

**THE HONORABLE BODY
Council Chambers
Municipal Building
North Tonawanda, New York 14120
Tuesday, January 3, 2006
6:05 P.M.**

REGULAR SESSION CALLED TO ORDER BY PRESIDENT SOMMER

ROLL CALL

**Present: President Sommer
Aldermen Brick, Rizzo, Schwandt, Donovan**

Absent: None

**Also Present: Mayor Lawrence V. Soos
Attorney Shawn P. Nickerson**

PROOF OF PUBLICATION PUBLISHED NOVEMBER 4 & 7, 2005

- 1) Bid – Truck Bay Area Replacement at Fire Headquarters – Engineer

PROOF OF PUBLICATION PUBLISHED NOVEMBER 14, 2005

- 1) Bid – Water Treatment Plant Improvement – Water Department

PROOF OF PUBLICATION PUBLISHED NOVEMBER 16, 2005

- 1) Legal Notice – Public Hearing – Rezoning of 1141 Kinkead Avenue – City Clerk

PROOF OF PUBLICATION PUBLISHED NOVEMBER 17, 2005

- 1) Estoppel Notice – Bond Resolution – City Clerk

**MOVED by Alderman Sommer SECONDED by Alderman Rizzo
That the Common Council hereby receives and files the aforementioned Proofs of
Publication.
CARRIED.**

AUDIENCE PARTICIPATION

**Randy Fahs, 1217 Master Street – Spoke against putting the Clerk position in the
Department Head Union.**

**Branko Sedlacek, 1351 Abington – Spoke against putting the Clerk position in the
Department Head Union.**

**Jeffrey Mis, 1421 Payne Avenue – Spoke against putting the Clerk position in the
Department Head Union.**

**Jerry DiVirgilio, 767 Payne Avenue – Spoke against putting the Clerk position in the
Department Head Union.**

**Dan Rivera, 65th Avenue – Spoke against putting the Clerk position in the Department
Head Union.**

**Liz Kaszubski, 1463 Fairfield – Questioned meeting change and spoke against putting the
Clerk position in the Department Head Union.**

**Sonia Dusza, 123 Miller Street – Questioned naming the Tonawanda News as the official
City newspaper.**

COMMUNICATIONS FROM CITY OFFICIALS

I. Mayor

December 30, 2005

**Common Council
216 Payne Ave.
North Tonawanda, NY 14120**

Dear Common Council:

At a regularly scheduled Common Council meeting held on December 21, 2005 your honorable body passed a resolution submitted by Alderman Brett Sommer as follows:

“That the Common Council abolishes the position of Deputy City Clerk from the contract between the City of North Tonawanda and OPEIU and reinstates the position of City Clerk to the OPEIU contract.”

In accordance with the North Tonawanda City Charter Section 2.023 Veto of Ordinances and Resolutions, I hereby veto the passage of this Resolution. Some of the more salient reasons for the veto are discussed below.

I – Improper Insertion of Text

The resolution cited above was submitted for consideration by the Common Council. However, the minutes reciting the resolution as passed by the Common Council reads:

“That the Common Council abolishes the position of Deputy City Clerk from the contract between the City of North Tonawanda and OPEIU and reinstates the position of City Clerk to the OPEIU contract at Step 3 of the salary schedule.”

The addition of the language regarding a predetermined salary schedule was not explained and not properly before the City Council for consideration. Most importantly, this additional language was not the subject of a vote by the City Council. This procedural shortfall, and the lack of information which I believe is necessary to make a proper determination regarding any salary schedule, prevents my approval of the resolution.

II – Amendment of City Charter

As passed, the resolution purports to reinstate the position of City Clerk to the OPEIU contract, making the position of City Clerk subject to the terms and conditions of the collective bargaining agreement between the City of North Tonawanda and the OPEIU. Certain provisions of this agreement conflict with the North Tonawanda City Charter with regard to the position of City Clerk. Thus, the resolution would effectively amend the City Charter. For example, the OPEIU collective bargaining agreement states that the City of North Tonawanda may discharge an employee covered by the agreement “[i]f there is just cause...” See § 5.6.1 of the agreement. The North Tonawanda City Charter states that the City Clerk “serves at the pleasure of the council,” clearly indicating the Council can discharge the City Clerk with or without cause.

Through the resolution, the City Council is attempting to effectively amend the City Charter, making the City Clerk dischargeable for cause only. Not only is this amendment contrary to the confidential nature of the City Clerk position, there are New York State Law requirements which must be followed to make such a revision to the City Charter.

Under Municipal Home Rule Law §23(f), a local law which “abolishes, transfers or curtails any power of an elective officer” is subject to a mandatory referendum. This resolution would curtail the power of the City Council, comprised of elected officials; to discharge the confidential position of City Clerk at will, without cause, as provided by the current City Charter. As such, a mandatory referendum is required in order to make such an amendment. Because no such referendum was held, an amendment to the City Charter,

Accordingly, please authorize for payment the current Warrant of Claims for Common Council audit, dated January 3, 2006, 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 Donovan
That the Common Council hereby authorizes for payment the current Abstract of Claims for Common Council Audit dated January 3, 2006 and further authorizes the Mayor and City Clerk respectively sign and countersign said Warrant:

01	General Fund	\$116,104.70
02	Water Fund	32,631.17
04	Sewer Fund	64,603.33
07	Trust & Agency Fund	4,180.12
11	General Fund Encumbered	<u>522.86</u>
	Final Total	<u>\$218,042.18</u>

Ayes: Brick, Rizzo, Schwandt, Donovan, Sommer (5)
Nays: None (0)
CARRIED.

XVI. City Clerk

December 30, 2005

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

Dear Honorable Body:

Due to the resignation of Alderman Catherine Schwandt from the Lumber City Development Corporation it would now be appropriate to appoint another member of the Common Council to a seat on the board.

Very truly yours,
Thomas M. Jaccarino
City Clerk

MOVED by Alderman Schwandt **SECONDED** by Alderman Donovan
That the Common Council hereby appoints Brett Sommer to a seat on the board of the Lumber City Development Corporation
CARRIED.

XXV. Monthly Reports

.1 Treasurer .2 Treasurer Investments

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

XXVII. Annual Reports

1. City Historian

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

LATE COMMUNICATION

MOVED by Alderman Sommer SECONDED by Alderman Rizzo
To bring the following communication to the floor.
Ayes: Brick, Rizzo, Schwandt, Donovan, Sommer (5)
Nays: None (0)
CARRIED.

#1Re: Approval of North Tonawanda Planning Commission By-Laws as submitted.

MOVED by Alderman Sommer SECONDED by Alderman Schwandt
That the Common Council approves the By-Laws of the North Tonawanda Planning
Commission as submitted.
Ayes: Brick, Rizzo, Schwandt, Donovan, Sommer (5)
Nays: None (0)
CARRIED.

ADJOURNMENT

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

Time of Adjournment: 6:35P.M.

Respectfully submitted,

Thomas M. Jaccarino
City Clerk