

TOWN OF CLARENCE, ERIE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES

December 16, 2021

Chairman Kempton called the meeting to order at 8:16 a.m. and asked Ms. Ignatowski to take roll call. Present were Robert Dixon, Elaine Wolfe, Clayt Ertel and Chris Kempton. Lauren Fix arrived at approximately 8:18 a.m. Peter DiBiase was not at the meeting due to a work commitment and Mary Powell was out of Town. Also present were Paul Leone, Lawrence Meckler, Steven Bengart, Jennifer Strong, Peter DiCostanzo, Liaison/Councilman and Kimberly Ignatowski. Also present were Chris Knospe of NYSEG. Matt Green and Jonathan McMahon were present for the Greens on Sheridan LLC Project.

Mr. Knospe was present to introduce himself to the Board. He is a Program Coordinator with NYSEG. Paul Leone and Mr. Knospe met yesterday to discuss some of the different programs offered by NYSEG. Paul Leone is the contact person for the CIDA with NYSEG. There are different programs available to businesses as well as to the community. Paul advises new applicants and other businesses regarding programs that are offered by NYSEG.

8:20 a.m. - Public Hearing on the Greens on Sheridan LLC Project.

A public hearing was held for the Greens on Sheridan LLC Project. Elaine Wolfe moved to open the public hearing at 8:20 a.m. There was a second by Clayt Ertel.

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

Mr. Leone introduced Mike Green and Jonathan McMahon who were present at the meeting on behalf of the project. This project is in amount not to exceed \$6,359,900.00. The applicant is asking for Agency assistance for the construction of a mixed use commercial and residential space building with 64,000 sq. ft. of commercial space and 18 apartment units located at 9150 Sheridan Drive. The project will allow for the expansion of the current business and maintain the level of employment making the project affordable with a competitive lease rate and keeping the Lessee in the Town of Clarence. The assistance contemplated by the Agency will include mortgage tax abatement, sales tax exception and real property tax abatements. This project is for a seven (7) year PILOT. All of the requirements have been met relative to the commercial and residential components. An IMPLAN Study was completed and distributed to the Board members and the Attorneys as well as a copy of the application. Mr. Leone asked if anyone has any questions on this project.

Mr. Dixon asked about the 64,000 sq. ft. or commercial space and if that is the total number of square feet. Mr. Green said that the project consists of 6,400 square feet of commercial space with the balance being 18 apartments for the mixed use project.

Mr. Ertel asked the about the time frame for the project. Mr. Green said they will start construction in the spring of 2022 depending on the weather. There is a house that will be demolished. It will take approximately about a year for complete.

Mr. Kempton asked about the rental fees for the apartments. Mr. Green answered that the apartments will rent for market rate which will be anywhere from \$1,200 to \$1,700 per unit. Rents will be affordable. All will be regular market rental rates and no rental control. All the units will be 1 or 2 bedrooms.

Ms. Fix asked about the parking. Parking has to be approved by the Town and there will be 2 spots per unit with plenty of space for commercial parking.

SEQR has been approved and a Neg Dec issued of which the CIDA has a copy. The project has been approved by the Planning Board and the Town Board. Mr. Leone said the documents have been reviewed the CIDA counsel and Ms. Strong. All requirements have been met.

There being no other questions or comments, there was a motion by Elaine Wolfe to close the public hearing. There was a second by Robert Dixon.

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

Greens on Sheridan LLC Project - Consider Adopting a Resolution to Incentivizing Project.

Mr. Kempton said that the public hearing has been held and those present had the opportunity to comment and ask questions. The Chairman asked for a motion to adopt the resolution as prepared by Jennifer Strong to approve incentivizing the Greens on Sheridan LLC Project. There was a motion by Clayt Ertel with a second by Elaine Wolfe. On the question Steven Bengart, Co-Counsel said that he assumes that the IMPLAN study as presented will be made part of the record. Mr. Kempton answered that the IMPLAN study was included and it was provided to the Board to review before the meeting. This project does meet all the eligibility requirements for a mixed use project. It is expected that the project will increase the employment numbers by 10 additional employees in about three years to manage the property. Mr. Kempton asked if there is nothing further on the question for a vote by the Board.

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

The project was approved.

Mr. Kempton and Mr. Leone thanked the applicants for coming in. Mr. Leone added that Ms. Strong will be in touch with the applicants.

(copy of approved resolution attached hereto.)

Minutes of November 18, 2021.

Mr. Kempton asked if everyone had a chance to review the minutes from the November 18, 2021 meeting. There was a motion to accept the minutes by Elaine Wolfe with a second by Robert Dixon. There was nothing further on the question.

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

Treasurer's Report.

The Chairman reported on the Financial Report. He reported on the balances in the money market and the checking account. There are no outstanding expenses for the rest of the year. There is a net income to date of \$3,118.87. There was a motion by Robert Dixon with a second by Elaine Wolfe. There was nothing further on the question.

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

Correspondence.

Mr. Kempton reported that he received an invitation via e-mail from Invest Buffalo Niagara for an on conference for a boarding session. Clayt and Peter DiBiase will receive a copy and they will need to respond and pick a time when they would be available. They can meet in person or via ZOOM. It will be in early January.

New Business.

He had a meeting on a potential project on Harris Hill and Roll Road. It is an existing building as 5635 Harris Hill Road. This is in its very early stages. He will keep on top of it.

Old Business.

A. UTEP Discussion.

The Chairman went over the UTEP Agreement that is being worked on. This is to update the policy that is affect. The Chairman talked about the updated policy as having a scoring system. There will be 3 different levels of pilots...a 5 year, 7 year and 10 year pilot. There is a checklist that the IDA's will have to use for the projects that will be reviewed by the IDA's. Each project will be reviewed according to the checklist to determine if a project is eligible. This is not be voted on now...but will have to determine if the CIDA would sign on to this policy. Mr. Meckler wanted to make a comment on the check list...and offer his opinion. A project either qualifies or does not quality. If it qualifies, the CIDA should have the discretion as how to incentivize the project. If it does not qualify, obviously, the CIDA would not incentivize the project. The CIDA wants to be in a positon that if a project does qualify, by signing this agreement, it would limit what the CIDA can and cannot do based on a somewhat subjective scoring system. Mr. Kempton added that is why the members need to look at this checklist and make a determination if they want to be part of this new system. There is deviation language in this policy. Ms. Strong added that the CIDA does have a Deviation Policy in place. Mr. Kempton continued with 4 items...one is that the application is complete; 2 that the project is eligible; that the project went through the planning process, and the last is the local labor compliance. Ms. Strong said that is only if a local labor policy is adopted. The CIDA does not have a local labor policy. Mr. Leone added that he suggests that the Board consider adding on to the policy on multi-family and other items outside the county wide policy. Mr. Kempton said the CIDA needs to pay attention to this in order to make a determination on whether to sign on to this. There will further discussions in the near future on the updates to the UTEP.

B. Update Annual Reporting-Drescher and Malecki.

The Chairman said that the CIDA has retained Drescher and Malecki to perform the 2021 Audit for the CIDA. They do the Audit which includes the Annual Reporting and the PARIS report. There will be an additional form that will be need to added to the annual questionnaire to further verify that the annual FTE reporting is as accurate as possible. Mr. Kempton also wanted to have a spread sheet report showing the FTE at the time of application, the proposed added employment and current FTE’s. Ms. Ignatowski, Ms. Rosel and will confer with Jared Pickard from Drescher Malecki regarding the reporting. This is something that needs to be done to be in compliance with the Comptroller’s office.

The fee for the 2021 audit has not increased.

Items Not On the Agenda.

Ms. Strong had a few items. She spoke to Drescher and Malecki regarding the form to be used for full time employee reporting for the closing documents. She was advised to continue to use NY-45. The Burke homes project is closing through the mail next Monday or Tuesday. Also, Governor Hocol passed legislation that Municipal Meeting Minutes need to be posted 2 weeks after the meeting.

Mr. DiCostanzo let the Board know that the Town Board Organizational meeting will coming up in a few weeks and the appointment of the IDA Board members will be on the agenda.

Public Comments.

None.

Adjournment.

There was a motion to adjourn the meeting by Elaine Wolfe with a second by Robert Dixon. There was nothing on the question.

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

Meeting adjourned at 9:03 a.m.

Respectfully submitted,
Cynthia M. Rosel

RESOLUTION OF THE TOWN OF CLARENCE, ERIE COUNTY, INDUSTRIAL DEVELOPMENT AGENCY (THE “AGENCY”) AUTHORIZING GREENS ON SHERIDAN LLC (THE “LESSEE”) TO CONSTRUCT A MIXED USE SPACE BUILDING WITH 6,400 SQUARE FEET OF COMMERCIAL SPACE AND 18 APARTMENT UNITS (19,200 SQUARE FEET) AT 9150 SHERIDAN DRIVE, CLARENCE OWNED BY THE LESSEE, AS AGENT FOR THE AGENCY FOR LEASE TO THE AGENCY AND SUBSEQUENT LEASEBACK TO THE LESSEE.

WHEREAS, GREENS ON SHERIDAN 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 construction and equipping of a mixed use space building with 6,400 square feet of commercial space and 18 apartments (19,200 square feet) at 9150 Sheridan Drive, Clarence, 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 to construct buildings 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 10 FTE at the Project location in the Town of Clarence within two years following the completion of the Project; 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 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 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, Executive Director, 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 on the already owned land located at 9150 Sheridan Drive, Clarence, to commence with the construction and equipping of a mixed use space building with 6,400 square feet of commercial space and 18 apartments (19,200 square feet) 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 \$6,359,900.00, 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, Executive Director 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 \$3,500,000.00 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 \$306, 250.00. 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 seven 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, estimated to provide \$624,000.00 in real property tax abatement benefits.

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, Executive Director 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, Executive Director or Assistant Secretary in an amount not to exceed \$6,000,000.00 (with a mortgage tax abatement of \$45,000.00) 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, Executive Director 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 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: December 16, 2021

ACCEPTED:

GREENS ON SHERIDAN LLC
as Lessee

By _____

Name:

Title:



9150 Matt Green Mixed Use Negative Declaration.txt