Project Facility; and

WHEREAS, the Issuer and the Company will enter into a Loan Agreement (the “Loan Agreement”) dated as of May 1, 2016, pursuant to which the Issuer will make a loan of the proceeds of the Bonds to the Company to finance a portion of the costs of the Project, fund a debt service reserve fund, if any, and pay capitalized interest, if any, and cost of issuance of the Bonds and the Company will, among other things, agree to make loan payments in an amount sufficient to pay debt service on the Bonds; and

WHEREAS, Berkshire Bank (the “Purchaser” or “Bank”), has offered to purchase the Bonds pursuant to a Bond Purchase Agreement (the “Bond Purchase Agreement”) dated as of May 1, 2016, to be entered into by and among the Issuer, the Company and the Bank; and

WHEREAS, as security for the repayment of the Bonds, the Issuer will, among other things, assign all of its right, title and interest in and to the Loan Agreement and certain other documents to the Bank pursuant to a certain Pledge and Assignment, dated as of May 1, 2016, between the Issuer and the Bank, with an acknowledgment by the Company (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Pledge and Assignment”); and

WHEREAS, to further secure the Bonds and the obligations of the Company with respect thereto, the Company will give a guaranty dated as of May 1, 2016 (as the same may be amended, restated, supplemented or otherwise modified from time to time, the “Guaranty”) to the Bank; and

WHEREAS, to secure the Company’s obligations with respect to the Loan Agreement, the Company will execute a mortgage and assignment of leases and rents dated as of May 3, 2016 (the “Mortgage”) in favor of the Issuer granting to the Issuer a mortgage lien on the Company’s interest in the Project Facility; and

WHEREAS, pursuant to an assignment of mortgage dated as of May 3, 2016 (the “Assignment”), the Issuer will assign the Mortgage to the Bank; and

WHEREAS, to demonstrate compliance with the provisions of the Code relating to the issuance of tax-exempt obligations, (A) the Issuer and the Company will execute a tax compliance agreement dated the date of delivery of the Bonds (the “Tax Compliance Agreement”) relating to certain requirements set forth in Sections 145 and 148 of the Code, (B) the Issuer will execute a completed Internal Revenue Service (“IRS”) Form 8038 (Information Return for Private Activity Bonds) relating to the Bonds (an “Information Return”) pursuant to Section 149(e) of the Code, and (3) file the Information Return with the IRS, and (C) the Bank will execute a letter (the “Issue Price Letter”) confirming the issue price of the Bonds for purposes of Section 148 of the Code; and

WHEREAS, the Issuer has given due consideration to the Application and the representations by the Company that undertaking the Project and issuing the Bonds, (a) will induce the Company to acquire, construct and operate in the Town; and (b) will provide needed affordable housing option for senior who desire to live in the Town; and

WHEREAS, the undertaking of the Project and the issuance of the Bonds in conjunction with the Project is for a proper purpose, to wit, to lessen the burdens of government and is in the public interest;

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

Section 1. It is the policy of the State to promote the economic welfare, recreation opportunities and prosperity of its inhabitants and to actively promote, attract, encourage and develop recreation and economically sound commerce and industry for the purpose of preventing unemployment and economic deterioration.

Section 2. It is among the purposes of the Issuer to promote, develop, encourage and assist in the acquisition, construction, rehabilitation and improvement of facilities for not-for-profit corporations and thereby relieve and reduce unemployment, better and maintain job opportunities and lessen the burdens of government.

Section 3. Based upon representations made by the Company to the Issuer, the Issuer makes the following findings and determinations:

- (a) Ratifies and confirms its Preliminary Inducement Resolution findings.
- (b) The Project is in furtherance of the purposes of the Issuer.
- (c) The issuance of the Bonds will be an inducement to the Company to acquire, construct and operate the Project in the Town.
- (d) It is desirable and in the public interest for the Issuer to issue its Bonds to finance the costs of the Project, together with certain related costs and amounts, in an aggregate principal amount not to exceed \$14,000,000.
- (e) The Town is not undertaking the Project in place of, on behalf of, for the benefit of, or at the request of the Issuer.

Section 4. In consequence of the foregoing, the Issuer hereby determines to:

(a) execute the Bond Purchase Agreement and the Loan Agreement in substantially the forms presented at this meeting, with such amendments or modifications as the Chairman, the Vice Chairman or other officer designated by the Chairman (the "Authorized Officer") deems necessary under the circumstances, provided no such amendment or modification materially alters the risk to the Issuer;

(b) issue and deliver the Bonds to the Bank on or before December 31, 2016, subject however to the approval of the final terms of the Bonds and the terms and conditions of the Bond Purchase Agreement by the Authorized Officers of the Issuer and the Company;

(c) use the proceeds of the Bonds to make a loan to the Company pursuant to the Loan Agreement, including to finance a portion of the costs of the acquisition, construction and equipping of the Project and necessary incidental expenses in accordance with the Bond Purchase Agreement and the Loan Agreement;

(d) assign the Mortgage to the Bank and grant a mortgage recording tax exemption with respect to the recording of such mortgage;

(e) execute the Pledge and Assignment in a form approved by an Authorized Officer on the advice of counsel;

(f) execute the Tax Compliance Agreement and a completed Internal Revenue Service Form 8038 (Information Return for Private Activity Bonds) relating to the Bonds (the "Information Return") and file the Information Return with the Internal Revenue Service in connection with the issuance of the Bonds; and

(g) execute and deliver all other certificates and documents required in connection with issuance and sale of the Bonds including the documents identified on the draft Closing Memorandum and any other documents as may be required by the Trustee or otherwise required to accomplish the Project and qualify the interest on the Bonds for tax-exempt status under Section 103 of the Code (collectively, the "Bond Documents").

Section 5. The Issuer is hereby authorized to undertake the Project, to finance the costs of acquisition, construction and equipping of the Project, the funding of a debt service reserve fund, if any, and capitalized interest, if any, and costs of issuance, by the issuance of the Bonds and all acts previously taken by the Issuer with respect to the acquisition, construction and equipping of the Project, the undertaking of the Project, and the issuance of the Bonds are hereby approved, ratified and confirmed.

Section 6. Subject to receipt of the approval of the Town of Colonie of the issuance of the Bonds pursuant to, and solely for the purposes of, Section 147 of the Code, the Issuer is hereby authorized to issue, execute, sell and deliver the Bonds in accordance with the provisions of the Bond Purchase Agreement and the terms authorized in this Resolution. Each of the Authorized Officers of the Issuer is hereby authorized, on behalf of the Issuer, to execute (by manual or facsimile signature) and deliver the Bond Documents, on such terms and conditions as shall be consistent with this Resolution and approved by an Authorized Officer, the execution thereof by such Authorized Officer constituting conclusive evidence of such approval.

Section 7. There is hereby expressly delegated to each Authorized Officer, subject to receipt of the approval of the Town of Colonie of the issuance of the Bonds pursuant to, and solely for the purposes of, Section 147 of the Code and other the limitations contained herein, the power with respect to the Bonds and the Bond Documents to determine and carry out the following:

(a) The issuance and sale of the Bonds in accordance with the provisions of the Bond Purchase Agreement to be provided by the Bank, provided that the purchase price paid by the Bank shall not be less than ninety-five percent (95%) of the principal amount of the Bonds so sold;

(b) The principal amount of Bonds to be issued, not to exceed an initial aggregate principal amount of \$14,000,000.

(c) The date or dates, maturity date or dates and principal amount of each series and maturity of the Bonds, the amount and date of each sinking fund installment, if any, and which Bonds are serial bonds or term bonds, if any, provided that no Bond shall mature later than 30 years from the date of issuance;



(d) The interest rate or rates of the Bonds, the date from which interest on the Bonds shall accrue and the first interest payment date therefor, provided that the initial interest rate on the Bonds shall not exceed ten percent (10%) per annum;

(e) The form of the Bonds, the place or places of payment of the Bonds, denomination or denominations of and the manner of numbering and lettering the Bonds;

(f) The redemption price or redemption prices, if any, and the redemption terms, if any, for the Bonds;

(g) Directions for the application of the proceeds of the Bonds; and

(h) Any other provisions deemed desirable by the Authorized Officer not in conflict with the provisions hereof or of the Bond Purchase Agreement.

Section 8. In addition to the authority hereinabove granted, the Authorized Officer of the Issuer is hereby authorized and directed, for and in the name and on behalf of the Issuer, to do and cause to be done any such other acts and things, to execute and deliver any such additional certificates, instruments, documents or affidavits, to pay any such other fees, charges and expenses, and to make such other changes, omissions, insertions, revisions, or amendments to the documents referred to in Section 4 of this Resolution, as they determine may be necessary or desirable to consummate the transactions contemplated by this Resolution, the Bond Documents and the other documents referred to above.

Section 9. The Bonds, together with interest payable thereon, shall be special obligations of the Issuer payable solely from revenues (other than with respect to the Reserved Rights) derived from the sale or other disposition of the Project. No covenant, stipulation, obligation or agreement contained in this Resolution or the Bond Documents or any other document referred to above shall be deemed to be the covenant, stipulation, obligation or agreement of any member, director, agent or employee of the Issuer in his or her individual capacity and neither the members or directors of the Issuer nor any officer executing the Bonds shall be liable personally on the Bonds or be subject to any personal liability or accountability by reason of the issuance thereof. Neither the member, directors or officers of the Issuer, nor any person executing the Bonds or any of the Bond Documents or other documents referred to above on behalf of the Issuer, shall be liable thereon or be subject to any personal liability or accountability by reason of the execution, issuance or delivery thereof. The Bonds shall never be a debt of the State, the Town or any political subdivision thereof. The State, the Town or any political subdivision thereof shall not be liable thereon. None of the State, the Town or any political subdivision thereof is obligated to pay, and neither the faith and credit nor the taxing power of the State, the Town or any political subdivision thereof is pledged to the payment of, the principal or redemption price, if any, of or interest on, the Bonds.

Section 10. A copy of this Resolution, together with documents presented at this meeting and referred to herein, shall be placed on file in the office of the Issuer where the same shall be available for public inspection during business hours.

Section 11. Any expense incurred by the Issuer with respect to the Project and the financing thereof shall be reimbursed out of the proceeds of the Bonds or, in the event such proceeds are insufficient after payment of other costs of the Project, or the Bonds are not issued by the Issuer for any reason whatsoever, shall be paid by the Company. By acceptance hereof, the Company hereby agrees to pay such expenses and further agrees to indemnify the Issuer, its members, employees and agents and hold the Issuer 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 Issuer with respect to the Project and the financing thereof.

Section 12. Should the Issuer's participation in the Project or the financing be challenged by any party, in the courts or otherwise, the Company shall defend, indemnify and hold harmless the Issuer and its members, officers and employees from any and all losses arising from any such challenge including, but not limited to, the fees and disbursement of the Issuer's counsel. Should any court of competent jurisdiction determine that the Issuer is not authorized under the Act to make a loan to the Company or otherwise participate in the Project, this Resolution shall automatically become null, void and of no further force and effect, and the Issuer shall have no liability to the Company hereunder or otherwise.

Section 13. This Resolution shall take effect immediately.