

**THE HONORABLE BODY
Council Chambers
Municipal Building
North Tonawanda, New York 14120
Wednesday, March 2, 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 16, 2005

**MOVED by Alderman Schwandt SECONDED by Alderman Rizzo
That the minutes of the regular session held February 16, 2005 be approved as circulated and
filed in the Office of the City Clerk.
CARRIED.**

AUDIENCE PARTICIPATION – None

COMMUNICATIONS FROM CITY OFFICIALS

I. Mayor

February 16, 2005

Dear Common Council:

Please be advised that I am appointing,

**Sophie Lopacki
360 St. Joseph Dr
North Tonawanda, NY 14120
694-5831**

**to the Golf Course Committee. Her term will begin immediately and expire December 31,
2006. She replaces Jan Nicely who has resigned.**

Thank you for your attention in this matter.

**Sincerely,
David J. Burgio**

**MOVED by Alderman Rizzo SECONDED by Alderman Soos
That the Common Council hereby receives and files the aforementioned communication.
CARRIED.**

NOW, THEREFORE, for good and valuable consideration as hereinafter set forth, the parties agree and contract as follows:

1. The lessor hereby leases to the lessee the parcel of land known as "Gateway Park," for a minimum of eight (8) Saturday concert dates per year, for a term of three (3) years. The lessee shall have an option to renew this lease for an additional three (3) year term or period subsequent to December 31, 2008, by directing written notice to the lessor at least ninety (90) days before expiration of this lease. Consideration for such renewal is indicated in paragraph 5.

2. As partial consideration for the rental of the premises, the lessee agrees to keep the leasehold premises in at least its present condition.

3. The lessee shall provide the lessor, on or before December 31st of each and every year of this lease, a list of the Saturday dates which lessee has scheduled concerts for the premises. All dates are subject to the approval of lessor. Approval of requested dates shall be sought by lessee through lessor's Steering Committee.

4. The lessee shall provide the lessor on or before June 1st of each and every year of this lease, a list of performers and the dates on which they are scheduled to perform. All performers and the dates on which they are scheduled to perform are subject to the approval of lessor. Consent will not be unreasonably withheld.

5. Consideration for the lease of said premises shall be as follows:

(a) Year 2006: lessee agrees to pay lessor rent in an amount mutually agreed upon between the parties. The amount of mutually agreed upon rent to be paid by lessee shall be at least \$1000.00 per approved date. Any rent to be paid in excess of \$1000.00 shall be subject to audit of lessee's books by lessor. Dates shall be provided by lessee as set forth more fully in paragraph "3" above.

(b) Year 2007: lessee agrees to pay lessor rent in an amount mutually agreed upon between the parties. The amount of mutually agreed upon rent to be paid by lessee shall be at least \$1000.00 per approved date. Any rent to be paid in excess of \$1000.00 shall be subject to audit of lessee's books by lessor. Dates shall be provided by lessee as set forth more fully in paragraph "3" above.

(c) Year 2008: lessee agrees to pay lessor rent in an amount mutually agreed upon between the parties. The amount of mutually agreed upon rent to be paid by lessee shall be at least \$1000.00 per approved date. Any rent to be paid in excess of \$1000.00 shall be subject to audit of lessee's books by lessor. Dates shall be provided by lessee as set forth more fully in paragraph "3" above.

Lessor shall provide lessee with the electricity currently available at "Gateway Park" to operate its stage, beer trucks and any equipment utilized for each concert. In addition to use of any existing electrical outlets at "Gateway Park", lessor shall reserve lessee the use of at least one "boat dock" outlet during each scheduled concert. In no event shall lessor be required to provide electricity to lessee other than that which is currently available at "Gateway Park."

On the morning of each scheduled Saturday concert, lessor shall reserve lessee one boat slip. The location of said slip shall be mutually agreed upon between lessor and lessee. Lessor's harbormaster shall act as its agent for the purpose of determining the slip's location. In addition to the above rent, lessee shall pay lessor the normal rate for use of the aforementioned slip. Lessee shall vacate the slip no later than 12:00 AM on Sunday morning following each scheduled Saturday concert.

6. Garbage: Lessee shall clean up all garbage, litter and refuse left in the park after each scheduled concert and deposit it in designated location in "Gateway Park".

7. Police: At least five (5) uniformed and on-duty North Tonawanda police officers shall patrol Gateway Park during each scheduled concert date from 6:30 P.M. – 10:30 P.M. Of the five (5) North Tonawanda police officers patrolling each concert, one (1) officer shall be a lieutenant. If no lieutenant is available for a scheduled concert, all five (5) officers may be patrolmen. In addition to the aforementioned rent set forth in paragraph 5 above,

lessee shall compensate lessor for one-half the overtime costs incurred by the North Tonawanda Police officers patrolling Gateway Park during each scheduled concert. Lessee shall only compensate lessor for police overtime costs incurred during concert dates actually utilized by lessee. Lessor shall post notices and shall enforce parking regulations during concert set up.

8. Security: In addition to the aforementioned rent set forth in paragraph 5 above, lessee shall provide at least twenty (20) security guards for each scheduled concert. Said security guards shall be provided at no cost to lessor.

Lessee has the right to restrict any items entering "Gateway Park" from one (1) hour before the start of each concert until the end of each concert. Such items include, but are not limited to containers, backpacks, food and beverages.

Lessor shall provide lessee with wooden barricades necessary to block off the street prior to and during each concert. Lessor shall remove all of its wooden barricades after each concert.

9. Restrooms: In addition to the aforementioned rent set forth in paragraph 5 above, lessee shall provide at least ten (10) portable restrooms for each scheduled concert. Said portable restrooms shall be provided at no cost to lessor and lessee shall remove. Lessor shall be allowed to use the aforementioned restrooms during the week. Lessor shall be responsible for cleaning said portable restrooms provided by lessee, once per week. Lessor's once per week cleaning shall be done on the Thursday immediately preceding each concert.

Lessee shall have access to all public restrooms located in "Gateway Park." Lessor shall clean and maintain all public restrooms in the park.

10. Vendors: Lessee shall be granted exclusive license to sell alcohol and food products on the leased premises during all scheduled concerts. Alcohol sales shall be made solely by lessee's vendor, Colonie Lounge, Inc., 1795 Hertel Avenue, Buffalo, NY 14216. Any food or alcohol vendors utilized by lessee shall possess all necessary and valid permits and licenses for the sale of alcohol and food at the scheduled concerts, including but not limited to City of North Tonawanda vending permits. Vendors shall be exempt from all Steering Committee fees during concerts which are the subject of this lease.

11. Insurance: No later than one week prior to the first scheduled concert in each year of this lease, the lessee shall furnish the lessor a certificate of liability insurance in the amount of \$1,000,000.00 (each occurrence) /\$2,000,000.00 (per event aggregate), under which certificate the lessor shall be designated as an insured, together with the lessee.

12. Subsequent to each scheduled concert, the lessee shall, without notice, quit and deliver said premises to the lessor, or its assigns, peacefully, quietly and in as good order and condition, reasonable use and wear thereof excepted, as the same is now or may hereafter be placed by the lessor or lessee.

13. The lessee hereby covenants and agrees to indemnify and save harmless the lessor from all fines, suits, claims, demands and actions resulting from its intentional, reckless or negligent acts of any kind and nature due to its operations pursuant to this lease. Lessee further agrees to assume all the risk in the operation of its business and shall be solely responsible and answerable in damages for any and all accidents or injuries to persons or property resulting from its intentional, reckless or negligent acts in the operation of its business under this lease. It is understood and agreed that the specified amounts of insurance set forth in paragraph 11 herein in no way limit the liability of the lessee. The lessee shall carry insurance in such amounts as to indemnify and save harmless the lessor from all claims, suits, demands and actions resulting from lessee's intentional, reckless and negligent acts in the operation of its business under the terms of this lease.

14. The lessee shall allow the lessor's authorized representative access to the premises at all reasonable hours for the purpose of examining and inspecting said premises for purposes necessary, incidental to, or connected with the performance of its obligations hereunder or in the exercise of its governmental functions. Lessor's representative shall be available at "Gateway Park" at least one (1) hour prior to and during each concert.

15. The lessee shall not assign, transfer, sublease, pledge, surrender or otherwise encumber or dispose of this lease or any estate created by this lease, or any interest in any portion of it, or permit any other person or persons, company or corporation to occupy the premises without the written consent of the lessor. Written consent by lessor to assign, transfer or sublease shall not be unreasonably withheld, but shall be subject to scrutiny and approval of lessor. Any consent by lessor to assign, transfer or sublease shall be further subject to renegotiation of this lease with the proposed assignee, transferee of sub lessee.

16. Any waiver or any breach of covenants herein contained to be kept and performed by the lessee shall not be deemed or considered as a continuing waiver and shall not operate to bar or prevent the lessor from declaring a forfeiture for any succeeding breach of either the same condition or covenant or otherwise.

17. The lessee will make no unlawful or offensive use of the premises. Lessor shall maintain "Gateway Park" before and after each concert. Such maintenance by lessor shall include, but not be limited to watering flowers, street sweeping, disposal of garbage and providing garbage bags.

18. **Term and Option to Renew:** This agreement shall be effective upon signature of both parties and shall expire on December 31, 2008, unless sooner terminated as otherwise provided. The lessee shall be granted an option to renew for a three-year term under terms and conditions, including any increase in the lease fee, to be negotiated between the lessee and the lessor and upon mutual agreement of both parties. In order to exercise this option, the lessee must give the lessor at least ninety (90) days written notice prior to the expiration of this lease. At the expiration or earlier termination of this agreement, the lessee shall promptly surrender the possession of the premises to the lessor.

19. The lessor shall have the right to and shall adopt and enforce reasonable rules and regulations with respect to the use of the park and related facilities which the lessee agrees to observe and obey. The lessee shall observe and obey all the laws, ordinances, regulations and rules of the federal, state, county and lessor which may be applicable to its scheduled concerts at the park. Likewise, it shall obtain and maintain all permits and licenses necessary for its operation of the concert series and unless otherwise stated in this agreement, lessee agrees to pay all taxes, fees or licenses imposed by law as relates to its operation of the park as a concert venue and as relates to its vending of alcohol and/or food items.

20. It is understood and agreed that nothing contained herein is intended or should be construed as any way creating or establishing the relationship of co-partners between the parties hereto, or as constituting the lessee as the agent, representative or employee of the lessor for any purpose or in any manner whatsoever.

21. Notwithstanding anything to the contrary, the City or the lessee reserves the right to cancel this lease. Should the City exercise its right to cancel this lease, it must give lessee at least three (3) months written notice to vacate. In exercising its right to cancel, the lessor must take and use the premises for public purpose within the reasonable judgment of the Common Council of the City of North Tonawanda.

Should lessee exercise its right to terminate, it must give the City written notice no earlier than September 1 and no later than November 30 of the year in which lessee exercises its option to terminate. Once said written notice to terminate is given to the City by lessee, it shall immediately vacate the leased premises. Should lessee fail to give written notice to terminate as provided herein, it must continue to pay rent set forth in Paragraph 5 above, until lessor can utilize any unused dates for other events. Lessor shall make a good faith effort to reserve lessee's unused dates for other events.

22. This lease shall supersede and rescind as null and void any present lease in existence at the present time.

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

Chapter 25, Section 25-3 Fees:

- A. Residential buildings: four hundred (\$400) up to 2,000 square feet per building, and an additional one hundred (\$100) above 2,000 square feet, plus one hundred and fifty (\$150) for each additional unit.**
- B. All other construction: six dollars (\$6) per thousand or fractional part thereof for the first fifty thousand dollars (\$50,000) of estimated cost or value. For any additional amount of such estimated cost or value, up to and including one hundred thousand dollars (\$100,000), the fee shall be four dollars (\$4) per thousand or fractional part thereof. For any additional amounts of such estimated cost or value over one hundred thousand dollars (\$100,000), the fee shall be four dollars (\$4) per thousand for each additional one thousand dollars (\$1,000) or fractional part thereof.**
- C. Signs and billboards: twenty-five dollars (\$25) per one hundred (100) square feet or fractional part thereof.**
- D. Gas, oil and storage tanks of any kind, whether located above or below ground: the permit fee shall be fifty dollars (\$50) per one thousand gallons capacity or any fractional part thereof.**
- E. Gas, oil and storage tanks of any kind, whether located above or below ground, with capacity in excess of twelve thousand (12,000) gallons: the permit fee shall be one hundred dollars (\$100), plus a fee as calculated under Subsection B.**
- F. The fee for removing gas, oil and storage tanks of any kind, whether located above or below ground, shall be based on the following capacity of such storage tanks: one hundred dollars (\$100) each for a tank of up to and including twelve thousand (12,000) gallons, and for tanks over twelve thousand (12,000) gallons, a fee of one hundred and fifty dollars (\$150) plus costs from the demolitions fee schedule set out in Subsection G.**
- G. Demolition fee: the demolition fee is based upon the cost of demolishing the building or structure.**

Demolition Cost	Fee
\$ 0 to 1,000	\$ 50.00
\$ 1001 to 5000	\$ 75.00
\$ 5,000 or more over \$ 5,000	\$ 75.00 plus \$ 5.00 for each \$1000 or fraction thereof

25-3.1 Plan review fee:

- A. A plan review fee in the amount of fifty dollars (\$ 50.00) shall be paid at the time of filing the plan application for residential, commercial or industrial building construction with the Building Inspector.**
- B. A sketch review fee in the amount of twenty-five dollars (\$25) shall be paid at the time of filing the sketch application for minor additions or garages, etc.**
- C. Notwithstanding Subsection A and B above, review fees will be considered part of the building permit fee if the building is issued within three (3) months of application.**

25-3.2 Other fees related to building construction.

- A. Minimum permit fees shall be as follows:**
 - (1) Structural, such as buildings, additions, decks, in-ground pools and tanks: thirty five dollars (\$35)**
 - (2) Non-structural, such as siding, re-roof, vinyl replacement windows, and signs: twenty dollars (\$20).**
 - (3) All permit fees will be based on contractor's quotes/contract prices, material receipt costs (doubled for inclusion of labor value) or on estimates as determined by the Building Inspector.**

And further, that the Common Council hereby adopts the following amendments to §103-6 (9) (e):

103-6 (9) (e) Private garages with a limit of 750 square feet in size and of similar construction style as the surrounding neighborhood.

103-11 A (1) Any use permitted in the C1 district, without the size restriction of accessory structures.

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

VII. Accountant

February 25, 2005

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

Dear Honorable Body:

In accordance with Article V, Division 1, Section 5.002 and 5.003 of the City Charter, an Abstract Sheet, comprised of a Warrant of Claims, has been submitted by this office for your review and approval.

Accordingly, please authorize for payment the current Warrant of Claims for Common Council audit, dated March 2, 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 Rizzo

SECONDED by Alderman Soos

That the Common Council hereby authorizes for payment the current Abstract of Claims for Common Council Audit dated March 2, 2005 and further authorizes the Mayor and City Clerk respectively sign and countersign said Warrant:

01	General Fund	\$449,172.66
02	Water Fund	50,8830.42
04	Sewer Fund	85,680.59
06	Capital Projects Fund	36,925.62
07	Trust & Agency Fund	2,178.78
08	Community Development	6,221.54
11	General Fund (Enc)	69,184.82
12	Water Fund (Enc)	193.72
14	Sewer Fund (Enc)	8,421.15
19	Bishop Gibbons Fund	<u>225.00</u>
	Final Total	<u>\$709,087.30</u>

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

XI. Fire

February 17, 2005

Mayor David Burgio
 City Hall
 North Tonawanda, NY 14120

Dear Mayor Burgio:

I have taken the necessary steps to hire two probationary Firefighters in the North Tonawanda Fire Department. The new Firefighters will fill the two vacancies created by retirements. I will be notifying the candidates today, February 17, 2005 that they have been selected.

The appointment dated for these men will be effective March 7, 2005; enabling them to give their present employers two weeks notice.

The new firefighters will start at the fire academy in Utica, New York on March 21, 2005 and will graduate on June 10, 2005.

The two candidates I have selected are:

Aaron Mohr
 826 Ohio Street
 North Tonawanda, NY

Justin T. Krajnak
 174 Keil Street
 North Tonawanda, NY

I will be in touch with you regarding a swearing in ceremony.

Sincerely,
 Gregory R. Frank
 Fire Chief

MOVED by Alderman Sommer **SECONDED** by Alderman Hempel
 That the Common Council hereby receives and files the aforementioned communication.
CARRIED.

XXV. Monthly Reports**.1 Treasurer (re: Investments)**

MOVED by Alderman Rizzo **SECONDED** by Alderman Sommer
 That the Common Council hereby receives and files the aforementioned monthly report.
CARRIED.

XXXII. Community Development

February 25, 2005

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

Re: Local Consolidated Housing Plan

Dear Honorable Body:

The North Tonawanda Office of Community Development respectfully requests authorization to submit a consolidated local housing plan for approval by the Council. The plan will ensure Community Development and Housing activities are all working toward the same goals – Homeownership Assistance, Neighborhood Revitalization and Housing

Rehabilitation. A Consolidated Plan will also assist in the City's efforts to secure State and Federal Funds.

Sincerely,
James B. Sullivan
Community Development Director

MOVED by Alderman Hempel **SECONDED** by Alderman Schwandt
That the Common Council authorizes the North Tonawanda Community Development Office to submit a consolidated local housing plan. The plan will ensure Community Development and Housing activities are all working toward the same goals – Homeownership Assistance, Neighborhood Revitalization and Housing Rehabilitation. A Consolidated Plan will also assist in the City's efforts to secure State and Federal Funds.
CARRIED.

COMMUNICATIONS FROM OTHERS

A.
Sweeney Hose Co. - **Re: Statement of Volunteer Fireman:**

Eric Allen Goudy

Re: Removal from Fire Rolls:

Nicholas Yager
Kimberly Wozniak

MOVED by Alderman Sommer **SECONDED** by Alderman Rizzo
To add Eric Allen Goudy to the City Fire Rolls and to remove Nicholas Yager and Kimberly Wozniak from the City Fire Rolls.
CARRIED.

ADJOURNMENT

MOVED by Alderman Hempel **SECONDED** by Alderman Sommer
That this regular session of the Common Council be and hereby is adjourned.
CARRIED.

Time of Adjournment: 6:07P.M.

Respectfully submitted,

Thomas M. Jaccarino
City Clerk