

**THE HONORABLE BODY
Council Chambers
Municipal Building
North Tonawanda, New York 14120
Wednesday, February 16, 2005
6:00 P.M.**

REGULAR SESSION CALLED TO ORDER BY PRESIDENT SOMMER

PLEDGE OF ALLEGIANCE

ROLL CALL

**Present: President Sommer
Aldermen Soos, Rizzo, Schwandt, Hempel**

Absent: None

**Also Present: Mayor David J. Burgio
City Attorney Shawn P. Nickerson**

APPROVAL OF THE MINUTES OF THE REGULAR SESSION FEBRUARY 2, 2005

**MOVED by Alderman Sommer SECONDED by Alderman Rizzo
That the minutes of the regular session held February 2, 2005 be approved as circulated and
filed in the Office of the City Clerk.
CARRIED.**

PROOF OF PUBLICATION PUBLISHED DECEMBER 31, 2004 & JANUARY 3, 2005

- 1) Bid – Installation of 8-inch Sanitary Sewer – Engineer

PROOF OF PUBLICATION PUBLISHED JANUARY 16 & 17, 2005

- 1) Notice – Normal Weekly Sanitation Pickup – Public Works

**MOVED by Alderman Rizzo SECONDED by Alderman Soos
That the aforementioned proofs of publication be received and filed.
CARRIED.**

AUDIENCE PARTICIPATION

Gordon Fritz – Spoke against special assessment districts.

Joanne Dickey – Questioned the consolidation of the Assessor's Office.

COMMUNICATIONS FROM CITY OFFICIALS

II. Attorney

February 11, 2005

Honorable Mayor and Common Council
North Tonawanda City Hall
216 Payne Avenue
North Tonawanda, NY 14120

Re: Agreement to Amend and Restate Electric Franchise

Dear Mayor Burgio and Common Council

This letter is in response to the Council's request that the attached agreement be scheduled for the next agenda. Accordingly, please find a draft of the proposed Agreement for your review.

It should be noted that this is a ten-year extension of the existing franchise agreement. More specifically, it continues the current agreement (expiring in 2007) to 2017.

I have spoken to former City Attorney, Henry Wojtaszek regarding this matter. He indicated the attached is what was negotiated with Niagara Mohawk.

Also attached please find a letter from the law firm of Couch White, LLP. Mr. Wojtaszek requested their assistance in rendering a legal opinion regarding exit fees. Said fees would be owed to Niagara Mohawk should the City choose to municipalize power during the term of the agreement. According to the attached calculations, the exit fees may actually decrease the longer Niagara Mohawk provided power to the City of North Tonawanda under the terms of a franchise agreement.

Please place said Agreement on the next agenda for a vote. Should the attached meet with your approval, please authorize Mayor Burgio to execute the same.

Should you have any questions or comments, please do not hesitate to contact me.

Yours truly,
Shawn P. Nickerson
City Attorney

MOVED by Alderman Sommer

SECONDED by Alderman Hempel

That the Common Council hereby amends and restates the electric franchise agreement as follows and authorizes the Mayor to sign the agreement, subject to review of all terms and documentation by the City Attorney:

WHEREAS, the City of North Tonawanda previously granted to NMPC an electric franchise which permits NMPC to lay, erect, construct, maintain and operate the necessary poles, towers, wires, cables, conduits, subways, appliances, structures and other fixtures in, over, upon, across and under all of the streets, avenues, public parks and places of and in the City of North Tonawanda for the purpose of transmitting, distributing and furnishing electricity, and for the corporate purposes of NMPC, in pursuance of Subdivision 3 of Section 11 of New York's Transportation Corporations Law, which electric franchise was duly approved by the Common Council of the City of North Tonawanda at a meeting held on August 2, 2000 at which a quorum was present and a majority of the members of said Common Council voted in favor thereof (hereinafter the "FRANCHISE"); and

WHEREAS, the City of North Tonawanda is willing to amend and restate the Franchise by modifying the "FIFTH" paragraph of said Franchise, which modification will serve to amend and extend the term of said Franchise as set forth herein,

NOW, THEREFORE, for good and valuable consideration, the receipt and adequacy of which is hereby mutually acknowledged under the seal, the parties hereto agree as follows:

1. The "FIFTH" paragraph of the Franchise is hereby deleted in its entirety and the following shall be inserted in its place:

"FIFTH: The term of this Franchise Agreement shall be for a period expiring August 2, 2017, retroactive to April 24, 1999, when the prior franchise expired. Upon the expiration of said term, this agreement shall automatically renew for subsequent terms of seven (7) years unless either the City of North Tonawanda or Niagara Mohawk Power Corporation notifies the other in writing of its intent to terminate not less than one (1) year nor more than two (2) years prior to the expiration of the then current term. Any such notice shall be mailed or personally delivered to the City of North Tonawanda at the City Hall, 216 Payne Avenue, North Tonawanda, New York 14120, or to Niagara Mohawk Power Corporation, Attention Law Department, 144 Kensington Avenue, Buffalo, New York 14214."

2. Except as set forth herein, the Franchise is otherwise unmodified and remains in full force and effect.

Ayes: Rizzo, Schwandt, Hempel, Sommer (4)

Nays: Soos (1)

CARRIED.

IV.1 Engineer

February 9, 2005

Honorable David J. Burgio, Mayor
and Common Council Members
City Hall
North Tonawanda, New York 14120

Re: Project 2005-01, Briarwood Subdivision Public Improvements
Award of Contract

Dear Honorable Body:

On January 25, 2005, ten (10) bids were received and publicly opened by the City Clerk for the Briarwood Subdivision Public Improvements. The bid results of are as follows:

• Yarussi Construction, Inc.	\$646,836.00
• Milherst Construction, Inc.	\$649,600.56
• Accadia Site Contracting, Inc.	\$650,405.00
• Man'o'Trees	\$693,000.00
• C. Destro Development Co., Inc.	\$764,800.00
• Northeast Diversification, Inc.	\$772,555.00
• Visone Construction, Inc.	\$779,940.00
• Mark Cerrone, Inc.	\$793,322.50
• Cimato Brothers Construction, Inc.	\$825,204.25
• Anastasi Trucking & Paving Co.	\$857,653.15

Accordingly, I respectfully request that the Common Council award Project 2005-01, Briarwoods Subdivision Public Improvements, to Yarussi Construction, Inc., 5660 Simmons Ave., Niagara Falls, New York 14068, at their low bid amount of \$646,836; authorizing the mayor to sign said contract; contingent upon Common Council approval of the creation of the Briarwood Subdivision special assessment district; that the Common Council amend the 2005 Capital Budget by adding the Briarwood project in the amount of \$700,000; and that the Common Council accept the property deeded to the city for the improvements within the right-of-way; all subject to review by the City Attorney.

Very truly yours,
Dale W. Marshall, P.E.
City Engineer

02-16-05

Accordingly, please authorize for payment the current Warrant of Claims for Common Council audit, dated February 16, 2005, and further authorize the Mayor and City Clerk to respectively sign and countersign said Warrant.

Very truly yours,
David R. Jakubaszek
City Accountant

MOVED by Alderman Schwandt **SECONDED** by Alderman Sommer
That the Common Council hereby authorizes for payment the current Abstract of Claims for Common Council Audit dated February 16, 2005 and further authorizes the Mayor and City Clerk respectively sign and countersign said Warrant:

01	General Fund	\$216,375.93
02	Water Fund	18,356.14
04	Sewer Fund	83,423.33
06	Capital Projects Fund	25,510.00
07	Trust & Agency Fund	4,870.37
11	General Fund (Enc)	6,771.27
12	Water Fund (Enc)	1,937.61
14	Sewer Fund (Enc)	<u>10,496.00</u>
	Final Total	<u>\$367,740.65</u>

Ayes: Soos, Rizzo, Schwandt, Hempel, Sommer (5)
Nays: None (0)
CARRIED.

X. Police

February 4, 2005

North Tonawanda Common Council
216 Payne Avenue
North Tonawanda, NY 14120

Dear Honorable Body:

I have applied to and have been approved by Government Acquisitions, Inc., a company that supplies vehicles to municipalities for no cost, to participate in their program.

These vehicles are provided at no cost because commercial advertising is placed on each vehicle thus passing the cost on to the advertiser, not the city. We will have the final decision on the type of advertiser and the design, assuring that our cars will retain a professional appearance.

The City Attorney's office has reviewed the proposed contract and agrees with the terms. A resolution is needed to adopt this program prior to sending my formal request to Government Acquisitions, Inc.

There is no guarantee that sponsors can be located in the Western New York area. Once we apply, there is no time frame when or even if this program will be successful. We still need to purchase cars per the 2005 budget. Please consider a resolution on this matter.

Respectfully submitted,
Randy D. Szukala

MOVED by Alderman Schwandt **SECONDED** by Alderman Soos
That the Common Council hereby authorizes the Police Department to submit a request to Government Acquisitions, Inc. to supply vehicles to the City of North Tonawanda at no cost to the City subject to review of the City Attorney.
CARRIED.

XXXII.2 Community Development

February 9, 2005

**The Honorable Mayor and Common Council
City Hall – 216 Payne Avenue
North Tonawanda, NY 14120**

**Re: Extension of Agreement between H. Sicherman & Company, Inc. and the
City of North Tonawanda through the Community Development Dept.**

Dear Honorable Body:

The City, through its Community Development Dept., has contracted with H. Sicherman & Company, Inc., for 2003 and 2004 regarding consulting services for community development, economic development and planning services.

Further, the Community Development Dept. will be in need of some consulting services regarding a number of Federal and State Grant applications for 2005. It is anticipated that these services will be provided on a limited basis.

Consequently, I am requesting that the Common Council authorize the Mayor to sign an extension of the existing contract, with revised rates, to cover the period of January 1, 2005 through December 31, 2005, subject to review by the City Attorney. All other terms and conditions will remain the same. The cost of these services will be paid from Community Development Block Grant funds.

Thank you for your anticipated cooperation.

**Sincerely,
James B. Sullivan
Director of Community Development**

MOVED by Alderman Sommer

SECONDED by Alderman Schwandt

That the Common Council hereby authorizes the Mayor to sign an extension of the existing contract between H. Sicherman & Company, Inc. and the City of North Tonawanda through the Community Development Office, with revised rates to cover the period of January 1, 2005 through December 31, 2005, subject to review by the City Attorney. All other terms and conditions will remain the same. The cost of these services will be paid from Community Development Block Grant funds.

Ayes: Soos, Rizzo, Schwandt, Hempel, Sommer (5)

Nays: None (0)

CARRIED.

MOVED by Alderman Sommer

SECONDED by Alderman Hempel

That it is the position of the North Tonawanda Common Council to pursue a regional approach to providing municipal services. The purpose of this is our concern for taxpayer relief. However, we must continue to provide necessary city services. In an effort to accomplish this task, the Common Council hereby requests Mayor Burgio to actively pursue consolidation of the vacant City Assessor position with other government entities. These entities shall include but not be limited to the County of Niagara and the City of Lockport.

In addition, we authorize the Mayor to negotiate with GAR & Associates in a consultant capacity, to maintain the current assessment rolls to insure that the City of North Tonawanda continues to receive the \$65,000 New York State Assessment Aid.

Ayes: Rizzo, Schwandt, Hempel, Sommer (4)

Nays: Soos (1)

CARRIED.

ADJOURNMENT

MOVED by Alderman Schwandt SECONDED by Alderman Rizzo
That this regular session of the Common Council be and hereby is adjourned.
CARRIED.

Time of Adjournment: 6:37P.M.

Respectfully submitted,

Thomas M. Jaccarino
City Clerk