

TOWN OF CLARENCE, ERIE COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES

April 19, 2018

Chris Kempton called the meeting to order at 8:17 a.m.

Present at the meeting were Patrick Johnson, Elaine Wolfe, David Schuster, Mary Powell, Clayt Ertel and Chris Kempton. Also present were Paul Leone, Nathan Neill, Lawrence Meckler, Steven B. Bengart, Jonathan Bleuer, Kimberley Ignatowski, and Cynthia Rosel. Guests were Paul and Tamara Stephen.

**8:17 a.m. - Public Hearing – 9560 Main Street LLC Project.**

Mr. Kempton turned the meeting over to Paul Leone who introduced Paul and Tamara Stephen, the principals of the company. The Notice of Public Hearing and the IMPLAN study were sent to the Board members prior today's meeting. The applicants are asking for Agency assistance in connection with the construction of an approximately 48,600+/- square foot mixed use facility on a parcel of land located at 9560 Main Street across from the Clarence Central High School. The parcel previously contained a motel that had been vacant for many years, was an eyesore and a potential danger to the community. The project amount is \$5,600,000. The Agency is proposing to provide mortgage tax abatement, sales tax exemption on any materials and/or equipment purchased for incorporation into the project and to provide real property tax abatement in accordance with the existing Agency Uniform Tax Policy and Guidelines as amended. It has been determined that the project is eligible for the equivalent of the 485-b tax abatement which is a 10 year Pilot. The retail portion is well below the 1/3 requirement it is more like less than a 5<sup>th</sup> of the project cost. Mr. Neill had a breakdown of the costs of the retail portion...it is very small. The applicants anticipate that the Project would create approximately 34 jobs. Mr. Leone asked if there were any questions for the applicant or himself. There were none. Mr. Kempton asked for a motion to close the public hearing.

There was a motion to close the public hearing by Clayt Ertel with a second by Mary Powell. There was nothing on the question.

Vote: Ayes: Johnson, Wolfe, Schuster, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: None Motion carried...unanimous.

Roll Call was taken and the Chairman introduced the newly appointed member, Patrick Johnson and welcomed him to the CIDA. Mr. Johnson gave a brief summary of his background and expressed that he was happy to be on board.

**9560 Main Street LLC Project.**

Mr. Kempton asked the Board if there were any questions regarding this project which was the subject of the Public Hearing at the beginning of the meeting. There were no questions or further discussion regarding the project. There was a motion by David Schuster with a second by Elaine

Wolfe to approve the project and adopt the authorizing resolution as prepared by Nathan Neill, a copy of which is attached hereto and made part of the minutes.

**Vote: Ayes: Johnson, Wolfe, Schuster, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: None Motion carried.**

Mr. Schuster moved to approve the project and adopt the authorizing resolution. There was a second by Mary Powell. There was nothing on the question.

**Vote: Ayes: Johnson, Wolfe, Schuster, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: None Motion carried.**

### **Minutes of February 15, 2018 and March 15, 2018.**

There was a motion by David Schuster with a second by Elaine Wolfe to approve the minutes of the February 15, 2018 meeting. There was nothing further on the question.

**Vote: Ayes: Wolfe, Schuster, Ertel, Kempton. Noes: None  
Recuse: None Absent: None Abstain: Johnson, Powell.  
Motion carried.**

There was a meeting scheduled for March 15, 2018. There was not a quorum present at the meeting. Minutes were prepared of the proceedings. Mr. Kempton and Mr. Schuster were the only members in attendance and agreed that the minutes that were prepared reflect the proceedings at that meeting. There was a motion by David Schuster with a second by Elaine Wolfe to accept the minutes and nothing on the question.

Mr. Meckler added that there was not a quorum present at the meeting so the motion failed as the others present were not at the meeting.

### **Treasurer's Report.**

Mr. Schuster, Treasurer, reported on the balances in the Money Market and the Checking Accounts as of 4/19/18. Expenses to date are in the amount of \$34,448.78. Interest earned to date is \$527.07. The Net Income to date is -33,021.71. There are some projects in the works that the CIDA will be receiving fees on. There was money moved from the savings account to the checking account to pay future bills.

There was a motion by Clayt Ertel with a second by Elaine Wolfe to accept the Treasurer's Report. There was nothing on the question.

**Vote: Ayes: Johnson, Wolfe, Schuster, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: None Motion carried.**

### **Correspondence.**

A Notice of Public Hearing from the Town of Amherst was e-mailed to everyone. It was for a project for Daemen College.

Mr. Neill said that a new application was received for 6449 Transit Road RSA LLC Project. A public hearing would have to be scheduled for the May meeting. Mr. Kempton would like to discuss this under old business.

### **New Business.**

Mr. Leone complimented the Board on the Main Street Study and the Economic Study for that project that the CIDA did. He is being contacted by several companies because of the studies. Some of the projects would be eligible and some would not be. He is meeting with companies. The one project was retail and Mr. Leone explained why this type of project would not be eligible because it was all retail. It is a physical training/exercise center that is closing one location and moving to another on Goodrich Road.

The other company principle he met with was regarding property at Main and Winding Lane and property on Sheridan Drive. The business is called Renewal by Anderson Windows which is the retail division of the Anderson Corp. The windows will not be manufactured at the location. It would be all retail so it is not eligible. The company principle will meet with Mr. Leone when he gets back in Town from Florida.

Mr. Leone is letting the Board know that there is interest out there, but some are just not eligible.

Mary Powell said that this discussion is a good exercise to refresh the Board's memories on what is and what is not eligible.

Mr. Leone also complimented Jonathan Bleuer on his marketing of the Main Street project. Mr. Leone said that he has been receiving several calls because of it.

There are also two more potential mixed-use projects that will be eligible as long as the retail portion meets the requirements.

### **Old Business.**

Mr. Kempton made a motion to authorize the CIDA to enter into an Agreement with the Town of Clarence to memorialize the provision of administrative services to the Clarence Industrial Development Agency. There was a second by Clayt Ertel. On the question, this motion is being done upon the suggestion of the auditors.

Vote: Ayes: Johnson, Wolfe, Schuster, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: None Motion carried.

### **6449 Main Street Project.**

This project will be on the agenda at the May 17, 2018 meeting for a public hearing to consider board approval for a pilot. Mr. Neill said that the project is eligible. At the time of the original application the applicant anticipated that the project would be eligible for a tax abatement under Section 485-b and did not apply for real property tax abatement in accordance with the existing Agency Uniform Tax Exemption Policy and Guidelines. The project would be eligible for the equivalent of the 485-b under the Agency policy. Due to the residential component of the Project, it is not eligible for the 485-b tax abatement. That is why they are applying for it now.

Mr. Kempton added that this is not being voted on today and will be discussed further at the May meeting.

### **Camoin Associates Inc.**

Last evening, Robert Camoin and Victoria Storrs did a public presentation on the Economic Analysis for the Main Street Corridor Economic Redevelopment Study. The program was well attended with at least 40-50 participants. The report was very well received and there were several questions from the attendees.

Rob and Victoria are here today to address any questions the Board may have regarding the final report and what the next steps are to implement the plan.

Mr. Kempton asked Mr. Camoin how have other municipalities and who would move the Plan forward and implement Plan. These are great tools but it has to be moved forward...it is out of the CIDA hands...who would do that, the Town Board, the Supervisor, the Mayor, and how do we keep up the momentum, keep this going forward. Mr. Camoin answered that usually it is the Economic Development leader who would move it forward. The Town does not have an Economic Development staff member...it may be Jonathan. The key is leadership, whether it be the CIDA or the Town or a committee that the process keep going forward and the important thing is that this Board can communicate with the Town and ask who is going to move this forward. Jonathan has been championing this project but that really is not his role. Jonathan Bleuer added that as an adopted document of the town it becomes a legal, binding document. The Town has a yearly review process of the Comprehensive Plan which includes everything that has been addendumed to that including this Plan...and it will be. Every December, the Planning and Zoning Department and Planning Board, provides an update at a public hearing, and goes through the action items of every single plan and discuss what has been done, what's being worked on and on what's going to be done. As part of the whole year, they look at these all the time and say what do we need to do to make this one happen and this one happen. It is also keeping the ball rolling, keeping the word out there and seeding all the things that we need to happen...the biggest component in this study is the sewer...but Jonathan thinks that we are making big headway on that..

Mr. Meckler added that practically, two things come out of this Plan. .one...with respect to the Plan and the follow-up...the CIDA has done its job and is now turning it over to the Town. It is up to the Town to implement the Plan. The second part is, because of all the publicity of the Plan, the CIDA is going to get a lot more interest...there will be a lot more projects that may come forward, whether they are acceptable or not, whether they meet the requirements or not. Mr. Meckler thinks that the CIDA can publicize the Plan but it is up to the Town to implement, execute the Plan. The CIDA will get some additional projects from it.

Mr. Camoin suggested at the CIDA meetings, you might consider making it part of the meeting agenda to reflect on the Plan to see how it is being implemented.

There was further discussion and Mr. Camoin and Ms. Storrs went over the matrix. It was also suggested that other "partners" be brought in. Like the Chamber of Commerce and other organizations to keep the Plan going forward.

There will need to be a formal request from the CIDA to the Town Board to ask that the Economic Assessment study and incorporated into the Master Plan.

**Economic Assessment/Main street strategy: action Plan and market Analysis**

Mr. Kempton moved to recommend that the Town Board adopt the Economic Study/Main Street Strategy: Action Plan and Market Analysis as a supplement to and made part of Clarence 2030, the Town Comprehensive Plan. There was nothing further on the question.

**Vote: Ayes: Johnson, Wolfe, Schuster, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: None Motion carried.**

**Items not on the Agenda.**

Mr. Kempton said that the Main Street Corridor Economic Redevelopment-Vision Main Street Study and the Economic Assessment Study have been completed. They are great tools for the Town to move forward with the Main Street Corridor redevelopment. There could be a third component to this project on what the CIDA could do, within the law, to create another pilot schedule for 3-5 years that would be specific to the Main Street Corridor to try to grab some attention of businesses to fulfill that plan. Mr. Kempton suggested that a couple of members of the Board could meet to come up with some options and present to the Board to discuss. Mr. Neill said that the Board has the power to come up with some other type schedule but we should let the other agencies know what the CIDA is doing as they may want to have similar schedules also.

Mr. Leone said that there is a bill that has been presented that has to do with retail sales projects to change the laws for IDA's to include retail.

**2017 Audit.**

Mr. Kempton also mentioned that we need to accept the 2017 Audit. There were not enough members at the March meeting to make up a quorum...so we will need a motion today.]

There was a motion by Clayt Ertel with a second by Mary Powell to accept the 2017 Audit as presented by Drescher and Malecki. There was nothing on the question.

**Vote: Ayes: Johnson, Wolfe, Schuster, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: None Motion carried.**

Mr. Kempton announced that David Schuster is resigning as a member of the CIDA. He has accepted a job out of Town. David has served on the Board since 2010 and as its Treasurer since 2016. He also was a member of the CIDA Audit Committee. He will be missed. Mr. Schuster thanked the Board...it was a pleasure to serve and he will miss being a part of the CIDA. The Board wished Mr. Schuster much success.

Mr. Kempton also added that Rob Camoin and Victoria Storrs paid Jonathan a very high compliment especially for his professionalism and enthusiasm. You do not see that very often. There was a friendly motion to adjourn at 9:20 a.m.

(Attachment 1) 9560 Main Street LLC Project Resolution (adopted April 19, 2018)

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING 9560 MAIN STREET, LLC (THE "LESSEE") TO CONSTRUCT AN APPROXIMATELY 48,600 SQUARE FOOT MIXED-USE FACILITY ON A PARCEL OF LAND LOCATED AT 9560 MAIN STREET AND TO ACQUIRE AND INSTALL MACHINERY, EQUIPMENT, FURNISHINGS AND FIXTURES REQUIRED IN CONNECTION THEREWITH, AS AGENT FOR THE AGENCY, FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE, ALL FOR A MIXED-USE FACILITY, AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, 9560 Main Street, LLC (the "Lessee") has entered into negotiations with the officials of the Town of Clarence, Erie County, Industrial Development Agency (the "Agency") with respect to the acquisition and equipping by the Agency with the proceeds of a lease with mortgage transaction of a mixed use facility consisting of the construction of an approximately 48,600 square foot mixed-facility with eleven first floor "vanilla box" commercial retail units and twenty four residential apartment rental units and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith, by the Lessee as agent for the Agency, for lease to the Agency and subsequent leaseback to the Lessee, all for a mixed-use facility for lease to other tenants, (the "Project"); and

WHEREAS, the Lessee has submitted an Eligibility Questionnaire and other materials and information to the Agency (collectively hereinafter the "Eligibility Questionnaire") to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency assistance in the acquisition, construction and installation of the Project; that the Project is necessary to provide quality apartments and retail space in the Town of Clarence; that there will be no substantial adverse disruption of existing employment at facilities of a similar nature in the Town of Clarence; there are currently no employees at the Project location but Lessee anticipates that the Lessee will employ 2 FTE employees and the occupants of the facility will employ 17 FTE employees at the Project location within 2 years following completion of the Project; that Agency financing or other assistance is necessary because rehabilitation cost would be prohibitive without Agency assistance, and is necessary for the Project to proceed; and that, therefore, Agency financing or other assistance is reasonably necessary to encourage the Lessee to proceed with the Project in the Town of Clarence; if Agency financing or other assistance is disapproved, the Lessee would likely not proceed with the Project; and that, therefore, Agency financing or other assistance is reasonably necessary to encourage the Lessee to proceed with the Project in the Town of Clarence; and

WHEREAS, the Agency has held a public hearing on the Project pursuant to Section 859-A of the General Municipal Law; and

WHEREAS, the Agency desires to further encourage the Lessee with respect to the acquisition and construction of the Project, if by so doing it is able to induce the Lessee to proceed with the Project in the Town of Clarence; and

WHEREAS, the Project should not be delayed by the requirement of determining the details of a lease with mortgage transaction, which cannot be immediately accomplished, and the Lessee has agreed to extend its own funds with respect to the Project, subject to reimbursement from the proceeds of the notes, if applicable.

NOW, THEREFORE, THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY HEREBY RESOLVES AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, construction and installation of the Project and the financing or other assistance thereof by the Agency pursuant to the New York State Industrial Development Agency Act will promote and is authorized by and will be in furtherance of the policy of the State as set forth in said Act. The Agency further hereby determines, on the basis of the Eligibility Questionnaire and supplemental information furnished by the Lessee, as follows: (a) it would not have financed or otherwise assisted the Project except to induce the Lessee to construct the Project in the Town of Clarence; (b) the Project is reasonably necessary because due to the requirement of extensive rock removal, the changes of exterior building materials required by the Town of Clarence, changes to the requirements of the DEC for on-site sanitary treatment systems and increased green design features for stormwater management the costs would be prohibitive without Agency assistance; (c) that Agency financing or other assistance for the Project is reasonably necessary to promote economic development in the Town of Clarence; (d) the Project will create at least 17 new full time employees; (e) the Project involves the adaptive reuse of the site of a former motel located in a prominent location which has been vacant for many years in the Main Street Enhancement Zone of the Town; (f) the Project will provide substantial capital investment. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (g) the Project as represented is reasonably necessary to provide the purposes of the Act, subject to verification and confirmation of such representations prior to the Agency entering into a lease with mortgage transaction; and (h) the Project is an integral part of the Lessee's plan to proceed with the Project in the Town of Clarence.

Section 2. The Agency hereby authorizes the Lessee to proceed with the Project as herein authorized at a cost estimated at \$5,600,000, which Project will be constructed through a lease with mortgage transaction with the Lessee.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information undertake to enter into a lease with mortgage transaction.

Section 4. The Chairman, Vice Chairman, Secretary and Assistant Secretary of the Agency and other appropriate officials of the Agency and its agents and employees are hereby authorized and directed to take whatever steps may be necessary to cooperate with the Lessee to assist in the acquisition and construction of the Project.

Section 5. The Lessee is authorized to initiate the construction of an approximately 48,600 square foot mixed use facility and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith, as agent for the Agency and is authorized to advance such funds as may be necessary to accomplish such purposes. The Agency is hereby authorized to enter into such agreements with the Lessee as the Chairman, Vice Chairman, Secretary, Assistant Secretary or other authorized officer may deem necessary in order to accomplish the above.

Section 6. The Lessee is authorized to make purchases of goods and services relating to the Project that would otherwise be subject to New York State and local sales and use tax in a combined amount up to \$2,121,520 which may result in a New York State and local sales and use tax exemption benefits ("sales and use tax exemption benefits") not to exceed \$185,633. The Agency may consider any requests by the Lessee for increases in the amount of sales and use tax benefits authorized by the Agency upon being provided with appropriate documentation detailing the additional purchases of property or services necessary for the completion of the Project.

Section 7. Any such action heretofore taken by the Lessee in initiating the acquisition and construction of the Project is hereby ratified, confirmed and approved.

Section 8. Any expenses incurred by the Agency with respect to the Project and the financing thereof shall be paid by the Lessee. By acceptance hereof, the Lessee agrees to pay such expenses and further agrees to indemnify the Agency, its members, directors, officers, employees and agents and hold the Agency 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 Agency in good faith with respect to the Project and the financing thereof.

Section 9. The Agency has determined that this Project is eligible for the 485-b equivalent 10 year payment in lieu of taxes (PILOT).

Section 10. The provisions of this resolution shall continue to be effective until one year from the date hereof whereupon this resolution shall cease to be effective (except with respect to matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective date of this resolution or (b) the Agency enters into a lease only transaction or (c) the Lessee shall continue to take affirmative steps to construct the Project.

Section 11. This resolution is also subject to the construction of space suitable for the purpose authorized herein.

Section 12. The execution and delivery of a Project and Agent Agreement, a Lease to Agency and Leaseback Agreement, between the Agency and the Lessee being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman or Vice Chairman is hereby authorized. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 13. The execution and delivery of a mortgage from the Agency and the Lessee to a lender selected by the Lessee and approved by the Chairman, Vice Chairman, Secretary or Assistant Secretary, in an amount not to exceed \$5,600,000 and together other ancillary documents is hereby authorized which mortgage and ancillary documents shall be substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Secretary or Assistant Secretary. The appropriate officers of the Agency are hereby authorized to execute, seal, acknowledge and deliver such agreement and any and all papers, instruments, opinions, certificates, affidavits and other documents and to do and cause to be done any and all acts and things necessary or proper for carrying out this resolution. The execution and delivery of each such instrument shall be conclusive evidence of due authorization and approval.

Section 14. The Agency has reviewed the negative declaration adopted by the Planning Board of the Town of Clarence on August 3, 2016 determining that the proposed action will not have a significant impact on the environment and that a draft environmental impact statement will not be required to be prepared and the Agency hereby determines, based upon information furnished to the Agency by the Town of Clarence and such other information as the Agency has deemed necessary to make this determination, that the Project does not require the preparation of an environmental impact statement under the State Environmental Quality Review Act, being Article 8 of the New York State Environmental Conservation law, as the contemplated actions will not have a significant effect on the environment and



the Agency hereby confirms the negative declaration previously adopted by the Town of Clarence attached hereto and made a part hereof.

Section 15. The Agency has made and makes no representation or warranty whatsoever, either express or implied, with respect to the merchantability, condition, environmental status, fitness, design, operation or workmanship of any part of the Project, its fitness for any particular purpose, the quality or capacity of the materials in the Project, or the suitability of the Project for the Lessee's purposes or needs or the extent to which proceeds derived from the sale of the bonds will be sufficient to pay the cost of the acquisition, construction, renovation and installation of the Project. The Lessee is satisfied that the Project is suitable and fit for Lessee's purposes. The Agency shall not be liable in any manner whatsoever to anyone for any loss, damage or expense of any kind or nature caused, directly or indirectly, by the Project property or the use or maintenance thereof or the failure of operation thereof, or the repair, service or adjustment thereof, or by any delay or failure to provide any such maintenance, repairs, service or adjustment, or by any interruption of service or loss of use thereof or for any loss of business howsoever caused, and the Lessee hereby agrees to indemnify and hold the Agency harmless from any such loss, damage or expense.

Section 16. Should the Agency's participation in this Project be challenged by any party, in the courts or otherwise, the Lessee shall defend, indemnify and hold harmless the Agency and its members, officers and employees from any and all losses arising from such challenge, including, but not limited to, the fees and disbursements of the Agency's counsel. Should any court of competent jurisdiction determine that the Agency is not authorized under Article 18-A of the General Municipal Law to participate in the Project, this resolution shall automatically become null, void and of no further force and effect, and the Agency shall have no liability to the Lessee hereunder or otherwise.

Section 17. This resolution is subject to compliance with all local building and zoning requirements.

Section 18. The provisions of the new Section 875 of the General Municipal Law which became effective on March 28, 2013 shall apply to this Project. In the event it is determined that an agent, project operator or other person or entity obtained state sales and use exemptions benefits for which they were not entitled or which were in excess of the amount authorized, the agent, project operator or other person or entity shall comply with all the provisions of Section 875 and pay back to the Agency the amount of the state sales and use tax exemptions benefits that they obtained but were not entitled to.

Section 19. The provisions of the Town of Clarence, Erie County, Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance adopted by the Agency on June 16, 2016 shall be applicable to this Project.

Section 20. This resolution shall take effect immediately.

ADOPTED: April 19, 2018