

TOWN OF CLARENCE, ERIE COUNTY  
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES  
January 16, 2020

Organizational Meeting

Chris Kempton called the meeting to order at 8:16 a.m.

Present at the meeting were Peter DiBiase, Robert Dixon, Elaine Wolfe, Clayt Ertel, and Chris Kempton. Patrick Johnson and Mary Powell were not able to make the meeting. Also present were Paul Leone, Peter DiCostanzo, Jennifer Strong, Larry Meckler, Steve Bengart, Kimberly Ignatowski, and Cynthia Rosel.

8: 20 a.m. - Public Hearing – 8600 Sheridan Drive-APEX Dental Solutions LLC.

The Chairman opened the public hearing for the 8600 Sheridan Drive-APEX Solutions LLC Project. Paul Leone gave the particulars of the project. The applicant, APEX Dental Solutions LLC, is requesting Agency assistance in the form of mortgage tax abatement, sales tax exemption and real property tax abatement which would be a 7 year PILOT. The project amount is \$1,360,000.00. The project will include renovations to an approximate 9,000 +/- square foot vacant building located at 8600 Sheridan Drive to expand their existing business and the acquisition and installation of machinery, equipment, furnishings and fixtures required in connection all for a dental lab, manufacturing and distribution facility. The expansion will allow the applicant to expand its current business and maintain their level of sales and employment. The business is manufacturing with a laboratory. The IMPLAN Study is in the packet and was previously e-mailed to the members for review before the meeting along with the application. The project will create 15 new full time positions and 3 part time. There are currently 30 Full Time Employees and 7 Part Time Employees.

Mr. Kempton asked if there were any questions on the project. There being none, there was a motion to close the public hearing by Robert Dixon to close the public hearing with a second by Elaine Wolfe.

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

**Election of Officers for 2020.**

The first order of business was the election of the officers for the CIDA 2020.

Mr. Kempton opened the up the floor for nominations for the officers of the Clarence IDA Board. The members nominated Chris Kempton as Chairman, Clayt Ertel as Vice Chairman, Patrick Johnson as Treasurer and Mary Powell as Secretary. There was a motion by Elaine Wolfe with a second by Peter DiBiase to accept the existing slate of officers of the CIDA for 2020. There was nothing on the question.

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

**Appointments to Staff.**

The Staff appointees are Lawrence Meckler and Steven Bengart to serve as Counsel/Assistant Secretary; Jennifer Strong of Neill and Strong as Transactional Counsel; Paul Leone as Business Consultant and CEO; Kimberly Ignatowski as CFO; Cynthia Rosel as Staff Administrative Assistant and Mary Morris as CIDA Billing Administrator. The Board was in agreement with the slate of existing appointees. Mr. Kempton asked for a motion to accept the slate of appointments for the CIDA Staff. There was a motion by Elaine Wolfe with a second by Peter DiBiase to accept the slate of appointments for the CIDA for 2019. There was nothing on the questions.

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

#### Minutes of December 19, 2019.

There was a motion to approve the minutes of the December 19, 2019 meeting by Peter DiBiase with a second by Robert Dixon. There was nothing on the question.

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

#### Treasurer's Report.

The Chairman said the he would go over the Treasurer's Report in Pat Johnson's absence. He began that the CIDA laptop crashed. He will be asking for a motion to approve funds to purchase a new laptop. The laptop was looked at by an IT person and it cannot be repaired or information recovered. Therefore, Quick Books will also have to be purchased. The laptop was from 2003.

Mr. Kempton went over the financials from January through December 2019. (The current financials will not be available until a new laptop is purchased.) Fees received in 2019 were in the amount of \$36,723.89 (total income.) The total expenses for 2019 were \$41,637.54. The net ordinary income for 2019 is -4,913.65. Interest earned for 2019 was \$16,605.47. The net income for 2019 is \$11,691.82.

Mr. Leone asked Ms. Ignatowski about the Bank of Akron and the resent sale. This transaction has not been completed as of today. There is a project with the CIDA with a Pilot benefit. The CIDA will monitor the project.

Mr. Kempton also drew attention to the Budget for 2019 and note that the expenses was \$57,000+/- and the expenses were actually \$41,000+/- . The interest earned was \$1,200 but actually came in at \$16,605.47.

Mr. Kempton asked for motion to accept the financials for 2019 end. There was a motion by Clayt Ertel with a second by Elaine Wolfe. There was nothing further on the question.

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

#### Correspondence.

There was no correspondence. The auditors, Drescher and Malecki, have started the audit process and the annual questionnaire will be mailed out shortly.

#### New Business.

Mr. Leone several businesses that are reaching out to him as potential applicants but nothing new.

#### 8600 Sheridan Drive-APEX Dental Solutions LLC.

Mr. Kempton had Mr. Leone go over the particulars of the project that is under consideration for CIDA incentives. Mr. Leone said that APEX LLC, 8600 Sheridan Drive has submitted an application and was the subject of the public hearing at the start of this meeting. The applicant is asking for mortgage tax abatement, sales tax exemption and real property tax abatement which would be a 7 year PILOT. The project amount is \$1,360,000.00. The IMPLAN Study was done and is available in the packet. The application was also e-mailed to the Board members and the attorneys. The project meets the criteria and is eligible.

Mr. Kempton made a motion to approve the 8600 Sheridan Drive Project and adopt the resolution as presented by Jennifer Strong with a second by Clayt Ertel. The Resolution is attached hereto as part of the minutes as Exhibit A.

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

**Old Business.**

None.

**Items Not on the Agenda.**

Mr. Leone had a report from the NYS Senate if anyone would like to look at it. There was mention of IDA's but not in this area and there was nothing negative.

Mr. Kempton reached out to Carl Calabrese to let him know that the CIDA is deliberating whether or not to continue as a member of the Masiello, Martucci, Calabrese and Associates for 2020. Mr. Calabrese was not available at that time so he did not get a chance to speak with him. The Board has decided not to renew the agreement at this time. However, they discussed becoming a member of the New York State Economic Development Council.

Mr. Leone had an application for the New York State Economic Development Council. At the last two meetings, there was discussion regarding the CIDA becoming a member. The Board members were interested in doing so. Mr. Kempton asked for a motion to approve the CIDA becoming a member of the NYSEDC for an amount not to exceed \$1,500. A motion was made by Clayt Ertel with a second by Elaine Wolfe to submit the application to become a member of the NYSEDC. On the question, Mr. Kempton will look it over the application to see what the extra cost would be to add the other Board members to the mailing list for the NYSEDC.

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

Mr. Leone will check with Dave Mingoia the Executive Director of the Amherst IDA to see how many members they have as members of the NYSEDC and get back to Mr. Kempton.

Mr. Kempton addressed the purchase of a new laptop. The laptop crashed and we will need a new one. The CFO uses the laptop for the financials. The former EDO also used it for his reports. The CIDA will need to upload other items onto the laptop. Mr. Kempton asked for a motion to approve an amount not to exceed \$2,000 for the purchase of a laptop, the purchase of basic Quick Books program, and to cover the cost of any fee for consulting services incurred to try to retrieve the information from the hard drive from the laptop. Elaine Wolfe so moved and there was a second by Clayt Ertel. There was nothing further on the question.

**Vote: Ayes: DiBiase, Dixon, Wolfe, Ertel, And Kempton. Noes: None  
Recuse: None. Absent: Johnson, Powell. Motion carried. Unanimous**

**Public Comments.**

Peter DiCostanzo thanked everyone for serving on the Clarence Industrial Development Agency especially, Chris, Mary and Clayt for serving for so many years.

There was a motion by Clayt Ertel with a second by Elaine Wolfe to adjourn the meeting.

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

The meeting was adjourned at 8:47 a.m.

Respectfully submitted.  
Cynthia M. Rosel

EXHIBIT "A"

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE "AGENCY") AUTHORIZING APEX DENTAL SOLUTIONS, LLC (THE "LESSEE") FOR THE ACQUISITION AND RENOVATION OF AN EXISTING APPROXIMATELY 9,000 SQUARE FOOT BUILDING LOCATED AT 8600 SHERIDAN DRIVE 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 DENTAL LAB MANUFACTURING/DISTRIBUTION FACILITY, AND TO TAKE OTHER PRELIMINARY ACTION.

WHEREAS, APEX Dental Solutions, 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 consisting of the acquisition and renovation of an approximately 9,000 square foot building located at 8600 Sheridan Drive in the Town of Clarence 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 Dental Lab Manufacturing/Distribution Facility who will be the occupant of the Project (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, renovation and installation of the Project; that the Project is necessary to provide manufacturing jobs 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 30 FTE and 7 PTE at the Project location but Lessee anticipates that the Lessee will employ 45+ FTE and 10+ FTE employees at the Project location within 2 years following completion of the Project; that Agency financing or other assistance is necessary because the Lessee is out of space and this will allow them to expand their current business and maintain their level of sales and employment, the renovation 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, renovation 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) that Agency financing or other assistance for the Project is reasonably necessary to promote economic development in the Town of Clarence; (c)

the Project will create at least 15 new full time and 3 part time employees; (d) the Project will provide substantial capital investment. The Agency further determines, on the basis of the Lessee's Eligibility Questionnaire that; (e) 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 (f) 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 \$1,360,000, 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 acquisition and renovation of an approximately 9,000 square foot building 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 \$320,000.00 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 \$28,000.00. 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 acquisition 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. The Agency has determined that this Project is eligible for the 485-b equivalent 7 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 \$1,360,000 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 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 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 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 18. 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 19. This resolution shall take effect immediately.

ADOPTED: January 16, 2020

ACCEPTED:

APEX DENTAL SOLUTIONS, LLC

By: \_\_\_\_\_  
Michael P. Curran, Jr.

President