

AGENDA - COMMON COUNCIL MEETING – August 19, 2014 - 5:30 PM  
REGULAR MEETING

1. Call to order, Roll Call and Pledge of Allegiance to the flag.
2. Certification of prior meetings. Resolution dispensing with reading of minutes.
3. Reading of Privilege of the Floor Regulations.
4. Privilege of the Floor:
5. Communications from the Mayor including disapproval messages.
6. Communications from the public and petitions:
  1. Request from Gary Cerne, Dunkirk City School District Superintendent, for police supervision for their High School Football games on September 12th, 19th, October 3<sup>rd</sup>, 16th & late October date TBA.
  2. Notice of Claim from:
    - a) Josephine Tooley for alleged damages to her vehicle due to pothole on Main Street.
    - b) Randall Benderson and David Baldauf for alleged property damage.
7. Reports of Standing Committees, Boards and Commissions.
8. Unfinished Business:
9. Pre-filed Resolutions:
  68. Resolution authorizing Appointment of Chautauqua County Water Agency Member.
  69. Resolution authorizing Agreement to provide random drug testing (Langford Testing and Consulting).
  70. Resolution transferring City funds (18 Lake Shore Drive West, Dunkirk).
10. New Business:
11. Adjournment.

Nicole Joiner  
City Clerk



## DUNKIRK CITY SCHOOL DISTRICT

620 Marauder Drive  
Dunkirk, New York 14048  
Telephone (716) 366-9300  
Fax (716) 366-9399

MR. KENNETH A. KOZLOWSKI

*President*  
Board of Education

MR. GARY CERNE

*Superintendent*

August 6, 2014

Chief David Ortolano  
Dunkirk Police Department  
Central Avenue  
Dunkirk, NY 14048

Dear Chief Ortolano:

We would like to request police supervision for our High School football games on the following dates:

Friday, September 12, 2014 at 7:30 PM  
Friday, September 19, 2014 at 7:30 PM  
Friday, October 3, 2014 at 7:30 PM  
Thursday, October 16, 2014 at 7:00 PM  
Plus one additional date in late October TBA

**RECEIVED**

**AUG 08 2014**

**DUNKIRK POLICE DEPT**

The fees for providing coverage should be forwarded directly to the Dunkirk City School District, 620 Marauder Drive, Dunkirk, NY, 14048.

Please let me know if this causes a coverage dilemma for you. As always, thank you for your help.

Sincerely,

Gary J. Cerne  
Superintendent of Schools

GJC:tdo

cc: Mike Sarratori, Athletic Director

Notice of Claim  
City of Dunkirk, N.Y.

PLEASE TAKE NOTICE, that the undersigned, pursuant to the applicable NY State statutes, hereby makes claim against the CITY OF DUNKIRK, NEW YORK for injuries and/or damages sustained by me as hereinbelow detailed:

Claimant Name:

Josephine Tooley

Claimant Address:

850 Main St

Dunkirk NY 14048

Claimant Telephone Number:

(716) 366-2566

This claim is for (injuries/damages alleged):

TO MY CAR, Front end  
fractured Springs

2014 JUL 31 PM 12:43

RECEIVED  
CITY CLERK'S OFFICE  
DUNKIRK, N.Y.

This claim is alleged to have arisen on the 17th day of July, 2014 at approximately 1 a.m./p.m. on that date at Main St, by Field Brook Ponds, Before Train Tracks

The injuries and/or damages sustained by the Claimant arose in the following manner:

Hit a water covered, large pot hole on Main St. 38" by 36" and 4" deep, which could not be seen due to it was completely filled and covered with water, it fractured my @ Springs in my car

The amount and type of injuries and/or damages sustained by the Claimant consist of the following: fracture Springs in my car, estimate to fix it attached, car can not be driven because of damage, I do have a witness to the incident.

WHEREFORE, the undersigned respectfully requests that the within claim be allowed and paid to me.

Respectfully yours,

Josephine Tooley 7/28/14  
Claimant (date)

State of New York )  
County of Chautauqua ) ss.:

Josephine Tooley being duly sworn, deposes and say that he/she is the claimant herein; that he/she has read the foregoing claim and knows the contents thereof; that the same is true to the knowledge of the deponent, except as to matters therein stated to be alleged upon information and belief, and, as to those matters, he/she believes it to be true.

Sworn to before me this  
31st day of July, 2014.

Mary L. Vercant  
Notary

MARY L. VERCANT #01VE5078259  
Notary Public, State of New York  
County of Chautauqua  
Commission Expires May 19, 2015

# MIDAS AUTO SERVICE EXPERTS

4007 VINEYARD DRIVE  
 DUNKIRK, NY 14048  
 Ph:716-366-2275, Fax:(716) 366-2279

# ESTIMATE

#140730006 Page 1 of 1  
 7/31/2014, 10:21 AM

Facility #: 7089815

JOSEPHINE TOOLEY  
 820 MAIN STREET  
 DUNKIRK, NY 14048

HOME: 716-366-2566

ACCOUNT #:

2002 BUICK CENTURY  
 CH332T (NY)  
 ODOM IN/OUT: 52225 / 52225  
 2G4WS523421230926  
 3.1L V6 Cyl.

Sales: 0

Qty	Item Number	Loc	Description	ST	Each	Labor	Misc	Extended
1	185141		RF QUICK STRUT ASSEMBLY	RO	229.95	98.40		328.35
1	AL		ALIGNMENT	R	55.95			55.95

Parts	285.90
Labor	98.40
Sub-Total	384.30
NY STATE Tax	28.82
<b>Grand Total</b>	<b>413.12</b>

THANK YOU FOR VISITING YOUR DUNKIRK MIDAS YOUR COMMENTS ARE WELCOME.

WHICH MAY BE REQUIRED AFTER THE WORK HAS BEEN STARTED. WORN OR DAMAGED PARTS WHICH ARE NOT EVIDENT ON FIRST INSPECTION MAY BE DISCOVERED. THIS ESTIMATE OF REPAIRS CANNOT COVER SUCH CONTINGENCIES. WHEN ADDITIONAL WORK IS DEEMED NECESSARY, CUSTOMER AUTHORIZATION WILL BE SECURED PRIOR TO COMMENCEMENT OF THAT ADDITIONAL WORK.

I HEREBY AUTHORIZE THE REPAIR WORK TO BE DONE. YOU AND YOUR EMPLOYEES MAY OPERATE VEHICLE FOR PURPOSES OF TESTING, INSPECTION, DELIVERY, AND/OR SPACE ACCOMADATION AT MY RISK.

MIDAS SHOP # 6297, NYS FACILITY # 7089815, S.S. VENDER # 122378

CUSTOMER SIGNATURE

*x Josephine B Tooley*

7/31/2014



**DUKE HOLZMAN  
PHOTIADIS & GRESENS LLP**  
*Strategic Business Counsel Since 1970*

Donald J. Holzman  
Gregory P. Photiadis  
James W. Gresens  
Peter G. Ruppert++  
Michael J. Lombardo\*\*\*  
Howard E. Berger  
Dennis P. Cleary  
Gary M. Kanaley\*  
Robert L. Bencini

Patricia Gillen  
Charles C. Ritter, Jr.  
Matthew J. Beck  
Elizabeth A. Kraengel \*\*  
Barbara B. Strzemeski-Haase  
Steven R. Kropski +  
Ryan L. Belka \*\*  
John D. Celani\*

Emanuel Duke  
(1916-1999)  
Edwin P. Yaeger  
(1934-1992)

\* Also Admitted in FL  
\*\* Also Admitted in MA  
\*\*\* Also Admitted in PA  
+ Also Admitted in SC  
++ Also Admitted in TX

August 5, 2014

Ronald A. Szot, Esq.  
Office of City Attorney  
City of Dunkirk  
Second Floor, City Hall  
342 Central Avenue  
Dunkirk, New York 14048

2014 AU - 6 AM 11:42

RECEIVED  
CITY OF DUNKIRK'S OFFICE  
DUNKIRK, N.Y.

**RE: VERIFIED NOTICE OF CLAIM OF RANDALL BENDERSON AND  
DAVID H. BALDAUF, AS TRUSTEES UNDER A TRUST AGREEMENT  
DATED SEPTEMBER 22, 1993 KNOWN AS THE RANDALL  
BENDERSON 1993-1 TRUST, RICHARD FRANCO AND EDWIN K.  
FIEDLER, CLAIMANTS**

Dear Mr. Szot:

Served herewith pursuant to General Municipal Law §50-e are two copies of the Verified Notice of Claim of the above named Claimants against the City of Dunkirk.

Very truly yours,

DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP

Howard E. Berger

HEB/hh  
Encl.

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In the Matter of the Claim of

**RANDALL BENDERSON AND DAVID H. BALDAUF, AS  
TRUSTEES UNDER A TRUST AGREEMENT DATED SEPTEMBER  
22, 1993 KNOWN AS THE RANDALL BENDERSON 1993-1  
TRUST, RICHARD FRANCO AND EDWIN K. FIEDLER  
7978 Cooper Creek Boulevard, Suite 100  
University Park, Florida 34201**

**VERIFIED NOTICE OF CLAIM**

**-against-**

**CITY OF DUNKIRK, NEW YORK  
City Hall  
342 Central Avenue  
Dunkirk, New York 14048**

RECEIVED  
CITY CLERK'S OFFICE  
DUNKIRK, N.Y.  
2014 AU - 6 AM 11:42

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**TO: CITY OF DUNKIRK, NEW YORK  
c/o Office of City Attorney  
Ronald A. Szot, Esq.  
Second Floor, City Hall  
342 Central Avenue  
Dunkirk, New York 14048**

PLEASE TAKE NOTICE, that RANDALL BENDERSON AND DAVID H. BALDAUF, AS TRUSTEES UNDER A TRUST AGREEMENT DATED SEPTEMBER 22, 1993 KNOWN AS THE RANDALL BENDERSON 1993-1 TRUST, RICHARD FRANCO AND EDWIN K. FIEDLER ("Claimants"), hereby give notice of a claim against the City of Dunkirk, New York (the "City") and demand damages from the City in a sum to be determined after proper adjudication of the within claim, for engineering and repair costs for damage to real property sustained by Claimants by reason of the wrongful, negligent and careless acts and omissions of the City, its agents, servants or employees. In support thereof, Claimants state as follows:

1. **The name and address of Claimants and their attorneys are:**

**CLAIMANTS:**

RANDALL BENDERSON AND DAVID H. BALDAUF, AS  
TRUSTEES UNDER A TRUST AGREEMENT DATED SEPTEMBER 22, 1993  
KNOWN AS THE RANDALL BENDERSON 1993-1 TRUST,  
7978 Cooper Creek Boulevard, Suite 100  
University Park, Florida 34201

and

570 Delaware Avenue  
Buffalo, New York 14202

RICHARD FRANCO AND EDWIN K. FIEDLER  
7978 Cooper Creek Boulevard, Suite 100  
University Park, Florida 34201

**ATTORNEYS:**

Howard E. Berger, Esq.  
Duke, Holzman, Photiadis & Gresens LLP  
701 Seneca Street, Suite 750  
Buffalo, New York 14210  
Tel.: 716-855-1111  
[hberger@dhpqlaw.com](mailto:hberger@dhpqlaw.com)

2. **The nature of the claim:** This is a claim for property damage sustained by Claimant caused, upon information and belief, by the negligence of the City arising from and relating to the City's negligent design, construction, repair and/or maintenance of an underground box culvert and storm water drainage system running underneath the parking lot on certain real property located at the 3292 Vineyard Drive, Dunkirk, New York. Upon information and belief, said box culvert failed, undermining the pavement above and resulting in the collapse of a portion of the paved parking lot thereon. Upon information and belief, the culvert failed due to its inability to handle the volume of water generated during a period of rainfall that occurred on or about May 13, 2014, which condition was caused or exacerbated by

the accumulation of debris within the culvert and at points downstream of the culvert. Photos of the collapsed portion of the parking lot on the subject premises are annexed as Exhibit A.

3. **The time when, the place where and the manner in which the claim arose:** Claimants discovered the collapse and other damage to the parking lot at the 3292 Vineyard Drive premises on May 13, 2014. As hereinabove stated, upon information and belief, on or about said date, an underground box culvert, which was part of the storm water drainage system running underneath the parking lot on the subject premises, failed, undermining the pavement above and resulting in the collapse of a portion of the paved parking lot thereon. Upon information and belief, the culvert failed due to its inability to handle the volume of water generated during a period of rainfall that occurred on or about May 13, 2014 which condition was caused or exacerbated by the accumulation of debris within the culvert and at points downstream of the culvert.

4. **The items of damage or injuries claimed include:** Claimants have incurred repair costs for, among other things, engineering services, excavation of the damaged culvert, replacement of approximately 33 feet of corrugated five (5) foot diameter pipe with one-half inch steel pipe inserted into existing undamaged pipe, use of a water-jet vacuum to de-silt the outlet of the culvert on the downstream side, and re-paving of the affected area.

5. This notice is made and served on behalf of the Claimants in compliance with the provisions of General Municipal Law § 50-e and such other laws and statutes as are in the case made and provided.

PLEASE TAKE FURTHER NOTICE that Claimants demand payment of said claim, and unless said claim is paid within a reasonable time it is the intention of Claimants to commence suit against the City to recover for the damages claimed herein.

WHEREFORE, Claimants respectfully request that this claim be allowed and paid by the said City of Dunkirk, New York.

Dated: August 5, 2014

**DUKE, HOLZMAN, PHOTIADIS & GRESENS LLP**  
*Attorneys for Claimants*

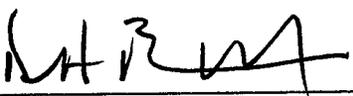
By Howard E. Berger

Howard E. Berger, Esq.  
Duke, Holzman, Photiadis & Gresens LLP  
701 Seneca Street, Suite 750  
Buffalo, New York 14210  
Tel.: 716-855-1111  
[hberger@dhpqlaw.com](mailto:hberger@dhpqlaw.com)

VERIFICATION

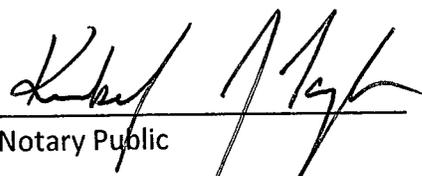
STATE OF FLORIDA            )  
  )SS:  
COUNTY OF MANATEE        )

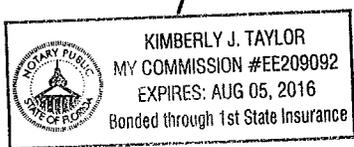
David H. Baldauf, being duly sworn, deposes and says: I am a Trustee Under a Trust Agreement dated September 22, 1993 known as the RANDALL BENDERSON 1993-1 TRUST, one of the Claimants in the above entitled matter. I have read the foregoing Notice of Claim and know the contents thereof. The contents are true to my own knowledge, except as to matters therein stated to be alleged upon information and belief, and to those matters I believe them to be true.

  
\_\_\_\_\_  
David H. Baldauf

*APC*

Subscribed and Sworn to before  
this 4<sup>th</sup> day of August, 2014.

  
\_\_\_\_\_  
Notary Public



**RESOLUTION #68-2014**  
**AUGUST 19, 2014**

**BY: THE ENTIRE COUNCIL**

**APPOINTMENT OF CHAUTAUQUA COUNTY WATER AGENCY MEMBER**

**WHEREAS**, by Resolutions 211-13 and 246-13, the Chautauqua County Legislature established, and amended, a County Water Agency (the "Agency") pursuant to Article 5-A of the New York State County Law to evaluate water supply needs in northern Chautauqua County; and

**WHEREAS**, among the members of such Agency is to be a member appointed by the Common Council of the City of Dunkirk; and

**WHEREAS**, the Council (by Resolution No. 22-2014) appointed **STEPHANIE KIYAK** to the Chautauqua County Water Agency as its representative, and it is now appropriate to appoint a successor representative; now, therefore, be it

**RESOLVED**, that the Common Council of the City of Dunkirk hereby appoints **WILLIAM RIVERA** to the Chautauqua County Water Agency.

**RESOLUTION #69-2014**  
**AUGUST 19, 2014**

**BY: ENTIRE COUNCIL**

**AUTHORIZING AGREEMENT TO PROVIDE RANDOM DRUG TESTING  
(LANGFORD TESTING AND CONSULTING)**

**WHEREAS**, the Department of Transportation (DOT) requires standard random selection drug testing for employees possessing a CDL license; and

**WHEREAS**, the DOT requires written reports regarding the City's compliance with such drug testing requirements; and

**WHEREAS**, Complete Testing Services was contracted to perform this function for the City, per Resolution No. 14-2014 (January 21, 2014), but has noticed the City that it is no longer to be in business; and

**WHEREAS**, Langford Testing and Consulting can provide without interruption the required services in a good and workmanlike manner; now, therefore, be it

**RESOLVED**, the Mayor is authorized and directed to enter into an agreement with **Langford Testing and Consulting**, 52 Berry Road, Fredonia, New York 14063, for the administration of the standard random selection drug testing program for the balance of 2014.

**RESOLUTION #70-2014**  
**AUGUST 19, 2014**

**BY: THE ENTIRE COUNCIL**

**TRANSFERING CITY FUNDS**  
**(18 Lake Shore Drive West, Dunkirk)**

**WHEREAS**, certain real property commonly known as 18 Lake Shore Drive West, Dunkirk, NY (the "Property"), is currently owned and controlled by DLDC Real Property, LLC ("Real Property, LLC"), a subsidiary of the Dunkirk Local Development Corporation (the "DLDC"); and

**WHEREAS**, the Property is subject to a certain Note & Mortgage which provides, *inter alia*, for a payment of Fifty Thousand Dollars and Zero Cents (\$50,000.00) on or before September 1, 2014; and

**WHEREAS**, the DLDC has no available monies which are available to fund such payment; and

**WHEREAS**, the Property is a very valuable development location within the City of Dunkirk (the "City"), and it would be in the best interest of the City for the City to assist the DLDC and Real Property, LLC in maintaining ownership of the Property; now, therefore, be it

**RESOLVED**, that the City agrees to transfer, as below detailed, certain monies to the Dunkirk Local Development Corporation and DLDC Real Property, LLC to provide for the September 1, 2014 Note & Mortgage payment in the amount of Fifty Thousand Dollars and Zero Cents (\$50,000.00), subject to the condition that the City be guaranteed that such money shall be repaid to the City out of any net proceeds from the sale or lease of the Property; and, be it further

**RESOLVED**, that the Fiscal Affairs Officer is hereby authorized and directed to make the following modifications to the Fiscal Year 2014 budget:

**FUND 1**

<u>Account No.</u>	<u>Department</u>	<u>Line</u>	<u>Change</u>
001.8020.1990.0000	Development	HUD Repayment	(\$22,826.52)
001.1325.1000.0000	Treasury	Personal Services	(\$22,173.48)
001.8050.2005.0000	Cable TV	Equipment	(\$ 5,000.00)
001.8020.4247.0000	DLDC	Allotment	\$ 50,000.00