

TOWN OF CLARENCE, ERIE COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES

July 20, 2023

Chairman Chris Kempton called the meeting to order at 8:15 a.m.

Present were Lauren Fix, Elaine Wolfe, Mary Powell, Clayt Ertel and Chairman Kempton. Peter DiBiase was not unable to attend the meeting due to a work commitment and Robert Dixon was also unable to attend as he was out of Town. Paul Leone, Jennifer Strong, Larry Meckler, Steven Bengart, Peter DiCostanzo, Councilman/Liaison, Kimberly Ignatowski and Cynthia Rosel were also present. Noel Dill and Paul Stephen, Jr. were present for the 4280 Research Pkwy. LLC Project. Eric Frye was present for the proposed DIMAR Manufacturing Project

**Minutes of June 22, 2022 Meeting.**

Chris Kempton asked if everyone had any questions or comments on the minutes of the June 22, 2023 meeting. There were none. There was a motion by Elaine Wolfe with a second by Clayt Ertel to approve the June 22, 2023 meeting minutes. There was nothing on the question. The vote was as follows:

Vote: Ayes: Wolfe, Powell, Ertel, Kempton. Noes: None  
Recuse: Fix (she was not at the meeting). Absent: DiBiase, Dixon, Motion carried

**Treasurer's Report.**

Kimberly Ignatowski reviewed the financial report as of July 20, 2023 in the absence of the Treasurer. Ms. Ignatowski reported on the balances in the cash-checking and various CD accounts Fees received to date are in the amount of \$1,500.00. Interest earned to date is a total of \$5,789.98. Total expenses for the period of June 23-July 20, 2023 were \$1,060.00 and to date are 40,578.46. There is a net income of – 33,288.48. Mr. Kempton asked if there were any questions. There was a motion made by Clayt Ertel to accept the Treasurer's Report as submitted with a second by Elaine Wolfe. There was nothing on the question.

Vote: Ayes: Fix, Wolfe, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: DiBiase, Dixon, Motion carried

**Correspondence.**

Mr. Kempton addressed the letter he received from the County Executive. The Chairman responded acknowledging receipt of the County Executive's letter and invited Mr. Poloncarz to call the him to discuss Mr. Poloncarz's letter. The Chairman has not received any calls. In his correspondence, the Chairman advised the County Executive that the CIDA will look into the issues addressed in the County Executive's letter and will address them in detail.

**Public Hearings.**

**4280 Research Pkwy. LLC Project**

There was a motion at 8:20 a.m. made by Mary Powell with a second by Clayt Ertel to open the public hearing on the 4280 Research Pkwy. LLC Project.

Vote: Ayes: Fix, Wolfe, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: DiBiase, Dixon, Motion carried.

Paul Leone introduced Noel Dill and Paul Stephen, Jr. that were attending the meeting for the 4280 Research Parkway LLC Project. Mr. Leon also introduced Eric Frye who is from DIMAR Manufacturing Corporation. Mr. Leon introduced the project. The applicant is requesting for Agency assistance in the form of a lease only or lease with mortgage transaction in an amount not to exceed \$4,975,000.00. The assistance contemplated by the Agency will include mortgage tax abatement up to \$27,937.50, sales tax exemption up to \$185,063.00 on any materials and/or equipment purchased for incorporation into the Project and real property tax abatement pursuant to a ten-year PILOT in accordance with the Agency's Uniform Tax Exemption Policy and Guidelines. 4280 Research Parkway, LLC (the "Company") requests assistance in connection with the construction of 55,000 square foot manufacturing facility located at 4280 Research Parkway, in the Town of Clarence, New York and the Clarence Central School District for lease to a single tenant (the "Project"). The Project will allow the tenant to expand its current business and increase their level of employment, making the project affordable with a competitive lease rate.

Mr. Leone added that if there are any questions, he or Mr. Dill will be happy to address them. Jennifer Strong, Counsel, also added that the Cost Benefit Analysis was received and sent to the Board members before the meeting. It is also in today's packet. Ms. Strong added that this public hearing is for the construction of the building. Mr. Bengart that the IMPLAN just referenced is made part of the record. The tenant for this project will be DIMAR. The DIMAR project application was received yesterday. DIMAR is applying for sales tax exemption incentive only. These two projects are related, but are two separate projects.

Noel Dill, Vice President for Stephen Development Inc., said that he is representing the 4280 Research Pkwy. LLC project today. This project is the first project in approximately 50 years of new built construction on Research Pkwy. and hopefully it is not the last opportunity to bring projects, jobs and manufacturing to the Town of Clarence. This project is very fortunate to have DIMAR as a tenant. DIMAR is a long time Clarence employer with 115 employees. The facility in Cheektowaga where DIMAR is operating at present does not have the space they need to expand the facility and fully develop the new product line they have. In addition, DIMAR has additional customers for its other product lines. By moving the facility to Clarence, they will be saving 36 jobs relocating them here but it will build and add additional jobs, approximately 16 right off the bat. In anticipation for the future, DIMAR will run 2 shifts at the Research Parkway facility. The new facility will allow for clearances where DIMAR can pull trucks through a great door and have overhead cranes that will make the operations more efficient. The way that the lease is set up it will allow them to grow and expand in the future...there is additional room on the property to allow for them to expand further.

The Chairman asked if Mr. Dill could explain the ownership of the new building. Mr. Dill explained that the ownership of 4280 Research Parkway LLC is seventy-five per cent (75%) Shisler Road Associates which owns the land and is an affiliate of Stephen Development. We have other projects that we will do to really build out an industrial and solar park of this property. The other twenty-five percent (25%) is GET Research LLC which is an entity made up of the principles of DIMAR. Those principles themselves are personally guaranteeing the lease which is allowing us to be able to move forward with this inducement in place. It is again the very first building built there and we are relying on DIMAR as the tenant to build it.

Clayt Ertel asked what the new product that is going to be produced there. Eric Frye of DIMAR said it will be a lot of the existing products but there are some new customers with the same type of products, sheet metal, cabinets, server racks, things along those lines. DIMAR will also bringing the ventilation line to the facility that will allow for the testing of this line of enormous fans.



Mr. Leone asked Mr. Ertel about the Pallett Services project. Mr. Ertel answered that it still in the process and hopefully it will be on the ZBA agenda soon. Mr. Ertel asked if Mr. Bengart has heard anything on the project Mr. Bengart answered that he has not. Mr. Ertel thought it was supposed to be on the next agenda. Mr. Bengart added that it was not on the agenda for July. The August agenda is not out yet. Mr. Ertel asked if there was a problem. Mr. Ertel added that there were no zoning issues. The applicant needed to work some things out.

**Amendment – Sexual Harassment Policy.**

Mr. Kempton asked Ms. Ignatowski to give the Board a brief summary on the amended policy. Ms. Ignatowski said that in the packet today with the financials is a copy of the amended policy. New York State has changed the model policy the year and added additional pages. It is pretty much the same policy that has been followed. She did e-mail the amended policy to the Board for review. The only thing that needed to be added was who a complaint would be made to. That was added and it will be the Chairman and the attorney. Mr. Kempton asked for a motion to accept the amended sexual harassment policy as submitted. There was a motion made by Clayt Ertel with a second by Elaine Wolfe to accept and adopt the amended Sexual Harassment Policy.

Vote:                   Ayes: Fix, Wolfe, Powell, Ertel, Kempton.                   Noes: None  
                          Recuse: None   Absent: DiBiase, Dixon,                   Motion carried.

**Fee Schedule Discussion.**

The Chairman said that the Executive Committee will meet after this meeting to go over the present policy. Mr. Kempton made an attempt to draft a simpler policy that would be easier. The committee will go through it and come back with hopefully a draft for the Board to review.

Mr. Kempton asked if there were any comments from the rest of the Board on the Fee Policy draft that was passed out at the last meeting. There were none. The Executive Committee will meet immediately after this meeting.

**Annual Questionnaire.**

Mr. Kempton spoke briefly regarding the reporting on the FTE's that is done yearly. There was discussion on the numbers being reported on the questionnaires. There will be follow-up on this. Kimberly will contact the auditor to prepare a letter to the person who certified to the numbers on the questionnaire to get some clarification.

**Items not on the Agenda.**

Ms. Ignatowski will have the proposed budget available at the August meeting for the Board to review. The audit committee will meet either in person or via zoom to go over the proposed budget before the August meeting. The 2024 Budget will be presented at the August meeting. The Budget needs to be adopted the September meeting.

Ms. Wolfe asked about the Eastern Hills Mall project and if there is any update. There was a brief discussion. Mr. Meckler added that the County is doing a sewer study and a consultant has been hired. He was not sure of the time frame. It may be done in the Fall...a couple of months. It is in progress. Mr. Leone asked if the downayment was received from the Sheridan Drive/Harris Hill project. Ms. Strong has been in touch with the attorney regarding the draft Project and Agent agreement. Once the

documents have been signed and submitted and the down payment received, the St-60 and the ST-123 can be sent to the applicant.

Mr. Ertel said that the Stephens group has a significant Solar project for the property near the Research Parkway project. He asked what the Town's position is on this particular project...does the Town have any restrictions or zoning issues for Solar projects. Mr. Meckler said that the Solar component has not moved ahead at all. The Town has a law that is in regard to taxes and pilots, incentives. The discussion did not go any farther because this would be a Town Board issue...not the CIDA at this time.

Ms. Strong is in contact with the attorney for the Dean project and waiting for the signed Project Agent agreement to be returned. She has also been in touch with attorney for the MJ Peterson project, and is waiting for the Project Agent Agreement on this as well.

Ms. Strong also reached out on the Seal and Design project for the closing and she is waiting for a response from the attorney on this project as well. This expires in October she believes.

The Green project also never got in touch with Ms. Strong regarding an extension...this has now expired.

There being nothing further, there was a motion to adjourn the meeting by Lauren Fix with a second by Elaine Wolfe. Nothing on the question.

Vote: Ayes: Fix, Wolfe, Powell, Ertel, Kempton. Noes: None  
Recuse: None Absent: DiBiase, Dixon, Motion carried.

Meeting adjourned at 8:55 a.m.

Respectfully submitted,  
Cynthia M. Rosel

(The Executive Committee member met after the regular meeting to discuss possible amendments to the Fee Policy.)

**Exhibit "A"**

**RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING 4280 RESEARCH PARKWAY, LLC (THE "LESSEE") TO ACQUIRE, CONSTRUCT AND EQUIP A 55,000 SQUARE FOOT MANUFACTURING BUILDING LOCATED AT 4280 RESEARCH PARKWAY, IN THE TOWN OF CLARENCE, NEW YORK AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE.**

WHEREAS, **4280 RESEARCH PARKWAY, 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, construction and equipping of a 55,000 square foot manufacturing building located at 4280 Research Parkway, in the Town of Clarence, New York as agent for the Agency for lease to the Agency and subsequent leaseback to the Lessee (the "Project"); and

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

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Lessee, including the following: that the Lessee desires Agency assistance to acquire, construct and equip a 55,000 square foot manufacturing building located at 4280 Research Parkway, in the Town of Clarence, New York for sublease to a single tenant, as agent for the Agency for lease to the Agency and subsequent leaseback to the Lessee to allow for the expansion of the Lessee which is necessary to support the growth of the Lessee and the expansion of its operations in Clarence, New York; that if the assistance is granted, the Lessee anticipates hiring **0 FTE** at the Project location in the Town of Clarence within two years following the completion of the Project (the future tenant is expected to hire 16 FTE) that the Project will result in substantial capital investment; that there will be no adverse disruption of existing employment at facilities of a similar nature in the Town of Clarence; if Agency financing or other assistance is disapproved, the Lessee would have to scale back the Project negatively impacting future growth in New

York; and that, therefore, Agency financing or other assistance is 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, construction and equipping 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 if financing is utilized, which cannot be immediately accomplished, and the Lessee have 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 location of the Project in the area to be served by the Project as there is a demonstrable need for the Project; (b) that Agency financing and/or other assistance is reasonably necessary to promote economic development and to induce the Lessee to proceed with the Project; (c) there will be no substantial adverse disruption of existing employment or facilities of a similar nature to the Project in such area; (d) the Project will allow the Lessee to expand into the Town of Clarence; (e) the Project will create additional employment and provide substantial capital investment; The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (f) 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 into a lease with mortgage or lease only transaction and (g) 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, which Project will be financed through a lease with mortgage or without financing with a lease only transaction.

Section 3. The Agency will undertake, as soon as it is furnished with sufficient information as to the details of a mortgage enter into a lease with mortgage or if it is determined that financing is not necessary a lease only 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, construction and equipping of the Project.

Section 5. The Lessee is authorized to with regard to the parcel of land located at 4280 Research Parkway, Clarence, commence with the acquisition, construction and equipping of a 55,000 square foot manufacturing building and authorizes the Lessee to proceed with the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection therewith at combined cost not to exceed **\$4,975,000.00**, subject to the obtaining of all required approvals from the Town of Clarence and other involved governmental agencies, and 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 or Assistant Secretary or other 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 **\$2,115,000.00** 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 **\$185,063.00**. 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 construction and renovation 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. This resolution is subject to a **ten-year payment in lieu of tax agreement** for municipal services policy of the Agency on the building and thereafter make a full payment in lieu of taxes. 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 6 hereof) unless prior to the expiration of such one year (a) the Agency shall by subsequent resolution extend the effective date of this resolution, or (b) the Agency shall enter into a lease with mortgage or lease only transaction with the Lessee.

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 with mortgage or lease only transaction or (c) the Lessee shall continue to take affirmative steps to secure financing for the Project.

Section 11. The execution and delivery of a Project Agreement, Lease to Agency and a Leaseback Agreement between the Agency and the Lessee, each being substantially in the form approved by the Agency for prior transactions or in form approved by the Chairman, Vice Chairman, Secretary or Assistant Secretary 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 12. 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 **\$3,725,000.00 (with a mortgage tax abatement of \$27,937.50)** and other ancillary documents, if required, 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 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 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. 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 indemnifies and holds the Agency harmless from any such loss, damage or expense.

Section 14. 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 or which are for property or services not authorized or taken in cases where such Lessee, its agents, project operators or other person or entity failed to comply with a material term or condition to use property or services in the manner required by Agreements entered into between the Agency and the applicant with respect to the Project, 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 15. 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 16. This resolution is subject to compliance with all local building and zoning requirements.

Section 17. The Agency has reviewed the negative declaration adopted by the Planning Board of the Town of Clarence on May 3, 2023 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 18. The provisions of the Town of Clarence, Erie County, Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance are applicable to this Project.

Section 19. This resolution shall take effect immediately.

ADOPTED: July 20, 2023