

**Minutes of the Meeting of the
County of Clinton Industrial Development Agency
November 3, 2014**

The meeting was called to order by T. Trahan, Chairperson, at 12:03 p.m., at the offices of the County of Clinton Industrial Development Agency, 190 Banker Road, Suite 500, Plattsburgh, N.Y.

Members Present: Trent Trahan, Chairperson
 David Hoover, Vice Chairperson
 Keith Defayette, Treasurer and CFO
 Michael Zurlo, Secretary
 Kim Murray, Assistant Secretary
 Mark Leta, Member
 John VanNatten, Member

Members Excused: None

Others Present: Erin Hynes, Executive Director
 Barbara Shute, Recording Secretary
 George Cregg, Esq., Agency Counsel via teleconference

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

T. Trahan waived the reading of the notice of the meeting published in the *Press-Republican* on October 21, 2013.

Reading and Consideration of the Draft Minutes of the CCIDA meeting of October 6, 2014:

T. Trahan waived the reading of the minutes of the October 6, 2014 regular meeting. He asked if there were any questions or discussion regarding the draft minutes, there was none. On a motion by K. Murray and seconded by J. VanNatten, it was unanimously carried to approve the minutes of the October 6, 2014 regular meeting, as presented.

Public Comment: None

Bills and Communications: None

Treasurer's Report

CCIDA:

The account balance at 10/31/14 was \$249,635.16

No income reported for October:

Balance Sheet:

There is \$0 remaining in the CIDA, LLC's bank account.

Income Statement:

The income statement shows the expenses that were approved during the month of October.

The "net income or loss" for each month will be for expenses for administering the CCIDA.

Expenses paid in October:

TDC- Admin fee	\$6,936.00
Delish by Irises (September and October)	\$314.52
Total Expenses	\$7,250.52

T. Trahan asked if there were any questions regarding the Treasurers Report and there were none.

On a motion by M. Zurlo and seconded by D. Hoover, it was unanimously carried to accept the Treasurer's Report as presented by K. Defayette.

Reports of the Committees: None

New Business:

1. Discussion of ABO Policy Guidance regarding Formation of Subsidiary Public Authorities and AG Formal Opinion NO. 2041-F1

G. Cregg reviewed the following information contained in a "Client Alert" from Hodgson Russ.

On October 8, 2014, the ABO issued a Policy Guidance regarding an IDA's ability to create subsidiaries.

In the Policy Guidance, the ABO addressed the issue of whether public authorities have the authority to create subsidiaries. The ABO analyzed the issue by referring to Section 2827-a of the Public Authorities Law.

The position of the ABO is that no public authority as defined in Section 2 of the Public Authorities Law may form a subsidiary corporation unless such power is expressly granted to it in its enabling state.

In the Policy Guidance, the ABO goes on to cite a recent Opinion of the Attorney General (AG Opinion No. 2014-F I ;) which states that industrial development agencies ("IDAs") do not have the statutory power to form subsidiary corporations.

The position of the ABO contained in the Policy Guidance is questionable because many IDAs (and other public authorities) have created subsidiary corporations for legitimate reasons in connection with undertaking projects such as administering state and federal grant programs and owning and operating industrial parks.

In addition, AG Opinion No. 2014-FI is also troubling because not only does the Attorney General state that IDAs do not have the authority to create subsidiary corporations, but the Attorney General goes on to state that IDAs do not have the authority to make grants or loans. Again, many IDAs have entered into contracts to provide for loans and/or grants in connection with undertaking projects.

In any event, please be advised that the Policy Guidance and the AG Opinion No. 2014-FI do not impact the creation of local development corporations by municipalities (i.e., capital resource corporations) for the purpose of providing a means to assist not-for-profit corporations in financing capital projects with the proceeds of federally tax-exempt bonds. Such capital resource corporations are not subsidiaries of IDAs.

We are reviewing in more detail the Policy Guidance and the AG Opinion No. 2014-FI and we expect to be reaching out to our IDA clients shortly with advice and options regarding these recent developments.

Old Business:

1. Update on Audit Exit Interview

E. Hynes noted that according to, "Understanding the Audit Process," the CCIDA now has 30 days (Nov. 24th is our submission date) from the time it received the report to draft a formal response and identify "factual differences in the report;" this response will become an appendix to the final audit.

Additionally, the CCIDA has to come up with a "Corrective Action Plan" (CAP) that must be put into place 90 days following the distribution of the final report. This plan will show how the Agency will implement the recommendations of the report, or if the IDA chooses not to implement a recommendation, the reasons why. Executive Law also requires the CAP be sent to the Governor, Legislative Leaders and Legislative Fiscal Committees. The Comptroller may, one year from the final report being issued, schedule a follow-up audit to assess the extent to which the CCIDA has implemented the CAP.

Action Items:

1. Consider a resolution to reconvey Lower Saranac Hydro Project

E. Hynes noted that this is the last outstanding IDA project to be reconveyed.

M. Leta stated that due to the fact that NYSEG was a party to the original agreement related to this project he planned to abstain from voting on the matter.

The following resolution was offered by M. Zurlo, seconded by K. Defayette, to wit:

Resolution No. 11-14-01

RESOLUTION AUTHORIZING RECONVEYANCE OF THE LOWER
SARANAC HYDRO PROJECT AND THE EXECUTION OF RELATED
DOCUMENTS.

WHEREAS, County of Clinton Industrial Development Agency (the "Agency") is authorized and empowered by the provisions of Chapter 1030 of the 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, manufacturing, and warehousing 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 or about April 16, 1990 (the "Closing Date"), the Agency undertook the following project (the "Project") for the benefit Lower Saranac Hydro Partners, L.P., (the "Company"): (A)(1) the acquisition of a fee or leasehold interest in an approximately 70+- acre parcel of land located on or about the Saranac River in the Towns of Plattsburgh and Schuyler Falls, Clinton County, New York (the "Land"), together with an existing concrete and masonry gravity dam located thereon (the "Existing Dam"); (2) the reconstruction of the Existing Dam; (3) the construction of the new intake channel, 4,000 foot long penstock, concrete powerhouse, tailrace and switchyard (the "New Facilities") on the Land (the Existing Dam, as renovated, and the New Facilities being collectively referred to as the "Facility"); and (4) the installation of certain machinery and equipment on the Land and in the Facility (the "Equipment"), all the foregoing to constitute a 6.4 megawatt hydroelectric generating facility (the Land, the Facility and the Equipment hereinafter being collectively referred to as the "Project Facility"), and (B) the financing of all or a portion of the costs of the foregoing by the issuance of the Agency's (i) construction loan note dated April 4, 1990 in the principal amount of not to exceed \$16,000,000 (the "Construction Loan Note"), (ii) term loan dated April 4, 1990 in the principal amount of not to exceed \$12,320,000 (the "Term Loan Note") and (iii) revolving credit note dated April 4, 1990 in the principal amount of not the exceed \$900,000 (the "Revolving Credit Note") issued pursuant to a construction loan agreement and a term loan and revolving credit agreement, each dated as of April 4, 1990 (the "Loan Agreements") by and among the Agency, the Company, Lower Saranac

Corporation, as sole general partner of the Company, and TIFD III-Q Inc., as original purchaser of said notes (the "Lender") (all the promissory notes delivered pursuant to the Loan Agreements, as the same may be amended, endorsed or supplemented from time to time, being sometimes hereinafter collectively referred to as the "Note") and (C) the selling of the Project Facility to the Company pursuant to the terms of an installment sale agreement dated April 4, 1990 (the "Installment Sale Agreement") by and between the Agency and the Company; and

WHEREAS, on the Closing Date, the Company executed and delivered to the Agency a certain deed (the "Deed to Agency") from the Company to the Agency, pursuant to which the Company conveyed to the Agency its real property interest in the Project Facility; and

WHEREAS, in connection with the Project, the Agency and the Company entered into a mortgage dated as of April 4, 1990 (the "Mortgage") from the Agency and the Company to the Lender, a pledge and assignment dated as of April 4, 1990 (the "Pledge and Assignment") from the Agency to the Lender, an assignment and assumption of contracts dated as of April 4, 1990 (the "Assignment and Assumption of Contracts") by and between the Agency and the Company, a payment in lieu of tax agreement dated as of April 4, 1990 (the "Payment in Lieu of Tax Agreement") by and among the Agency, the County Treasurer of Clinton County (the "County Treasurer") and the Company, various assignments, each dated as of April 4, 1990 (the "Assignments") from the Company and the Agency to the Lender, a security agreement dated as of April 4, 1990 (the "Security Agreement") from the Company and the Agency to the Lender, a subordination agreement dated as of April 4, 1990 (the "Subordination Agreement") by and among New York State Electric & Gas Corporation ("NYSEG"), the Company, the Agency and the Lender, and a subordinated mortgage and security agreement dated as of April 4, 1990 (the "Subordinated Mortgage") from the Agency and the Company to NYSEG (collectively, the "Financing Documents"); and

WHEREAS, per the Financing Documents and the correspondence attached hereto as Exhibit A, the Project is being terminated and reconveyed to the Company (the "Reconveyance"); and

WHEREAS, in connection with the Reconveyance, the Agency and the Company will execute certain documents to evidence the Reconveyance, including a deed to Company dated as of the date of the Reconveyance (collectively, the "Reconveyance Documents"); 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 on the above described Reconveyance; and

WHEREAS, pursuant to SEQRA, the Agency has examined the Reconveyance in order to make a determination as to whether the Reconveyance is subject to SEQRA, and it appears that the Reconveyance 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 Reconveyance, the Agency hereby determines that the Reconveyance constitutes a "Type II action" pursuant to 6 NYCRR 617.5(c)(26), and therefore that, pursuant to 6 NYCRR 617.6(a)(1)(i), the Agency has no further responsibilities under SEQRA with respect to the Reconveyance.

Section 2. Subject to (A) approval of the form of the Reconveyance Documents by Agency counsel, (B) evidence satisfactory to the Agency that (i) all payments in lieu of taxes and other local fees and assessments relating to the Project Facility have been paid by the Company and (ii) the Notes have been paid or discharged or if not paid, evidence that the Agency has been removed as a party to the Financing Documents and any other security documents and (C) receipt by the Chairperson of the Agency's administrative fee and counsel fees relating to the Reconveyance, the Agency hereby authorizes the execution by the Agency of the Reconveyance Documents.

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 Reconveyance 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 law firm of Hodgson Russ LLP is hereby appointed Agency Counsel to the Agency with respect to all matters in connection with the Reconveyance. Agency Counsel for the Agency is hereby authorized, at the expense of the Company, to work with the Company, and counsel to the Company, and others to prepare, for submission to the Agency, all documents necessary to effect the transactions contemplated by this Resolution.

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	VOTING	YES
Kim Murray	VOTING	YES
John VanNatten	VOTING	YES
Keith Defayette	VOTING	YES
Mark Leta	VOTING	Abstained

The foregoing Resolution was thereupon declared duly adopted.

Executive Director's Report:

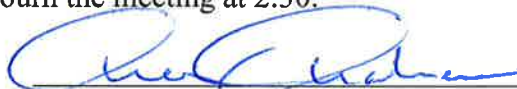
E. Hynes updated the members' on the status of the Northstar LLC project. She noted that the group had their first signed lease and that company is in the process of hiring. There are two other potential lease in the queue.

Executive Session:

On a motion by M. Zurlo and seconded by J. VanNatten, it was unanimously authorized to enter Executive Session at 12:41.

On a motion by M. Zurlo and seconded by K. Defayette, it was unanimously authorized to exit Executive Session at 2:29.

With no other items to discuss on a motion by M. Leta and seconded by D. Hoover, it was unanimously authorized to adjourn the meeting at 2:30.



Trent Trahan, Chairperson