

TOWN OF CLARENCE, ERIE COUNTY
INDUSTRIAL DEVELOPMENT AGENCY

MINUTES

January 21, 2021 (Via ZOOM)
(Organizational Meeting)

Chris Kempton called the meeting to order at 8:22 a.m.

Present were Peter DiBiase, Mary Powell, Clayt Ertel, and Chris Kempton. Robert Dixon was not in attendance. Elaine Wolfe, joined the meeting late due to technical difficulties connecting to ZOOM, therefore, Ms. Wolfe could not vote on any of the motions. Also present were Paul Leone, Lawrence Meckler, Steven Bengart, Jennifer Strong, Kimberly Ignatowski and Cynthia Rosel.

Election of Officers for 2021.

The first order of business was the election of the officers for the CIDA 2021.

Mr. Kempton began with asking for nominations for the officers of the Clarence IDA Board. The officers from 2020 were Chris Kempton as Chairman, Clayt Ertel as Vice Chairman, Patrick Johnson as Treasurer and Mary Powell as Secretary. Patrick Johnson resigned from the CIDA in August of 2020. Mr. Kempton spoke with Peter DiBiase who is willing to take on the Treasurer opening if the Board is in agreement. There were no other nominations and no objection to the slate as offered with Peter DiBiase as Treasurer. There was a motion by Christopher Kempton with a second by Peter DiBiase to accept the existing slate of officers of the CIDA as officers for 2021 with Peter DiBiase as Treasurer as the only change. There was nothing on the question.

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

Appointments to Staff.

The Administrative Staff appointees are Lawrence Meckler and Steven Bengart to serve as Co-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 re-appointment of the slate of existing Staff. Mr. Kempton moved to accept the current slate of appointments for the CIDA Staff. There was a second by Mary Powell. There was nothing on the questions.

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

Minutes of December 17, 2020.

There was a motion to approve the minutes of the December 17, 2020 meeting by Chairman Kempton with a second by Clayt Ertel. There was nothing on the question.

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

Treasurer’s Report.

Chairman Kempton went over the Financial Reports that were prepared by Kim Ignatowski. The January 1 through December 31, 2020 year-end report shows, that after all expenses, there is a net income for 2020 of \$695.16. The January 1 through January 21, 2021 Financial Report has a net income of -60.00. There have been no revenues received to date and there was 1 expense in the amount of \$60.00 for website maintenance. There was a motion by Chairman Kempton with a second by Clayt Ertel to accept the Treasurer’s Reports. There was nothing on the question.

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

Correspondence.

Correspondence was received from the Lancaster IDA and the Hamburg IDA containing Notices of Public Hearing that the LIDA and the HIDA were having. These were e-mailed to the Board and staff. There was no further correspondence.

Mr. Leone announced that Jennifer Strong has been appointed as counsel for the Lancaster IDA at its meeting yesterday. The Board congratulated Ms. Strong.

New Business.

A. 4015 Casilio Parkway-Seal and Design 2021 Project-Sales Tax Only.

Mr. Kempton asked Paul Leone to present the new project to the Board. This is a new project is for Sales Tax Only. A public hearing is not necessary as the benefit is under \$100,000. The project is for the purchase of new equipment and furnishings. The applicant is Seal and Design, Inc. and is located at 4015 Casilio Parkway. Mr. Leone is asking for approval of the project. Ms. Strong prepared a resolution authorizing and approving the project. Mr. Leone asked if there were any questions. There being none, the Chairman asked for a motion from the Board on the project. There was a motion by Clayt Ertel with a second by Mary Powell to adopt the resolution as prepared by Jennifer Strong, Counsel, authorizing and approving the 2021-4015 Casilio Parkway-Seal and Design, Inc. Project for Sale Tax Only. On the question Mr. Bengart, added that approval is pursuant to the resolution prepared by Jennifer Strong. Chairman Kempton answered so noted. There was nothing further on the question.

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

(A complete copy of the adopted resolution is attached to the minutes as Exhibit “A”)

B. Opening on the CIDA Board.

Mr. Kempton reminded the Board that there is one opening on the CIDA Board. Mr. Kempton did receive an e-mail from Patrick Johnson expressing his interest in re-joining the CIDA. However, he would be spending several months in Florida. In order for someone who is out of state, there would be posting requirements and public notice requirements pursuant to NYS Law. Mr. Kempton advised the Board that if they have any candidates in mind, they should reach out to Councilman DiCostanzo. There is a process and applications are available in the Supervisor’s office and also on the CIDA and the Town of Clarence websites. Peter DiCostanzo, CIDA Town Board Liaison, reviewed the applications that are on file but they were from a while ago. There is a one new application. This would be a Town Board appointment upon recommendation of the CIDA Board. Mr. Kempton added that if any Board members has any leads or prospects to have them fill out an application and again, perhaps reach out to Councilman DiCostanzo.

C. Possible New Study for – “Vision Sheridan Drive” Project.

At the last meeting Jonathan Bleuer gave his update on “Vision Main Street” Plan and development in the Town. Mr. Bleuer has been using the “Plan” that was developed and made part of the Town’s Comprehensive Plan. The Plan is being used by the Town and developers. Mr. Bleuer advised that there has been a more interest in development on Sheridan Drive. Mr. Kempton had a conversation with Jonathan Bleuer and asked if it would be helpful if there was a similar study done for Sheridan Drive as was done for the Main Street Corridor. Mr. Bleuer said it would be great. It would be great to have on the CIDA and the Town’s websites. All of a sudden we these different areas of focus of commercial development. If we went through the same process that we did for Main Street it would be helpful for zoning purposes and for developers to see what can and cannot be done in the Sheridan Drive corridor before they begin to develop their plans. Mr. Kempton is proposing that the CIDA consider paying for another study, the same that was done for Main Street, but for Sheridan Drive. Paul Leone added that he has been getting calls from realtors and developers interested in Sheridan Drive. It has been quite extensive. Jonathan coordinated the process for the CIDA for the Vision Main Street Study. Mr. Kempton said that we can go back to Jonathan and have him submit a proposal for a Sheridan Drive Study. Mr. Kempton will e-mail Jonathan with the CIDA’s proposal and let him bring us to the process. Clayt Ertel will reach out to Jonathan and put this in motion. Mr. Leone added that this is very helpful to him when he meets with potential applicants. It is a great tool for his toolbox.

Old Business.

Mr. Leone is waiting to hear from the attorney for the Wehrle Drive project.

Items Not on the Agenda.

Mr. Kempton added that the auditor is in the process of getting back the yearly questionnaire. Mr. Kempton is questioning how furloughed employees should be reported. There is a difference with on being on layoff and being furloughed. How should that be reported on the questionnaire. Ms. Rosel added the questionnaires have been mailed out and there have been several returned already. Ms. Ignatowski added that the due date is January 29, 2021.

Ms. Rosel asked if the Board is interested in renewing its membership with the NYS Economic Development council. Mr. Kempton said that yes we should renew and Board agreed.

Public Comments.

None.

There was a motion by Clayt Ertel with a second by Peter DiBiase to adjourn the meeting. There was nothing on the question.

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

(Elaine Wolfe was able to join the meeting before the adjournment.)

The meeting was adjourned at 8:55 a.m.

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 SEAL & DESIGN, INC. 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, Seal & Design, Inc. (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 existing manufacturing operation (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 108 full time persons and 3 part time employees at its current leased facility located at 4015 Casilio Parkway in the Town of Clarence, which facility is currently owned by Penman Enterprises, leased to the Agency, subleased to Penman Enterprises for sub-sublease to the Company which employees will be retained as a result of the Project and an additional 12 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 amount 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 manufacturing facility located at 4015 Casilio 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 \$500,000 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 \$500,000 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 \$43,750.00. 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 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 12. 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 13. This resolution shall take effect immediately.

ADOPTED: January 21, 2021

ACCEPTED: _____

SEAL & DESIGN, INC.

By _____
Dean S. Penman, President