

MINUTES OF THE
COUNTY OF CLINTON
INDUSTRIAL DEVELOPMENT AGENCY
MONDAY, DECEMBER 10, 2018

The meeting was called to order by T. Trahan, Chairperson, at 12:14 p.m., at the office of the County of Clinton Industrial Development Agency, 137 Margaret Street, Suite 208, Plattsburgh, New York 12901.

MEMBERS PRESENT: Trent Trahan, Chairperson
David Hoover, Vice Chairperson
Keith Defayette, Treasurer and Chief Financial Officer
Kim Murray, Assistant Secretary
John VanNatten, Member

MEMBERS EXCUSED: Michael Zurlo, Secretary
Mark Leta, Member

STAFF PRESENT: Renee McFarlin, Executive Director
George Cregg, Esq., Agency Counsel
Christopher Canada, Esq., Agency Counsel
Toni Moffat, Executive Assistant

T. Trahan stated that there was a *quorum* present.

T. Trahan waived the reading of the notice of the meeting published in the *Press Republican* on December 22, 2017.

Approval of the Minutes of the November 26, 2018 Meeting

T. Trahan asked if there were any questions regarding the draft minutes of the November 26, 2018 meeting of the CCIDA. There were none.

On a motion by K. Defayette, and seconded by D. Hoover, it was unanimously carried to approve the minutes of the November 26, 2018 meeting of the CCIDA.

Public Comment

There was no public comment.

Treasurer's Report

K. Defayette reviewed the Treasurer's Report. There were no questions or concerns.

On a motion by K. Murray, seconded by D. Hoover, it was unanimously RESOLVED to approve the Treasurer's Report as presented by K. Defayette.

Committee Reports

Audit Committee

K. Defayette noted the Committee met and are recommending the Full Board accept the Committee recommendation and approve to initiate the 2018 Agency audit.

On a motion by J. VanNatten, seconded by K. Murray, it was unanimously carried to accept the Committee recommendation and approve to initiate the 2018 Agency audit.

Governance Committee

J. VanNatten noted the Committee met and reviewed the 2018 annual reports and are recommending Full Board approval of the:

- 2018 CCIDA Missions and Operations Statement
- 2018 CCIDA Operations and Accomplishments
- 2018 CCIDA Performance Measures Report
- 2018 CCIDA Procurement Report
- 2018 CCIDA Real Property
- 2018 CCIDA Investment Report

On a motion by D. Hoover, seconded by K. Murray, it was unanimously carried to accept the recommendation of the Committee and approve the 2018 annual reports as presented and authorize posting of same to PARIS.

Old Business

Vermont Green Line

R. McFarlin reported she has been in continued communications with the involved parties (with the exception of Beekmantown Town Supervisor Sam Dyer). They have requested additional time to review the proposed PILOT deviation and compare it to the 2016 PILOT deviation. She anticipates feedback by the end of next week.

New Business

Ardak Hospitality LLC

R. McFarlin reported she has communicated with Ardak Hospitality LLC counsel, Jessica Miller and confirmed that Ardak Hospitality LLC’s purpose in refinancing their mortgage is to achieve a lower interest rate. Therefore, Staff has recommended an administrative fee is appropriate for this transaction.

On a motion by K. Defayette and seconded by D. Hoover, it was unanimously carried to approve the administrative fee for Ardak Hospitality LLC’s refinancing of their mortgage.

The following resolution was offered by K. Defayette, seconded by D. Hoover, to wit:

Resolution No. 12-18-02

RESOLUTION AUTHORIZING THE EXECUTION BY COUNTY OF CLINTON INDUSTRIAL DEVELOPMENT AGENCY OF A CERTAIN MORTGAGE AND RELATED DOCUMENTS IN CONNECTION WITH THE ARDAK HOSPITALITY LLC PROJECT.

WHEREAS, County of Clinton Industrial Development Agency (the “Agency”) is authorized and empowered by the provisions of Chapter 1030 of 1969 Laws 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 225 of the 1971 Laws of New York, as amended, constituting Section 895-f 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, reconstructing, 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 one or more “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, on July 7, 2008 (the “Closing”), the Agency granted certain financial assistance to Ardak Hospitality LLC (the “Company”) to assist in financing a project (the “Project”) consisting of the following: (A)(1) the acquisition of an interest in certain parcels of land containing approximately 2.66 acres generally located on State Route 3 between Plaza Boulevard and Della Drive in the Town of Plattsburgh, Clinton County, New York (the “Land”), (2) the construction of an approximately 56,325 square foot building on the Land (the “Facility”) and (3) the acquisition and installation therein and thereon of certain machinery and equipment (the “Equipment”) all the foregoing to constitute an approximately 90-room, 5 story hotel (the Land, 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 Act) with respect to the foregoing, including potential exemptions from sales and use taxes, real property transfer taxes, mortgage recording taxes and real estate taxes (collectively, the “Initial Financial Assistance”); and (C) the lease of the Project Facility to the Company pursuant to the terms of a lease agreement dated as of July 1, 2008 (the “Lease Agreement”) by and between the Company and the Agency; and

WHEREAS, simultaneously with the Closing, (A) the Company executed and delivered to the Agency (1) a certain lease to agency dated as of July 1, 2008 (the “Lease to Agency”) by and between the Company, as landlord, and the Agency, as tenant, pursuant to which the Company leased to the Agency a portion of the Land and all improvements now or hereafter located on said portion of the Land (collectively, the “Leased Premises”) for a lease term ending on December 31, 2019; (2) a certain license agreement dated as of July 1, 2008 (the “License to Agency”) by and between the Company, as licensor, and the Agency, as licensee, pursuant to which the Company granted to the Agency (a) a license to enter upon the balance of the Land (the “Licensed Premises”) for the purpose of undertaking and completing the Project and (b), in the event of an occurrence of an Event of Default by the Company, an additional license to enter upon the Licensed Premises for the purpose of pursuing its remedies under the Lease Agreement; and (3) a bill of sale dated as of July 1, 2008 (the “Bill of Sale to Agency”), which conveyed to the Agency all right, title and interest of the Company in the Equipment, (B) the Company and the Agency executed and delivered a payment in lieu of tax agreement dated as of July 1, 2008 (the “Payment in Lieu of Tax Agreement”) by and between the Agency and the Company, pursuant to which the Company agreed to pay certain payments in lieu of taxes with respect to the Project Facility, (C) the Agency filed with the assessor and mail to the chief executive officer 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 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) (the “Real Property Tax Exemption Form”) relating to the Project Facility and the Payment in Lieu of Tax Agreement, (D) the Agency executed and delivered to the Company a sales tax exemption letter (the “Sales Tax Exemption Letter”) to ensure the granting of the sales tax exemption which formed a part of the Initial Financial Assistance and (E) the Agency filed with the New York State Department of Taxation and Finance the form entitled “IDA Appointment of Project Operator or Agent for Sales Tax Purposes” (the form required to be filed pursuant to Section 874(9) of the Act) (the “Thirty-Day Sales Tax Report”); and

WHEREAS, in order to finance a portion of the costs of the Project, the Company obtained a loan in the principal sum of up to \$7,325,000 (the “Initial Loan”) from Community Bank (the “Lender”), which Initial Loan

was secured by a mortgage and security agreement dated as of July 1, 2008 (the "Mortgage") from the Agency and the Company to the Lender; and

WHEREAS, in July, 2009, the Company obtained additional financing for the Project (collectively, the "Interim Financing") pursuant to (A) a mortgage dated as of the date of the Interim Financing (the "New Mortgage") by and among the Lender, the Agency and the Company to secure a loan from the Lender to the Company in the principal sum of up to \$960,000 (the "Additional Loan"), (B) a consolidation, extension and modification agreement dated as of the date of the Interim Financing (the "Extension and Modification Agreement") by and among the Lender, the Agency and the Company and (C) a consolidated mortgage dated as of the date of the Interim Financing (the "Consolidated Mortgage") by and among the Lender, the Agency and the Company, which Consolidated Mortgage consolidated the Initial Loan and the Additional Loan into one obligation (the "Loan"); and

WHEREAS, by correspondence dated December 5, 2018 (the "Request"), which Request is attached hereto as Exhibit A, the Agency was informed that the Company intends to refinance the Loan in the approximate amount of \$5,599,332 (the "Refinanced Loan") from the Lender, which Refinanced Loan will be secured by a mortgage or mortgages (collectively, the "Refinanced Mortgage") and certain other additional loan documents (collectively, with the Refinanced Mortgage, the "Refinanced Loan Documents"); and

WHEREAS, pursuant to the Request, the Company would like the Agency to enter into the Refinanced Loan Documents for purposes of obtaining an exemption from mortgage recording taxes related to the Refinanced Mortgage; 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 adopted pursuant thereto by the Department of Environmental Conservation of the State of New York, being 6 NYCRR Part 617, as amended (the "Regulations" and collectively with the SEQR Act, "SEQRA"), the Agency must satisfy the requirements contained in SEQRA prior to making a final determination whether to proceed with the Request; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Request in order to make a determination as to whether the Request is subject to SEQRA, and it appears that the Request constitutes a Type II action under SEQRA;

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

Section 1. Based upon an examination of the Request, the Agency hereby makes the following determinations:

(A) The Request constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(23), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Request.

(B) That since the Refinanced Mortgage will not secure an amount more than the Loan, no "financial assistance" (as such quoted term in defined in the Act) will be provided by the Agency in connection with the Refinanced Loan or the execution by the Agency of the Refinanced Loan Documents.

(C) That the value of the exemption from mortgage recording taxes relating to the Refinanced Mortgage will not exceed \$100,000.

(D) That since compliance by the Agency with the Request will not result in the Agency providing more than \$100,000 of “financial assistance” (as such quoted term is defined in the Act) to the Company, Section 859-a of the Act does not require a public hearing to be held with respect to the Request.

Section 2. Subject to (A) approval of the form of the Refinanced Loan Documents by Agency counsel and (B) receipt by the Executive Director of (1) the Agency’s administrative fee relating to the Request, if any, and (2) counsel’s fees relating to the Request, the Agency hereby authorizes (a) the execution by the Agency of the Refinanced Loan Documents and (b) the execution and delivery by the Agency of an affidavit of exemption from mortgage recording taxes with respect to the Refinanced Mortgage.

Section 3. Subject to the satisfaction of the conditions described in Section 2 hereof, the Chairperson (or Vice Chairperson) of the Agency is hereby authorized to execute and deliver the Refinanced Loan Documents to the Company, 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, all in substantially the form thereof presented to this meeting, with such changes, variations, omissions and insertions as the Chairperson (or Vice Chairperson) shall approve, the execution thereof by the Chairperson (or Vice Chairperson) to constitute conclusive evidence of such approval.

Section 4. 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 Refinanced Loan 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 Refinanced Loan Documents binding upon the Agency.

Section 5. 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:

Trent Trahan	VOTING	YES
David Hoover	VOTING	YES
Michael E. Zurlo	EXCUSED	EXCUSED
Kim Murray	VOTING	YES
Keith Defayette	VOTING	YES
Mark Leta	EXCUSED	EXCUSED
John VanNatten	VOTING	YES

The foregoing Resolution was thereupon declared duly adopted.

EXHIBIT A

REQUEST

- SEE ATTACHED -

Zeigler, Nadene

From: Jessica L. Miller <jmiller@staffordowens.com>
Sent: Wednesday, December 5, 2018 1:33 PM
To: Zeigler, Nadene
Cc: Susanna Piller; Danielle Vallee
Subject: RE: CCIDA/Ardak

Hi Nadene –

Bank is community bank and amount is \$5,599,332.

We do not have loan docs yet, but will send to you when we do.

Yes, we are requesting exemption from mortgage tax.

Thanks.

Jess

From: Zeigler, Nadene [mailto:NZeigler@hodgsonruss.com]
Sent: Wednesday, December 05, 2018 12:23 PM
To: Jessica L. Miller <jmiller@staffordowens.com>
Subject: CCIDA/Ardak

Good afternoon Jessica:

I understand that your client would like to refinance the initial loan of \$7,325,000 and the subsequent loan of \$960,000. Please confirm the amount and the lender and please provide me with the loan documents for my review. The IDA is meeting on Dec. 10, 2018, at which meeting I will have the board presented with a resolution authorizing the IDA to enter into the refinancing documents. Are you also requesting exemption from mortgage recording tax?

Nadene E. Zeigler
Partner
Hodgson Russ LLP
Tel: 518.433.2420
Fax: 866.505.9238



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Management Team Reports

2019 and 2020 Meeting Dates

On a motion by J. VanNatten, seconded by D. Hoover, it was unanimously carried to approve the 2019 and 2020 Meeting Dates of the CCIDA.

Project Monitoring

R. McFarlin reported she completed four site visits since the last meeting including Northstar, ARCP (DHC of Plattsburgh), TDC Building #18 and Saranac Power Partners.

Project Status Update

Schulter Systems

R. McFarlin reported on December 7, 2018, counsel for Schulter Systems authorized Hodgson Russ to finalize documents pertaining to both the Warehouse Expansion and Thinset Projects.

Delaware River Solar – Mooers IV

R. McFarlin reviewed the revenue figures of the PILOT deviation.

Vermont Green Line

R. McFarlin reported there hasn't been any new updates from Mike Releyea.

Invenergy/Bull Run Solar Farm

R. McFarlin reported she has been in communications with Jon Labarre regarding this potential project. The anticipated date to begin the permit process is Spring, 2019.

Executive Director's Report:

Delaware River Solar – Mooers IV

R. McFarlin informed the Board she has a meeting with Northeastern Clinton School Superintendent Robb Garrand and school business official tomorrow regarding this matter. She noted that Delaware River Solar also needs to file a new application for this PILOT deviation.

R. McFarlin reported she has continued attending meetings and events locally, and within the region, including ERS Investments (who recently purchased the former Pfizer facility in Champlain, New York) and the Northern Border Regional Commission (provides grant funds up to \$500,000 for infrastructure projects in northern border states.)

Other Business:

There being no further business to discuss, K. Murray motioned to adjourn the meeting, seconded by J. VanNatten at 12:37 p.m.



Trent Trahan, Chairperson