

COMMON COUNCIL PROCEEDINGS
September 20, 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. 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 this meeting.

Certification of September 6, 2011 meeting was read by City Clerk Mleczo.

RESOLVED: That the reading of the minutes of Tuesday, September 6th, 2011 be dispensed with.

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

Carried, all voting aye.

PUBLIC COMMENTS:

Arlene Langendorfer, 86 E. Pine Street, Dunkirk, NY read the following letter mailed to Bill Daly, Director of Chautauqua County Planning & Economic Development, and Greg Edwards, County Executive as follows:

"The County Planning Department is advocating and promoting the enhancement and promotion of green space in Chautauqua County.

Over 250 residents have already signed a petition to preserve the Pangolin Park in Dunkirk as a public green space. On behalf of the many concerned citizens of Dunkirk and Chautauqua County, please encourage the County Planning & Development Department to include Pangolin Park in their plans for preserving and promoting greenways. Pangolin Park is located along the city's pedestrian and bicycle waterfront pathway and has been used as a public park for generations - it should be kept as a park for the good of all residents and for future generations.

Thank you for your consideration to this matter".

Jim Pasierb, 66 N. Jerboa Street, Dunkirk, NY again requested that "Privilege of the Floor" be added to the end of the Council Meeting.

Jim Pasierb read the following letter addressed to Assemblyman Andy Goodell, Senator Cathy Young and Senator Mark Grisanti as follows:

"Dear Assemblyman Goodell:

As you may be aware, Senator Mark Grisanti recently obtained State funding for a small waterfront park in Niagara Falls. That park was going to be given to developers to build a low rate motel. Senator Grisanti made sure that park land was kept for the good of all the people.

Similarly, the City of Dunkirk has Pangolin Park near the lake that may be given to developers for one dollar. Pangolin Park is located along the City's pedestrian and bicycle waterfront pathway and has been used as a park for generations. Over 250 residents have already signed a petition to preserve Pangolin Park as a green space. On behalf of the many concerned citizens of Dunkirk and Chautauqua County, please consider helping us in any way you can to preserve and protect Pangolin Park."

"Dear Senator Young:

We applaud your recent success in obtaining funding and support for the enhancement of a park in Stockton. Obviously, this park will add to the quality of life of the residents of Stockton, particularly the children.

As you may be aware, your colleague, Senator Mark Grisanti recently obtained State funding for a small waterfront park in Niagara Falls. That park was going to be given to developers to build a low rate motel. Senator Grisanti's efforts made sure that the park land was kept for the good of all the people.

Similarly, the City of Dunkirk has Pangolin Park near the lake that may be given to developers for one dollar. Pangolin Park is along the City's pedestrian and bicycle waterfront pathway and has been used as a park for generations. Over 250 residents have already signed a petition to preserve Pangolin Park as a green space. On behalf of the many concerned citizens of Dunkirk and Chautauqua County, please consider helping us in any way you can to preserve and protect Pangolin Park".

"Dear Senator Grisanti:

Congratulations on your success in Niagara Falls in keeping La Salle Park a waterfront green space that can be enjoyed by everyone instead of a cheap development project.

We are residents of the City of Dunkirk, New York faced with a very similar situation. A copy of our letter to our Senator Cathy Young is enclosed. We ask that you

and your staff assist Senator Young in helping us preserve our park just as you helped the residents of the City of Niagara Falls.

Thank you Senator, and please keep up the good work for all the residents of New York State".

Helen Britt, 51 N. Pangolin Street, Dunkirk, NY also read a letter sent to our Legislators Keith Ahlstrom, Robert Duff, John Gullo, Shaun Heenan and Bob Scudder as follows:

The County Planning Department is advocating and promoting the enhancement and promotion of green space in Chautauqua County.

Over 250 residents have already signed a petition to preserve the Pangolin Park in Dunkirk as a public green space. On behalf of the many concerned citizens of Dunkirk and Chautauqua County, please encourage the County Planning and Development Department to include Pangolin Park in their plans for preserving and promoting greenways. Pangolin Park is located along the city's pedestrian and bicycle waterfront pathway and has been used as a public park for generations - it should be kept as a park for the good of all residents and for future generations.

Thank you for your attention to this matter.

Concerned Citizens of Dunkirk"

Dru Pasierb, 66 N. Jerboa Street, Dunkirk, NY stated that she was here to address some of the comments that have been on line in the Observer in regard to Pangolin Park as follows:

Comment: "Not in my backyard. . ."

Fact: The Pangolin Park is in our front yards; all of ours . . .and it is a park for Dunkirk Citizens.

Comment: "We do not pay taxes for the Park. . .referring to just the immediate residences.

Fact: We all pay taxes for that park and for its maintenance to be used for all.

Comment: "Why don't we buy the Land"?

Fact: The Pine Street residents would like to do that. . .those three or four houses would like some of that park to increase the value of their property and pay more taxes.

Comment: The park is underused. . .

Fact: At present it is underused because it has been neglected for the 15 years Jim and I have lived there.

Comment: That we only have negative comments.
Fact: Personally, I would like to see the Farmers Market down there, wide, double-wide sidewalks for walking. . .and in reference to La Salle "the park's architect said the design was for a "passive recreation facility" that focused on open spaces for people to relax, come and play and use the waterfront. The park is not about soccer, baseball fields or sports facilities - we have that a few blocks away. It's a park to be used and enjoyed for all seasons!

Thank you very much!

Ron Krystofiak, 46 N. Jerboa Street Dunkirk, NY agreed with his neighbors in opposition of the proposed project for Pangolin Street. He also reminded Council of the petitions presented to them earlier from residents in opposition to this proposal, and of what was said at a previous CAC Meeting. He stated that remarks at that meeting, along with comments from Mr. Mirth were in regard as to where it was stated that there does not even appear to be a line of reasoning as to why Pangolin Park was selected when there are at least 11 other sites along the lake that are better suited for housing and should be first. He also advised of an article in the Observer on May 23, 2011 that reported Mr. Mirth's comments and Mayor Frey stating that a meeting was set to discuss items with residents on June 25th, which did not happen. He stated this was rescheduled, but was also cancelled due to another event, and has not since been rescheduled. He informed that Councilwoman Floramo had stated to make sure that Council met with residents before anything was done, and Councilman Michalski also stated that they're not moving on this at all before it's brought to the residents. He stated that lake front property is prime, but so are parks. He advised of a home on Lake Front Boulevard that's been for sale for most of this year and has heard of no offers for this as of yet. Mr. Krystofiak stated that throughout the summer on every Saturday morning there were youth groups using the park for soccer and touch football, and some of the children's groups that occupied St. Hyacinth's School were coming and using the park. He stated it could be put to better use, but according to the children using it, there's nothing there to use the park for. He suggested putting in walk paths, benches, a playground and ice-rink as in the past, and it would be valuable as green space. He reminded that housing would require additional street care, garbage and snow removal, and that sewer installation may be an overload on the system, which has been voted on to be redone because of it's poor condition along Lake Front Boulevard. Mr. Krystofiak therefore requested consideration for this proposal again, and asked to preserve the beautiful spot we have, develop it as a useful park, and don't destroy it.

COMMUNICATIONS FROM THE MAYOR INCLUDING DISAPPROVAL MESSAGES:

Mayor Frey had nothing to report at this time.

COMMUNICATIONS FROM THE PUBLIC AND PETITIONS:

Petition from Robert Bender on behalf of Tim Hortons requesting water & sewer connections from the City for their proposed location on Vineyard Drive.

Councilman Michalski moved to refer this request to the Public Works and Treasurer's Offices. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Loudspeaker application from Harriet Tower for guitar music at the Stearns Court on October 5th, 2011 from 5:00 to 7:00 PM for friends of Stephanie Kiyak.

Councilman Muldowney moved that permission be granted and referred this to the Public Works & Police Departments. Seconded by Councilwoman Szukala.

Carried, all voting aye.

Notice of Claim from Mary Barbknecht for damages to her vehicle allegedly due to a fallen tree limb while parked on Washington Avenue.

Councilman Muldowney moved to refer this claim to the City Attorney. Seconded by Councilman Michalski.

Carried, all voting aye.

Petition from Tracy Ossman on behalf of the Dunkirk City School District requesting the presence of a uniformed police officer for School #4 and #7 on Tuesday, December 6th, 2011 from noon to 3:00 PM for a special School District vote.

Councilwoman Szukala moved to refer this request to the PBA. Seconded by Councilman Michalski.

Carried, all voting aye.

REPORTS OF STANDING COMMITTEES, BOARDS AND COMMISSIONS:

Councilman Michalski stated that at the previous Council Meeting, he requested a meeting with the proposed developer on the Pangolin site, and asked Director of Development Ahlstrom for an update on this.

Director of Development Ahlstrom advised that he spoke with them this afternoon, and there were a couple of things they were trying to get in order so they have the correct answers. This was due to some changes in tax credits that were in the initial program that may have some effect on the bottom line. He also stated that he spoke with the residents and have a commitment from them, and this should be wrapped up in time for discussion or action at the next meeting. He further advised that this was being worked on for proper information from the developer instead of assumptions made six months ago that have changed.

Councilman Michalski stated that it was still his intention to bring those developers to a public meeting so people have an opportunity to hear what they have to say before Council votes on this. He again stated this was his intention, and they had his word on it.

Councilman Muldowney agreed with Councilman Michalski, and thanked the Pangolin residents, as he heard some positive comments/suggestions from this group tonight. He stated that this was the first time he heard these comments as it was always "not now", "not never or ever" and did like the suggestions about wider sidewalks and benches. He stated that he did not hear that in the last three to four months, the tone has changed, hopefully the dialogue will be continuing with the developers, and we'll continue from there.

Councilwoman Szukala spoke relative to the (winter) parking situation in the City and how to simplify the changes. She stated that she spoke with Chief Ortolano on this and they agreed to work on a suggested change, thus starting with the winter changes on the same day for overnight and alternate parking. She stated this would have nothing to do with the time change, but simply starting on the same date for both (alternate and overnight parking). She stated this would make it easier on the residents as well as visiting guests not accustomed to our regulated parking, and this would be discussed at a Public Safety Meeting on September 26th at 2:00 PM in the Conference Room. Councilwoman Szukala again advised that they will not consider making any changes in time, but only move starting and ending dates for the season. She felt that most people don't stop to read the signs as there's too much wordage, it's confusing for people that aren't from here, and simplifying the process would also help rescue vehicles and snowplows.

Councilwoman Szukala also advised that Skeeter Tower had addressed the Council last year for help on reducing the amount of litter around the Middle & High Schools. She advised that after that, the Superintendent was notified, and the City suggested that the school system purchase some trash receptacles to be placed around the areas of concern. She stated that Mr. Cerne was more than happy to assist, and as of this morning, it was believed that they were ordered and delivered to the school system. She advised however, that with the ongoing construction projects taking place over the season, they need to be located and will then be installed.

Councilwoman Szukala further addressed Public Works Director Gugino relative to the high weeds along the ditch line, and wondered if there was a time-frame for this and on the list.

Public Works Director Gugino advised that this was the lowest of priorities on the list right now, as all the time, energy and manpower was spent on railroad crossings and upgrading. Councilwoman Szukala also questioned if they had different crews for this, and Public Works Director Gugino advised that they did, but doubted if weeds would be cut before the winter.

Building Inspector Zurawski also informed her that they notify the Legal Department about weeds, and they have a response on this matter. He advised that this was low priority right now, and they do have a National Team that comes out and does weeds per region. Councilwoman Szukala stated that this was unfortunate, as if it were her yard or anyone else's they would be ticketed, but understood that there was a working

relationship involved. Building Inspector Zurawski also advised her that a Federal Law was also involved.

Councilman-at-large Dolce addressed the Public Works Director relative to the street cut across from School #4, and questioned if a temporary mediation could be done.

Public Works Director Gugino advised of the contract with Birch Grove and informed that they just tied into the storm sewer on Wednesday. He further advised that he talked to the contractor yesterday who does know this has to be remedied.

PRE-FILED RESOLUTIONS:

RESOLUTION #54-2011
SEPTEMBER 20, 2011

BY ENTIRE COUNCIL:

**RESOLUTION AUTHORIZATION MAYOR TO EXECUTE LEASE ASSIGNMENT FOR
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 Marina lease is subject to a leasehold mortgage held by Huntington National Bank (the "Bank") which was also consented to by the City; and

WHEREAS, the Bank and Ryan Marine Services, LP have agreed to sell and/or transfer their rights under the Lease to JSG Marina Holdings, LLC, or an entity to be formed with the same principal ownership, under a contract dated September 8, 2011, that has been fully executed by all parties involved; and

WHEREAS, pursuant to the original contract, the assignment of the lease rights must be consented to by the City, however, subject to the term that it may not be unreasonably withheld; now, therefore, be it

RESOLVED, that the City of Dunkirk Common Council hereby consents to the assignment 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, and hereby directs the Mayor to execute all documents necessary to facilitate this assignment, subject to maintaining the terms set out in the original Lease, and all subsequent amendments.

Councilman-at-large Dolce advised that he had his questions on this answered in the workshop.

Vote on resolution: Carried, all voting aye.

RESOLUTION #55-2011
SEPTEMBER 20, 2011

BY ENTIRE COUNCIL:

**AUTHORIZING THE CITY TO ENTER INTO A
GENERAL MUNICIPAL LAW 239-m
REFERRAL EXEMPTION AGREEMENT WITH
THE CHAUTAUQUA COUNTY PLANNING BOARD**

WHEREAS, pursuant to New York State Municipal Law 239-m, municipalities shall, before taking final action on proposed actions, refer certain actions to the county planning agency for inter-community or county-wide considerations; and

WHEREAS, the Law also states that the county planning agency may enter into an agreement with the referring bodies to provide that certain proposed actions are of local, rather than inter-community or county-wide concern, and are not subject to referral under this section; and

WHEREAS, the actions that this agreement would exempt from County General Municipal Law 239-m Review are: Special Use Permit renewals; rear and side building setback; fences; decks; minimum building size; minimum building lot size; size and height of garages; number of storage sheds; and subdivision of lots; and

WHEREAS, all municipalities that wish to take advantage of the aforementioned exemptions must enter into a legal agreement with the County Planning Board that formalizes the exemption agreement; and

WHEREAS, the City of Dunkirk is desirous of entering into such agreement with the County Planning Board that formalizes the exemption agreement; now, therefore, be it

RESOLVED, that the Mayor is hereby directed and authorized to execute a General Municipal Law 239-m Referral Exemption Agreement with the Chautauqua County Planning Board.

Councilman-at-large Dolce advised that if they ever needed to go for a referral they could do so.

Vote on resolution: Carried, all voting aye.

NEW BUSINESS:

City Attorney Carrie advised that he is filing a letter with the City Clerk from the Bond Attorney regarding resolution #49-2011 authorizing bonding for the water pipes. He advised that this would be in the Clerk's Office for anyone to view and that Council and the Mayor already received this.

He explained that at this point, they are saying that Roberts Rules were properly followed with that vote, and a 4-0 vote would be upheld if taken to Court. He also advised that there's a higher level needed to be held in regard to bonding issues, and they are now saying that it would be in the city's best interest not to follow through with any bonding or bids on this project. City Attorney Carrie advised that this needed to be received and filed by the Council.

Councilman-at-large Dolce questioned if there was any opposition to receiving and filing.

Communication from Hodgson Russ, LLP Jeffrey W. Stone & John Alessi re: Bond Resolution #49-2011.

Received and filed.

Adjourned at 6:45 PM

Tom Mleczko, City Clerk
