

COMMON COUNCIL PROCEEDINGS
September 3, 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, City Treasurer Woods, Fiscal Affairs Officer Halas, Building Inspector Zurawski, Clerk, Board of Assessors Mleczko, Director of Development Neratko, CDBG Administrator Gornikiewicz, Personnel Administrator Heyden and Police Chief Ortolano.

Absent: Department of Public Works Director Gugino and Fire Chief Ahlstrom.

Certification of August 20, 2013 meeting was read by City Clerk Lawrence.

RESOLVED: That the reading of the minutes of Tuesday, August 20, 2013 be dispensed with.

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

Carried, all voting aye.

PUBLIC COMMENTS:

James Muscato, 280 Lake Shore Drive West, Dunkirk, New York suggested council table Resolution #65-2013 on tonight's agenda, Budget Line Modification (Bertges Property); to his knowledge there was never a Resolution by the DLDC Committee to transfer ownership of this property.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Dolce clarified there has been no transfer of ownership on the Bertges Property.

Mayor Dolce advised the Native American statue on Lake Shore Drive has drawn a great deal of interest; Department of Public Works Director Gugino has spoken to a local business and contractor for an initial inspection and stated further reviews will take place over the next couple of weeks before a final course of action is determined. Mayor Dolce stated it is our goal to have repairs and staining completed this year and enclosure and possible relocation slated for next spring or summer.

Mayor Dolce spoke in regard to the city streets paving project and stated "our list has gone through multiple revisions do to the specific nature of the hot in place process therefore, Department of Public Works Director Gugino is researching alternative streets this evening." Mayor Dolce further advised "we are currently under the 30,000.00 linear feet threshold and looking to substitute four or five streets for ones that have been deemed "too short" for the hot in place train and if everything goes according to schedule, council will be asked to ward the bid at the next council meeting with work likely commencing by the end of this month." Mayor Dolce

stated “when the final list is reviewed and approved, which should be done by the end of this week, we look forward to releasing it; those streets will comprise for over \$500,000.00 worth of street repair.”

Mayor Dolce advised time has passed for filing litigation against the City for assessments but time for serving is not yet complete; the city received two challenges to date and a resolution for legal/appraisal services will be forthcoming at the September 17th council meeting.

Mayor Dolce thanked Nicole Waite for crafting a letter of intent on the city’s behalf regarding the business sign program through the Northern Chautauqua Community Foundation and stated the DLDC would partner with local businesses for sign improvement.

Mayor Dolce advised reconstructed filter bed six will be the first filter bed to be tested at the water filter plant and stated this is a necessary step before other filter repairs are to be implemented.

Mayor Dolce announced the West End Waterline Project will be completed this week and Department of Public Works Director has advised this project has been a success. The Willowbrook Water Tower construction project will be completed by the end of the month and the Talcott Street Project (Millennium Parkway Project) is on schedule.

Mayor Dolce reminded residents the Historic Home Tour will take place this Saturday, September 7th and there will be a Flag Football League meeting next Wednesday, September 11th at 5:30 PM, on the second floor of the Sterns Building.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

Petition from Mari Ellen Szwejbka to close Robin Street between Fourth and Fifth Streets with two barricades on each end on Saturday, September 14th from 9:00 AM until Midnight (rain date September 15th) for their Annual Block Party.

Councilwoman Szukala inquired if any Department Head had concerns regarding the closure of this street.

Police Chief Ortolano advised this group requests this every year, there has never been a problem and has no issue with the closure of this street.

Councilwoman-at-large Kiyak advised a motion to approve was needed contingent that the premises are left in the same condition as to prior to the event and referred this to the Department of Public Works, Police Department, Fire Department and Law Department.

Councilman Gonzalez moved to approve. Seconded by Councilman Michalski.

Carried, all voting aye.

Notice of claim from Judith Burgos for damages to her vehicle allegedly caused by a city lawnmower.

Councilwoman-at-large Kiyak advised a motion to refer to the Law Department was needed.

Councilwoman Szukala moved to refer to the Law Department. Seconded by Councilman Rivera.

Carried, all voting aye.

Prior Notice from Julius Bota informing of dangerous trees in front of 435 Woodrow Avenue.

Councilwoman-at-large Kiyak advised a motion to refer to the Law Department was needed.

City Attorney Szot advised this prior notice should be referred to the Department of Public Works and City Clerk's Office not the Law Department.

Councilwoman-at-large Kiyak advised a motion to refer to the Department of Public Works and City Clerk's Office was needed.

Councilman Rivera moved to refer to the Department of Public Works and City Clerk's Office. Seconded by Councilman Gonzalez.

Carried, all voting aye.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:

Councilman Michalski had nothing to report at this time.

Councilman Rivera expressed sadness over the cancellation of the Heritage Festival and advised the Dunkirk Historical House Tour has not been cancelled and will be held this weekend.

Councilman Rivera commended Mayor Dolce for the changes in the city's hiring process and for attempting to involve council and stated he has been uncomfortable with the city's past hiring process.

Councilman Rivera advised tonight's council meeting is being recorded and will be broadcast on Thursday, September 5th at Noon and there will be no Personnel Committee Meeting in September.

Councilman Gonzalez advised the next Public Works Meeting will be held on September 30th at 3:00 PM in the Mayor's Conference Room.

Councilwoman Szukala asked Mayor Dolce about the absence of Department of Public Works Director Gugino during the last few council meetings.

Mayor Dolce advised Department of Public Works Director Gugino has been absent due to various Mayoral research projects such as the Native American Statue and Hot in Place Street Pavement Project.

Councilwoman Szukala asked for an update on the Park Avenue sink hole, street sign projects and summer help status.

Mayor Dolce advised the street department will repair the sink hole on Park Avenue; signs are being made and will be installed before winter and the city currently has three part-time employees in the Parks Department, one employee in the Streets Department and one employee in the Water Department.

Councilwoman Szukala advised she has received several phone calls regarding employee position changes within the city and stated the Common Council has no input on the hiring process of those positions, they are Mayoral appointed positions, and any questions regarding this matter should be directed to the Mayor’s office.

Councilwoman-at-large Kiyak asked Mayor Dolce if Department of Public Works Director Gugino will be present at future council meetings.

Mayor Dolce advised he will be present.

Councilwoman-at-large Kiyak announced the next Economic and Development meeting will be held on September 11th at 11:00 AM in the Mayor’s Conference Room.

Police Chief Ortolano advised school opens tomorrow and reminded residents to obey school speed zones as officers will be issuing tickets to individuals not obeying the speed limits.

Department of Development Director Neratko spoke in regard to Resolution #65-2013, its importance to the council and public, proceeded to explain the history of this CDBG project and stated the majority of the funds used for payments and activities have been CDBG funds and the city needs to make this payment as it is basically the city’s only choice. Development Director Neratko advised cleanup on this site is ongoing, funding for this years payment is limited as the city had intended to spend CDBG funds and stated “when we were informed that wasn’t going to be a possibility going forward, we started looking into other options and really, this is the only one that really made any sense. Worst-case scenario if we didn’t make this payment would be that the DLDC fails to meet its financial obligations, they could lose the property, at that point, if the property isn’t in the hands of the DLDC or the city and the project is not going forward CDBG/HUD could ask for those funds back.”

PRE-FILED RESOLUTIONS:

RESOLUTION #59-2013
SEPTEMBER 3, 2013

BY THE ENTIRE COUNCIL:

AUTHORIZING AGREEMENT FOR ENGINEERING SERVICES
Hot-In-Place Paving Project
(Nussbaumer & Clarke, Inc.)

WHEREAS, the City has an opportunity to undertake a comprehensive program of paving various streets throughout the City utilizing a pool of funds accumulated over two years; and

WHEREAS, it would be in the best interests of the City to undertake such program and requires the bid specification and construction management services in order to insure the cost-effective utilization of such funds; and

WHEREAS, Nussbaumer & Clarke, Inc. is ready, willing and able to provide such services for the City in a good and workmanlike manner; now, therefore be it

RESOLVED, the Mayor is hereby authorized and directed to execute all necessary documents, including an agreement of services, on behalf of the City of Dunkirk, with **Nussbaumer & Clarke, Inc.**, 3556 Lake Shore Road, Suite 500, Buffalo, New York 14219-1494, in an amount not to exceed Nine Thousand Two Hundred Fifty Dollars and Zero Cents (\$9,250.00) to provide such specification and construction management engineering services for the City's paving program; and, be it further

RESOLVED, that the funds for such engineering services be taken from the Department of Public Works – CHIPS Account Number 001-5110-4055.

Councilwoman Szukala asked what services the city will be receiving from Nussbaumer & Clarke.

Mayor Dolce advised Nussbaumer and Clarke will provide the rebidding process and supervision of this project.

Councilwoman-at-large Kiyak asked if the procurement policy was followed regarding this agreement for engineering services.

Mayor Dolce advised he made an executive decision regarding this matter.

Carried, all voting aye.

RESOLUTION #60-2013
SEPTEMBER 3, 2013

BY: THE ENTIRE COUNCIL

**AUTHORIZING RENEWAL AGREEMENT WITH
STATE OF NEW YORK UNIFIED COURT SYSTEM
(CITY COURT SECURITY SERVICES – CONTRACT NO. C200440)
(APRIL 1, 2013 TO MARCH 31, 2014)**

WHEREAS, the City's five-year contract with the New York State Unified Court System reimburses the City's Police Department for security services in City Court was renewed in 2009 and terminates in 2014; and

WHEREAS, an annual Renewal Agreement between the parties is provided for each period (State fiscal year) which new period commenced on April 1, 2013, and terminates on March 31, 2014, and during which reimbursement has been allocated to not exceed Two Hundred Twenty Thousand Dollars and Zero Cents (\$220,000.00); and now, therefore, be it

RESOLVED, that the Mayor is hereby authorized and directed to execute the Annual Renewal Agreement on behalf of the City of Dunkirk, with the NYS Unified Court System, covering the period (April 1, 2013 to March 31, 2014) for which reimbursement shall be in an amount not to exceed Two Hundred Twenty Thousand Dollars and Zero Cents (\$220,000.00) to compensate the Police Department for City Court security services.

Carried, all voting aye.

RESOLUTION #61-2013
SEPTEMBER 3, 2013

BY ENTIRE COUNCIL:

CONSENT TO APPOINTMENT OF CITY CLERK

WHEREAS, Section 2-10.02 of the City Code provides that the City Clerk shall be appointed by the Mayor, with the consent of the Common Council; and

WHEREAS, pursuant to Section 2-10.02 of the City Code, Mayor Anthony J. Dolce has appointed Nicole Joiner, 621 Eagle Street, Dunkirk, New York, to the position of City Clerk and Registrar of Vital Statistics for the City of Dunkirk, subject to the consent of the Common Council; now, therefore, be it

RESOLVED, that Nicole Joiner, 621 Eagle Street, Dunkirk, New York, be confirmed as City Clerk and Registrar of Vital Statistics for the City of Dunkirk, effective September 4, 2013, at the rate of Sixteen Dollars and Zero Cents (\$16.00) per hour, not to exceed thirty-two (32) hours per week.

Councilwoman Szukala asked Mayor Dolce how many applications did the city received, how many individuals were interviewed and were second round of interviews administered for this position.

Mayor Dolce advised Personnel Administrator Heyden, City Clerk Lawrence and he reviewed 30 resumes, administered ten first round interviews and four second round interviews before arriving at the candidate selected this evening.

Councilwoman-at-large Kiyak read the following statement: "according to the City Charter, mayoral appointments require council approval; however, the Charter does not mandate council participation in the vetting process. As the Council Member-at-Large I requested to the mayor that I sit in on the interviews of the various candidates under his consideration which I was denied, however, the compromise was that I was allowed to meet and interview his selected candidate prior to this vote. Having only met the final candidate, I have no basis of comparison of whether she is the best choice. However, I do not have a sound reason to cast a no vote on his selection, therefore, I would like to state for the record I will be voting yes, but with reservations."

Carried, all voting aye.

RESOLUTION #62-2013
SEPTEMBER 3, 2013

BY THE ENTIRE COUNCIL:

**AUTHORIZE AGREEMENT FOR INDEPENDENT CONTRACTOR
(Community Development Block Grant Program)**

WHEREAS, the City of Dunkirk has a need for independent consulting services to provide assistance in order for the City to administer and to maintain certain requirements for the City's participation with the U.S. Department of Housing & Urban Development ("HUD") Community Development Block Grant ("CDBG") program, including but not necessarily limited to the provision of technical and compliance assistance necessary for the administration of the CDBG program; and

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

WHEREAS, NICOLE M. WAITE ("Waite"), 723 Washington Avenue, Dunkirk, New York 14048, 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 NICOLE M. WAITE ("Waite"), 723 Washington Avenue, Dunkirk, New York 14048, as an independent contractor to provide independent contracting services and assistance with various projects, particularly with regard to the administration of the City's Community Development Block Grant program, commencing September 4, 2013, and extending through August 30, 2014, with payment of Thirty-Two Thousand Dollars and Zero Cents (\$32,000.00) *per annum, pro rata*, with a minimum of thirty (30) hours per week, with such funds drawn from the Department of Development Contracted Services Account No. 001-8020-4036, with reimbursement drawn from CDBG Administrative funding, contingent upon such funds being made available.

Councilwoman Szukala inquired if the individual selected will have to sit for a civil service examination for this position.

Department of Development Director Neratko advised this is an independent contractor position so the individual will not have to participate in the civil service examination process.

Mayor Dolce advised HUD and the civil service agency has no problem with this being listed as an independent contractor position.

Councilwoman-at-large Kiyak advised this position is currently held by Tim Gornikiewicz and asked Mayor Dolce what are the plans for Tim Gornikiewicz when he is replaced by Nicole Waite?

Mayor Dolce advised Tim Gornikiewicz will assume a new position and will become Recreation Program Coordinator effective tomorrow.

Carried, all voting aye.

RESOLUTION #63-2013
SEPTEMBER 3, 2013

BY THE ENTIRE COUNCIL:

**CONFIRMING SUPPORT FOR COMMUNITY REVITALIZATION INITIATIVE
(NYS OFFICE OF ATTORNEY GENERAL)**

WHEREAS, the City of Dunkirk has a large stock of vacant and abandoned residential properties, but lacks the financial resources to adequately and promptly address this blight on the area; and

WHEREAS, it would be in the best interests of the City to seek funding to demolish such properties; and

WHEREAS, the Chautauqua County Land Bank Corporation (“CCLBC”) is seeking funding to develop a program to assist in demolishing vacant and abandoned residential properties located in the City through the NYS Office of the New York Attorney General (Community Revitalization Initiative); now, therefore be it

RESOLVED, that the Common Council confirms that the City of Dunkirk supports the Chautauqua County Land Bank Corporation’s request for funding through the NYS Office of the New York Attorney General (Community Revitalization Initiative), and will work to provide such local assistance and resources as are required to utilize the funding to address vacant and abandoned residential properties in the City.

Carried, all voting aye.

RESOLUTION #64-2013
SEPTEMBER 3, 2013

BY THE ENTIRE COUNCIL:

**AUTHORIZING BUDGET LINE MODIFICATIONS
FOR FY2013**

WHEREAS, there is a need to make timely adjustments to the 2013 Fiscal Year to address modifications in certain line items for the 2013 Summer Camp program; now, therefore, be it

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make the following line item budget modifications to properly reflect needed modifications in certain line items in the 2013 Fiscal Year Budget:

GENERAL FUND

<u>ACCOUNT NO.</u>	<u>DEPT.</u>	<u>LINE</u>	<u>INCREASE</u>	<u>DECREASE</u>
001-0001-2005	Gen Fund Revenue	Summer Camp		\$4,855.00

001-7310-4030 Youth Programming \$4,855.00

Councilwoman Szukala asked Mayor Dolce to explain to the public the reason for this change.

Mayor Dolce advised busing the children for summer camp (\$6,000.00) was paid for thru HUD funding in the past; funding was unavailable this year, therefore city funds needed to be used and was not budgeted in this year's budget. Mayor Dolce further advised revenue received from summer camp this year exceeded the cities expectations and will be used for this resolution.

Carried, all voting aye.

RESOLUTION #65-2013
SEPTEMBER 3, 2013

BY THE ENTIRE COUNCIL:

**AUTHORIZING BUDGET LINE MODIFICATIONS
FOR FY2013**

WHEREAS, there is a need to make timely adjustments to the 2013 Fiscal Year to address modifications in certain line items to address payment due on "Bertges Property" mortgage; now, therefore, be it

RESOLVED, that the Fiscal Affairs Officer is hereby authorized and directed to make the following line item budget modifications to properly reflect needed modifications in certain line items in the 2013 Fiscal Year Budget:

GENERAL FUND

<u>ACCOUNT NO.</u>	<u>DEPT.</u>	<u>LINE</u>	<u>INCREASE</u>	<u>DECREASE</u>
001-1900-1990		Contingencies		\$20,000.00
001-8020-4247	Development	DLDC Allotment	\$20,000.00	
001-8020-4036	Development	Contracted Svcs		13,000.00
001-8020-4247	Development	DLDC Allotment	13,000.00	

Councilwoman Szukala asked City Treasurer Woods should the city decide not to transfer this money to the DLDC how this will affect the city's credit.

City Treasurer Woods stated the DLDC is not under the direct operation of the city government, it is considered a component of the city government and default on the loan payment would most likely have a bad reflection on the city's credit rating.

Councilwoman Szukala confirmed with Mayor Dolce the sole purpose of this transfer of money is to allow the DLDC to make payment on this loan and is not a transfer of ownership of the property; transfer of ownership would require approval by both DLDC and council.

Mayor Dolce replied that is correct.

Councilwoman Szukala advised she had concerns on how the city got into this situation, initially intended to vote no, but upon weighing the pro's and con's has decided to support this resolution and stated "I also want to say for the record that I think that the terms that we were given

for this loan, this whole piece of property did not protect the city's best interest at all." Councilwoman Szukala stated she hopes there will be some resolution to this situation in the future and that all elected officials make it a top priority to market this property for development.

Councilman Gonzalez advised he believes the cost to market this property will be too high and stated "I think the price is going to be way too much and for us to be putting more money into bad money, I will vote against it."

Councilman Michalski asked Department of Development Director to explain the purpose of the transfer of funds.

Department of Development Neratko advised the property was appraised (after purchased) for \$250,000.00 well below the \$525,000.00 purchase price and stated "they've (HUD) stated since we've already put \$250,000.00 into the payments on the property, plus funds above and beyond that, they are not interested in any of their funds being utilized further on further payments on the property."

Councilman Michalski inquired if the city could be reimbursed this advancement from HUD should funding become available in the future and has anyone contacted the mortgagee regarding extending payments on this property.

Department of Development Director Neratko stated proceeds from the sale of this property would go back into the CDBG fund as this is where the funds originally came from.

Mayor Dolce advised he has spoken with the mortgagee and believes the property should be transferred to the city so the city could renegotiate the note into more manageable terms while the city looks to find a developer for this property.

Councilman Michalski inquired about the possibility of foreclosure.

City Attorney Szot advised the DLDC is legally obligated to continue to make payments on this property.

Councilwoman Szukala inquired if the property was appraised prior to demolition of the building or after demolition and stated the initial goal of this property was to establish a second boardwalk.

Department of Development Director Neratko advised the property was appraised prior to demolition of the building but after it was purchased and the DLDC is open to idea's as to how to utilize this property and is continuing to market this property.

Councilwoman Szukala asked Mayor Dolce could a meeting be scheduled within the next month in the evening with the DLDC members and common council to discuss this matter.

Mayor Dolce advised a meeting could be scheduled.

Councilwoman-at-large Kiyak read the following statement: "the Bertges property, as noted in the audit report by the Office of the New York State Comptroller dated November 2012, states that the property was purchased by the DLDC for \$525,000.00 even though the assessed value at the time was estimated for only \$361,000.00. As of June 2012, \$300,000.00 in additional payments were made, \$29,000.00 was spent to demolish the building and another \$148,145.00 was spent to pave the lot. Since the time of the report, we have been mandated by the DEC to remove the paved area in order to clean up the contaminated soil that has since been discovered which may cost the City up to an additional \$200,000.00. The \$50,000.00 that is owed this month is one of the three

more payments owed: \$50,000.00 next year and a final \$150,000.00 lump sum payment in 2015.

We can all question what the prior administration and the DLDC Board at that time were thinking when they decided to acquire this property, but in the end it doesn't change the facts we are facing today. We either lose the tremendous investment that has already gone into this property to foreclosure by not transferring these funds, or continue making the payments with the hope that this site will one day be purchased by a developer who shares a common vision with the community. These are our only options – keep the property, or allow the Bertges family to take the property back. Since we have already invested several hundreds of thousands of dollars, it makes sense to me to budget accordingly and make the remaining payment. I will also advocate that our development office make every effort to market this property so that taxpayers will one day see a return on their very deep investment.

I would also like to note that as a current member of the DLDC Board, we have yet to pass a resolution regarding ownership and this will need to be resolved at our next scheduled meeting. But today, the only action this Council is tasked with is transferring funds so that the DLDC can make the payment.”

Ayes: Councilman Michalski, Councilman Rivera, Councilwoman Szukala and Councilwoman-at-large Kiyak.

No: Councilman Gonzalez.

Carried, 4-1.

Councilwoman Szukala motioned to meet in Executive Session to discuss the employment history of a particular person or matter leading to the appointment, employment, promotion, demotion, discipline, suspension, dismissal or removal of a particular person or corporation, it is expected that no new business will take effect after the Executive Session concludes. Seconded by Councilman Gonzalez.

Carried, all voting aye.

Executive Session called to order at 6:07 PM.

Councilwoman Szukala moved to adjourn the Executive Session at 6:24 PM and reconvene to the regular Council Meeting. Seconded by Councilman Rivera.

Carried, all voting aye.

ADJOURNMENT:

Councilwoman Szukala moved to adjourn. Seconded by Councilman Rivera.

Carried, all voting aye.

Adjourned at 6:24 PM

Lacy Lawrence, City Clerk
