

TOWN OF CLARENCE, ERIE COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES

August 17, 2023

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

Present were Lauren Fix, Peter DiBiase, Robert Dixon, Elaine Wolfe, Mary Powell, Clayt Ertel and Chairman Kempton. Paul Leone, Jennifer Strong, Kimberly Ignatowski and Cynthia Rosel were also present.

**Minutes of July 17, 2023 Meeting.**

Chris Kempton asked if there were any questions or comments on the minutes of the July 17, 2023 meeting. There were none. There was a motion by Lauren Fix with a second by Mary Powell to approve the July 17, 2023 meeting minutes. There was nothing on the question. The vote was as follows:

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

**Treasurer's Report.**

Peter DiBiase, Treasurer, reviewed the financial report as of August 17, 2023. Mr. DiBiase reported on the balances in the cash-checking and various CD accounts. Total fees received to date are in the amount of \$5,262.50 Interest earned to date is a total of \$5,920.62. Total expenses for the period of June 23-July 20, 2023 were \$1,060.00 and to date are \$54,213.46 There is a net income of -43,030.34. The Treasurer asked if there were any questions. Mr. Kempton added that the only question would be regarding any anticipated fees and if any projects will close before the end of the year. Ms. Strong answered that she did not have the amounts, but the Seal and Design project should be closing shortly. The Sheridan Drive Project, the Research Parkway projects and DIMAR project will be submitting the down payment for the administration fees. These fees are anticipated when the project agent agreement and the administration fee agreements are signed. The projects will not receive the sales tax exemption forms until the agency receives these documents. A motion was made to accept the Treasurer's Report by Clayt Ertel with a second by Elaine Wolfe. There was nothing on the question.

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

Mr. Kempton added that the proposed 2024 Budget was e-mailed to everyone. The Chairman added that the Audit Committee met yesterday to review the proposed Budget for 2024. The Budget is on the agenda just for review, comment and questions. It will be voted on at the September meeting. Mr. Kempton added that the Audit Committee is presenting the proposed budget at the meeting today and asked Kim Ignatowski to address the Board regarding the Budget. Ms. Ignatowski said that the only thing that came up yesterday at the Audit Committee meeting was the fee for Drescher and Malecki for the 2023 Audit. Ms. Ignatowski is waiting to receive the proposal from Drescher and Malecki for 2023 so she does not know if there will be an increase or if the fee will remain the same...that is the only figure that could potentially change in the proposed budget that is presented today. She did go over what remained the same and what increased and decreased. Mr. Kempton asked if there were any questions. At this time there were none. Mr. Kempton also added again that the budget should be reviewed as it will be voted on to adopt at the September meeting.

**Correspondence.**

There was no correspondence. There was an e-mail notification for a meeting of the Invest Buffalo.

**New Business.**

A. DIMAR Manufacturing Corp – Consider Incentive Resolution for Installment Sales Transaction (Sales Tax Only Exemption) Benefit.

DIMAR is on the agenda to consider an application for Sales Tax Only for this project. There is no public hearing necessary as the benefit at under \$100,000. DIMAR will be locating and the only tenant for the new construction of 4280 Research Parkway. The 4280 Research Parkway LLC Project was approved at the July meeting after a public hearing. DIMAR application was submitted to the board and discussed at the meeting in July. DIMAR will be adding new jobs as well as relocating jobs from the Cheektowaga location where they will be moving from. DIMAR will be responsible for reporting the full time employees not the LLC. This request is for sales tax only. The Cost Benefit Analysis was also submitted to the Board. There is a resolution in the package and it was also e-mailed to the members before the meeting for review. Mr. Kempton made a motion to approve the resolution for the DIMAR Manufacturing Corp. project application for Sales Tax Only with a second by Clayt Ertel. On the question, Mary Powell had some questions regarding DIMAR sales tax only as the tenant and the abatement project. There was discussion regarding the LLC construction project and the DIMAR project. The two are connected even though two separate entities. The jobs information is on the DIMAR application as this entity will be creating and bringing present positions to the facility. The LLC will not be creating the positions. The tenant will. Ms. Strong added that usually the two entities would be on a joint application...these two projects were submitted as separate. The LLC did not want to be responsible for reporting on the tenant’s employment numbers. It is not incorrect; it is just unusual. Mr. Leone added that this has been done before by other IDA’s. There was nothing further.

Mr. Kempton asked for a vote on the motion...the vote was as follows:

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

(Resolution attached as Exhibit “A”)

B. 4280 Research Parkway LLC Project (New Application -increase in mortgage amount and overall project costs – requires new public hearing)

The Chairman said that this project was before the Board at the July meeting. Ms. Strong added that after the last meeting, the applicant underestimated the mortgage amount by \$1,000,000. This was realized after the meeting as construction costs went up considerably. The applicant would like to amend the request. Ms. Strong added that a new public hearing is necessary. The applicant needed to submit a second application amending the request increasing the amount of the mortgage...which they did. That application was e-mailed to the Board for review for this meeting. The public hearing will be held at the September meeting to consider the amended amounts. Mr. Kempton added that the project was induced at the July meeting. Site work has already begun. This will be on the agenda again in September for a public hearing on the amended application for the increase. Ms. Strong added that there are some items that need to be filled in on the application and she has notified the applicant including her notes.

C. New Business.

Paul Leone has been in touch with Paul Stephen regarding a Solar Farm on the same site as the Research Pkwy. Mr. Leone does not know if the Town is in favor of a Solar Farm on that site. Mr. Ertel said that the Town had about a year ago talking about this topic and at that juncture there was no decision made on what the guidelines would be. Mr. Ertel has not heard anything further on this but thinks that the Town is about 90% there as to what those guidelines would be. Mr. Kempton asked if there are any provisions, laws or rules regarding the IDA's on Solar Farms prohibiting this type of project. Ms. Strong added that IDA's are encouraged to do it. Mr. Leone added that the State can give a 15 year abatement. Other IDA's have increased the incentive to 20 year abatement...Lancaster being one of them. Some have given 25 and one was 30. These PILOTS are structured differently...the PILOT is based on the amount of production of power generated...kilowatts not based on the taxes. Mr. Dixon added that you would have to look at is the land worth more with the Solar Farm on it. Ms. Powell agreed. The point is if it is a good use of the land. That would be on the Town to decide. Mr. Kempton added that this is not before us at this time.

Mr. Leone has also talked about the Pallett Services project. Mr. Leone talked to Jonathan in the Planning Dept. and there would be no problem. They still need to go before the ZBA for the variances.

Mr. Kempton has been engaged in and has been to a couple of meetings on the Invest Buffalo and we continue to get correspondence from them. They are more of marketing organization that is really marketing outside of Buffalo to encourage businesses to look at locating their facilities to the area and trying to also get people to choose to move here and back here. They have put together some fantastic web pieces and promotional pieces marketing WNY...they are well done and they do a great job marketing WNY. They have another group that Mr. Kempton is going to be in engaged with that would welcome new people coming into Town that would create an opportunity welcoming them to the area. Other areas have networking events focused in on identifying the new people locating to town and connecting them within the community. Invest Buffalo has a whole group that does that and connects new people coming into Town within the community. It is an active organization. Mr. Dixon asked if they have been successful with other cities. Mr. Kempton said they claim that they have. At every meeting they will list the value of the projects and the name of the companies. Mr. Ertel added the they are fulfilling their purpose. Mr. Kempton added if it is worth it...is it effective...he really does not know. They are active. It is a wide group of people involved from local business that are all engaged. This can be looked at in more detail at the next budget time to decide if the CIDA would like to renew the membership in Invest Buffalo.

Mr. Leone also brought up the Eastern Hills Mall project. He spoke with Carl Montonte, Jr. regarding the project but he has no information at all. Mr. Leone said that he could set up a meeting with Mr. Kempton, Mr. Montonte and Ms. Strong regarding any incentives. Mr. Leone talked to Ms. Strong and said that maybe this could be a mixed use or adaptive re-use project.

Mrs. Wolfe passed out a copy of the article that was in the Clarence Bee by Supervisor Casilio on the status of the Eastern Hills Project. Elaine Wolfe thought it was an excellent article that laid out the status of the project very well.

Mary Powell asked about the Dean Project and how that was going. Ms. Strong has received the project agreement and sales tax documents and have been issued the sales tax exemption ST-123.

Ms. Powell also asked if there is anything they should know about dates for the Vision Sheridan Project. Mr. Ertel said they are working on the date for the public input meeting. Mr. Kempton said that they are looking at October 12<sup>th</sup> or 19<sup>th</sup>. Mr. Ertel will work on setting up the public forum which will be at the Clarence High School Library with the School District. He will let the Board know at the September meeting if the date is confirmed by them. Mr. Kempton thanked Ms. Powell for bringing that up.

### **Old Business.**

None.

**Items Not on the Agenda.**

Ms. Ignatowski added that she received notification from Chase that two CDs are maturing as of 8/23. She will be sending rates out to the Board. Kim Ignatowski will roll over the CD's. Mr. Kempton asked about the balance in the checking account. Ms. Ignatowski answered that she would like to leave the balance in the checking account as tis as the fee for the study will still have to be paid. The invoices are monthly. Mr. Kempton agreed as there is a significant amount that will still owing.

**Public Comments.**

None.

There being no further business, the Chairman asked for a motion to adjourn the meeting.

Mary Powell moved to adjourn the meeting with a second by Elaine Wolfe. There was nothing on the question.

Meeting adjourned at 8:56 a.m.

Respectfully submitted by Cynthia M. Rosel

**Exhibit "A"**

**RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY AUTHORIZING AND APPROVING THE EXECUTION  
AND DELIVERY OF A PROJECT AND AGENT AGREEMENT AND AN INSTALLMENT SALE  
AGREEMENT WITH DIMAR MANUFACTURING CORPORATION. AND OTHER  
INSTRUMENTS AND MATTERS IN CONNECTION THEREWITH**

WHEREAS, Town of Clarence, Erie County, Industrial Development Agency (the "Agency"), is authorized under the laws of the State of New York, and in particular the New York State Industrial Development Agency Act, constituting Title I of Article 18-A of the General Municipal Law, Chapter 24 of the Consolidated Laws of New York, as amended, (collectively, the "Act"), to promote, develop, encourage and assist in the acquiring, constructing, reconstructing, improving, maintaining, equipping and furnishing of industrial, manufacturing, warehousing, commercial, civic and commercial research facilities, and thereby advance the job opportunities, general prosperity and economic welfare of the people of the State of New York and to improve their prosperity and standard of living; and

WHEREAS, Dimar Manufacturing Corporation (the "Company"), has entered into negotiations with officials of the Town of Clarence, Erie County, Industrial Development Agency (the "Agency") with respect to the acquisition and installation of machinery, equipment, furniture and fixtures in connection with the Company's proposed new manufacturing location in a leased location at 4280 Research Parkway, in the Town of Clarence (the "Project") to allow the Company to expand and purchase non-manufacturing equipment; and

WHEREAS, the Company submitted an Eligibility Questionnaire to the Agency to initiate the accomplishment of the above; and

WHEREAS, the Eligibility Questionnaire sets forth certain information with respect to the Company, including the following: that the Company desires Agency assistance to acquire, install and operate the Project for manufacturing purposes with resultant increase in employment in the Town of Clarence; the Project will retain existing employment and create additional employment and substantial capital investment and will allow the Company to expand; **that the Company presently employees 31 full time persons and 2 part time employees** at its current leased facility located in Cheektowaga. At the new location in Clarence, in which the Company will be the sole tenant,, which facility is currently owned by 4280 Research Parkway LLC, and will be leased to the Company which employees will be retained as a result of the Project and **an additional 16 full time employees will be added** as a result of the Project within 2 years following completion of the Project; that if Agency participation is disapproved, the Company might not proceed with the Project; that Agency participation in the Project is reasonably necessary to encourage the Company to proceed with the Project in the Town of Clarence; and

WHEREAS, a public hearing on the Project is not required pursuant to Section 859-A of the General Municipal Law because the number of benefits to be received by the Company is less than \$100,000; and

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

WHEREAS, the Agency purposes to obtain the aforementioned benefits and to accomplish the purposes of the Act by inducing the Company to acquire and install the Project as agent for the Agency and subsequent installment sale thereof to the Company for its use for its leased manufacturing facility to be located at 4280 Research Parkway, Clarence, New York; and

NOW, THEREFORE, BE IT RESOLVED BY THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY AS FOLLOWS:

Section 1. The Agency hereby determines that the acquisition, installation and operation of the Project and participation therein 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 of the Company and supplemental information furnished by the Company, as follows: (a) it would not have participated in the Project except to induce the Project; (b) the Project will provide substantial increased employment and substantial capital investment; (c) there will be no substantial adverse disruption of existing employment of facilities of a similar nature to the Project in such area; (d) that the Project is necessary to allow the Company to complete the major expansion approved by the Agency several years ago, that: (a) the Project as represented is reasonably necessary to promote the purposes of the Act; and (b) the Project is an integral part of the Company's plan to expand its business in the Town of Clarence.

Section 2. To accomplish the purposes of the Act, the Agency hereby authorizes the Company to proceed with the Project as herein described with a **maximum authorized amount of \$450,000** to be expended without further action of the Agency. The Agency is authorized, subject to the provisions of this Resolution, to acquire title to the Project and to enter into a Project and Agent Agreement and an Installment Sale Agreement with the Company and to execute and deliver such other documents and instruments as may be necessary in order to consummate the transaction contemplated by this Resolution.

Section 3. The execution and delivery of the Installment Sale Agreement, a Project and Agent Agreement and such other documents and instruments as may be necessary in order to carry out the purposes of this Resolution, each being substantially the form approved by the Agency for prior transactions or approved by the Chairman, Vice-Chairman or Assistant Secretary is hereby authorized. The Chairman, Vice-Chairman or Assistant Secretary of the Agency are hereby authorized to execute, acknowledge and deliver each such Instrument and the Secretary and Assistant Secretary of the Agency are hereby authorized to affix the seal of the Agency on each such Instrument, as applicable, and attest to the same. The execution and delivery of each such document by said officer shall be conclusive evidence of due authorization and approval.

Section 4. All covenants, stipulations, obligations and agreements of the Agency contained in this Resolution, the Project and Agent Agreement and in the Installment Sale Agreement and other documents and instruments shall be deemed to be the covenants, stipulations, obligations and agreements of the Agency to the full extent authorized or permitted by law, and such covenants, stipulations, obligations and agreements shall be binding upon the Agency and its successors from time to time and upon any board or body to which any powers or duties affecting such covenants, stipulations, obligations and agreements shall be transferred by or in accordance with law. Except as otherwise provided in this Resolution, all rights, powers and privileges conferred and duties and liabilities imposed upon the Agency or the members thereof by the provisions of this Resolution, the Project and Agent Agreement, the Installment Sale Agreement or other documents and instruments shall be exercised or performed by the Agency or by such members, officers, board or body as may be required by law to exercise such powers and to perform such duties.

No covenants, stipulation, obligation or agreement herein contained or contained in the Installment Sale Agreement or other documents and instruments shall be deemed to be a covenant, stipulation, obligation or agreement of any member, officer, agent or employee of the Agency in his individual capacity.

Section 5. The Agency is hereby authorized to acquire, install and provide the Project, all as particularly authorized by the terms and provisions of the Installment Sale Agreement. Any action heretofore taken by the Company in initiating the acquisition and installation of the Project on behalf of the Agency is hereby ratified, confirmed and approved. The proper officers of the Agency are hereby authorized to accept title to the Project.

Section 6. The Company 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 \$450,000 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 \$39,375.00**. 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. The Chairman, Vice Chairman, Secretary and Assistant Secretary and any member of the Agency are hereby designated the authorized representatives of the Agency and each of them is hereby authorized and directed to execute and deliver 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 Project and Agent Agreement, the Installment Sale Agreement and other necessary documents and instruments.

Section 8. Any expenses incurred by the Agency with respect to the Project shall be paid or reimbursed by the Company whether or not the transaction contemplated by this Resolution is completed, unless through the fault of the Agency. By acceptance hereof, the Company agrees to pay such expenses and further agrees to indemnify the Agency, its members, employees and agents and hold the Agency and such 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.

Section 9. The provisions of this Resolution shall continue to be effective until one year from the date hereof whereupon the Agency may, at its option, terminate the effectiveness of the Resolution (except with respect to the matters contained in Section 7 hereof) unless prior to the expiration of such period (a) the Agency shall by subsequent resolution extend the effective period of this Resolution, or (b) the Company and the Agency enter into an Installment Sale Agreement.

Section 10. The Agency hereby determines, based upon information furnished to it by the Company and such other information as the Agency deemed necessary to make this determination, that the Project is a Type II Action under the State Environmental Quality Review Act and does not require the preparation of an Environmental Impact Statement under such Act as the contemplated action will not have a significant effect on the environment.

Section 11. The provisions of Section 875 of the General Municipal Law 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 12. The provisions of the Town of Clarence, Erie County, Industrial Development Agency Policy for Recapture and/or Termination or Modification of Financial Assistance shall be applicable to this Project.

Section 13. This resolution shall take effect immediately.

ADOPTED: August 17, 2023