

COMMON COUNCIL PROCEEDINGS
October 4, 2011

The meeting was called to order at 6:20 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 Mleczo, Director of Development Ahlstrom, Personnel Administrator Heyden, Fire Chief Ahlstrom and Police Chief Ortolano.

Councilman-at-large Dolce excused Councilwoman Floramo from tonight's meeting.

Certification of September 20, 2011 meeting was read by City Clerk Mleczo.

RESOLVED: That the reading of the minutes of Tuesday, September 20, 2011 be dispensed with.

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

Carried, all voting aye.

PUBLIC COMMENTS:

Dru Pasierb, 66 N. Jerboa Street, Dunkirk, New York distributed a park plan design for the Pangolin and Jerboa Street ball field to the Mayor and Council and stated "hopefully we could receive grant money and this is our next step to work toward making Pangolin a permanent park."

Arlene Langendorfer, 86 E. Pine Street, Dunkirk, New York advised she was dismayed by an article which appeared in Saturday's Observer regarding the Pangolin Street ball field and stated "in my opinion there are no winners, no losers"; "we are here to stand up for what we feel is best for the city and for our neighborhood" and stated that she could foresee a viable park at that location for the whole city to use. Mrs. Langendorfer further advised the Observer's comment was ludicrous; "we attend council meetings because we are interested in what is going on in the city; we want to know what our elected representatives are doing." Mrs. Langendorfer continued "we're just looking for accountability, for truth and what you have planned for us and for the city."

Jim Pasierb, 66 N. Jerboa Street, Dunkirk, New York inquired about the status of the Privilege of the Floor portion of the council meeting being extended to the latter part of the agenda.

Councilman-at-large Dolce advised he has not polled the council regarding their views on this matter and takes full responsibility for not addressing this issue with them. Councilman-at-large Dolce stated "I have no problems with that as long as it would be something pertinent to what was already discussed at the meeting." Councilman-at-large Dolce advised he will discuss this matter with his colleagues.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Frey thanked Mrs. Pasierb for her Pangolin Street Park design.

Mayor Frey advised residents the Animal Control Officer is no longer picking up raccoons and skunks as he has in the past, per New York State Law the Animal Control Officer can not pick up cats and agencies such as the SPCA are not accepting cats. Mayor Frey advised residents the Animal Control Officer has a private business in which he could pick up these types of animals, but as far as his obligation to the city, he is only responsible for picking up dogs. Mayor Frey advised he needs assistance from the council to inform the public as to what the Animal Control Officers obligations and responsibilities are.

Councilman-at-large Dolce advised Animal Control Officer Steve Purol assists with the cat program.

Mayor Frey advised there will be a Halloween Decorating Contest in the City this year; Tom Mleczo and Bob Peterson will be the judges. Mayor Frey advised a winner will be chosen in each of the four wards and each winner will receive a \$25.00 gift card. Mayor Frey advised no City money will be used for these awards; monies for these awards will come from his personal fund.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

No communications or petitions from the public to report at this time.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:

Councilman Michalski commended the residents from Pangolin and Jerboa Street for their persistence during the past six months and stated we need input from the public. Councilman Michalski continued "I hope that we could use the energy that was put into this whole process and turn it and focus it somewhere else, like to this park."

Councilman Michalski advised he also receives telephone calls from residents regarding animals in the City, stated the Animal Control Officer works part-time and his contract is limited to only picking up dogs. Councilman Michalski further advised the council could assist in informing the public of the responsibilities of the Animal Control Officer.

Councilman Muldowney addressed the Pangolin and Jerboa Street residents and stated "I think your group has come a long way since "not now, not here, not never" to at least giving us some kind of other direction of where you would like the park to go." Councilman Muldowney advised we are waiting to hear from Developmental Director Ahlstrom on the status of Resolution #18-2011.

Development Director Ahlstrom advised nothing happens with this Resolution, this Resolution is dead and stated since there were no respondents to the RFP, no action is required by the council; "it was an open and closed RFP with no action taken."

Councilwoman Szukala asked City Attorney Cerrie what is the status of the contract negotiations with the Unions.

City Attorney Cerrie advised they've met with the PBA and 912 Unions three times and stated there has been good dialogue, but neither side is at a position where they are willing to settle with the terms proposed by both sides, and they will be meeting again on October 18th. City Attorney Cerrie advised they will be meeting next week with Union #2693.

Councilman-at-large Dolce advised the next Finance Committee Meeting will be held on Monday, October 17th at 5:00 PM.

Councilman-at-large Dolce read the following letter on behalf of Councilwoman Floramo:

“Dear Councilman Dolce:

Due to unforeseen health I must resign from the council. The heart procedure worked but is not doing what it should do leaving me very tire, especially when I speak. I do hope the next procedure will work better and I can still be involved outside with the Dunkirk I love.

I have all the Personnel in order and will get back to you and Mike as committee members as soon as I can.

Regretfully,

Councilwoman Rose Floramo”

Councilman-at-large Dolce advised he has briefly spoken with City Attorney Cerrie and stated they we will need to act on finding a replacement at the next council meeting on October 18th.

On behalf of himself and the Police Department, Chief Ortolano offered his condolences to the family of former Dunkirk Police Officer LeRoy Fox who passed away last week.

PRE-FILED RESOLUTIONS:

RESOLUTION #56-2011
OCTOBER 4, 2011

BY: ENTIRE COUNCIL

APPROVING THE DUNKIRK HOUSING AUTHORITY EMPLOYEE SALARIES

WHEREAS, Section 32 of the New York State Public Housing Law requires the approval by the governing body of municipality in which the Authority operates, of all salaries of the Authority employees; and

WHEREAS, the City of Dunkirk Housing Authority at its March 3, 2011 meeting approved the attached salary schedule for its employees for the years 2009, 2010, 2011 and 2012, subject to approval of the Dunkirk Common Council and further revision of the Authority's Personnel Policy; now, therefore, be it

RESOLVED, that the Common Council hereby approves the salaries of the Dunkirk Housing Authority employees for the years 2009, 2010, 2011 and 2012, as listed on the attached schedule plus the 6% to be paid, for the years 2008 and 2009, in one lump sum payment. It further approves the salaries shown in appendix B for new hires, effective January 1, 2010.

Councilman Michalski advised he will be voting no on this Resolution and stated it's the message and timing that's at issue. "If you see it from our point of view as a council, we're a local legislative body operating under the rules of New York State and we're basically approving federal spending by approving these raises. It doesn't really put us in a very fair situation. I know it kind of seems like it's the employees that are in the middle of this, and that's not the way I'd exactly like it to be but that's the way it is. I can't change the way that's being set up." Councilman Michalski further advised they met with the union representative and stated "some of their benefits are pretty generous... for us to look at a raise and not consider the benefits I think this is just wrong. You have to consider the entire package; I don't think that you can just look at one part of that, you have to look at their pay and the benefits. I think some of those benefits are pretty generous and again, being the situation that we're in, we don't really have any control over those benefits anyway."

Councilman Muldowney agreed with Councilman Michalski, advised he has voted for these contracts during his 10 years on this council and stated "I never really felt comfortable because it was from another board that negotiated basically on our behalf and it was set up probably 30 years ago that we would oversee the contracts or approve the contracts. I guess I don't like the idea of the increases in these tough economic times, but I have to go back to the boards that have negotiated it and it's gone back a three-year period and they came up with what they feel they can live within their own budget." Councilman Muldowney advised he will be voting yes on this Resolution.

Councilwoman Szukala advised this has been difficult for all and no one is taking their vote lightly. Councilwoman Szukala stated "for me it's also a timing issue, I think that this is sending a very clear wrong message to the unions that are sitting down right now at the table and we can't come to a common ground. We're asking for more, they're not willing to give as much and I think for me I would not have had a problem with the raises if there would have been more give in the benefits." Councilwoman Szukala continued "I also feel it is very unfair that we're asked to rubber stamp a raise that we don't have any control in negotiating, so for me, this is just the wrong time and it's not fair to the unions that are sitting there day after day trying to come up with a solution for the city's problems if I

was to vote yes.” Councilwoman Szukala advised she will again be voting no on this Resolution.

Councilman-at-large Dolce advised he initially voted no on this Resolution and stated any questions he had were answered during a special meeting with the representatives who negotiated this contract. Councilman-at-large Dolce stated “I’m satisfied to the point where this is an equitable deal for both sides. I also felt at the time I didn’t feel that the Housing Authority contract should be the first one that we say yea or nay to, that’s just how it worked out timing wise with these other union contracts being negotiated. But once the firemen’s contract was approved, that to me sets the baseline for the other union negotiations, not the Housing Authority.” Councilman-at-large Dolce advised the Housing Authority contract is in its own separate context, dictated to the council by the State and stated “regardless if it’s fair or not, it’s something that we must act on as a municipality.” Councilman-at-large Dolce advised he will be voting yes on this Resolution.

Vote on Resolution:

Ayes: Councilman Muldowney, Councilman-at-large Dolce

No: Councilman Michalski, Councilwoman Szukala

Councilman-at-large Dolce announced the vote was 2-2 and inquired what happens at this point.

City Attorney Cerrie advised this Resolution needed a majority vote to pass.

Councilman-at-large Dolce inquired with City Attorney Cerrie regarding a tie breaker vote.

City Attorney Cerrie advised there is no tie breaker vote and reiterated this Resolution needed a majority vote to pass.

Development Director Ahlstrom advised this Resolution needed 3 votes to pass.

Councilman-at-large Dolce inquired if the Housing Authority Board and the Union had to renegotiate this contract.

City Attorney Cerrie replied “I believe in talking to their attorney, a letter is going to be sent to the Comptroller to address the issue because it is such a unique situation and there isn’t any clear answer as to what the next step is.” City Attorney Cerrie further advised they could go back to the negotiating table and present a new contract for the council to approve or disapprove. City Attorney

Cerrie stated "at this time, the next step is going to be a letter to the Comptroller requesting some advice."

Resolution defeated, 2-2.

RESOLUTION #57-2011
October 4, 2011

BY: COUNCILWOMAN SZUKALA

ACCEPTING MAINTENANCE RESPONSIBILITY FOR NORTH DEER STREET

WHEREAS, the North Deer Street pavement, from Lake Shore Drive East northerly to the lake, was removed during demolition in preparation for the harborfront development in the mid-1980's, and

WHEREAS, because of the pavement removal, that section of North Deer Street was removed from the New York State Department of Transportation Local Highway Inventory (LHI), and

WHEREAS, currently that portion of North Deer Street has been put back into service as a public street, now, therefore, be it

RESOLVED, that the City of Dunkirk hereby once again accepts ownership, operation and maintenance responsibility of North Deer Street from Lake Shore Drive East northerly to the lake, and, be it further

RESOLVED, that the Department of Public Works is directed to take the necessary steps to add that portion of North Deer Street to the LHI.

Carried, all voting aye.

RESOLUTION #58-2011
October 4, 2011

BY: ENTIRE COUNCIL

**AUTHORIZING THE MAYOR TO RENEW A CONTRACT WITH
DFT COMMUNICATIONS**

WHEREAS, the City's contract for phone service with DFT Communications, will expire December 31, 2011, and

WHEREAS, this contract will cover all lines at City Hall, including the Police Department, and other various departments around the City, excluding the Waste Water Treatment Plant, Harbor Master, Senior Center and Public Access 12; and

WHEREAS, the City has been approached by DFT Communications with a proposal which would lock in our phone service rate for a three (3) year period; and

WHEREAS, the new agreement would make it possible to more effectively budget for the City's phone service; and

WHEREAS, the proposed contract is expected to have monthly savings for the City of Three Hundred Thirty-Six Dollars and Fifty-One Cents (\$336.51), now, therefore, be it

RESOLVED, the Mayor is hereby authorized and directed to renew an agreement with DFT Communications which will be effective January 1, 2012 and terminate on December 31, 2014, with an expected savings of \$336.51 per month.

Carried, all voting aye.

RESOLUTION #59-2011
October 4, 2011

By: ENTIRE COUNCIL

**AUTHORIZING THE MAYOR TO RENEW A CONTRACT WITH
DFT COMMUNICATIONS FOR THE WASTE WATER TREATMENT PLANT,
HARBOR MASTER, SENIOR CENTER AND PUBLIC ACCESS 12**

WHEREAS, the City's contract for phone service with DFT Communications, will expire December 31, 2011, and

WHEREAS, this contract will cover all lines at the Waste Water Treatment Plant, Harbor Master, Senior Center and Public Access 12; and

WHEREAS, the City has been approached by DFT Communications with a proposal which would lock in our phone service rate for a three (3) year period; and

WHEREAS, the new agreement would make it possible to more effectively budget for the City's phone service in the areas listed above; and

WHEREAS, the proposed contract is expected to have monthly savings for the City of Forty-Four Dollars and Seventy-Six Cents (\$44.76), now, therefore, be it

RESOLVED, the Mayor is hereby authorized and directed to renew an agreement with DFT Communications which will be effective January 1, 2012 and terminate on December 31, 2014, with an expected savings of \$44.76 per month.

Mayor Frey advised this contract will result in a savings to the city of approximately \$4,600.00 and the city will also receive additional coverage that it did not receive in the past.

Carried, all voting aye.

RESOLUTION #60-2011
OCTOBER 4, 2011

BY: ENTIRE COUNCIL

AUTHORIZING AGREEMENT
WITH JOHNSON, MACKOWIAK AND ASSOCIATES, LLP
FOR ACCOUNTING SERVICES FOR 2011 THROUGH 2015

WHEREAS, the current audit contract with Johnson, Mackowiak and Associates, LLP, expired on December 31, 2010, and

WHEREAS, certain professional outside accounting and auditing services are required by the City of Dunkirk for fiscal years 2011, 2012, 2013, 2014 and 2015, and

WHEREAS, Johnson, Mackowiak and Associates, LLP, has undertaken such accounting and auditing services in the past, and

WHEREAS, it is in the best interests for the City to utilize Johnson, Mackowiak and Associates, LLP, for such services for

Year ended December 31,	<u>New York State Annual Report</u>	<u>Audit of the Basic Financial Statements</u>	<u>Blended Hourly Rate</u>
2011	\$ 7,000	\$ 27,250	\$ 95/hour
2012	7,250	27,750	100/hour
2013	7,500	28,500	100/hour
2014	7,750	29,000	105/hour
2015	8,000	29,500	105/hour

now, therefore be it

RESOLVED, that the Mayor be, and hereby is, authorized and directed, to execute an Agreement, on behalf of the City of Dunkirk, with **JOHNSON, MACKOWIAK AND ASSOCIATES, LLP**, 70 East Main Street, Fredonia, New York 14063, for accounting and auditing services for fiscal years 2011, 2012, 2013, 2014 and 2015, and, be it further

RESOLVED, that the funds shall come out of Account No. 001-1310-4036.

Carried, all voting aye.

RESOLUTION #61-2011
OCTOBER 4, 2011

BY: COUNCILWOMAN SZUKALA

INTRO NO. 7 TO LOCAL LAW #7-2011
CITY OF DUNKIRK, NEW YORK

**A LOCAL LAW TO AMEND CHAPTER 76 “VEHICLE AND TRAFFIC”,
ARTICLE VIII “PARKING, STANDING AND STOPPING”
SECTION 76-85 ENTITLED “OVERNIGHT PARKING PROHIBITED”
OF THE DUNKIRK CITY CODE**

BE IT ENACTED by the City Council of the City of Dunkirk, New York as follows:

Section 1 **Intent.**

It is the intent of this Local Law to amend Chapter 76, Article VIII, Section 76-85 entitled “Overnight parking prohibited,” to commence and end on the same dates as Alternate Parking.

Section 2 **Amendment of City Code.**

Chapter 76, Article VIII, of the Dunkirk City Code is hereby amended as follows:

§ 76-85. Overnight parking prohibited. [Amended 12-2-1997 as L.L. #16-1997 lto change “Third Street from Main Street to Robin Street” to “Third Street from Main Street to Central Avenue”]; Amended 10-6-1998 as L.L. #5-1998 (to delete “Eagle Street from Third Street to Fourth Street”)]

DELETE

A. It shall be unlawful to park any vehicle on any of the following listed streets between the hours of 3:30 A.M. and 7:00 A.M. during the period commencing **November 1 and ending March 31**. This provision shall not apply to any street subject to the alternate parking regulations of § 76-82 of this article.

AMEND

A. It shall be unlawful to park any vehicle on any of the following listed streets between the hours of 3:30 A.M. and 7:00 A.M. during the period commencing **the first Sunday in November and ending the first Saturday in April**. This provision shall not apply to any street subject to the alternate parking regulations of § 76-82 of this article.

Section 3 **Effective Date.**

This Local Law shall take effect immediately upon filing with the Secretary of State.

Councilwoman Szukala motioned to table this Resolution with a Public Hearing to be held on October 17, 2011 at 5:50 PM.

NEW BUSINESS:

RESOLUTION #62-2011
NEW BUSINESS
OCTOBER 4, 2011

BY: COUNCILWOMAN SZUKALA, SECONDED BY COUNCILMAN MICHALSKI

**AUTHORIZING AWARD OF BID FOR CONTRACT 6-2011
HVAC IMPROVEMENTS AT THE DUNKIRK WATER TREATMENT PLANT**

WHEREAS, the current consent order in effect at the Dunkirk Water Treatment Plant includes improvements to the electrical and HVAC systems at the plant, and

WHEREAS, sealed bids for Contract 6-2011 – HVAC Improvements at the Dunkirk Water Treatment Plant were received and opened on September 29, 2011 at 2:00 PM local time, with two (2) 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 John W. Danforth, 300 Colvin Woods Parkway, Tonawanda, NY 14150, be accepted in the amount of \$87,000 for HVAC Improvements at the Dunkirk Water Treatment Plant, 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 John W. Danforth, for the above described construction in accordance with the bid documents, and that funding shall be allocated from Fund Account 015-8320-5041-4048, and, be it further

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

Councilman-at-large Dolce advised he inquired about this during the workshop session and stated Resolutions #62 and #63 monies were already approved from Phase I of this bonding project.

City Attorney Cerrie advised the Public Hearing date for the prior Resolution (#61-2011) should be October 18th.

Councilwoman Szukala apologized for the error.

Carried, all voting aye.

RESOLUTION #63-2011

**NEW BUSINESS
OCTOBER 4, 2011**

BY: COUNCILWOMAN SZUKALA, SECONDED BY COUNCILMAN MICHALSKI

**AUTHORIZING AWARD OF BID FOR CONTRACT 5-2011
ELECTRICAL IMPROVEMENTS AT THE DUNKIRK WATER TREATMENT PLANT**

WHEREAS, the current consent order in effect at the Dunkirk Water Treatment Plant includes improvements to the electrical and HVAC systems at the plant, and

WHEREAS, sealed bids for Contract 5-2011 – Electrical Improvements at the Dunkirk Water Treatment Plant were received and opened on September 29, 2011 at 2:00 PM local time, with two (2) 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 Industrial Power and Light Corporation, 701 Seneca Street, Suite 500, Buffalo, NY 14210, be accepted in the amount of \$89,400 for Electrical Improvements at the Dunkirk Water Treatment Plant, 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 Industrial Power and Light Corporation, for the above described construction in accordance with the bid documents, and that funding shall be allocated from Fund Account 015-8320-5041-4048, and, be it further

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

Carried, all voting aye.

**RESOLUTION #64-2011
NEW BUSINESS
OCTOBER 4, 2011**

BY: ENTIRE COUNCIL

**WATER AND SANITARY SEWER TAP APPROVAL FOR
PROPOSED TIM HORTON’S ON VINEYARD DRIVE**

WHEREAS, a request for water and sanitary sewer tap approval for a proposed Tim Horton’s restaurant to be located at 3936 Vineyard Drive, in the Town of Dunkirk, was received at the regular meeting of September 20, 2011, and

WHEREAS, this request was referred to the Director of Public Works and Treasurer for review and recommendation, now, therefore, after said review, be it hereby

RESOLVED, that water and sanitary sewer tap approval is hereby granted in accordance with the respective utility agreements between the City and Town of Dunkirk contingent upon the aforesaid agreements and any conditions imposed by the Department of Public Works for a proposed Tim Horton’s restaurant at 3936 Vineyard Drive in the Town of Dunkirk.

Councilman-at-large Dolce inquired if the city receives any revenue from this.

City Treasurer Woods advised the City will receive \$2,500.00 for each tap fee, for a total of \$5,000.00.

Carried, all voting aye.

ADJOURNMENT:

Councilwoman Szukala moved to adjourn. Seconded by Councilman Michalski.

Carried, all voting aye.

Adjourned at 6:45 PM

Tom Mieczko, City Clerk
