

Town of Colonie Local Development Corporation

Board Minutes March 19, 2018 Meeting

Meeting called to order by John Kearney, President, at 6:25 pm, 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, President	
Alison Blessing	Peter Gannon
Eric Phillips (Exited 6:50)	Gary Rinaldi
Benjamin Syden	

Members absent:

Carmino Basile

Other Persons in attendance:

Agency Counsel: Connie Cahill and Melissa Bennett, Barclay Damon LLP
Chief Executive Officer:
Chief Fiscal Officer: Christopher Kelsey
Guest: Sister Lauren Van Dermark, CSJ, Project Coordinator
Sister Kay Ryan, CJS. Project Coordinator
Toby Shea, Project Architect

Mr. Kearney advised the members that Mr. LaCivita was unable to attend the meeting this evening due to a family commitment.

Approval of the Minutes

Mr. Kearney indicated the draft of the January 22, 2018 minutes were in the Board packets for review.

MOTION: To accept the January 22, 2018 minutes as provided. Motion offered by Alison Blessing and seconded by Gary Rinaldi. Mr. Gannon abstained. Motion was unanimously approved by the remaining members in attendance.

Committee Reports

Governance –Mr. Syden indicated the Committee met at 5:30 this evening to reaffirm the following statements, policies and reports previously approved in January 2018:

- a) Mission Statement
- b) By-Laws
- c) Code of Ethics

- d) Conflicts of Interest Policy
- e) Procurement Policy
- f) Property Acquisition Policy
- g) Property Disposition Policy
- h) Whistleblower Policy
- i) Operations and Accomplishments Report
- j) Report of Real Property Owned
- k) Governance Committee Charter

Additionally, it reviewed and approved the following reports 2017:

- a) New York State Authorities Budget Office Public Authorities Reporting Information System Annual Report, Certified Financial Audit Report, Investment Report, and Procurement Report.
- b) Annual Self-evaluation of Governance Committee Performance Report
- c) Performance Measurement Report

The Committee voted to recommend to the full Board adoption of the above statements and policies for 2018 and reports for 2017 as presented.

Mr. Syden indicated the Committee also reviewed the revised Self-Evaluation Form which was provided to all the Corporation Members and will be collected this evening. Mr. Syden intends to provide a summary of the findings at the next meeting of the LDC.

Mr. Syden indicated the Governance Committee continued to discuss the potential for a full Board retreat to discuss the direction the Corporation wanted to go in 2018 along with Barclay Damon providing a brief training update at the same time. They will also look to schedule a meeting with the Town Supervisor to coordinate the Town and Corporations goals.

Mr. Gannon and Mr. Phillips then discussed the idea of transforming the Corporations website to be more of a marketing tool to attract development of the Town and Corporation. They would like to see it be more than a way to disseminate the requirements of the New York State Authorities Budget Office. Mr. Gannon indicated he thought it would be good to have a sub-committee dedicated to the website and its redesign.

Ms. Cahill advised that Ms. Blessing had informed her of the need to recuse herself from the action related to the Shaker Pointe at Carondelet, Inc. Project before the Corporation tonight, and that Mr. Phillips needed to leave early for a work commitment. Therefore she requested the New Business portion of the agenda be done now.

New Business

Shaker Pointe at Carondelet, Inc. – Mr. Kearney welcomed Sister Lauren Van Dermark and Sister Kay Ryan back to the Corporation and invited them to begin their presentation. Sister Lauren thanked the Corporation for all the support it has provided over the last eight years to bring their vision to reality. The first three phases of the project are

complete and they have a 93% occupancy rate at this time. The fourth phase of the project is to construct "Parkland at Shaker Pointe." This will be an independent senior living apartment building with three stories and 35 independent living units. It will be located on the southern side of the land off of Watervliet Shaker Road with its entrance directly across from East Hills Boulevard.

Ms. Cahill summarized the application as a \$13.5 million bond issuance which will provide for the construction of this facility and refinance a small portion of the 2014 debt issuance facilitated by the Corporation.

RESOLUTION 2018-003: Taking preliminary official action toward the financing of a certain project for Shaker Pointe at Carondelet, Inc. (the "Company") and authorizing the execution and delivery of a preliminary agreement with the Company with respect to such transactions. Resolution offered by Benjamin Syden and seconded by Eric Phillips. Ms. Blessing recused herself. Resolution was unanimously approved by the remaining members in attendance.

Ms. Cahill informed the Board that the resolution authorized the scheduling of a Tax Equity and Fiscal Responsibility Act (TEFRA) hearing for the project. As the Project would like to close in May they are requesting the TEFRA hearing in April 2018. Discussion ensued regarding availability and the Corporation will schedule the TEFRA hearing for April 23, 2018.

The project representatives thanked the Corporation for its continued support and also acknowledged Toby Shea, the project architect, for his efforts on the project. All the Board Members expressed their appreciation for the project and what it has provided to the senior community within the Town.

Mr. Phillips excused himself at 6:50 pm, and exited the meeting.

Committee Reports

Audit - Mr. Rinaldi indicated the Audit Committee met this evening at 5:30 with William Freitag, an audit Partner from BST & Co., LLP CPAs, who provided a summary of the audit reports for the year ended December 31, 2017 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 2017 audit reports.

Mr. Rinaldi also indicated the Committee met at 5:30 this evening to review, and to reaffirm the Committee's Charter for 2018, previously approved in January 2018:

Additionally, it reviewed and approved the following reports 2017:

- a) Annual Self-evaluation of Audit Committee Performance Report
- b) Assessment of the Effectiveness of Internal Controls Report
- c) Annual Investment Report

The Committee voted to recommend to the full Board adoption of the above Charter for 2018 and reports for 2017 as presented.

Finance – Mr. Rinaldi indicated the Committee met this evening, after the Audit Committee meeting, to review and reaffirm the following policies for 2018, previously approved in January 2018:

- a) Investment Policy
- b) Procurement Policy
- c) Financing Guidelines
- d) Fee Structure
- e) Insurance Coverage
- f) Finance Committee Charter

Additionally, it reviewed and approved the following reports 2017:

- a) Annual Self-evaluation of Finance Committee Performance Report
- b) Annual Investment Report

The Committee voted to recommend to the full Board adoption of the above Policies and Statements for 2018 and reports for 2017 as presented.

Ms. Cahill stated there is a resolution before the Board this evening to approve, re-affirm, and adopt the Corporation's Governance, Audit and Finance Committees recommendations for 2018, and various reports for 2017.

RESOLUTION 2018-004: Approving additional annual actions. Resolution offered by Benjamin Syden and seconded by Peter Gannon. Resolution was unanimously approved by the members in attendance.

Chief Executive Officer's Report

Mr. LaCivita was unable to attend this evening, but indicated via e-mail to Mr. Kelsey that he had nothing beyond the Shaker Pointe at Carondelet Phase IV Project to discuss this evening.

Chief Fiscal Officer's Report

Mr. Kelsey indicated there had been little activity in the Corporation financially within the first quarter, but will provide a quarterly interim financial statement to the Board once the quarter officially closes on March 31st.

Old Business

None

Meeting adjourned at 7:40 pm.

Next meeting will be April 23, 2018 at 6:00 pm at 347 Old Niskayuna Road, Latham, NY 12110.

RESOLUTION 2018-003 - TAKING PRELIMINARY OFFICIAL ACTION TOWARD THE FINANCING OF A CERTAIN PROJECT FOR SHAKER POINTE AT CARONDELET, INC. (THE "COMPANY") AND AUTHORIZING THE EXECUTION AND DELIVERY OF A PRELIMINARY AGREEMENT WITH THE COMPANY WITH RESPECT TO SUCH TRANSACTION.

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, Shaker Pointe at Carondelet, Inc. (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 \$13,500,000 (the "Bonds") to (1) finance (a) a 3-story building containing approximately 35 independent living units for senior citizens (the "Facility") located on approximately 30 acres of land located at One Bell Tower Drive in the Town of Colonie, Albany County, New York (the "Land"), and (b) the acquisition and installation therein and thereon of various machinery and equipment (the "Equipment") (the Land, the Facility and the Equipment being collectively referred to as the "Project Facility"); and (2) refinance the outstanding principal balance of the Issuer's \$15,000,000 Tax-Exempt Revenue Bonds (Shaker Pointe at Carondelet, Inc. Project), Series 2014 (the "Series 2014 Bonds"); 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 (the "Financial Assistance"); 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 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 October 24, 2011; and

WHEREAS, although the resolution authorizing the issuance of the Bonds and the undertaking of the Project has not yet been drafted for approval by the Issuer, a preliminary agreement (the “Preliminary Agreement”) relative to the proposed issuance of the Bonds and the undertaking of the Project by the Issuer has been presented for approval by the Issuer;

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, renovation 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) The Project is in furtherance of the purposes of the Issuer.
- (b) The issuance of the Bonds will be an inducement to the Company to acquire, construct, equip and operate the Project Facility in the Town.
- (c) 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 amount not to exceed \$13,500,000.
- (d) The Issuer reasonably expects to reimburse the Company for expenses incurred in connection with the Project from the proceeds

of the Bonds.

Section 4. Subject to the conditions set forth in the last sentence of this Section 4, the Issuer will (a) issue the Bonds in such principal amount and with such maturities, interest rate or rates, redemption terms and other terms and provisions to be determined by a further resolution of the Issuer; (b) make a loan to the Company in an amount equal to the Bond proceeds to finance all or a portion of the costs of the Project pursuant to a loan agreement to be entered into between the Issuer and the Company whereby the Company will be obligated, among other things, to make payments to the Issuer in amounts and at a time so that such payments will be adequate to pay the principal of, premium, if any, and interest on the Bonds; and (c) secure the Bonds in such manner as the Issuer, the Company and the purchaser(s) of the Bonds mutually deem appropriate. The issuance of the Bonds contemplated by this Resolution are subject to (i) obtaining all necessary governmental approvals, including the approval of the Town Board of the Town of Colonie in accordance with Section 147(f) of the Code; (ii) approval by the members of the Issuer of the form and substance of the Bonds and the agreements and other documents necessary or desirable in connection with the authorization, issuance, sale and delivery of the Bonds; (iii) agreement by the Issuer, the Company and the purchaser(s) of the Bonds upon mutually satisfactory terms for the Bonds (and any such additional bonds) and for the sale and delivery thereof; (iv) satisfaction of the requirements of Section 145(a) of the Code; (v) the condition that there are no changes in the Code and New York State Law, including regulations thereunder, which prohibit or limit the Issuer from fulfilling its obligations hereunder; and (vi) payment by the Company of the Issuer's Bond Issuance Fee and all costs and expenses of the Issuer with respect to the issuance of the Bonds.

Section 5. The form, terms and substance of the Preliminary Agreement (in substantially the form presented to this meeting) are in all respects approved, and the Chairman (or Vice Chairman) of the Issuer is hereby authorized, empowered and directed to execute and deliver said Preliminary Agreement in the name and on behalf of the Issuer, said Preliminary Agreement to be substantially in the form presented to this meeting, with such changes therein as shall be approved by the officer executing same on behalf of the Issuer, the execution thereof by such officer to constitute conclusive evidence of such officer's approval of any and all changes or revisions therein from the form now before this meeting.

Section 6. From and after the execution and delivery of the Preliminary Agreement, the officers, agents and employees of the Issuer are hereby authorized, empowered and directed to proceed with the undertakings provided for therein on the part of the Issuer and are further authorized to do all such acts and things and to execute all such documents as may be necessary or convenient to carry out and comply with the terms and provisions of the Preliminary Agreement as executed.

Section 7. 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 8. The Preliminary Agreement shall be deemed the obligations of the Issuer, and not of any member, officer, agent or employee of the Issuer in his/her individual capacity, and the members, officers, agents and employees of the Issuer shall not be personally liable thereon or be subject to any personal liability or accountability based upon or in respect hereof or of any

transaction contemplated hereby. Neither the Preliminary Agreement nor the Bonds shall constitute or give rise to an obligation of the State of New York or the Town of Colonie, New York and neither the State of New York nor the Town of Colonie, New York shall be liable thereon, and further, such agreement and such Bonds shall not constitute or give rise to a general obligation of the Issuer, but rather shall constitute limited obligations of the Issuer. The Bonds and the interest thereon shall constitute a special, limited obligation of the Issuer payable solely from the revenues derived or to be derived from the loan agreement with respect to the Project and from other related assets of the Company, if any, pledged to repayment of the Bonds and from the enforcement of the security pledged to the payment of the Bonds. The Bonds shall be issued solely for the purposes set forth in this Resolution.

Section 9. 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 10. 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 11. Barclay Damon LLP, of Albany, New York is hereby appointed Bond Counsel to the Issuer with respect to all matters in connection with the Project. Bond Counsel is hereby authorized, at the expense of the Company, to work with the Company, Counsel to Company, and others to prepare, for submission to the Issuer, all documents necessary to effect the authorization, of the transactions contemplated by this Resolution.

Section 12. This Resolution shall take effect immediately.

RESOLUTION 2018-004 - 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, 2017 (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 Audit Committee, Finance Committee and Governance Committee each did not have a quorum at their respective committee meetings on January 22, 2018 and therefore, each committee has re-reviewed the relevant policies and reports approved by each committee at their January 22, 2018 meetings (the “January 22 Documents”) and has recommended a reaffirmation of their approval by the Corporation; and

WHEREAS, each of the Audit Committee, the Finance Committee and the Governance Committee reaffirmed its respective recommendation from the January 22, 2018 meeting that its respective charter be amended to clarify that the members of each such Committee shall be appointed by the Chairman (the "Committee Charter Revisions"); and

WHEREAS, the members of the Corporation desire to review and approve the Annual Reports, reaffirm their approval of the January 22 Documents and the Committee Charter Revisions 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-affirms its approval of the January 22 Documents; 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, the January 22 Documents 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 4. This Resolution shall take effect immediately.