

**COMMON COUNCIL PROCEEDINGS**  
**August 1, 2011**

The meeting was called to order at 6:13 PM by Councilman-at-large Dolce followed by the Pledge of Allegiance.

Present: Councilmen Michalski, Muldowney, Councilwoman Szukala and Councilman-at-large Dolce.

Also present: Mayor Frey, City Attorney Cerrie, Public Works Director Gugino, City Treasurer Woods, Fiscal Affairs Officer Curtin, Building Inspector Zurawski, Clerk, Board of Assessors Mleczko, Fire Chief Ahlstrom and Police Chief Ortolano.

Absent: Personnel Administrator Roger Heyden.

Councilman-at-large Dolce excused Councilwoman Rose Floramo and Development Director Kory Ahlstrom from tonight's meeting.

Certification of July 19, 2011 meeting was read by City Clerk Mleczko.

Councilwoman Szukala advised council received these minutes this afternoon and inquired if they had to approve them now, or could council approve them at the next council meeting.

Mayor Frey advised due to scheduled vacations the Clerk's office has been busy.

City Clerk Mleczko also noted tonight's council meeting was pushed up one day from its normal scheduled meeting day.

Councilwoman Szukala advised she was sure the minutes were correct but did not want to approve the minutes without having the chance to read them.

Councilman-at-large Dolce advised council to read the minutes now during this meeting.

**RESOLVED:** That the reading of the minutes of Tuesday, July 19, 2011 be dispensed with.

Motion by Councilman Michalski motioned to accept the minutes as presented. Seconded by Councilman Muldowney.

Carried, all voting aye.

**PUBLIC COMMENTS:**

Dick Mirth, 119 E. Green Street, Dunkirk, New York, stated he is a civil engineer and spoke in regard to the Lake wall project. Mr. Mirth advised in 2006 he wrote a paper on the repair of the Dunkirk Harbor Walls which he presented at a Forensic Engineering Conference in Cleveland, Ohio. Mr. Mirth advised he reviewed the 2007 report prepared by Hill Engineering and stated the paper covered all the important aspects except the sections that were undercut. Mr. Mirth continued "the City has already repaired the worst part of that wall and I looked at the repairs yesterday and they're holding up fine." Mr. Mirth advised the engineer's letter states the

sewer line and deep sewer line might be damaged if the wall fails; this is an extremely low possibility according to Mr. Mirth. "The chance of failure of the wall is near zero and I think the amount that he is talking about is a pretty expensive insurance policy for a chance of zero failure" and suggested with several small repairs costing \$100,000.00 – 150,000.00 the wall is good for another 80 years. Mr. Mirth stated no matter what fund pays for the wall, whether it is the water or sewer fund it still costs money; the wall is still functional and that the city should not spend 1.9 million to repair the wall. Mr. Mirth suggested Resolution #48 on tonight's agenda be reduced to 1.5 million to cover the street work and the wall should be left alone.

Jim Pasierb, 66 N. Jerboa Street, Dunkirk, New York inquired about the status of Resolution 18-2011 Pangolin Street Development and item #4 - Privilege of the Floor on council's agenda. Mr. Pasierb advised he would like Privilege of the Floor extended again at the end of the agenda to give audience member the privilege to speak on the comments of the council.

Councilman-at-large Dolce advised Development Director Ahlstrom was not present at tonight's meeting and asked City Attorney Carrie for a response.

City Attorney Carrie spoke in regard to the second part of Mr. Pasierb's question; advised council is entitled to amend the procedure of Privilege of the Floor if they chose to do so but suggested rules be established for the second Privilege of the Floor as there are rules established for the first portion of Privilege of the Floor. City Attorney Carrie further suggested new subject matter should be discussed during the second Privilege of Floor to avoid repeats or repetition and stated this decision is up to the council.

Councilman-at-large Dolce advised council could discuss this.

Councilman-at-large Dolce advised he was trying to contact Development Director Ahlstrom regarding the Pangolin Street Development Project.

City Attorney advised there are no new developments since the last meeting regarding the Pangolin Street Development Project.

Mayor Frey advised he was still waiting to hear from the Pangolin Street Group to schedule a meeting with them.

Arlene Langendorfer, 86 E. Pine Street, Dunkirk, New York advised Mayor Frey the group is not interested in meeting with him.

Edna Sek, 7 Lakefront Boulevard, Dunkirk, New York, advised she recently attended a County Legislator's meeting held at the Clarion Hotel in Dunkirk. Mrs. Sek stated she addressed the Legislator's regarding the Department of Social Services offices not returning to Dunkirk and advised they listened to what she had to say but no one gave her an answer. Mrs. Sek advised we have three legislators and we should ask them why they are not working harder on this situation. Mrs. Sek further advised it was very important to get these offices and workers back in Dunkirk; "I'm tired of Dunkirk being at the end of the stick, we're always last one on the totem pole" and ignored. Mrs. Sek asked Mayor Frey and Council to send another letter to County Executive Edwards and advised that she heard that County Executive Edwards supposedly made the remark "those offices will never come back to Dunkirk." Mrs. Sek stated she will continue to work as hard as she can on getting those offices back in Dunkirk.

Mayor Frey replied he will be meeting with a developer within the next week to 10 days and that this issue has not been placed on the back burner.

**COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:**

On behalf of the City, Mayor Frey extended condolences to Roger and Paul Heyden on the recent death of their mother.

**COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:**

Notice of Claim from Raymond A. Grant Jr. for damages to his vehicle allegedly due to a city tree limb falling on vehicle.

Councilman Muldowney motioned to refer this to the City Attorney's Office. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Prior notice from Stephen Cooley informing of a dangerous tree at the corner of E. Pine Street and Armadillo Street.

Councilwoman Szukala motioned to refer this to the City Attorney and DPW. Seconded by Councilman Michalski.

Carried, all voting aye.

Petition from Friendship Missionary Baptist Church Gospel Choir requesting permission to use Washington Park on Saturday August 20<sup>th</sup> from Noon until 9:00 PM for a gospel singing program.

Councilman Michalski motioned that permission be granted and referred this to the DPW and PBA. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Petition from Alan Gens, Assistant Principal/Director of Athletics of DHS requesting police coverage (2 officers plus School Resource Officer) for the following football games: Saturday Septmber 3<sup>rd</sup>, Friday September 23<sup>rd</sup>, Friday September 30<sup>th</sup>, Friday October 14<sup>th</sup> from 7:00 PM until 10:00 PM and October 21<sup>st</sup> and 28<sup>th</sup> for Potential Home Playoff Games (times to be determined). Also, requesting permission to hold Homecoming Parade on Friday, September 30<sup>th</sup> at 5:30 PM with the parade route beginning at the parking lot on Marauder Drive and ending at the football field on Sixth Street.

Councilman Muldowney motioned that permission be granted and referred this to the PBA. Seconded by Councilman Michalski.

Carried, all voting aye.

Loudspeaker application from Iglesia Getsemani A.G. requesting permission to use loudspeakers at 115 Central Avenue on August 27<sup>th</sup> from Noon until 6:00 PM for their "Christian Fair."

Councilman Michalski motioned that permission be granted contingent upon the group choosing a 4 hour time frame and notifying the City Clerk's Office of the hours chosen. Councilman Michalski referred this to the PBA. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Loudspeaker application from Friendship Baptist Gospel Choir requesting permission to use loudspeakers in Washington Park on August 20<sup>th</sup> from 2:00 PM until 6:00 PM for their Gospel Fest.

Councilman Muldowney motioned that permission be granted. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Petition from Joseph & Susan Gullo III requesting to use the corners of Central Avenue and Fourth Street on Friday, September 2<sup>nd</sup> from 9:00 AM until 4:00 PM and Doughty Street, in front of Fire Hall, near the corner of Rt. 60 on September 3<sup>rd</sup> and 4<sup>th</sup> from 8:00 AM until 4:00 PM for their annual "Muscular Dystrophy Boot Drive."

Councilwoman Szukala motioned that permission be granted and referred this to PBA and DPW. Seconded by Councilman Michalski.

Carried, all voting aye.

#### **REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:**

Councilman Michalski had nothing to report at this time.

Councilman Muldowney advised Police Chief Ortolano that he needs to speak to him regarding a sign.

Councilwoman Szukala wished Councilwoman Floramo a speedy recovery and stated she hopes that Rose is back soon.

Councilwoman Szukala advised residents National Night Out will be held tomorrow evening in Washington Park.

Councilwoman Szukala informed Mrs. Sek she sent letters to the Congressman, Senator, and County Executive Edwards several months ago suggesting the County use the old unemployment office on Lake Shore Drive for county offices.

Mrs. Sek asked Councilwoman Szukala if she received any answers from these individuals.

Councilwoman Szukala advised she did not receive any answers from these individuals, and stated the building has since been occupied by another tenant.

Councilman-at-large Dolce advised the next Finance Meeting will be held Monday, August 8<sup>th</sup> at 5:30 PM.

**PRE-FILED RESOLUTIONS:**

**RESOLUTION #45-2011**  
**August 1, 2011**

**By: ENTIRE COUNCIL**

**AUTHORIZING AGREEMENT WITH  
CHAUTAUQUA COUNTY OFFICE FOR THE AGING  
FOR SENIOR SERVICES**

**WHEREAS**, the City of Dunkirk provides a program of services for the elderly through the Dunkirk Senior Citizens Center, and

**WHEREAS**, Chautauqua County's Office for the Aging sponsors programs and services for the elderly on a county-wide basis, and

**WHEREAS**, the County desires to use space in the Dunkirk Senior Citizens Center to be used by County employees or other assigned staff to provide counseling, information and referral services to senior citizens, and

**WHEREAS**, the City and County desire to enter into a continuation agreement whereby the County would provide financial assistance to the City to help defray the cost of cleaning, janitorial, maintenance and utilities in the Senior Center; now, therefore, be it

**RESOLVED**, that the Mayor be, and hereby is, authorized and directed to execute an agreement with the County of Chautauqua Office For The Aging, on behalf of the City of Dunkirk, for reimbursement of certain expenses incurred in the provision of Senior Citizen services, in an amount not to exceed Three Thousand Five Hundred Dollars (\$3,500.00) at the rate of Eight Hundred Seventy-Five Dollars (\$875.00) for each quarter, payable in advance, for the period April 1, 2011 to March 31, 2012, to be appropriated to Account #001-0001-2351 Programs For Aging.

Carried, all voting aye.

**RESOLUTION #46-2011**  
**August 1, 2011**

**BY: COUNCILWOMAN SZUKALA**

**AUTHORIZATION TO REJECT AND RE-BID THE 2011  
COLD MILLING AND ASPHALTIC CONCRETE PLACEMENT CONTRACT BIDS**

**WHEREAS**, sealed bids were received and opened on July 25, 2011, for the 2011 Cold Milling and Asphaltic Concrete Placement Contract with two (2) bids being received, and

**WHEREAS**, after said bid opening, a discrepancy was found in the bid documents which requires clarification, now, therefore, be it

**RESOLVED**, upon the review and recommendation of Director of Public Works Gugino, that all bids for the 2011 Cold Milling and Asphaltic Placement Contract as opened on July 25, 2011, be rejected and that the Department of Public Works is authorized to re-bid said contract, and, be it further

**RESOLVED**, that the City Clerk is hereby authorized to return the bid deposits of the bidders in accordance with the contract documents.

Carried, all voting aye.

**RESOLUTION #47-2011**  
**August 1, 2011**

**BY: ENTIRE COUNCIL**

**AUTHORIZING AWARD OF BID FOR THE CONSTRUCTION OF THE  
WILLOWBROOK AVENUE ELEVATED WATER STORAGE TANK**

**WHEREAS**, the New York State and Chautauqua County Departments of Health have required that the City make improvements to the City's water treatment and distribution systems to conform to current standards and water supply needs, and

**WHEREAS**, one such requirement is the replacement of the Willowbrook Avenue water storage tank, and

**WHEREAS**, sealed bids for the replacement of the storage tank were received and opened on July 7, 2011 at 2:00 PM local time, with four (4) bidders responding, now, therefore, be it

**RESOLVED**, upon the review and recommendation of Director of Public Works Gugino and the City's retained consultant, Hill Engineering, Inc., that the low bid of Caldwell Tanks, Inc., 4000 Tower Road, Louisville, KY 40219, be accepted in the amount of \$2,653,000.00 for Alternate Bid #1 – Minimum 2.0 Million Gallon Composite Tank, be accepted, and, be it further

**RESOLVED**, that the Mayor is hereby authorized and directed to execute any necessary documents on behalf of the City of Dunkirk with Caldwell Tanks, Inc., for the

above described construction in accordance with the bid documents and that funding shall be allocated from Fund Account 015-8320-5041-8049, and, be it further

**RESOLVED**, that the City Treasurer and Fiscal Affairs Officer be directed to create the necessary credit/debit accounts necessary for this construction, and, be it finally

**RESOLVED**, that the City Clerk is hereby authorized to return the bid deposits in accordance with the contract documents.

Carried, all voting aye.

**RESOLUTION #48-2011**  
**AUGUST 1, 2011**

**BY: ENTIRE COUNCIL**

**A BOND RESOLUTION, DATED AUGUST 1, 2011, OF THE COMMON COUNCIL OF THE CITY OF DUNKIRK, CHAUTAUQUA COUNTY, NEW YORK (THE "CITY"), AUTHORIZING OF IMPROVEMENTS TO THE LAKEFRONT BOULEVARD BEACH WALL, AT A MAXIMUM ESTIMATED COST NOT TO EXCEED \$3,450,000, AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$3,450,000, PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE SAID PURPOSE, SAID AMOUNT TO BE OFFSET BY ANY FEDERAL, STATE, COUNTY AND/OR LOCAL FUNDS RECEIVED, AND DELEGATING THE POWER TO ISSUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE SALE OF SUCH BONDS TO THE CITY TREASURER.**

**WHEREAS**, it has been determined that the Lakefront Boulevard Beach Wall, by inspection of the City's retained consultant Hill Engineering, Inc., is deteriorating to the extent that it is threatening failure. Should it fail, an emergency situation would exist, seriously jeopardizing the City's water, wastewater, and other infrastructure systems; and

**WHEREAS**, the Common Council of the City of Dunkirk, Chautauqua County, New York (the "City"), has determined that the improvements to the Lakefront Boulevard Beach Wall (collectively, the "Project"), is in the best interest of the public, health, safety, and well being; and

**WHEREAS**, the Common Council desires to issue obligations of the City to finance the costs of the Project; now, therefore, be it

**RESOLVED**, by the Common Council (by the favorable vote of not less than two-thirds of all the members of the Council) as follows:

**SECTION 1.** The specific purpose (hereinafter referred to as “purpose”) to be financed pursuant to this resolution is improvements to the City’s Lakefront Boulevard Beach Wall, including but not limited to, all preliminary work and necessary equipment, materials and site work and any preliminary costs and costs incidental thereto. The maximum cost of said purpose will not exceed \$3,450,000.

**SECTION 2.** The Common Council plans to finance the maximum estimated cost of said purpose by the issuance of serial bonds in an amount not to exceed \$3,450,000 of said City, hereby authorized to be issued therefore pursuant to the Local Finance Law, said amount to be offset by any federal, state, county and/or local funds received. Re-payment of the obligations is to be equally divided (50/50) between the Water and Wastewater Funds. Unless paid from these sources (including without limitation, user charges paid by the owners of properties on which water meters are installed), the cost of such acquisition is to be paid by the levy and collection of taxes on all real property in the City to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

**SECTION 3.** It is hereby determined that said purpose is an object or purpose described in subdivision 1 of paragraph (a) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of said purpose is 40 years.

**SECTION 4.** Current funds are not required to be provided prior to the issuance of the bonds authorized by this resolution or any notes issued in anticipation of the sale of said bonds.

**SECTION 5.** It is hereby determined the proposed maturity of the obligations authorized by this resolution will be in excess of five years.

**SECTION 6.** The faith and credit of said City are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. Unless paid from other sources (including without limitation, user charges paid by the owners of properties on which water meters are installed), there shall annually be levied on all the taxable real property of the City a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.



**SECTION 7.** Subject to the provisions of this resolution and of the Local Finance Law, pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals of said notes and of Section 21.00, Section 50.00, Sections 56.00 to 60.00, Section 62.00 and Section 63.00 of the Local Finance Law, the powers and duties of the Common Council pertaining or incidental to the sale and issuance of the obligations herein authorized, including but not limited to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation notes issued in anticipation of said bonds, and the renewals of said notes, are hereby delegated to the City Treasurer, the chief fiscal officer of the City.

**SECTION 8.** The temporary use of available funds of the City, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Local Finance Law, for the purpose or purposes described in Section 1 of this resolution. The City then reasonably expects to reimburse any such expenditures (to the extent made after the date hereof or within 60 days prior to the date hereof) with the proceeds of the bonds authorized by Section 2 of this resolution (or with the proceeds of any bond anticipation notes issued in anticipation of the sale of such bonds.) This resolution shall constitute the declaration of the City's "official intent" to reimburse the expenditures authorized by Section 2 hereof with such bond or note proceeds, as required by United States Treasury Regulations Section 1.150-2.

**SECTION 9.** The City Treasurer is further authorized to take such actions and execute such documents as may be necessary to ensure the continued status of the interest on the bonds authorized by this resolution, and any notes issued in anticipation thereof, as excludable from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and to designate the bonds authorized by this resolution, and any notes issued in anticipation thereof as "qualified tax-exempt bonds" in accordance with Section 265(b)(3)(B)(i) of the Code.

**SECTION 10.** The City Treasurer is further authorized to enter into a continuing disclosure agreement with the initial purchaser of the bonds or notes authorized by this resolution, containing provisions which are satisfactory to such purchaser in compliance with the provisions of Rule 15c2-12, promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

**SECTION 11.** The City has complied in every respect with all applicable federal, state and local laws and regulations regarding environmental matters, including compliance with the New York State Environmental Quality Review Act ("SEQRA"), comprising Article 8 of the Environmental Conservation Law and, in connection therewith, duly issued a negative declaration and/or other applicable

documentation, and therefore, no further action under the State Environmental Quality Review Act is necessary.

**SECTION 12.** The validity of said serial bonds or of any bond anticipation notes issued in anticipation of the sale of said serial bonds may be contested only if:

- (1) (a) such obligations were authorized for an object or purpose for which the City is not authorized to expend money, or
- (b) if the provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication; or
- (2) such obligations were authorized in violation of the provisions of the Constitution of New York.

**SECTION 13.** The City Clerk is hereby authorized and directed to publish this resolution or a summary thereof, together with a notice in substantially the form provided by Section 81.00 of said Local Finance Law, in a newspaper having a general circulation in said City and hereby designated as the official newspaper of said City for such publication.

**SECTION 14.** This Project will fulfill requirements outlined in a Consent Order dated October 7, 2009, from the Chautauqua County Department of Health.

**SECTION 15.** This Resolution shall take effect immediately.

Councilman Muldowney motioned to pull this Resolution in the interest of the public and the city. Councilman Muldowney advised this will be discussed at the Finance Committee Meeting on Monday then presented again to the Council two weeks from now at the next Council meeting. Seconded by Councilwoman Szukala.

Carried, all voting aye. **Pulled.**

**RESOLUTION #49-2011**  
**AUGUST 1, 2011**

**BY: ENTIRE COUNCIL**

**A BOND RESOLUTION, DATED AUGUST 1, 2011, OF THE COMMON COUNCIL OF THE CITY OF DUNKIRK, CHAUTAUQUA COUNTY, NEW YORK (THE "CITY"), AUTHORIZING THE RECONSTRUCTION OF AND CONSTRUCTION OF IMPROVEMENTS TO THE CITY WATER SYSTEM, AT A MAXIMUM ESTIMATED COST NOT TO EXCEED \$1,800,000 AND AUTHORIZING THE ISSUANCE OF SERIAL BONDS IN AN AGGREGATE PRINCIPAL AMOUNT NOT TO EXCEED \$1,800,000, PURSUANT TO THE LOCAL FINANCE LAW TO FINANCE SAID PURPOSE, SAID AMOUNT TO BE OFFSET BY ANY FEDERAL, STATE, COUNTY AND/OR LOCAL FUNDS RECEIVED, AND DELEGATING THE POWER TO ISSUE BOND ANTICIPATION NOTES IN ANTICIPATION OF THE SALE OF SUCH BONDS TO THE CITY TREASURER.**

**WHEREAS**, it has been determined by the City's retained consultant, Hill Engineering, Inc., that the installation and replacement of water lines in the area along Lakefront Boulevard from North Main Street easterly to North Serval Street including, but not limited to, the installation of a new line along Lakefront Boulevard, and the replacement of existing intersecting side street water lines north of East Pine Street, and any associated work as found necessary; and

**WHEREAS**, the Common Council of the City of Dunkirk, Chautauqua County, New York (the "City"), has identified that the reconstruction of and construction of improvements to the City water distribution system including, but not limited to, replacement and construction, and all preliminary work and necessary equipment, materials and site work and any preliminary costs and costs incidental thereto (collectively, the "Project") is in the public welfare, safety and well being, since current system conditions in this area have resulted in low water pressure, poor water quality, and possible fire protection issues, which all jeopardize the water distribution in this area; and

**WHEREAS**, the Common Council desires to issue obligations of the City to finance the costs of the Project; now, therefore, be it

**RESOLVED**, by the Common Council (by the favorable vote of not less than two-thirds of all the members of the Council) as follows:

**SECTION 1.** The specific purpose (hereinafter referred to as "purpose") to be financed pursuant to this resolution is the reconstruction of and construction of improvements to the City water system including, but not limited to, the installation and replacement of water lines in the area along Lakefront Boulevard from North Main Street easterly to North Serval Street including, but not limited to, the installation of a new line along Lakefront Boulevard, and the replacement of existing intersecting side street water lines north of East Pine Street, and any associated work as found necessary, and all preliminary work and necessary

equipment, materials and site work and any preliminary costs and costs incidental thereto. The maximum cost of said purpose will not exceed \$1,800,000.

**SECTION 2.** The Common Council plans to finance the maximum estimated cost of said purpose by the issuance of serial bonds in an amount not to exceed \$1,800,000 of said City, hereby authorized to be issued therefore pursuant to the Local Finance Law, said amount to be offset by any federal, state, county and/or local funds received. The cost of the project to be paid from Water Fund Reveue. Unless paid from other sources (including without limitation, user charges paid by the owners of properties on which water meters are installed), the cost of such acquisition is to be paid by the levy and collection of taxes on all real property in the City to pay the principal of said bonds and the interest thereon as the same shall become due and payable.

**SECTION 3.** It is hereby determined that said purpose is an object or purpose described in subdivision 1 of paragraph (a) of Section 11.00 of the Local Finance Law, and that the period of probable usefulness of said purpose is 40 years.

**SECTION 4.** Current funds are not required to be provided prior to the issuance of the bonds authorized by this resolution or any notes issued in anticipation of the sale of said bonds.

**SECTION 5.** It is hereby determined the proposed maturity of the obligations authorized by this resolution will be in excess of five years.

**SECTION 6.** The faith and credit of said City are hereby irrevocably pledged for the payment of the principal of and interest on such bonds as the same respectively become due and payable. An annual appropriation shall be made in each year sufficient to pay the principal of and interest on such bonds becoming due and payable in such year. Unless paid from other sources (including without limitation, user charges paid by the owners of properties on which water meters are installed), there shall annually be levied on all the taxable real property of the City a tax sufficient to pay the principal of and interest on such bonds as the same become due and payable.

**SECTION 7.** Subject to the provisions of this resolution and of the Local Finance Law, pursuant to the provisions of Section 30.00 relative to the authorization of the issuance of bond anticipation notes or the renewals of said notes and of Section 21.00, Section 50.00, Sections 56.00 to 60.00, Section 62.00 and Section 63.00 of the Local Finance Law, the powers and duties of the Common Council pertaining or incidental to the sale and issuance of the obligations herein authorized, including but not limited to authorizing bond anticipation notes and prescribing the terms, form and contents and as to the sale and issuance of the bonds herein authorized and of any bond anticipation

notes issued in anticipation of said bonds, and the renewals of said notes, are hereby delegated to the City Treasurer, the chief fiscal officer of the City.

**SECTION 8.** The temporary use of available funds of the City, not immediately required for the purpose or purposes for which the same were borrowed, raised or otherwise created, is hereby authorized pursuant to Section 165.10 of the Local Finance Law, for the purpose or purposes described in Section 1 of this resolution. The City then reasonably expects to reimburse any such expenditures (to the extent made after the date hereof or within 60 days prior to the date hereof) with the proceeds of the bonds authorized by Section 2 of this resolution (or with the proceeds of any bond anticipation notes issued in anticipation of the sale of such bonds.) This resolution shall constitute the declaration of the City's "official intent" to reimburse the expenditures authorized by Section 2 hereof with such bond or note proceeds, as required by United States Treasury Regulations Section 1.150-2.

**SECTION 9.** The City Treasurer is further authorized to take such actions and execute such documents as may be necessary to ensure the continued status of the interest on the bonds authorized by this resolution, and any notes issued in anticipation thereof, as excludable from gross income for federal income tax purposes pursuant to Section 103 of the Internal Revenue Code of 1986, as amended (the "Code") and to designate the bonds authorized by this resolution, and any notes issued in anticipation thereof as "qualified tax-exempt bonds" in accordance with Section 265(b)(3)(B)(i) of the Code.

**SECTION 10.** The City Treasurer is further authorized to enter into a continuing disclosure agreement with the initial purchaser of the bonds or notes authorized by this resolution, containing provisions which are satisfactory to such purchaser in compliance with the provisions of Rule 15c2-12, promulgated by the Securities and Exchange Commission pursuant to the Securities Exchange Act of 1934.

**SECTION 11.** The City has complied in every respect with all applicable federal, state and local laws and regulations regarding environmental matters, including compliance with the New York State Environmental Quality Review Act ("SEQRA"), comprising Article 8 of the Environmental Conservation Law and, in connection therewith, duly issued a negative declaration and/or other applicable documentation, and therefore, no further action under the State Environmental Quality Review Act is necessary.

**SECTION 12.** The validity of said serial bonds or of any bond anticipation notes issued in anticipation of the sale of said serial bonds may be contested only if:

- (2) (a) such obligations were authorized for an object or purpose for which the City is not authorized to expend money, or

- (b) if the provisions of law which should be complied with at the date of publication of this resolution are not substantially complied with, and an action, suit or proceeding contesting such validity is commenced within twenty days after the date of such publication; or
- (2) such obligations were authorized in violation of the provisions of the Constitution of New York.

**SECTION 13.** The City Clerk is hereby authorized and directed to publish this resolution or a summary thereof, together with a notice in substantially the form provided by Section 81.00 of said Local Finance Law, in a newspaper having a general circulation in said City and hereby designated as the official newspaper of said City for such publication.

**SECTION 14.** This Project will fulfill requirements outlined in a Consent Order dated October 7, 2009, from the Chautauqua County Department of Health.

**SECTION 15.** This Resolution shall take effect immediately.

Councilman Michalski motioned to pull this Resolution. Seconded by Councilwoman Szukala.

Carried, all voting aye. **Pulled.**

**NEW BUSINESS:**

**RESOLUTION #50-2011**  
**NEW BUSINESS**  
**AUGUST 1, 2011**

**BY: ENTIRE COUNCIL**

**AUTHORIZING AWARD OF BID FOR THE LAKEFRONT BOULEVARD  
BEACH WALL IMPROVEMENTS – CONTRACT 3-2011: GENERAL CONSTRUCTION**

**WHEREAS**, the existing beach wall fronting Lakefront Boulevard between North Main and North Serval Streets is deteriorating to the extent that it is threatening failures to both the Lakefront Boulevard pavement, sidewalk and associated underground infrastructure, and

**WHEREAS**, the Chautauqua County and New York State Departments of Health have also recognized that the improvements to the beach wall will address consent order related water supply issues along Lakefront Boulevard, such that the beach wall

improvement contract is necessary to protect future waterline improvements as outlined in the current consent order, and

**WHEREAS**, sealed bids for the *LAKEFRONT BOULEVARD BEACH WALL IMPROVEMENTS – CONTRACT 3-2011: GENERAL CONSTRUCTION* were received and opened on July 7, 2011 at 2:00 PM local time, with four (4) bidders responding, now, therefore, be it

**RESOLVED**, upon the review and recommendation of Director of Public Works Gugino and the City's retained consultant, Hill Engineering, Inc., that the *LAKEFRONT BOULEVARD BEACH WALL IMPROVEMENTS – CONTRACT 3-2011: GENERAL CONSTRUCTION* low bid of Man O'Trees, Inc., 1500 Union Road, West Seneca, New York 14224, be awarded in the amount of \$3,450,490.55 for Base Bid-Wall "A" including Bid Alternates No. 1 & No. 2, and, be it further

**RESOLVED**, that the Mayor is hereby authorized and directed to execute any necessary documents on behalf of the City of Dunkirk with Man O'Trees, Inc., for the above described construction in accordance with the bid documents, and, be it further

**RESOLVED**, that the City Treasurer and Fiscal Affairs Officer be directed to create the necessary credit/debit accounts necessary for this construction, and, be it finally

**RESOLVED**, that the City Clerk is hereby authorized to return the bid deposits in accordance with the contract documents.

Councilman Muldowney motioned to pull this Resolution. Seconded by Councilwoman Szukala.

Carried, all voting aye. **Pulled.**

Notice of Petition from Verizon, New York, Inc. (formerly New York Telephone Company) vs. The Assessor, Board of Assessment Review and the City of Dunkirk, New York.

City Clerk Mleczko advised the city received a letter from Verizon's attorney, Patrick Raymond, confirming that the complaint filed against the city may be disregarded as inadvertent.

Councilman-at-large Dolce asked City Attorney Cerrie to explain the letter received from Verizon's attorney, Patrick Raymond.

City Attorney Cerrie explained Patrick Raymond's letter and the agreement reached with Verizon in 2010.

Carried, all voting aye.

Basic Financial Statements for the City of Dunkirk For The Year Ending December 31, 2010.

Receive and File.

**ADJOURNMENT:**

Councilman Muldowney motioned to moved to executive session. Seconded by Councilwoman Szukala.

Carried, all voting eye.

**Adjourned at 6:40 PM**

**Tom Mleczko, City Clerk**

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