

OFFICIAL PROCEEDINGS  
KEWEENAW COUNTY BOARD OF COMMISSIONERS  
SPECIAL MEETING  
October 12, 2016

A special meeting of the Keweenaw County Board of Commissioners was held on October 12, 2016 beginning at 6:30 p.m. at the Courthouse, Eagle River, MI and began with the pledge of allegiance.

Commissioners present: Randy Eckloff, Bob DeMarois, Don Piche, Ray Chase, Del Rajala.

The meeting was posted on the door of the Courthouse and on the county website.

This meeting was called to discuss options for the Keweenaw Mountain Lodge as Rural Development has requested further action as KML is in default of revenue bond payments. The County was in receipt of a letter dated September 16, 2016 from Rural Development stating the above. The letter is attached as a part of the minutes within the options set of documents presented by Charles Miller. See below.

Attached to the minutes are the documents that were presented to those at the meeting. There were two sets of documents, the financial set presented by Carl Johnson, C.P.A. for KML, and the options set which were presented by Charles Miller, Keweenaw County's civil counsel.

After the presentation, there were very few questions and no decisions were made at this time.

Time was allowed for public comment.

There being no further business motion by Chase to adjourn at 7:35 p.m. Meeting adjourned sine die.

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Donald Piche, Chairman

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Julie A. Carlson, Clerk



Keweenaw Mountain Lodge  
 Modified Income and Loss By Year

	2015	2016	2013	2012	2011	2010	2009	2008	2007	2006
Operating Income	961,568.00	997,328.00	940,122.00	947,293.00	984,557.00	1,116,011.00	996,598.00	1,015,322.00	1,029,580.00	934,364.00
Operating Expenses	(1,064,216.00)	(1,150,621.00)	(1,096,475.00)	(1,130,700.00)	(1,154,975.00)	(1,331,445.00)	(1,212,198.00)	(1,170,150.00)	(1,207,278.00)	(971,599.00)
Income <Loss>	(102,648.00)	(153,293.00)	(156,353.00)	(183,407.00)	(170,418.00)	(215,434.00)	(215,540.00)	(154,828.00)	(177,698.00)	(37,175.00)
Debt Service Requirement										
Principal & Interest	113,830.00	114,671.00	114,425.00	115,135.00	114,758.00	88,004.00	7,400.00	-	-	-
Debt Service Payments Made	-	-	74,029.00	5,000.00	-	35,613.00	-	-	-	-
12/31/15 Unpaid Bond Interest	344,455.00									
12/31/15 Unpaid Bond Principal	225,000.00									
Total Interest & Principal In Arrears	569,455.00									
Total Interest & Principal In Arrears as of 06/15/2016 - Unaudited	594,078.00									
Principal Balance of Bonds due at 12/31/15	1,766,000.00									
Total Balance of Bonds & Interest Due at 12/31/15	2,110,455.00									

Note: Modified Income excludes non-operating expenses

KEWEENAW COUNTY  
MOUNTAIN LODGE  
December 31, 2006-2015

ASSETS	2015	2014	2013	2012	2011	2010	2009	2008	2007	2006
<b>Current assets</b>										
Cash and cash equivalents	125,175	86,073	81,046	101,019	159,432	15,409	27,866	-	-	9,178
Accounts receivable	-	3,332	839	6,815	437	9,901	30,810	54	7,552	-
Due from County	-	-	2,493	4,561	4,754	-	-	-	-	-
Due from Federal Government	-	-	-	-	-	-	-	4,959	81,534	-
Inventory	12,453	25,575	26,738	22,839	24,115	19,255	13,735	6,585	2,661	-
Prepaid expense	1,935	2,760	4,628	3,185	3,219	996	-	21,777	30,427	29,858
<b>Total current assets</b>	139,563	117,740	115,744	138,419	191,957	45,561	72,411	33,375	122,174	39,036
<b>Noncurrent assets</b>										
Capital assets not being depreciated	715,619	715,619	715,619	1,111	23,491	8,420	69,092	69,744	68,397	-
Capital assets being depreciated, net	2,669,130	2,809,447	2,956,599	3,816,246	3,970,912	4,117,698	4,248,272	4,361,491	3,953,709	1,784,535
<b>Total Noncurrent Assets</b>	3,384,749	3,525,066	3,672,218	3,817,357	3,994,403	4,126,118	4,317,364	4,431,235	4,022,106	1,784,535
<b>Total assets</b>	3,524,312	3,642,806	3,787,962	3,955,776	4,186,360	4,171,679	4,389,775	4,464,610	4,144,280	1,823,571
<b>LIABILITIES</b>										
<b>Current Liabilities</b>										
Accounts payable	3,547	8,905	3,890	2,138	2,206	48,242	19,730	32,022	1,835	3,561
Accrued liabilities	8,277	2,682	8,050	6,631	6,543	12,388	14,634	3,215	2,881	2,319
Due to other funds	-	-	-	-	401,475	389,398	206,437	141,585	141,585	100
contracts payable	18,596	35,016	27,065	32,519	28,836	23,127	26,026	14,612	100,394	1,097,321
Other deposits payable	344,455	270,582	196,710	227,178	119,222	47,568	-	-	16,860	10,091
Accrued interest payable	-	-	-	-	-	-	-	-	-	-
<b>Total Current Liabilities</b>	374,875	978,173	235,715	268,466	156,807	532,800	449,788	256,286	1,376,947	1,113,392
<b>Noncurrent Liabilities</b>										
Bonds payable—due in less than one year	260,000	219,000	173,000	102,748	102,000	63,000	27,000	26,000	-	-
Bonds payable—due in more than one year	1,506,000	1,547,000	1,593,000	1,613,504	1,614,500	1,643,150	1,679,150	1,678,850	1,393,000	-
<b>Total Noncurrent Liabilities</b>	1,766,000	1,766,000	1,766,000	1,716,252	1,716,500	1,706,150	1,706,150	1,704,850	1,393,000	-
<b>Total liabilities</b>	2,140,875	2,744,173	2,001,715	1,984,718	1,873,307	2,238,950	2,155,938	1,961,136	2,769,947	1,113,392
<b>NET POSITION</b>										
Net invested in capital assets	1,618,749	1,759,066	1,906,218	2,099,996	2,254,662	2,411,548	2,542,122	2,649,855	2,451,225	687,214
Restricted for:										
Debt Service	-	-	-	1,111	770	770	57,442	54,332	33,553	-
Construction Project	(235,312)	(199,445)	(119,971)	(88,759)	57,221	(480,239)	(371,377)	(212,125)	2,053	22,965
Unrestricted	1,383,437	1,559,621	1,786,247	2,012,348	2,313,303	2,193,048	2,228,837	2,503,474	2,487,725	710,179
<b>Total net position</b>	1,383,437	1,559,621	1,786,247	2,012,348	2,313,303	2,193,048	2,228,837	2,503,474	2,487,725	710,179

County transferred \$617,853 to eliminate the deficit

### KEWEENAW MOUNTAIN LODGE DEBT

- The KML expansion was financed by \$1,803,000 in loans from Rural Development (Department of Agriculture) and \$1,764,000 in grants from the Economic Development Corporation.
- Rural Development holds three separate bonds in support of the loans.
- The bonds are revenue bonds – not general obligation bonds.
- County did not agree to make bond payments from the general fund.
- Bonds are payable only from KML "Net Revenues"
  - "Revenues" are money KML receives from operating the facility and any money KML receives from money it invests.
  - "Net revenues" are the amounts remaining after expenses of administration, operation, and maintenance of KML.
- KML's Net Revenues have been consistently insufficient to make the bond payments.
  - Bonds have been in default since at least November 2010.
  - By the end of 2011, the County was already \$183,221.77 behind in bond payments.
  - No payments have been made on the bonds since 2013.
  - As of 12/31/15, \$569,455 in principal and interest owed on the bonds was past due.
- Rural Development has a lien on KML's revenues and is entitled to have a receiver appointed because the bonds are in default.
- The KML fund had deficits in 2008-2010 and 2012-2015 and will have a deficit in 2016.
  - The KML fund did not have a deficit at the end of 2011 because \$437,853 was transferred to KML from the General Fund and \$180,000 was transferred from the EDC Fund
  - The KML fund deficit began increasing again in 2012 and was \$235,161 at the end of 2015.
  - The MI Department of Treasury requires the filing of deficit elimination plans when there is a fund deficit. Previously-filed deficit elimination plans were rejected. No recent deficit elimination plans have been filed.



United States Department of Agriculture  
Rural Development  
Community Programs – Michigan State Office

September 16, 2016

VIA U.S. CERTIFIED MAIL  
7001 1140 0001 1206 6170

Keweenaw County  
ATTN: Don Piche, Chairman, Board of Commissioners  
5095 Fourth Street  
HC1 Box 607  
Eagle River, Michigan 49950

Re: \$1,273,000 Revenue Bond, Series 2007, No. R-1, issued January 17, 2007;  
\$120,000 Revenue Bond, Series 2007B, No. R-1, issued June 15, 2007; and  
\$410,000 Revenue Bond, Series 2008, No. R-1, issued June 18, 2008

Dear Chairman Piche:

As you know, the United States of America, acting through the Rural Housing Service, United States Department of Agriculture (the "Government"), is the holder of the following three (3) revenue bonds (individually, a "Bond," and collectively, the "Bonds") issued by the County of Keweenaw, Michigan (the "Issuer"), each pursuant to Act 94 of the Public Acts of Michigan, 1933 (codified at Mich. Comp. Laws §§ 141.101 - .140):

<u>Issuance Date</u>	<u>Principal</u>	<u>Interest Rate</u>
January 17, 2007	\$1,273,000	4.125%
June 15, 2007	\$120,000	4.125%
June 18, 2008	\$410,000	4.375%

Under the terms and conditions of these Bonds, Issuer promised to repay the above principal amounts, with interest, to the Government on the dates and in the principal installments set forth in the maturity schedule attached to each Bond. To secure its repayment obligations, Issuer also irrevocably pledged, as security for the Bonds, the revenues of the Keweenaw Mountain Lodge and related recreational facilities (the "Facility"), "after provision . . . for reasonable and necessary expenses of operation, administration and maintenance thereof."

As you also know, these Bonds are now in default. These defaults can be summarized as follows:

3001 Coolidge Road • Suite 200 • East Lansing, MI 48823  
Phone: (517) 324-5168 • Fax: (517) 324-5225 • TDD: (517) 324-5169 • Web: <http://www.nurdev.usda.gov/ml>

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1400 Independence Avenue, SW, Washington, DC 20250-9410 or call (800) 795-3272 (voice) or (202) 720-6382 (TDD).

9/21/16  
JAE

<u>Principal</u>	<u>Last Default Date</u> <sup>1</sup>	<u>Delinquent Interest</u>	<u>Total Delinquency</u> <sup>2</sup>
\$1,273,000	January 17, 2016	\$263,690.58	\$446,366.52
\$120,000	June 15, 2016	\$11,573.66	\$17,047.59
\$410,000	June 15, 2016	\$81,755.47	\$130,663.68

Thus, Issuer's total delinquency is currently \$594,077.79, with interest continuing to accrue at a rate of \$202.3904 per diem (as of September 16, 2016, an additional \$39,995.42 in interest has accrued).

The Government has previously brought the delinquencies summarized above to Issuer's attention, however Issuer has failed to cure or otherwise address them. Indeed, Issuer has not made any kind of Bond payment, not even a partial one, since December 10, 2013, almost three years ago.

Consistent with its duty as a steward of taxpayer funds, the Government must now address Issuer's defaults and mitigate the damages such defaults have caused to the Government. To that end, and as permitted by 7 C.F.R. §§ 1951.101 - .150 and the Applicant Certifications (Federal Collection Policies for Consumer or Commercial Debts), Form RD 1910-11, executed by Issuer, the Government is preparing to, among other things, refer Issuer's delinquent account to the U.S. Department of Treasury for cross-servicing and offset. Once Issuer's account has been referred, Michigan Rural Development personnel must thereafter refer all inquiries from Issuer regarding the account to the U.S. Department of Treasury's Bureau of the Fiscal Service.

Notwithstanding the foregoing, the Government is authorized and willing to again explore the possibility of reamortizing Issuer's entire indebtedness, and refrain from referring Issuer's account to the U.S. Department of Treasury, but only on the following terms:

1. Consistent with the regulations found in 7 C.F.R. §§ 1951.201 - .250, Issuer must demonstrate its eligibility for reamortization. Among other things, Issuer will need to show it has the financial wherewithal to make the post-reamortization bond payments. Please note that due to the amount of accrued interest that will need to be added to the principal balance of the new bonds, the size of Issuer's post-reamortization bond payments may in fact be as large as or larger than the size of its current Bond payments.

According to the audited financial statements Issuer filed with the Michigan Department of Treasury's Local Audit and Finance Division for the calendar year ended December 31, 2015, Issuer had \$125,175 cash on hand after (presumably) Issuer had paid all or almost all of the expenses associated with the Facility's operation, administration and maintenance for 2015. Whatever the reason for Issuer's failure to forward these net revenues to the Government, Issuer may need or want to use them to enhance its reamortization eligibility.

<sup>1</sup> "Last Default Date" is the most recent date on which Issuer failed to make a complete Bond payment.

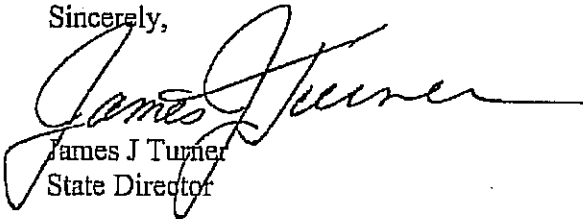
<sup>2</sup> "Total Delinquency" is the sum of the amount of delinquent interest and the amount of past due principal, as of the last required Bond payment date.

2. Given Issuer's demonstrated inability to make its current Bond payments, Issuer will need to pass a county-wide tax millage in an amount sufficient to support Issuer's post-reamortization bond repayment obligations.
3. The bond or bonds Issuer issues to retire and reamortize Issuer's indebtedness will need to be general obligations bonds secured by the Issuer's full faith and credit, *not* the net revenues of the Facility.

Furthermore, if Issuer believes (as the Government does) that the broader Keweenaw County economy benefits from the successful, profitable operation and management of the Facility then, in addition to the foregoing, Issuer should also engage a professional hospitality / property management company to operate, manage and maintain the Facility, as was recommended in both the Facility's 2005 Feasibility Study and Place Dynamics LLC's April 2016 Best Use / Re-Use Study for Keweenaw Mountain Lodge (the "Best Use Study"). Issuer should not be relying on Keweenaw County employees to perform these functions when, as the authors of the Best Use Study concluded, "[t]he lack of professional management [at the Facility] vies with the [Facility's] inability to remain open year-round as the leading cause for the [Facility's] current financial distress."

If Issuer is interested in exploring the possibility of a reamortization of Issuer's debt on the terms and conditions set forth above, please contact Gladstone Area Specialist Jim Yoder at (906) 428-1060 ext. 109 within thirty (30) days of receiving this letter. Otherwise, the Government will take all actions deemed necessary to protect its interests.

Sincerely,



James J Turner  
State Director

cc: Steven D. Mann, Esq., Miller, Canfield, Paddock and Stone, P.L.C.  
Charles Miller, Esq., Attorney, County of Keweenaw, Michigan  
Joseph Ben Israel, Community Programs Director, Washington, D.C.



## COLLECTION PROCESS

- Rural Development transfers Keweenaw County debt to U.S. Dept. of Treasury for collection.
- Before transfer, Rural Development must first certify to U.S. Dept. of Treasury that the debt is valid, must give Keweenaw County 60 days' notice of intent to transfer the debt, and must inform Keweenaw County of its appeal rights. 60-day period began to run on September 16, 2016.
- The County's response to Rural Development's letter should contend that because Rural Development only holds revenue bonds, it does not have a valid claim against Keweenaw County to transfer to U.S. Dept. of Treasury for collection.
- The County's response to Rural Development's letter should also insist that the County be informed of its appeal rights. Debts which are under appeal or in litigation may not be transferred.
- If the debt is transferred, U.S. Dept. of Treasury seizes money which federal agencies would otherwise pay to Keweenaw County and applies it to the debt.
  - In 2015, Keweenaw County Road Commission received \$241,140 in road funds.
    - Not clear whether Road Commission's autonomy would prevent its funds from being taken.
  - In 2015, Keweenaw County received \$334,856 Federal payments in-lieu-of taxes.
    - Should assume these funds are at risk if transfer of debt to U.S. Dept. of Treasury takes place.

### OPTIONS FOR DISCUSSION

Should consider requesting partial debt forgiveness in connection with any option.

- Agree to what Rural Development is asking.
  - Requires tax increases
  - Must evaluate likelihood that KML can make even larger bond payments.
  - Makes the debt a general obligation debt for the first time.
- Consent to appointment of receiver.
  - Must stipulate that receiver cannot require County to loan money to KML or sell KML without County agreement
  - Must stipulate that receiver must repay any loans to KML from the County ahead of Rural Development
  - This gives Rural Development management independent of the County
- Surrender KML "as is" to Rural Development in satisfaction of the debt.
  - Must have clear release from Rural Development on the loans and clear release from Economic Development on the grants.
  - Must disclose deed restriction and current condition of KML.
  - Before committing to this option, need to understand whether this would eliminate fund deficit.
- Short sell KML "as is" to a third-party with proceeds to Rural Development in satisfaction of the debt.
  - Must have clear release from Rural Development on the loans and clear release from EDC on the grants.
  - Must disclose deed restriction and current condition of KML.
    - Deed restriction did not stand in the way of prior efforts to sell KML
  - Before committing to this option, need to understand whether this would eliminate fund deficit.
- Lease KML long-term: 25-30 years.
  - Anticipates public notice and bidding per a term sheet.
  - Lease would be long-term to give tenant incentive to make and finance needed improvements.
  - Lease would provide for tenant to pay utilities, maintenance, and all operating costs in addition to rent.
  - Minimum lease payment would be equivalent to re-structured bond payments with lease payments assigned to Rural Development for bond liquidation.
  - Highest bidder would not necessarily win, since bid would reserve credit review.