

## Town of Colonie Local Development Corporation

Board Minutes  
March 18, 2019 Meeting

Meeting called to order by John Kearney, Chairman, at 6:10 pm. Upon conclusion of the Industrial Development Agency's public hearing and project presentation, the Corporation meeting was conducted simultaneously with the Town of Colonie Industrial Development Agency meeting due to the common actions necessary this evening.

Members in attendance:

John Kearney, Chairman  
Alison Blessing  
Eric Phillips  
Benjamin Syden

Peter Gannon  
Gary Rinaldi

Members absent: Carmino  
Basile

Other Persons in attendance:

Agency Counsel: Connie Cahill, Barclay Damon LLP  
Melissa Bennett, Barclay Damon LLP  
Chief Fiscal Officer: Christopher Kelsey Project  
Representatives:  
CIDC Colonie, LLC (BOCES) Project –  
Jonathan DeForest, Principal, BBL Construction Services  
Debra Lambek, project counsel.

Mr. Kearney indicated we would be moving the project presentation to the beginning of the agenda this evening rather than waiting until we got to "New Business."

### **Project Presentations -**

#### **CIDC Colonie, LLC (BOCES) Project:**

Ms. Lambek thanked the Corporation Board for their time this evening and reminded them that this is now the third time they have discussed this project, the first two as an applicant to the Industrial Development Agency. The application to the LDC requests the issuance of \$6,655,000 in bonds to finance the project.

CIDC Colonie, LLC is a non-profit 501(c)(3) corporation organized as a more financially advantageous model for undertaking this project. BBL Construction Services will retain

ownership of the land, which will be leased to CIDC Colonie, LLC. CIDC Colonie, LLC will then construct and own the building, which will be leased to BOCES.

The BOCES Project will construct a new two story building to provide appropriate learning conditions for the 100 children serviced by BOCES and to allow BOCES to capitalize on the benefits of centralized services by consolidating the services it currently provides in five locations outside the Town.

Mr. Syden inquired as to how one entity can own the property and another own the building for property tax purposes. Ms. Cahill indicated it was possible and the Town Assessor had been consulted already.

Ms. Cahill indicated that the resolution this evening authorizes Mr. LaCivita to schedule and hold a Tax Equity and Fiscal Responsibility Act (TEFRA) public hearing as required for the debt issuance.

Mr. Phillips and Mr. Syden expressed their reservations about acting on the project this evening because the application was only received the same day as the meeting and they had not had time to sufficiently review it.

Mr. Gannon asked for confirmation that the resolution only committed the LDC to holding a public hearing related to the project with no actual approvals. Ms. Cahill confirmed that was correct.

Ms. Lambek also indicated that State Environmental Quality Review (SEQR) had not been completed by the Town yet and wondered if the LDC would be open to performing its own SEQR, and whether the Corporation would be open to scheduling the public hearing on the project before June's meeting.

Mr. Gannon inquired as to where the project was in the Town's planning process and Mr. DeForest indicated he believed it was on the Town's Planning Board's March 26th agenda for conceptual approval.

Mr. Phillips then expressed his concerns with acting on final approval of the project before Town Planning Board approval, and that this would be a precedent setting event. The rest of the Board concurred with these reservations. They also stated that although June is the next scheduled meeting the Corporation was always open to scheduling additional meetings when necessary.

**RESOLUTION 2019-004 – Authorizing a TEFRA hearing with respect to the financing of a certain project for CIDC Colonie, LLC. Resolution was offered by Mr. Gannon and seconded by Mr. Rinaldi. Resolution was defeated with Mr. Kearney, Mr. Gannon and Mr. Rinaldi voting aye; Mr. Syden and Mr. Phillips voting nay; Ms. Blessing abstaining, and Mr. Basile absent.**

The BOCES Project representatives inquired as to the next step.

Mr. Phillips and Mr. Syden indicated they felt things were moving too quickly on this application since it was just received today. They wanted to review the application and have time to ask Counsel their questions.

**MOTION – Tabling action on the project for CIDC Colonie, LLC until the next meeting to allow the Members time to review the project application. Motion offered by Mr. Syden and seconded by Mr. Rinaldi. Motion approved with Ms. Blessing abstaining and Mr. Basile absent.**

The project representatives thanked the Corporation Board for their time this evening and looked forward to hearing from them as to when another meeting could be scheduled.

### **Approval of the Minutes**

Mr. Kearney indicated the draft of the February 4, 2019 minutes were in the Board packets for review.

**MOTION: To accept the February 4, 2019 minutes as presented. Motion offered by Mr. Phillips and seconded by Mr. Rinaldi. Motion was unanimously approved by the members in attendance.**

### **Committee Reports**

**Governance** –Mr. Syden indicated the Committee met at 5:30 this evening to review the following reports for 2018:

- 1) PARIS Reports:
  - a. Annual Report
  - b. Certified Financial Audit Report
  - c. Investment Report
  - d. Procurement Report
- 2) Mission Statement and Performance Measurements Report

The Committee voted to recommend to the full Board adoption of the above reports for 2018 as presented.

Mr. Syden also reviewed the results of the Board Self-Evaluation process for the prior year. While the evaluations were all very favorable it was a common theme that members felt they would benefit from a training update.

Mr. Syden asked Ms. Cahill to put together a list of potential dates for Barclay Damon LLP to provide a training update session for the Corporation's members. Ms. Cahill agreed and will follow-up with the members.

**Audit** - Ms. Blessing indicated the Audit Committee met this evening at 5:30 with Ann DeLucco, an audit Manager from BST & Co., LLP CPAs, who provided a summary of the audit reports for the year ended December 31, 2018 on behalf of Brendan Kennedy who had a prior commitment this evening. The Independent Auditor's Report and the Report on Internal Control over Financial Reporting and on Compliance and Other Matters Based on an Audit of Financial Statements Performed in Accordance with Government Auditing Standards opinions were both unmodified which is the best opinion that can be issued. There were no adjustments proposed to the Corporation's records and no management letter comments were issued, which is very good.

The Committee voted to recommend to the full Board acceptance of the 2018 audit reports.

Additionally, it reviewed and approved the following 2018 reports:

- a) Assessment of the Effectiveness of Internal Controls Report
- b) Annual Investment Report

The Committee voted to recommend to the full Board adoption of these reports for 2018 as presented.

**Finance** – Ms. Blessing indicated the Committee met this evening, after the Audit Committee meeting, to review and approved the following 2018 reports:

- a) Investment Policy
- b) Annual Investment Report

The Finance Committee also reviewed the Procurement Policy, with changes as presented at the meeting to conform with updates to the Town's Procurement Policy.

The Committee voted to recommend to the full Board adoption of these reports for 2018 and approval of the Procurement Policy, all as presented.

Ms. Cahill stated there is a resolution before the Board this evening to approve the additional items recommended for adoption by the Corporation's Governance, Audit and Finance Committees this evening.

**RESOLUTION 2019-005 – Approving additional annual actions. Resolution was offered by Mr. Syden and seconded by Ms. Blessing. Resolution was approved, with Mr. Basile absent.**

**Chief Fiscal Officer's Report**

Mr. Kelsey indicated there was not any significant activity to report since February's meeting and that he would distribution first quarter internal financial statements after the close of the quarter on March 31, 2019.

**Chief Executive Officer's Report**

Mr. LaCivita was unable to attend the meeting this evening due to a prior commitment, but had informed Mr. Kelsey that he had nothing to report this evening.

**Old Business**

None

**New Business**

None

Meeting adjourned at 7:45 pm.

Next meeting will be June 17, 2019 at 6:00 pm at 347 Old Niskayuna Road, Latham, NY 12110.

**RESOLUTION 2019-004: RESOLUTION AUTHORIZING A  
TEFRA HEARING WITH RESPECT TO THE FINANCING  
OF A CERTAIN PROJECT FOR CIDC COLONIE, LLC.**

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

WHEREAS, the Act 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 Act authorizes local development corporations to acquire by purchase, lease, bequest, devise or otherwise real or personal property or interests therein, to borrow money and to issue negotiable bonds, notes and other obligations therefor and to sell, lease, mortgage or otherwise dispose of or encumber any of its real or personal property or any interest therein upon such terms as it may determine; and

WHEREAS, the Town of Colonie Local Development Corporation (the “Issuer”) was formed pursuant to the provisions of the Act and a resolution of the Town Board of the Town of Colonie, New York (the “Town”) as a local development corporation within the meaning of the Act; and

WHEREAS, CIDC Colonie, LLC (the “Company”) has presented an application (the “Application”) to the Issuer, a copy of which was presented at this meeting and copies of which are on file at the office of the Issuer, requesting that the Issuer consider undertaking a project (the “Project”) consisting of the following: (A) 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 \$6,655,000 (the “Bonds”) to finance (i) the construction of an approximately 42,500 square foot building (the “Facility”) located on approximately 3.26 acres of land located at 10C Airline Drive in the Town of Colonie, Albany County, New York (the “Land”), and (ii) the acquisition and installation therein and thereon of various machinery, equipment and other tangible personal property (the “Equipment”) (the Land, the Facility and the Equipment being collectively referred to as the “Project Facility”), which Project Facility is to be leased to the Board of Cooperative Educational Services of Albany-Schoharie-Schenectady-Saratoga Counties, State of New York (the “Capital Region BOCES”), for use by the Capital Region BOCES as an education facility; and (B) the granting of the mortgage recording tax exemption (except as may be limited by Chapter 394 of the Laws of 2016 of the State, amended by Chapter 3 of the Laws of 2017 of the State) with respect to the recording of any mortgage with the County Clerk of the County of Albany; and

WHEREAS, with respect to any portion of the Bonds intended to be issued as federally tax-exempt obligations (the “Tax-Exempt Bonds”), interest on such portion of the Bonds will not be excluded from gross income for federal income tax purposes unless (A) pursuant to Section 147(f)

of the Internal Revenue Code of 1986, as amended (the “Code”) and the regulations of the United States Treasury Department thereunder (the “Treasury Regulations”), the Issuer provides notice of and conducts a TEFRA hearing and the issuance of such Tax-Exempt Bonds is approved by the Town Board of the Town of Colonie, New York; and (B) all of the requirements of Section 145 of the Code are satisfied; 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 Corporation has not yet made a preliminary determination as to the potential environmental significance of the Project and therefore has not yet determined whether an environmental impact statement is required to be prepared with respect to the Project;

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

Section 1. The Issuer hereby authorizes the Executive Director of the Issuer, after consultation with the Members of the Issuer and the Issuer’s Bond Counsel, to (A) establish the time, date and place for a public hearing of the Issuer pursuant to Section 147(f) of the Code to hear all persons interested in the Project (the “TEFRA Hearing”); (B) to cause the TEFRA Hearing to be held in the Town of Colonie, New York and to cause notice of such TEFRA Hearing to be given to the public by publishing a notice or notices of such TEFRA Hearing in a newspaper of general circulation available to the residents of the governmental units where the Project Facility is or is to be located, such notice or notices to be published no fewer than fourteen (14) days prior to the date established for such TEFRA Hearing; (C) to conduct such TEFRA Hearing; and (D) if any portion of the Bonds is intended to be issued as federally taxexempt obligations, to cause a report of the TEFRA Hearing fairly summarizing the views presented at such TEFRA Hearing to be promptly prepared and cause copies of said report to be made available to the Town Board of the Town of Colonie.

Section 2. This Resolution shall constitute the adoption of “official intent” (within the meaning of the United States Treasury Regulations Section 1.150-2(d)) with respect to issuance of the Tax-Exempt Bonds and the original expenditures which are reasonably expected to be reimbursed from the proceeds of the Tax-Exempt Bonds.

Section 3. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>	<u>ABSTAIN</u>	<u>ABSENT</u>
Carm Basile				X
Alison Blessing			X	
Peter Gannon	X			
John Kearney	X			
Eric Phillips		X		
Gary Rinaldi	X			
Benjamin Syden		X		

The Resolution was thereupon declared defeated.

**RESOLUTION 2019-005: RESOLUTION APPROVING  
ADDITIONAL ANNUAL ACTIONS.**

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

WHEREAS, the Act 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 Act authorizes local development corporations to acquire by purchase, lease, bequest, devise or otherwise real or personal property or interests therein, to borrow money and to issue negotiable bonds, notes and other obligations therefor and to sell, lease, mortgage or otherwise dispose of or encumber any of its real or personal property or any interest therein upon such terms as it may determine; and

WHEREAS, the Town of Colonie Local Development Corporation (the “Corporation”) was formed pursuant to the provisions of the Act and a resolution of the Town Board of the Town of Colonie as a local development corporation within the meaning of the Act; and

WHEREAS, the Act and the Public Authorities Law require that the Corporation prepare various annual reports (the “Annual Reports”); and

WHEREAS, the Corporation’s auditor has submitted draft audited financial statements for the year ended December 31, 2018 (the “Audited Financial Statements”) to the Corporation; and

WHEREAS, the Finance Committee has reviewed the Annual Reports and has recommended their approval by the Corporation; and

WHEREAS, the Governance Committee has reviewed the Annual Reports and has recommended their approval by the Corporation; and

WHEREAS, the Audit/Finance Committee has reviewed the Audited Financial Statements and has recommended their acceptance by the Corporation; and

WHEREAS, the Finance Committee has reviewed the Procurement Policy and recommended updates to the Procurement Policy by the Corporation; and

WHEREAS, the members of the Corporation desire to review and approve the Annual Reports, re-adopt the Procurement Policy, and accept the Audited Financial Statements, in the forms presented at this meeting;

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

Section 1. The Corporation hereby: (a) approves the Annual Reports; (b) re-adopts the Procurement Policy; and (c) accepts the Audited Financial Statements, each in the form presented at this meeting.

Section 2. The Executive Director of the Corporation is hereby directed to: (a) post copies of the Annual Reports and the Audited Financial Statements on the Corporation's website; and (b) file the Annual Reports and the Audited Financial Statements with the New York State Authorities Budget Office, as required by the Public Authorities Law.

Section 3. This Resolution shall take effect immediately.

The question of the adoption of the foregoing Resolution was duly put to a vote on roll call, which resulted as follows:

	<u>AYE</u>	<u>NAY</u>	<u>ABSENT</u>
Carm Basile			X
Alison Blessing	X		
Peter Gannon	X		
John Kearney	X		
Eric Phillips	X		
Gary Rinaldi	X		
Benjamin Syden	X		

The Resolution was thereupon declared adopted.