

**COUNTIES OF WARREN AND WASHINGTON**  
**INDUSTRIAL DEVELOPMENT AGENCY**

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Glens Falls, New York 12801

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At the Board Meeting of the Counties of Warren and Washington Industrial Development Agency held on **August 15, 2016** at the Warren County Municipal Center in Lake George, NY, the following members were:

**PRESENT:**

Bud Taylor	Chairman
Bruce Ferguson	Vice & Park Chairman/Contracting Officer
Joseph LaFiura	Secretary/Treasurer
Matt Simpson	At Large Member
Lou Tessier	
Dave O'Brien (delayed arrival)	
Craig Leggett	

**ABSENT:**

Jim Lindsay
John W. Weber

**ALSO PRESENT:**

Robert Morris, Esquire	FitzGerald Morris Baker Firth PC
Tom Rosecrans	TRSB Enterprises, LLC (RockSport)
Sue Beadle	TRSB Enterprises, LLC (RockSport)
Travis Whitehead	Area Resident
Deborah Mineconzo	Office Administrator

The minutes of the meeting were taken by the Office Administrator. The Chairman called the meeting to order at 4:00 pm. After attendance was taken the Chairman announced a quorum was present.

**Approval of minutes:**

Mr. LaFiura made a motion to approve the July 18, 2016 Board Meeting minutes. Mr. Tessier seconded the motion and all voted in favor of the motion by voice vote.

**Accounts Payable:**

Mr. LaFiura moved to approve the accounts payables as presented with Mr. Simpson seconding. The motion was approved by roll call vote.

**Old/Unfinished Business:**

**TRSB Enterprises, LLC (RockSport)**

Tom Rosecrans and Sue Beadle gave another brief presentation of their proposed project, answering several questions for the members. They confirmed their strong connection with the Town recreational programs and SUNY Adirondack Adventure Studies. They hope to break ground the end of this month. (*Dave O'Brien arrives*). Mr. Taylor informed everyone the Public Hearing was held this morning but no public attended. The plans for the project have been on display at the Town for some time now. Mr. Taylor stated it is a good project and the only one of its kind in this area. Mr. Ferguson moved to approve the draft Inducement Resolution for the project. Mr. Simpson seconded the motion and all voted in favor of the motion by roll call vote.

**Resolution No. 16-15**

**RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING HARD AS A ROCK TRAINING CENTER, INC. dba ROCKSPORT AND TSRB ENTERPRISES, LLC, AS AGENTS OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BY AND BETWEEN THE AGENCY AND HARD AS A ROCK TRAINING CENTER, INC. dba ROCKSPORT AND TSRB ENTERPRISES, LLC  
(Complete resolution annexed to this document)**

**Big Bay Lodging LLC:**

Mr. Morris reported the Preliminary Agreement to Big Bay Lodging back in May but it has not been returned yet. Mr. Jariwala advised Mrs. Mineconzo per Mr. Morris they are awaiting word on the SBA financing and confirmation from the Board of Education on approval by the School for the requested 485b participation.

**87 Stays, Inc.:**

Mr. Morris informed the members Mrs. Mineconzo had heard from Jerry Nudi this morning on his 87 Stays project delay. He advised her he is being held up regarding his building permit even though the Town approved the project five months ago.

**Tree Paad Project:**

Mr. Taylor pointed out that everyone has a copy of the letter received from Patti Garrand of the Tree Paad project. The letter advises the Agency she is withdrawing her project at this time for assistance as they have had a major needed investor pull out recently losing needed financing.

**Other Matters:**

In regards to our Park, Mr. Ferguson reported the forest maintenance work is probably going to be postponed another year (due to the downturn in the logging market).

**Meeting Attendance:**

Regarding the Agency meeting attendance policy, Mr. Taylor wanted to reiterate a member can be absent from meetings only four times per year per the manual. If eight meetings are not attended, the Agency can request the member to resign or ask the County Boards to remove a member.

**New Board Member:**

Mr. Taylor informed everyone it appears the Counties will be addressing the replacement for Brian Campbell, who resigned due to conflicts with meeting times. The intended replacement will be Richard Moore, Supervisor of Fort Ann. The appointment will be on the agenda for the August meetings of both counties.

There being no further business to discuss, Mr. Taylor adjourned the meeting at 4:15 pm.

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**Dated**

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**Joseph LaFiura, Secretary**

**Counties of Warren and Washington Industrial Development Agency**

**Resolution No. 16-15**

Adopted August 15, 2016

Introduced by Bruce Ferguson  
who moved its adoption.

Seconded by Matt Simpson

**RESOLUTION TAKING PRELIMINARY ACTION TOWARD UNDERTAKING A CERTAIN PROJECT, AS DEFINED HEREIN, APPOINTING HARD AS A ROCK TRAINING CENTER, INC. dba ROCKSPORT AND TSRB ENTERPRISES, LLC, AS AGENTS OF THE AGENCY FOR THE PURPOSE OF CONSTRUCTING AND EQUIPPING THE PROJECT FACILITY (AS DEFINED HEREIN) AND AUTHORIZING THE EXECUTION AND DELIVERY OF AN AGREEMENT BY AND BETWEEN THE AGENCY AND HARD AS A ROCK TRAINING CENTER, INC. dba ROCKSPORT AND TSRB ENTERPRISES, LLC**

WHEREAS, the Counties of Warren and Washington Industrial Development Agency (the "Agency") is a body corporate and politic duly organized and existing under Sections 856 and 890-c of the General Municipal Law ("GML") of the State of New York (the "State"), with its principal place of business at 5 Warren Street, Glens Falls, New York; and

WHEREAS, Hard as a Rock Training Center, Inc. (the "Operator"), having an address of 138 Quaker Road, Queensbury, New York 12804, is a business corporation created pursuant to the Laws of the State of New York; and

WHEREAS, the Operator, in connection with TRSB Enterprises, LLC, the property owner (the "Company"), has requested that the Agency provide financial assistance in the form of a payment of lieu of taxes, mortgage tax exemption and sales tax abatements regarding a tourist destination retail construction project (the "Project") to consist of: (i) the acquisition of an interest in a certain commercial parcel or parcels of land located at Carey Road (Lot 2), in the Town of Queensbury, County of Warren, State of New York and referred to as Tax Map Parcel Number 308.20-1-3.5 (the "Land"); (ii) the construction and equipping of a 8,400+/- square foot indoor climbing center and fitness facility (the "Facility"); (iii) the acquisition and installation therein of certain furnishings and fixtures (the "Equipment" together with the Land and the Facility, collectively the "Project Facility") to be used in connection with the contemplated uses; and (iv) the lease of the Project Facility to the Company, all pursuant to Title 1 of Article 18-A of the General Municipal Law of the State of New York, Chapter 862 of the Laws of 1971 of the State of New York (collectively, the "Act"), as amended; and

WHEREAS, the Land is currently owned by TRSB Enterprises, LLC, a limited liability company established pursuant to the laws of the State of New York (the "Company") ; said entity will enter into a sublease agreement with the Operator; and

WHEREAS, under Article 18-A of the General Municipal Law (the "Act"), the Legislature of the State of New York has granted the Agency the power and authority to undertake the Project; and

WHEREAS, the Project will require the Agency and the Company and/or Operator and to enter into an agreement whereby the Company and/or Operator will acquire, by deed or by lease, and construct the

Project Facility and the Agency will lease or sell the Project Facility to the Company and/or Operator with an option to buy; and

WHEREAS, the Agency is a state agency under Section 8-0105 of the Environmental Conservation Law of the State of New York and the Project is an action under Article 8 of said law (Article 8 hereinafter being referred to as the “State Environmental Quality Review Act” or “SEQRA”) and under 6 NYCRR Part 617, §§ 617.2(b) and 617.3(g); and

WHEREAS, the Company and Operator have submitted to the Agency, and the Agency has reviewed information needed to determine whether or not the Project will have a significant impact on the environment; and

WHEREAS, the acquisition, construction and installation of the Project Facility has not been commenced, and the Agency has not yet authorized the Project; and

WHEREAS, the Agency conducted a public hearing on August 15, 2016 pursuant to Article 18-A of the New York State General Municipal Law (the “Law”) before taking official action relating to the Project.

NOW, THEREFORE, BE IT RESOLVED:

SECTION 1. Findings. The Agency has reviewed the application together with the environmental assessment form to determine compliance with the requirements of the Act and based on the representations of the Company and the Operator to the Agency in said application and elsewhere, the Agency hereby makes the following findings and determinations with respect to the Project:

(A) The Project is a permitted project under the Act; and

(B) Undertaking the Project will advance the Agency’s corporate purposes by retaining one (1) full time job and nine (9) part time jobs and leading to the creation of at least two (2) full time and nineteen (19) part time job opportunities within the next two (2) years for the inhabitants of the Counties of Warren and Washington, New York and the State of New York. The Project will also promote the health, prosperity, and economic welfare of the inhabitants of the Counties of Warren and Washington and the State of New York and improve their standards of living; and

(C) (i) The Project is an “Unlisted Action” under SEQRA for which the Town of Queensbury Planning Board (the “Planning Board”) has acted as lead agency. On or about March 22, 2016, the Planning Board reviewed the Project Site Plan Application submitted on behalf of the Company and Operator and approved said Site Plans, and issued its Negative Declaration that the Project will not have a significant impact on the environment; and (ii) the Agency has thoroughly reviewed the environmental assessment form, negative declaration and related supporting information presented to the Agency within the Company’s and Operator’s Application for Assistance in order to determine whether the Project might have any potential significant adverse impacts upon the environment. After conducting this review, the Agency has determined that the acquisition, construction and equipping of the Project Facility are consistent with social, economic and other essential considerations and will not result in any significant adverse impacts on the environment. The Agency hereby ratifies the findings and Negative Declaration of the Town of Queensbury Planning Board. In doing so, the Agency satisfies the requirements of Part 617 of Title 6 of the New York Code of Rules and Regulations and no further SEQRA review is required for the Project; and

(D) It is in the public interest for the Agency to undertake the Project on behalf of the Company

and Operator; and

(E) The completion of the Project will not result in the removal of a commercial, industrial or manufacturing plant of the Company or Operator from one area of the State of New York to another area of the State of New York and is reasonably necessary to maintain the businesses competitive position in the market. Further, the completion of the Project will not result in any loss of jobs and all existing jobs will be retained nor will the completion of the Project result in the abandonment of one or more plants or facilities of the Company or any other proposed occupant of the Facility located within the State of New York; and

(F) Pursuant to section 862(2)(a) of the General Municipal Law, the Agency has determined that the Project falls within the scope of the definition of a “tourism destination” as defined by the laws of the State of New York; and

(G) The Agency further determines that the Project includes the following key aspects: (i) the Project will be a tourist destination for persons outside of the immediate economic region; (ii) the Project makes available services which would not, but for the Project, be reasonably accessible to the residents of the Counties of Warren and Washington because of a lack of reasonably accessible retail trade facilities offering such services; (iii) the Project will result in an increased tax basis for the Project location since the Land is currently assessed at \$121,600.00, but the project consists of an \$1,636,000.00 private investment; and (iv) the Project will attract new and additional revenues to nearby stores and businesses; and

(H) The Agency hereby finds that the for this Project the private investment, as more specifically described in subsection (G) herein, and the creation of jobs, as more specifically described in subsection (B) herein, shall be considered Material Terms for the purposes of monitoring in accordance with the policies and procedures of the Agency.

SECTION 2. Preliminary Agreement. The proposed preliminary project agreement by and between the Agency and the Company and the Operator (the “Preliminary Agreement”), as presented to this meeting, is hereby approved as to substance and form. The proposed agreement outlines the Agency’s and the Company’s and Operator’s rights and duties with respect to the undertaking of the Project. Subject to such changes as the Chairman of the Agency, upon advice of counsel, may reasonably deem necessary, the Chairman is authorized to execute the Preliminary Agreement, and the Secretary of the Agency is authorized to affix a facsimile of the corporate seal thereto and to attest to the same. Execution and attestation shall be conclusive evidence that the Agency has approved the Preliminary Agreement.

### SECTION 3. Description of Project.

Subject to the conditions set forth herein and in Section 4.02 of the Preliminary Agreement, the Agency shall:

- (A) acquire an interest in, construct and install the Project Facility; and
- (B) lease or sell the Project Facility to the Company pursuant to an agreement or agreements whereby the Company will obligate itself, among other things, to undertake the Project on behalf of the Agency.

### SECTION 4. Company Appointed Agent of Agency.

- (A) The Company and the Operator are hereby appointed the true and lawful agents of the Agency

to:

- (1) construct and install the Project Facility;
- (2) make, execute, acknowledge, and deliver all contracts, orders, receipts, instructions, and writings needed to complete the Project; and
- (3) do all other things requisite and proper for the completion of the Project.

(B) The Company and the Operator are authorized to proceed with the acquisition, construction and installation of the Project Facility, subject to receiving appropriate municipal approvals needed prior to commencement of construction, and to advance such funds as may be necessary to accomplish these goals.

(C) The Company and the Operator are also authorized to appoint third party agents to undertake the Project and thereby make available to such third party agents an exemption from New York State sales and use taxes in connection with undertaking the Project. This provision is subject to the Company and/or the Operator, as the case may be, entering into an Agent Agreement with the Agency.

SECTION 5. §144 Election. Not Applicable.

SECTION 6. Bond Counsel. Not Applicable.

SECTION 7. Document Preparation. Counsel to the Agency is hereby authorized and directed to cooperate with counsel to the Company and the Operator, as well as all other necessary parties, in order to prepare the documents needed to undertake the Project.

SECTION 8. Payment in Lieu of Tax (PILOT) Agreement. The Agency's approval is subject to the Company entering into a PILOT Agreement with the Agency whereby the Company agrees to make payments in lieu of taxes in an amount pursuant to the Agency's Uniform Tax Abatement Policy, or pursuant to a schedule that is otherwise agreed upon by the Agency and the Company, in any given year as if the Company were the owner of the Project and not the Agency. The Agency's approval is also subject to the Company and the Operator agreeing to the terms of the Agency's Recapture Policy, as it may be amended from time to time.

SECTION 9. Public Inspection. A copy of this resolution and a copy of the Company's and Operator's Application for Assistance, together with all other application materials not protected under applicable Freedom of Information Laws, shall be placed on file in the office of the Agency. Such documents shall be available for public inspection during normal business hours.

SECTION 10. Distribution of Resolution. The Chairman of the Agency is hereby authorized to distribute copies of this resolution to the Company and the Operator and all other persons requesting it.

SECTION 11. Public Hearing. A public hearing for this Project was duly authorized and held on August 15, 2016 in accordance with the provisions of Article 18-A of the General Municipal Law.

SECTION 12. Retail Facility. At least one third of the total project costs for the Project will be used for the development of a retail facility. Pursuant to Section 862 of the General Municipal Law, financial assistance from the Agency is prohibited for retail projects unless one of the following exceptions applies: (A) a tourism destination project; (B) a project located in a highly distressed area; and/or (C) a project that

provides a product or service to the area that otherwise would not be available. The Project meets (A) and (C), as described herein, since the Project is a tourism destination which will attract visitors from outside the economic region and the Project provides a product or service to the area that otherwise would not be available.

SECTION 13. Contingency. This resolution is contingent upon the approval of the Chief Executive Officers of the Counties of Warren and Washington pursuant to Section 862(2)(c) of the General Municipal Law.

SECTION 14. Further Action. The Chairman of the Agency is authorized to take such further action as shall be necessary to give effect to and implement this resolution.

SECTION 15. Effective Date. This resolution shall not take effect until the Company and/or Operator delivers to the Agency of a fully executed Preliminary Agreement, as defined herein, together with a \$10,000.00 security deposit.

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

<b>VOTING:</b>	<b>AYES</b>	<b>NAYS</b>	<b>ABSTAIN</b>	<b>ABSENT</b>
Harold G. Taylor	1			
Bruce A. Ferguson	1			
Joseph P. LaFiura	1			
Louis Tessier	1			
James T. Lindsay				1
Dave O'Brien	1			
John W. Weber				1
Matthew Simpson	1			
Craig Leggett	1			
<b>TOTALS</b>	<b>7</b>	<b>0</b>	<b>0</b>	<b>2</b>

The foregoing resolution was thereupon declared duly adopted.