

COMMON COUNCIL PROCEEDINGS**August 16, 2011**

The meeting was called to order at 6:17 PM by Councilman-at-large Dolce followed by the Pledge of Allegiance.

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

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 Mleczo, Director of Development Ahlstrom, Personnel Administrator Heyden, Fire Chief Ahlstrom and Police Chief Ortolano.

Councilman-at-large Dolce advised that Councilwoman Floramo was excused from tonight's meeting, and planned on seeing her at the next meeting.

Certification of August 1, 2011 meeting was read by City Clerk Mleczo.

RESOLVED: That the reading of the minutes of Monday, August 1, 2011 be dispensed with.

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

Carried, all voting aye.

PUBLIC COMMENTS:

Jim Pasierb, 66 N. Jerboa Street, Dunkirk, NY, stated that he inquired in regard to Resolution #18-2011 at the last meeting, and received no answer as to its status, and was told to see Mr. Ahlstrom about this proposal. He was advised by Mr. Ahlstrom that there were no new RFP's or changes by Burke Brothers or Owl Homes, and therefore again questioned what was the status for Resolution #18-2011, and if nothing was happening, this should be pulled.

Director of Development Ahlstrom advised that at the next meeting there will have to be a decision made on something to advance the project for the one RFP received or to reject all submissions that were supplied to us and shelve the project. He stated that there should be a resolution for that first meeting in September stating "to accept what proposal we have (RFP)" or if defeated it would kill the RFP.

Jim Muscato, 280 Lake Shore Dr. West, Dunkirk, NY spoke relative to the Bond Resolutions, stating that he was part of the Council when previous Bond Resolutions passed, and did not recall any of them with a problem; with the possibility of Councilman Muldowney having a concern with one issue pertaining to the Water Treatment/Water

Filtration Plant and the Boardwalk. He stated that everyone was in agreement, and they all passed. He further stated that Councilman-at-large Dolce was here, Councilwoman Floramo was here for one, and Councilman Muldowney along with himself. Mr. Muscato further stated that City Treasurer Woods along with City Attorney Carrie explained this as best as possible, and by law they are being presented as to what the Financial Law & Bonding Codes are, nothing was hidden, and you cannot project what the cost is in these resolutions without knowing the final figures before going to bonding. He stated that what bothered him was that no one had this problem before, these two were no different than the others, and if it does not go through by the 2/3 vote (all four members) he would like to know what plan Councilman-at-large Dolce has in mind to come up with a \$35,000 per day fine to comply with the Consent Order. He advised that when a Consent Order comes down from the Health Department, they will not forgive, and again asked for himself and the public what plan was in mind to pay for this on a daily basis including interest.

Councilman-at-large Dolce advised that he would speak to Mr. Muscato after the meeting. Mr. Muscato requested an answer now so it could be printed. Councilman-at-large Dolce advised that he would get no answer now, he appreciated his question, but stated that since he asked, the seawall was not part of the Consent Order.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Frey commented on the labor rally going on in front of City Hall, stating whatever union, they should have the opportunity to talk and negotiate, as working together is what it's all about; whether it's them as Union Members or us as the City protecting taxpayers money. He thanked Verizon for putting this together along with the participants.

Mayor Frey advised that we were waiting for the DOT in regard to the railroad crossings on Route 60, we are working on King & Lincoln right now. He further advised that the sales tax came in for the quarter and we were down \$4,300 this quarter, but overall we were up \$102,000 for the first six months. He stated that if we hold with our next two quarters the projection is close to a \$200,000 increase.

Mayor Frey further advised that No. 6 playground equipment was donated from the school district, Councilwoman Szukala has been working on this, there has been a discussion on redoing behind the Beach Hut, and next year we are working with the schools to give us the equipment from schools 4 and 5 and whatever equipment is left out there. He also stated that there were tree trunk issues, and we would be looking for government surplus at the end of the month, and we were looking at surplus in Philadelphia this weekend.

Mayor Frey stated that the street paving resolution was going forward tonight, informed of the upcoming Triathlon on Saturday, August 27th with over 200 runners, the Lighthouse celebration on the 26th to the 28th, and on Thursday, August 25th Music on the Pier would be sponsored by the Rotary and Doctors Strychalski and Berner for "ridding the Country of polio". He advised that Dan Reinega's father, Pete has suffered

from polio since the 1940's, was still recovering, this was an outstanding project for the Rotary and the City of Dunkirk, and invited everyone to come down on the pier. He also advised that music on the pier was extended another week, due to rain a couple weeks ago.

Communication from Mayor Frey reappointing Carlos Llera to the Dunkirk Housing Authority Board effective August 11, 2011.

Received and filed.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

Prior Notice from Stephanie Aprigliano-Kiyak informing of a dangerous dead tree on the corner of Eagle Street & Seventh Avenue.

Received and filed. Councilman-at-large Dolce also advised that this would be forwarded to the Public Works Department and City Attorney.

Loudspeaker application from Raymond E. Rosas for a four-piece band at E&R's Latin Flavor on September 4th from 3:00 PM to 10:45 PM.

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

Carried, all voting aye.

Petition from Alan Gens, Asst. Principal/Director of Athletics requesting two additional Police Officers for the football game on Saturday, September 3rd.

Mayor Frey advised that there would also be a dedication for the new field on that night.

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

Carried, all voting aye.

Communication from Richard & Judith Westling, Jr. advising and seeking reimbursement for damages to their garage roof caused by two large broken tree branches off of a tree in the unopened section of Wilson Avenue, and Prior Notice of another tree leaning into a tree on their property.

Councilwoman Szukala moved to refer this matter to the Public Works Department and City Attorney. Seconded by Councilman Michalski.

Carried, all voting aye.

Petition from Ed Wallace, Chairman of the MDA Bike Run & Campout requesting assistance from the Dunkirk Police Department to escort motorcycles up Central Avenue to Fredonia on September 3rd. If not permissible, requesting an escort as in past years down Route 5 to a left on Brigham Road to Temple Street in Fredonia.

Councilman Michalski moved to refer this to the PBA, and advised that the Police Chief preferred the previous years route of Route 5 to Brigham, as traffic lights on Central Avenue would have to be observed. Seconded by Councilwoman Szukala.

Carried, all voting aye.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS.

Councilman Michalski stated that our ACO only takes care of cats and dogs, and for any other issues the public would have to contact a pest control company. He stated that cats were an issue right now, we were not accepting any cats as there is no place to put them, and the only thing ongoing in the City was the spay/neuter program.

Councilman Muldowney commented on how well all of the events were doing in the City, and commended Kory Ahlstrom on how the music on the pier keeps getting bigger and better each year. He also commented on the success of the Cameron Run along with the Nathan George Foundation softball tournament.

Councilwoman Szukala spoke in regard to the playground equipment from School #6, informing Fourth Ward residents that part of this whole thing in regard to donation of equipment will also insure some type of playground structure in the Fourth Ward, and she would be staying involved in this so the Fourth Ward children will have someplace to go. She stated that more than likely it will not happen until Spring next year, and it was very generous of the school system to offer what they have.

Councilman-at-large Dolce advised that nine cats were trapped last week, the ACO was helping out with this process, but there was no place to take them.

Councilman-at-large Dolce also advised that Council would be on the radio on August 22nd at 9:00 AM, and also requested the December DLDC minutes from Director of Development Ahlstrom. He was advised that they would be in his box tomorrow.

PRE-FILED RESOLUTIONS:

RESOLUTION #48-2011 AUGUST 16, 2011

BY ENTIRE COUNCIL:

**A BOND RESOLUTION, DATED AUGUST 16, 2011, OF THE
COMMON COUNCIL OF THE CITY OF DUNKIRK,
CHAUTAUQUA COUNTY, NEW YORK (THE "CITY"),**

AUTHORIZING 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, their 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 (5) 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 Michalski questioned when it was a good time to spend three and one-half million dollars, and stated that although it's never a good time to do this, there are times that are better to spend, and this was one of them. He stated that the rates are low, and according to comments from the Federal Reserve rates were not going anywhere, and the sooner we get this done, the better to lock in at these low rates. Secondly, any repairs done today are cheaper than those done tomorrow, next year or ten years from now. He further stated that this is not a band-aid approach or something to be done on an annual basis, but will be addressed head-on and solved the correct way.

Councilman Muldowney stated that he has been here 10 years and this has been a problem for the city right along. He stated that we've exhausted our resources through Congressional and State, and the problem is not going away as it's 80-85 years old. He advised that if we keep patching what we did, this could turn into a very big problem, and if we take this head-on the city will get the low interest rates. He stated that he does not like to spend money, but this project will not go away.

Councilwoman Szukala advised of the reasons that she would be voting for Resolutions 48, 49 and 50.

She stated that Phase 2 of the water project is being done under a Consent Order, except for the Lake Front Blvd. Sea Wall, and after walking the entire length of Lake Front Blvd, she strongly agrees that sidewalks, rails, steps and wall itself are in need of much repair. She stated that she is not taking the amount of the project lightly, however; the City received four bids which were all close in monetary range. She further stated that often times elected Officials are accused of avoiding the tough decisions and taking the band-aid approach, and she was proud to be a part of this decision making process. She also advised that there are approximately 80-100 homes in the First Ward that will finally be getting increased water pressure, which has been an issue for several years. Councilwoman Szukala closed by stating that one of the items she promised taxpayers when she was elected was to address the aging infrastructure, and for these reasons, she will be voting yes on tonight's resolutions.

Councilman-at-large Dolce advised that he has stated on occasions where he stands on this, agreed that they are both worthwhile and need to be addressed, and he was not looking for concrete plans as stated, but rather how this was going to get done. He stated that he did not think these resolutions adequately address that, he was looking for a little more, and will be staying with his "no" vote.

Vote on Bond Resolution: Ayes: Councilmen Michalski, Muldowney, Councilwoman Szukala. No: Councilman-at-large Dolce. (3-1)

Resolution defeated.

RESOLUTION #49-2011
AUGUST 16, 2011

BY ENTIRE COUNCIL:

A BOND RESOLUTION, DATED AUGUST 16, 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 Revenue. 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 (5) 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 stated that this was in consideration and in the best interest of the City. He stated that Councilman-at-large Dolce voiced his ideas on this issue, they have worked together on things in past meetings, and urged him to vote in favor of this just to do what is best for the City, and avoid fines from the Department of Health.

Councilman-at-large Dolce stated that he appreciated Councilman Michalski's comments, and stated publicly that he was not closing the door on this one as we have

until September 5th, but this evening he will be voting no, and understood the ramifications of the fines. He advised that there is time to call a Special Meeting, and tonight he was looking for some sort of idea but knew it couldn't happen this evening, and hopefully in the next couple of weeks something can be worked out and call a Special Meeting to work on Resolution #49-2011.

Vote on Bond Resolution #49-2011: Ayes: Councilmen Michalski, Muldowney, Councilwoman Szukala and Councilman-at-large Dolce. (gavel down). No: Councilman-at-large Dolce. (gavel down). Councilman-at large Dolce stated 3 to1 a no vote and that he voiced his vote before the gavel.

Call it again: City Clerk Mleczo proceeded to call the roll again. Before completion of roll call again by City Clerk Mleczo, City Attorney Cerrie advised that authorization to change his vote was needed. Councilman-at-large Dolce stated that they usually just recall, that's how it was done in the last couple years. City Attorney Cerrie advised that according to Roberts Rules of Order you have to have authority from the Council to re-vote.

Councilman-at-large Dolce stated this would be new since we've been through this with this Council. City Attorney Cerrie stated he had no opinion on that, (checking in Roberts Rules of Order at this time) and Councilman-at-large Dolce stated that what they've done with this Council was just recall it, and to switch from what I have.

Tape was rewound at this time for clarification of vote. Vote was confirmed as stated above.

City Attorney Cerrie cited Roberts Rules of Order at this time, citing Article VI, Section 38.

Councilman-at-large Dolce questioned if there was a motion to call for permission to call a revote at this time. Councilman Michalski motioned for a revote. Asking if a second was needed on the revote, City Attorney Cerrie advised Councilman-at-large Dolce that this was correct.

Councilman Muldowney stated that he did not want to win this way, but did not think his argument was strong enough for the win.

There being no second on the motion, Councilman-at-large Dolce stated that he was surprised after being here eight years, stating that courtesy was offered when someone mis-spoke and it was allowed to let the person vote. He stated that he understood that he made a mistake, and thanked Councilman Michalski for making the motion, and this one (resolution) passes, apparently.

Vote on Bonding Resolution: Carried. (4-0).

City Attorney Carrie advised that #48-2011 didn't pass, so we have to make a motion to amend #50, stating that we have to cut off the Beach Front Boulevard process of it because we can't accept the whole bid.

Councilman-at-large Dolce stated "this is all wall, isn't it?" Public Works Director Gugino advised that the wall is the wall, and the waterline is the waterline. City Attorney Carrie then advised that we needed to pull this one as it doesn't meet 2/3 to pass, and the wall didn't pass so it gets pulled. He then questioned if that made sense to everyone.

Councilman-at-large Dolce stated because this one's not going to happen (#48-2011), and City Attorney Carrie stated this was correct as without the funding for it, we can't pass it.

Councilman-at-large Dolce then stated we just need to pull it, Kory Ahlstrom questioned if a motion was needed to pull the original resolution #50-2011 and City Attorney Carrie advised there is no motion needed to pull.

City Clerk Mlecenko stated so now resolution #51 becomes #50 and City Attorney Carrie advised this was correct.

(Discussion inaudible at this point).

City Attorney Carrie stated that he thought we just need an objection from the Council to him changing his vote. He stated there are different forms of Roberts Rules, but all of them say that we do need permission from the whole entire Council for it to vote on a majority, but thought we needed objections. Again he stated there's different forms of Roberts Rules, but you do need permission from the floor; from the Council, and by not being seconded, that's this objection.

Councilman-at-large Dolce questioned if they needed to state verbal objections or by not seconding, is that a rejection.

Director of Development Ahlstrom quoted Roberts Rules of Order as follows: "A Member has the right to change his vote up to the time of the vote - after that he can make the change only by permission of the assemblage, either by general consent; that is by no member objecting. The Chair inquires if anyone objects. If an objection is made, a motion must be made to grant permission, which motion is undebatable".

City Attorney Carrie stated and without the second, I think you have your objection, and Councilman-at-large Dolce stated, right. City Attorney Carrie then stated that #50 is pulled, and #51 becomes #50.

RESOLUTION #50-2011
AUGUST 16, 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.

Resolution pulled.

RESOLUTION #50-2011
AUGUST 16, 2011

BY COUNCILWOMAN SZUKALA:

AUTHORIZING AWARD OF THE 2011 COLD MILLING AND ASPHALTIC CONCRETE PLACEMENT CONTRACT

WHEREAS, sealed bids for the *2011 COLD MILLING AND ASPHALTIC CONCRETE PLACEMENT CONTRACT* were received and opened in the City Clerk's office at 10:00 AM on Wednesday, August 10, 2011, with two (2) bids being received, now, therefore, be it

RESOLVED, that, upon the review and recommendation of Director of Public Works Gugino, the low bid of H. Olsen & Sons Contractors, Inc., 1275 Overhiser Road, P. O. Box 9, Forestville, New York 14062, be accepted in the following estimated quantities and unit costs:

<u>Item #</u>	<u>Description</u>	<u>Estimated</u>			<u>Extension</u>
		<u>Quantity</u>	<u>Unit</u>	<u>Price</u>	
1	Cold Milling	16,300	S.Y.	\$ 2.00	\$ 32,600.00
2	Type 7 Top	935	Ton	\$16.00	\$ 14,960.00
3	Type 6 Top	190	Ton	\$17.00	\$ 3,230.00
4	True & Level	40	Ton	\$30.00	\$ 1,200.00
5	Type 3 Binder	1,850	Ton	\$12.50	<u>\$ 23,150.00</u>
TOTAL ESTIMATED COST:					\$75,115.00

and, be it further

RESOLVED, that the Mayor is hereby authorized and directed to execute a contract on behalf of the City of Dunkirk with H. Olsen & Sons Contractors, Inc., 1275 Overhiser Road, P. O. Box 9, Forestville, New York 14062, for the above described services in accordance with the contract documents, and, be it further

RESOLVED, that the funding shall be allocated from the CHIP's Account #001-5110-4055, and, be it finally

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

Councilman Michalski questioned if this was less than last year, as it seemed that we did more streets last year.

Public Works Director Gugino advised that this year we have \$276,000 in CHIPS money, and last year we carried over \$96,000 from 2009, plus the

\$276,000 spending under \$400,000 in 2010. He advised that this year we are spending \$276,000, and there was no decrease in CHIPS allotments from the State.

Vote on resolution: Carried, all voting aye.

NEW BUSINESS:

Walk-in petition from Jose Rodriguez requesting to use the Stadium, School 7 and Koch's Fields for their annual "Missing You Always" Memorial Softball Tournament on September 4th from 8:00 AM to 8:00 PM. (Access to extra picnic tables & garbage cans).

City Clerk Mleczo advised that proof of liability insurance was needed and explained that for School #7 he has to notify and get permission from the school.

City Attorney Cerrie also questioned the availability of the Fields for that day.

Councilman Michalski moved that permission be granted contingent upon the availability of the Fields, and liability insurance provided. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Councilman Muldowney moved to adjourn. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Adjourned at 7:02 PM

Tom Mleczo, City Clerk
