

COMMON COUNCIL PROCEEDINGS
December 4, 2012

The meeting was called to order at 5:30 PM by Councilwoman-at-large Kiyak followed by the Pledge of Allegiance.

Present: Councilmen Michalski, Rivera, Gonzalez, Councilwoman Szukala and Councilwoman-at-large Kiyak.

Also present: Mayor Dolce, City Attorney Szot, Public Works Director Gugino, City Treasurer Woods, Fiscal Affairs Officer Briggs, Building Inspector Zurawski, Clerk, Board of Assessors Mleczko, Director of Development Neratko, Personnel Administrator Heyden, Police Chief Ortolano and Fire Chief Ahlstrom.

Certification of November 20, 2012 meeting was read by City Clerk Lawrence.

RESOLVED: That the reading of the minutes of Tuesday, November 20, 2012 be dispensed with.

Motion by Councilwoman Szukala to accept the minutes as presented. Seconded by Councilman Rivera.

Carried, all voting aye.

PUBLIC COMMENTS:

Tom Taylor, 223 Temple Street, Dunkirk, NY spoke relative to a recent article in the newspaper relative to the claim for liquidated damages without stating a figure for same.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Dolce stated that some thought is under consideration in regard to recyclables. He advised that this may be switched to every other week instead of weekly, as there is not enough picked up every week, and this would be a cost-savings measure. He also stated that the city barns are open Monday through Friday for the public, and welcomed any comments from the public on this proposal by December 11th, as this needed to be printed on the calendar for next year.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

Notice of Claim from Amstar of WNY for an outstanding payment relative to the exterior tank painting of the Benton Street Water Storage Tank.

Councilwoman Szukala stated that she was in contact with the City Attorney and Treasurer about this, and questioned if this was what Mr. Taylor was referring to, and also when we received the original claim and responded as the painting took place a year and a half ago.

City Attorney Szot stated that Public Works Gugino know more relative to the specifics of the technicalities, but there is a component of the water project, the contract was let, services were to be provided to a certain level and date, but there's a difference of opinion if the services were rendered in full, on time and according to spec. He further advised that it was completed in August 2010, and there are issues on a legal perspective on what damages, if any still exist. He explained that the project was for

\$153,300 with approximately \$53,300 not paid, and liquidated damages are a mechanism if someone breaches a contract, the party damaged can seek payment for damages, which can be hard to quantify those costs. In this case, with a contract in advance, the contractor and the city agreed to a certain set of liquidated damages, detailing in advance what the damages would be if any breaches. He further explained that there is a difference of opinion on what was done, and how and when it was done according to specifications.

Councilwoman Szukala stated although there is money to pay for completion of the project, questioned where the city was involved with the Attorney for Amstar doing the work, where Hill Engineering fit into this, and if there was any language for penalties if not paid on time on top of what is already owed them.

City Attorney Szot advised that Hill Engineering oversaw the project and gave us the oversight relative to where it resolved itself, this is yet to be determined, and a lot of legal issues need to be clarified relative to the payment and penalties.

Councilman Gonzalez stated that some parts of this were not completed; we were still paying the balance, and questioned the punch list.

City Attorney Szot stated that at some point the job was done on time to spec, and they believe they are entitled to a certain payment, but our Engineers state that this was not correct.

Councilman Michalski requested additional pages of the claim with the amount.

Councilman Rivera questioned if this came under the Consent Order, and if the work was completed. Public Works Gugino advised that the Benton tank was under the Consent Order, and as far as completion; their contention is yes and ours is no. Public Works Gugino explained that there is a timeline involved, and this involves the crux with the legal issue.

Councilwoman Szukala moved to refer this claim to the City Attorney. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Petition from the Washington Park Action Restoration Committee (PARC) to use the perimeter of Washington Park for horse & wagon rides on December 14th from 6:00 to 9:00 PM.

Councilwoman Szukala questioned if this was for two separate organizations for the park, and if Chautauqua Opportunities was responsible for all costs incurred, if a separate rider was needed for insurance.

Director of Development Neratko advised that the insurance would be provided to the city this week, COI would be covering both organizations, and there were two events with the horse/carriage rides on Friday.

Councilman Gonzalez advised that he belonged to this Committee, and informed that they will not be having the horse/carriage rides as funds could not be secured, and everything would be held at the Methodist Church, but they did need the sign.

Councilman Rivera moved that permission be granted if the horses are provided, permission to hold this event contingent on liability insurance for both entities, and to clean the park/streets afterwards with referral to Public Works, City Attorney and the Police & Fire Departments.

Carried, all voting aye.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:

Councilman Michalski advised that there will be a Finance Committee Meeting on December 10th at 4:00 PM in the Conference Room. He further advised that he would be giving the local HUD Department (Buffalo) a call for some guidance, or for a Representative to help with our reply on the audit done for CDBG.

Councilman Rivera advised that there will be a Personnel Committee Meeting on December 18th at 10:00 AM, and he will be sending out invitations to certain individuals as well.

Councilman Rivera also thanked Building Inspector Zurawski for multiple houses disappearing in the last couple months and getting this done. He also thanked Public Works Director Gugino for picking up the leaves this past month with such a thin crew.

Relative to the leaves, Public Works Director Gugino advised that First Ward was just finished, Fourth Ward would be done tomorrow completing the first sweep, and a final sweep of the city would be done after this for one-time only.

Councilman Gonzalez advised that a Public Works Committee Meeting would be held on January 2, 2013, and he would address issues with Building Inspector Zurawski.

Councilman Gonzalez also addressed the Police Chief relative to a house near School #3 where this may be a potential drug area, and needed to be addressed.

Councilwoman Szukala advised of a set of shoes on the line at Lincoln & Talcott Streets, and advised of a Neighborhood Watch Meeting tomorrow at the Sr. Center at 7:00 PM, inviting anyone with suggestions/ideas to attend. She further addressed the Public Works Director in regard to the sign making machine. Public Works Director Gugino advised that he told Streets Supervisor Mike Porpiglia to do the purchase order, as he was in touch with the Software Company, and the funds were available for the end of the year.

Councilwoman Szukala also addressed the Mayor in regard to the progress on the seawall, and if there was any response yet in regard to assistance for this.

Mayor Dolce advised that there was no response yet, that we need a little help as far as a grant, and we could fund the rest from our operating budget. He advised that the permit expires next year, and this is something we need to fund from the operating budget rather than looking to bond.

Councilwoman Szukala advised of an e-mail she received in regard to leaves, informing that this person thought it was a nice process in the past, that everyone in the city is not working on financial problems, that this area (4th Ward) was not picked up in quite some time, and his bags were out for five weeks now. It was suggested that someone from the city contact the radio station in the morning to let him know where the trucks are. She stated that hopefully Fourth Ward will be addressed in the near future.

Councilwoman Szukala also suggested that the two smallest garbage pick-up days be combined instead of recycling. Mayor Dolce advised that this was not a set thing; these were only observations as there simply aren't that many recyclables out there.

Councilwoman Szukala addressed Development Director Neratko relative to a CDBG report in regard to \$2,678.32 in late fees and interest on the Bertges property. She questioned if this was a timing issue, if these fees would be seen in the future, and if we did not have the money there should be a plan for payments.

Director of Development Neratko advised that this was just a timing issue, the payment was due in September, and we did not have the CDBG funds at that time. He advised that they looked at alternative sources for this fix, but it wasn't feasible with the time frame, and payments had to be made. He explained that this is DLDC owned property, and the city cannot pay on their behalf, and the alternative would be to get a short-term loan from the bank. He advised that generally we receive CDBG funds in May or June each year, this was a different situation this year, and will make sure to pay on time and look into other options as well.

Mayor Dolce also informed that there was a new Clearing House handling the grants therefore it took time to retrieve information as there were no passwords or log-in information available. He further stated that this took time on a day-to-day basis to see if we were updated to the system.

Councilwoman-at-large Kiyak addressed the Public Works Director in regard to the change in picking up the leaves this year in comparison to last year, and if this would happen next year.

Public Works Director Gugino stated that he did not have the same staff available this year due to a medical/retirement in the Streets Department, one in the Parks Department, and there was a relocation of employees from the Streets to the Parks Department. He explained that we were down four people, and this year he used the Parks Department crew to help in the Street Department, but was still down by two men. He further advised that there was no schedule for leaves, this was not on the recyclable calendar, and this was based on nature. He also explained why we started 1 week later this year, the decrease in manpower, and the difference between this year and years past. He also agreed with the Mayor's suggestion relative to recycling, as this would help in training them for things like leaf pick-up or snow removal.

Councilwoman-at-large Kiyak also questioned the fourteen hours of overtime during the week of November 24th with no rain, snow or sleet, and the amount of salt that was dumped on bare roads, and the amount of overtime to expect for a major storm.

Public Works Director Gugino explained the procedure that must be followed when calls are made to the Mayor, Police Chief or himself if there are any dangerous/slippery conditions, and the consequences that could follow if nothing was done. He stated that major overtime may be a natural thing to happen, they do not look to go out on overtime, but streets must be clear and safe for school, bus and emergency issues. He further explained how they do a third-watch snow watch every year, which takes care of a lot of overtime by repositioning men, and has saved the city money over the last five years. He further advised of what may have to be done if there's a bad snow storm without the manpower, but he is always looking at ways to save money and be efficient, although more challenging each year. He also stated that until told different, he would continue protecting the city, liability issues, and safety of the public.

Councilwoman-at-large Kiyak advised of an Economic Development Committee Meeting on December 18th at 11:00 AM in the Conference Room.

PRE-FILED RESOLUTIONS:

RESOLUTION #109-2012
DECEMBER 4, 2012

BY COUNCILMAN MICHALSKI:

AWARDING BIDS FOR YEAR 2013 REQUIREMENTS OF TREATMENT CHEMICALS FOR THE WATER POLLUTION CONTROL AND WATER TREATMENT FACILITIES

WHEREAS, sealed bids for the furnishing of water and wastewater treatment chemicals were opened and read aloud in the Dunkirk City Clerk's Office at 10:00 a.m. on November 26, 2012, for chemicals which were determined to be rejected and re-bid in accordance with Resolution #88-2012, now, therefore, be it hereby

RESOLVED, that the following bids be accepted for furnishing year 2013 water and wastewater treatment chemicals:

| <u>Bidder</u> | <u>Item</u> | <u>Cost</u> |
|---|--|---|
| Kemira Water Solutions, Inc. 3211 Clinton Parkway Court Lawrence, Kansas 66047 | Poly-Aluminum Chloride (WTP) | \$990.00per dry ton |
| Amrex Chemical Company, Inc. 117 E. Frederick Street P.O. Box 642 Binghamton, NY 13902 | Aqua Ammonia Solution (WPCF) Phosphoric Acid (WPCF) | \$ 0.275 per pound NH ₄ OH \$ 0.590 per pound |

and, be it further

RESOLVED, that the Mayor is authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, with each of the above-named vendors, for the purchase of such treatment chemicals for the Water Pollution Control and Water Treatment Facilities, and that the City Clerk is hereby authorized to return the bid deposits of the bidders in accordance with the contract specifications.

Public Works Director Gugino advised that these were re-bid, and we got what we wanted.

Vote on resolution: Carried, all voting aye.

RESOLUTION #110-2012
DECEMBER 4, 2012

BY THE ENTIRE COUNCIL:

**AUTHORIZING ENGINEERING AGREEMENT FOR EAST SIDE WATER PROJECT
(NUSSBAUMER & CLARKE, INC.)**

WHEREAS, the City of Dunkirk continues to explore additional opportunities for the sale of water and a proposal has been made to study the possibility of supplying water east along Route 5 through to the Village of Silver Creek; and

WHEREAS, the City of Dunkirk, Town of Dunkirk, Town of Sheridan and Village of Silver Creek have been provided a proposal for such study for a lump sum fee of Three Thousand Nine Hundred Dollars and Zero Cents (\$3,900.00), to be divided equally among the four (4) communities; now, therefore, be it

RESOLVED, the Mayor is hereby authorized and directed to execute all necessary documents to be a participant with the Town of Dunkirk, Town of Sheridan and Village of Silver Creek in an engineering proposal to study the possibility and costs of supplying City water along Route 5 eastward to the Village of Silver Creek with **Nussbaumer & Clarke, Inc.**, 3556 Lake Shore Road, Suite 500, Buffalo, New York 14219-1494, in an amount not to exceed Nine Hundred Seventy-Five Dollars and Zero Cents (\$975.00) with the funds for such expense to be charged to:

002-8320-4736 Water Purification/Pumping – Contracted Services \$975.00

Councilwoman-at-large Kiyak requested to go on record stating "that she was the biggest proponent for consolidating/offering/merging services however we can involve the communities around us. I am for. . .(with that said) looking at moving forward with this opportunity, I feel that the City of Dunkirk is the one possessing the asset. The fact that we're spending \$16.7 million on upgrading our Water Treatment Plant, I would think that the services that we're providing for the communities definitely covers whatever cost is involved in these studies. I don't feel that we should be participating in the cost of the study of providing the services that we will be." She therefore advised that she would be voting "no" on this resolution.

Councilwoman Szukala stated that the small amount we are putting forward for the study update could bring more in the future if we provide our water to Silver Creek and outlying communities. She stated that the fee was nominal in comparison to providing water to those communities.

Councilman Michalski stated that this was a fantastic thing, what we should be able to do, and we still want to be involved in the Chadwick Bay Water District. He further stated that no one is going to pay our bills, we cannot wait as we are trying to make ends meet right now, and "hats off" to the current Administration for looking into this and reaching out to Silver Creek in the meantime.

Councilman Rivera stated that he received numerous calls about raising taxes and what the city will do about this. He stated that for this small amount of money, it could turn into more than people realize.

Councilman Gonzalez stated that other municipalities are paying higher rates to Erie County, and this was an opportunity for us to do something that will make money for the city, and a win-win situation.

Councilwoman-at-large Kiyak stated that it was not that she didn't want the service provided to Silver Creek, but that she disagreed with the city footing the bill, as we are providing the service, and no one is helping with the 16.7 million. She felt that all the others will reap the benefits, and the city taxpayers are paying the bill. She stated that she was all for them coming in, but not for the city paying the \$975.00.

Mayor Dolce thanked Public Works Director Gugino for getting the meeting together with the four municipalities. He stated that we need to see where we are at, and the update of the study was an extremely minimal cost. He further stated that there may be some investment on the city's end, but this would be a potential revenue source for decades to come. Mayor Dolce also stated that this study may enable a quick turn around as the heavy leg work was done in 2004 & 2005, and once all the Boards

approve this we should know the cost in about six weeks. He thanked Council for their support, as well as the other towns and villages.

Vote on resolution: Ayes: Councilman Michalski, Rivera, Gonzalez and Councilwoman Szukala. No: Councilwoman-at-large Kiyak. Carried.

RESOLUTION # 111-2012
DECEMBER 4, 2012

BY ENTIRE COUNCIL:

**AUTHORIZING RELEASE AND SETTLEMENT – Masonic Temple
(Empire Building Diagnostics, Inc.; Robert K. Lesser)**

WHEREAS, as a result of the devastating fire to the Masonic Temple Building (February 2010), the City of Dunkirk (the “City”) engaged the services of Empire Building Diagnostics, Inc. to undertake emergency work (including the removal of unstable walls to a safe level/height and the preparation of the Building to allow the City’s Fire Department personnel safe, appropriate and adequate access to successfully attack and extinguish the fire); and,

WHEREAS, such services were provided at the City’s request; and,

WHEREAS, a demand has been made to the City for payment for such services in the amount of Sixty-Four Thousand Three Hundred Ninety-Seven Dollars and Twenty-One Cents (\$64,397.21); and,

WHEREAS, the Dunkirk City Code provides that costs incurred in performance of such emergency work shall be paid by the City, with recovery from the property owner to be undertaken by the City; and,

WHEREAS, negotiations have been undertaken to settle the dispute among the City, the contractor and the property owner; and,

WHEREAS, it is in the best interests of the City to resolve the dispute among the City, the contractor and the property owner, in an attempt to avoid the large expense and uncertainty of litigation; now, therefore, be it

RESOLVED, that the Mayor is hereby authorized and directed to execute any documents and releases with Empire Building Diagnostics, Two Main Street, Depew, New York 14043, and Mr. Robert K. Lesser, One Eliot Plaza, Fairfield, CT 06824, and to resolve the dispute in an amount not to exceed Two Thousand Five Hundred Dollars and Zero Cents (\$2,500.00); and, be it further

RESOLVED, that the Fiscal Affairs Office and City Treasurer make appropriate budget modifications as follows:

Charge: 001-1900-1930 Judgments/Claims

| | | |
|----------|---------------|-------------|
| Decrease | 001-1900-1990 | \$2,500.00 |
| Increase | 001-1900-1930 | \$2,500.00. |

Councilwoman Szukala stated that she was happy to see it going this way, and thanked City Attorney Szot for making this a reality.

Councilman Rivera stated that this can be put to rest, and commended the Mayor and City Attorney.

Vote on resolution: Carried, all voting aye.

RESOLUTION #112-2012
DECEMBER 4, 2012

BY ENTIRE COUNCIL:

**AUTHORIZING CHANGE FOR
FIRST JANUARY 2013 COMMON COUNCIL MEETING**

WHEREAS, the Common Council wishes to change the date of their first meeting in January, 2013, and

WHEREAS, the Tuesday, January 1, 2013 meeting will be changed to Wednesday, January 2, 2013, because of the New Year's Day holiday, now, therefore, be it

RESOLVED, that the Tuesday, January 1, 2013 Common Council Meeting shall be re-scheduled to Wednesday, January 2, 2013

Carried, all voting aye.

RESOLUTION #113-2012
DECEMBER 4, 2012

BY THE ENTIRE COUNCIL:

AUTHORIZING BUDGET LINE TRANSFERS

WHEREAS, the City utilized in-house resources for certain "clerk of the works" services for the First Ward Water Waterline Project in order to reduce the costs to rate-payers; and,

WHEREAS, certain overtime expenses for such services were temporarily charged to a Department of Public Works Account in Fund One and transfers need to be made to accommodate the proper allocation for such expenses; and,

WHEREAS, such transfers are being recommended by the DPW Director as being reasonable and appropriate expenses of the First Ward Waterline Project; now, therefore, be it

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make certain budgetary changes as follows:

| <u>Account</u> | | <u>Debit</u> | <u>Credit</u> |
|--------------------|--------------------------|--------------|---------------|
| 015-8320-5042-8050 | First Ward Water Line | \$8,222.05 | |
| 015-0015-5031 | Fund Transfer | | \$8,222.05 |
| 001-0001-5031 | Fund Transfer | \$8,222.05 | |
| 001-1490-1001 | Pers Services – Eng – OT | | \$8,222.05 |

Councilwoman Szukala questioned if this payment for overtime was from the waterline project, transferring from one fund to another, and not coming out of the General Fund.

City Treasurer Woods advised that this was a reimbursement for accumulated overtime, and saved the city money by using an employee.

Vote on resolution: Carried, all voting aye.

RESOLUTION #114-2012
DECEMBER 4, 2012

BY THE ENTIRE COUNCIL:

**AUTHORIZING PARTNERSHIP AGREEMENT
(21st CENTURY COMMUNITY LEARNING CENTERS PROGRAM)**

WHEREAS, the Dunkirk City School District (the “District”) and the City have in the past partnered to participate in the 21st Century Community Learning Centers Program to provide academic and recreational activities for students in the District; and,

WHEREAS, the District has again requested that the City join in participating in the Program which provides outreach to disengaged and disenfranchised youth, and which would provide a grant of Ten Thousand Dollars and Zero Cents (\$10,000.00); now, therefore, be it

RESOLVED, that the Mayor is hereby authorized and directed to execute a Partnership Agreement for the City’s participation with the Dunkirk City School District for the 21st Century Community Learning Centers Program at Dunkirk High School for the 2012-2013 school year, and to accept and utilize funds in the amount of Ten Thousand Dollars and Zero Cents (\$10,000.00); and, be it further

RESOLVED, that the Fiscal Affairs Officer is hereby directed to create the appropriate accounts and/or to make the necessary budget line modifications to properly account for the receipt and use of the monies for the 21st Century Community Learning Centers Program.

Carried, all voting aye.

RESOLUTION #115-2012
DECEMBER 4, 2012

BY THE ENTIRE COUNCIL:

AUTHORIZING NYSDEC QUICK START ARBOR DAY GRANT ACCEPTANCE

WHEREAS, by Resolution No. 52.-2012, the Dunkirk Common Council approved and endorsed the City's application for a Quick Start Arbor Day Grant under the Urban and Community Forestry Program through the New York State Department of Environmental Conservation for a project located within the community; and

WHEREAS, such application was approved and grant funds of One Thousand Dollars and Zero Cents (\$1,000.00) have been awarded to the City for this Program, enabling the planting of trees on the 100 and 200 blocks of Central Avenue and for an educational Arbor Day Event at Bicentennial Park; now, therefore, be it

RESOLVED, that the Mayor is hereby authorized to execute any and all contracts and related documents with the NYS Department of Environmental Conservation to accept and utilize funds in the amount of One Thousand Dollars and Zero Cents (\$1,000.00) for the Quick Start Arbor Day Grant; and, be it further

RESOLVED, that the Fiscal Affairs Officer is hereby directed to create the appropriate accounts and/or to make the necessary budget line modifications to properly account for the receipt and use of the monies for the Quick Start Arbor Day Grant Program.

Councilwoman-at-large Kiyak questioned where the responsibility lies of watering the trees.

Director of Development Neratko advised that it would have to be determined.

Councilman Rivera asked if this had to be applied for each year.

Director of Development Neratko advised that this was a "Quick Start", being a one-time only grant opportunity entered as an Arbor Day Community, and we are eligible for future funds (part of the \$1,000).

Public Works Director Gugino acknowledged the Lions Club (especially Mr. Watson) for donating ten Hickory and Ash trees for the Point Gratiot area. He advised that they will come and plant the trees with our Parks Department personnel on Thursday.

Vote on resolution: Carried, all voting aye.

Councilwoman Szukala moved to adjourn. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Adjourned at 6:26 PM

Lacy Lawrence, City Clerk
