

**COMMON COUNCIL PROCEEDINGS**  
**September 17, 2013**

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, Department of Public Works Director Gugino, City Treasurer Woods, Fiscal Affairs Officer Halas, Building Inspector Zurawski, Clerk, Board of Assessors Mleczo, Director of Development Neratko, Fire Chief Ahlstrom, Personnel Administrator Heyden and Police Chief Ortolano.

Certification of September 03, 2013 meeting was read by City Clerk Joiner.

Councilwoman-at-large Kiyak advised that there is a correction to the minutes of the September 3<sup>rd</sup> Council Meeting. Resolution #64-2013, Budget Line Modification (Summer Camp) – Youth Programming Budget Line had an incorrect account number listed. The incorrect account number listed is 001-7140-4030. The correct account number should be 001-7310-4030. The minutes have been adjusted to reflect the correct account number and a misspelling error.

**RESOLVED:** That the reading of the minutes of Tuesday, September 03, 2013 be dispensed with.

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

Carried, all voting aye.

**PUBLIC COMMENTS:**

No one spoke.

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

Mayor Dolce advised that progress is being made with the blue street signs and will continue to replace the old ones as time allows.

Mayor Dolce advised that he had a productive meeting with Department of Public Works Director Gugino and other interested individuals in regards to the Native American statue restoration and enclosure project and hopes progress will be made in the near future.

**COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:**

Request from SUNY Fredonia FACE Center to host a New York Littoral Society beach cleanup event at Wright Park and Pt. Gratiot Beaches on Saturday, September 21<sup>st</sup> from 12:00 to 2:00pm.

Councilwoman-at-large Kiyak advised a motion was needed to approve and refer to DPW, Police, Fire and Law Department, contingent on prior proof of certification in lieu of insurance

naming the city as insured, in addition to prior waiver and liability release from all participating parties.

Councilwoman Szukala made a motion to approve. Seconded by Councilman Rivera.

Carried, all voting aye.

Notification from Pro Life Committee of Chautauqua County for a "National Life Chain" event being held on Sunday, October 6, 2013 from 2 to 3pm.

Received and Filed.

Notice of claim Daniel Tilburg for damages allegedly sustained to his vehicle from an exposed rebar on the corner of Central Avenue and East Green Street.

Councilwoman-at-large advised a motion was needed to refer to City Attorney.

Councilwoman Szukala made a motion to approve. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Article 7 Tax Challenge from Ogden Newspapers of New York, Inc.

Article 7 Tax Challenge from 447 Lake Shore Drive West LLC.

Received and Filed.

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

Councilman Michalski advised that he had the opportunity to sit in on the KVS training. He believes it will help Fiscal Affairs, Treasure's Office, and the Finance Committee tremendously and that the 2014 Budget will be implemented using the new system.

Councilman Rivera advised that tonight's Common Council Meeting will be aired on Cable Access channel at 12:30PM Thursday, September 19<sup>th</sup> and that the airing of High School Football will be back this weekend.

Councilman Gonzalez advised that the next Public Works Meeting is rescheduled to Monday, September 30<sup>th</sup> at 3:00PM.

Councilwoman Szukala inquired to Public Works Director Gugino about the status of a water main break and asked for clarification if any water purchases were made from the Village of Fredonia.

Public Works Director Gugino advised that he is 100% certain that no water was purchased from the Village of Fredonia, and that it is standard procedure that Fredonia and Chautauqua County Department of Health be informed of a potential major problem. He then advised that the water main break has been repaired.

Councilwoman Szukala advised that the Council will be on WDOE Radio this Thursday at 8:45AM.

Councilwoman Szukala asked Mayor Dolce if any progress has been made in the Union negotiations and if there was a meeting date scheduled between the DLDC Members and Council.

Mayor Dolce advised that he has made positive progress with both remaining Unions and that he has not yet scheduled a meeting but that it is on his “to-do” list.

Councilwoman Szukala expressed her sympathies to the friends, family, and teammates of Damon James.

Councilwoman-at-large Kiyak asked Public Works Director Gugino if the 24inch water line repair at the Water Treatment Plant was the water main break mentioned earlier and for an update on the Water Treatment Plant Consent Order.

Public Works Director Gugino advised that the repair is the one that has been mentioned and fixed. In regards to the Consent Order, he advised that there was a meeting last week and hopes to get bids out for the 2013 phase work very soon. Public Works Director Gugino then advised that the carbon has been delivered for filter bed 6 and the contractor will be in tomorrow to run the final air lines so that it can get tested for the Department of Health.

Councilwoman-at-large Kiyak asked Public Works Director Gugino to advise the public on the strategy to implement the new signage.

Public Works Director Gugino advised that there is currently one gentleman doing production while 2 others will handle the installation using current street signs going block by block until complete with additional blank signs available should any be missing.

Councilwoman-at-large Kiyak advised that there is an Economic Committee Meeting tomorrow at 11:00AM in the Conference Room.

Police Chief Ortolano reminded residents to watch driving speed in the school zones as he will continually have officers monitoring this and ticketing violators to ensure the safety of the children.

Public Works Director Gugino advised that the Dunkirk School District has recently purchased another set of the solar flashing school zone signs which will be set up on Brigham Road shortly.

Fire Chief Ahlstrom stated that he has been in discussion with Council Members in regards to the non-contractual overtime in the Fire Department. He advised that he has spoke with the Superintendent of Dunkirk Schools about reducing staff on-hand for various sporting events, but due to recent tragic events has come to a “gentlemen’s agreement” that would have the School District assume the cost of the overtime.

Councilman Gonzalez advised Department of Public Works Director Gugino that a street sign on the corner of Park and 6<sup>th</sup> is still bent and inquired to when that would be fixed. Department of Public Works Director Gugino advised that he will take care of it at no overtime expense to the City.

**PRE-FILED RESOLUTIONS:****RESOLUTION #66-2013**  
**SEPTEMBER 17, 2013****BY THE ENTIRE COUNCIL:****ACKNOWLEDGING SEQR COORDINATED REVIEW BY DUNKIRK CITY  
SCHOOL DISTRICT  
(Marauder Drive)**

**WHEREAS**, the City of Dunkirk owns certain premises bordered roughly by Marauder Drive and Lucas Avenue (designated as s/b/l 96.06-2-1) that have been utilized for and as sports and recreation facilities; and

**WHEREAS**, on March 19, 2013 (No. 19-2013), the Common Council acknowledged that the Dunkirk City School District (the "District") wished to enter into an agreement to memorialize the use of such property for athletic fields for practices and games for various sporting events, including but not necessarily limited to baseball, softball and soccer contests, as well as to improve a portion of the property including an access road to Van Miller Way; and

**WHEREAS**, the District wishes to enter in to a First Amendment to the Lease in order to obtain additional real property to re-orient certain athletic fields and to extend the term of the Lease; and

**WHEREAS**, the District wishes to act as lead agency for any SEQR review necessary in regard to the proposed First Amendment to the Lease arrangement with the City; now, therefore be it

**RESOLVED**, that the City of Dunkirk through its Common Council hereby acknowledges that the **Dunkirk City School District**, 620 Marauder Drive, Dunkirk, New York 14048, has acted as lead agency for a SEQR review which was undertaken by the District as part of a coordinated review in regard to the proposed First Amendment to the Lease with the City.

Councilwoman Szukala asked City Attorney Szot to explain to the public the purpose of this Resolution.

City Attorney Szot advised the City is entering into this agreement which will extend the property south of what was already leased by the Dunkirk School District so that they can receive additional long-term financing through State Board of Education.

Carried, all voting aye.

**RESOLUTION #67-2013**  
**SEPTEMBER 17, 2013**

**BY THE ENTIRE COUNCIL:**

**AUTHORIZING FIRST AMENDMENT TO LEASE AGREEMENT  
WITH DUNKIRK CITY SCHOOL DISTRICT  
(Marauder Drive)**

**WHEREAS**, the City of Dunkirk owns certain premises bordered roughly by Marauder Drive and Lucas Avenue (designated as s/b/l 96.06-2-1) that have been utilized for and as sports and recreation facilities; and

**WHEREAS**, on March 19, 2013 (No. 20-2013), the Common Council authorized and directed entering in to a Lease Agreement with the Dunkirk City School District (the "District") to memorialize the use of such property for athletic fields for practices and games for various sporting events, including but not necessarily limited to baseball, softball and soccer contests, as well as to improve a portion of the property including an access road to Van Miller Way; and

**WHEREAS**, the District wishes to enter in to a First Amendment to the Lease in order to obtain additional real property to re-orient certain athletic fields and to extend the term of the Lease; and

**WHEREAS**, the District has acted as lead agency for a SEQR review which was undertaken by the District as part of a coordinated review in regard to the proposed lease with the City; and

**WHEREAS**, it would be in the best interests of the City of Dunkirk to enter into a First Amendment to the Lease Agreement with the District for such use; now, therefore be it

**RESOLVED**, that the Common Council hereby authorizes and directs the Mayor to execute any required documents to enter into a First Amendment to the Lease Agreement with the **Dunkirk City School District**, 620 Marauder Drive, Dunkirk, New York 14048, for the District's use of and improvement to certain property of the City, bounded roughly by Marauder Drive and Lucas Avenue (being a part of s/b/l 96.06-2-1), from April 1, 2013 through December 31, 2031, for the cost of One Dollar and Zero Cents (\$1.00) per year, with the use of such property as athletic fields for practices and games for various sporting events, including but not necessarily limited to baseball, softball and soccer contests, as well as to improve a portion of the property including an access road to Van Miller Way.

Carried, all voting aye.

**RESOLUTION #68-2013**  
**SEPTEMBER 17, 2013**

**BY COUNCILWOMAN SZUKALA:**

**AUTHORIZE AGREEMENT EXTENSION FOR INDEPENDENT CONTRACTOR**  
**(Housing, Building & Zoning Enforcement Department)**

**WHEREAS**, the City of Dunkirk, through its Housing, Building & Zoning Enforcement Department (the "Department") has a need for assistance with various projects; and

**WHEREAS**, it would be in the best interest of the City to contract for such services; and

**WHEREAS**, Wendy Spinuzza is ready, willing and able to provide such services as an independent contractor for the City, and in a good and workmanlike manner; now, therefore, be it

**RESOLVED**, that the Mayor is directed and authorized to execute any and all agreements necessary to engage the services of **WENDY SPINUZZA**, 175 Eagle Street, Fredonia, New York 14063, as an independent contractor to provide independent contracting services and assistance with various projects commencing October 1, 2013, and extending through December 31, 2013, with payment of Seventeen Dollars and Fifty Cents (\$17.50) per hour up to thirty-five (35) hours per week, contingent upon such being made available, with such funds drawn from Account No. 001-3620-4036.

Councilman Michalski advised that the total amount allotted through the end of the year would not exceed \$8,100.00.

Carried, all voting aye.

**RESOLUTION #69-2013**  
**SEPTEMBER 17, 2013**

**BY THE ENTIRE COUNCIL:**

**AWARDING BIDS HOT-IN-PLACE PAVING PROJECT (2013)**

**WHEREAS**, the City, by resolution no. 59-2013 (September 3, 2013) engaged the services of Nussbaumer & Clarke, Inc., to undertake bid specification services to enable the City to undertake a comprehensive program of paving various streets throughout the City utilizing a pool of funds accumulated over two years; and

**WHEREAS**, sealed bids were let and were opened and read aloud in the Dunkirk City Clerk's Office at 10:00 a.m. on September 11, 2013;

**WHEREAS**, such bids were reviewed by Nussbaumer & Clarke, Inc., in order to determine the sufficiency of such bids and Nussbaumer & Clarke, Inc., have recommended the lowest responsible bidder be awarded such bid; now, therefore, be it hereby

**RESOLVED**, that the following lowest responsible bid be accepted for furnishing 2013 hot-in-place paving project:

<u>Bidder</u>	<u>Cost</u>
<b>Highway Rehabilitation Corp. 2258 Route 22 Brewster, New York 10509</b>	<b>\$133,900.00</b>

and, be it finally

**RESOLVED**, that the Mayor is authorized and directed to execute any and all documents, on behalf of the City of Dunkirk, with **Highway Rehabilitation Corp.**, in accordance with the contract specifications, for such 2013 hot-in-place paving project.

Councilwoman-at-large Kiyak inquired to Public Works Director Gugino if Nussbaumer provided a written list of all the bidders for this project to the City and to the specifics of the work to be done and a timeframe for completion.

Public Works Director Gugino explained the bidding process to the Council and advised that after this Resolution is approved work could start as early as September 24<sup>th</sup> or September 25<sup>th</sup>.

Councilman Rivera inquired as to if the streets associated with this project were the ones provided in the Observer.

Mayor Dolce confirmed that the mentioned information that was advertised in the Observer is the correct list that will be involved in the process.

Carried, all voting aye.

**RESOLUTION #70-2013**  
**SEPTEMBER 17, 2013**

**BY: ENTIRE COUNCIL**

**RESOLUTION AUTHORIZATION LANDLORD CONSENT  
(CHADWICK BAY MARINA)**

**WHEREAS**, the City of Dunkirk (the "City") entered into a contract dated July 16, 1985, whereby Metal Craft Company, Inc., was authorized to develop, construct and operate a full-service marina on the Dunkirk Harborfront, commonly known as Chadwick Bay Marina (the "Marina"); and

**WHEREAS**, pursuant to the terms of such Contract, the right to lease the Marina was assigned to Chadwick Bay Marina, LP; and

**WHEREAS**, the City later consented to the assignment of the Marina lease to Donald F. Ryan and Richard W. Ryan, and subsequently to Ryan Marine Services; and

**WHEREAS**, the City later approved the assignment of leasehold rights located at 30 Central Avenue, Dunkirk, New York 14048, from Ryan Marine Services, LP, to JSG Marina Holdings, LLC, and its subsequent assigns Chadwick Bay Marina Holdings, Inc. (Resolution 54-2011); and

**WHEREAS**, the City later approved the assigned of the Lease interest currently held by Ryan Marine Services, LP to JSG Marina Holdings, LLC, or an entity to be formed with the same principal ownership (Resolution 88-2011); and

**WHEREAS**, Chadwick Bay Marina Holdings, Inc. (“Chadwick”) is restructuring its ownership participation and as a result is seeking funding through Loeb Term Solutions, LLC (“Loeb”), 4131 South State Street, Chicago, IL 60609; and

**WHEREAS**, Loeb is requesting that the City of Dunkirk, as Landlord of the Marina, enter into a Landlord Consent to induce Loeb to provide financing to Chadwick; now, therefore, be it

**RESOLVED**, that the Mayor be and hereby is authorized and directed to enter into a Landlord Consent with Loeb Term Solutions, LLC (“Loeb”), 4131 South State Street, Chicago, IL 60609, and the City:

- Consents to the creation of Loeb’s security interest in certain Collateral and agrees that Loeb’s security interest is prior to the City’s;
- Agrees to notify Loeb in writing at least thirty (30) days before commencing any proceedings or otherwise taking any action to terminate the lease or to enforce the City’s remedies thereunder;
- Disclaims and waives to Loeb any interest in the Collateral, and acknowledges that the Collateral will at all times be personal property and not real estate fixtures, and will be subject to Loeb’s prior security interest;
- Advise Loeb if any payments are not received on time;
- Acknowledges that, to the City’s knowledge, Chadwick is not in default under the Lease;

- Consents to Loeb’s entry upon the Premises at all reasonable times to inspect, dispose of or remove the Collateral so long as all areas of egress will be left in a safe, workmanlike manner with proper OSHA level barriers and fall protections in place. Loeb is not, however, liable for any diminution in the value of the Premises caused by the absence of the Collateral or the necessity of replacing it
- Agrees that upon any default under the Lease by Chadwick and in the event that the City takes action against Chadwick as a result of such default, Loeb has the right to enter into and remain in possession of the Premises for a period of not to exceed one hundred twenty (120) days (“Initial Period”), for the purpose of enforcing its liens on the Collateral, including detaching, selling, auctioning from the Premises and removing the Collateral from the Premises. The City shall promptly provide notice to Loeb of a default under the Lease as well as notice of the receipt of an eviction judgment in favor of the City.

Councilwoman Szukala made a motion to table this resolution. Seconded by Councilman Gonzalez.

Vote to table Resolution:

Ayes: Councilman Gonzalez, Councilwoman Szukala, Councilwoman-at-large Kiyak.

No: Councilman Michalski, Councilman Rivera

TABLED, 3-2.

**ADJOURNMENT:**

Councilwoman Szukala moved to adjourn. Seconded by Councilman Gonzalez.

Carried, all voting aye.

**Adjourned at 5:50 PM**

**Nicole Joiner, City Clerk**

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