

THE HONORABLE BODY
Council Chambers
Municipal Building
North Tonawanda, New York 14120
Wednesday, March 1, 2006
7:00 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

APPROVAL OF THE MINUTES OF THE REGULAR SESSION FEBRUARY 15, 2006

MOVED by Alderman Rizzo SECONDED by Alderman Brick
That the minutes of the regular session held February 15, 2006 be approved as circulated and
filed in the Office of the City Clerk.
CARRIED.

AUDIENCE PARTICIPATION

Dan Rivera, 65 6th Avenue – Questioned sick time for City Treasurer.

Jerry DiVirgilio, 767 Payne Avenue– Questioned the Abstract of Claims.

COMMUNICATIONS FROM CITY OFFICIALS

II.1 Attorney

February 23, 2006

Hon. Mayor and Common Council
City Hall, 216 Payne Avenue
North Tonawanda, New York 14120

Re: Proposed Amendment to Chapter 51C of the City Code of the
City of North Tonawanda, New York, Entitled “Historic Preservation”

Dear Honorable Body:

Attached are proposed ordinance amendments for Chapter 51C of the City Code of the
City of North Tonawanda entitled, “Historic Preservation”, as required by the State of
New York. The language changes are delineated by the darker print in the document.

Please note that also attached are two explanatory documents from the State of New York
outlining why these changes must be made at this time.

If your Honorable Body concurs, please approve the changes as outlined, subject to any further review by the City Attorney. Should you have any questions, please do not hesitate to contact me.

Very truly yours,
Shawn P. Nickerson
City Attorney

MOVED by Alderman Sommer

SECONDED by Alderman Schwandt

That the Common Council hereby approves the following amendments to Chapter 51C of the City Code of the City of North Tonawanda, New York, Entitled "Historic Preservation" (as underlined), subject to review by the City Attorney:

CHAPTER 51C – HISTORIC PRESERVATION

Section 1. Purpose

It is hereby declared to be the public policy and in the public interest of the City of North Tonawanda to protect, enhance, and perpetuate places, districts, sites, buildings, structures, and other objects having a special character or special historical interest or value. Inasmuch as the identity of a people is founded on its past, and inasmuch as North Tonawanda has many significant historic, architectural, and cultural resources which constitute its heritage, this act is intended to:

- a) Protect, enhance and perpetuate properties of special historical, archeological, architectural or cultural interest or value which represent distinctive elements of North Tonawanda's historic, architectural, archeological, and cultural heritage;
- b) Foster civic pride in the accomplishments of the past;
- c) Protect, enhance and perpetuate North Tonawanda's attractiveness to residents, prospective residents, and visitors, and thereby promote and support the economic well-being of the people of the City;
- d) Enhance the visual and aesthetic character, diversity and distinctiveness of the City;
- e) Insure the harmonious, orderly, and efficient growth and development of the City;
- f) Promote the use, re-use and conservation of places, districts, sites, buildings and structures having special character or special historical or aesthetic interest or value for the education, inspiration, welfare, recreation, prosperity and enrichment of the public;
- g) Exercise aesthetic judgment and maintain the desirable character of the historic properties and present construction, reconstruction, alteration, or demolition, in harmony with existing properties insofar as style, materials, color, line, and detail are concerned, and thus prevent degeneration of property, safeguard public health, prevent fire, promote safety, and preserve the beauty and character of the historic properties;

Section 2. Historic Preservation Commission

There is hereby created a Commission to be known as the North Tonawanda Historic Preservation Commission.

- a) The Commission shall consist of nine (9) members to be appointed, to the extent available in the community, by the Mayor, with the consent of the Common Council. Criteria for Commission members are as follows:
 - i. At least one Commission member shall be a licensed design professional with demonstrated experience in historic preservation;
 - ii. At least one Commission member shall be an historian;

- iii. At least one Commission member shall be a resident of a designated historic district;
 - iv. At least one Commission member shall have demonstrated significant interest in and commitment to the field of historic preservation evidenced either by involvement in a local historic preservation group, employment, or volunteer activity in the field of historic preservation, or other serious interest in the field; and
 - v. All Commission members shall have a known interest in historic preservation and architectural development within the City of North Tonawanda.
 - vi. At least seven (7) of the Commission members shall be residents of the City of North Tonawanda.
 - vii. No more than three (3) members of the initial Commission may be City employees, and each must have professional expertise and experience directly related to the duties of the Commission. Such individuals will serve a single, one-year term for the express purpose of aiding the Commission in establishing policies and procedures.
- b) Commission members shall serve for a term of four (4) years, with the exception of the initial term for one member who will serve two years, one who will serve three years, and each of any municipal employees who will serve a single, non-renewable one-year term.
- c) The chairman and vice chairman of the Commission shall be elected by and from among the members of the Commission.
- d) The powers of the Commission shall include:
- i. Selection of staff and professional consultants as necessary to carry out the duties of the Commission, with funding approved by the Common Council;
 - ii. Promulgation of rules and regulations as necessary for the conduct of its business;
 - iii. Adoption of criteria for the identification of significant historic, architectural, and cultural landmarks and for the delineation of historic districts;
 - iv. Conducting of surveys of significant historic, architectural, and cultural landmarks and historic districts within the City;
 - v. Designation of identified places, districts, sites, buildings, structures, and other objects having a special character or special historical interest or value as landmarks and historic districts;
 - vi. Acceptance on behalf of the City government, and with the consent of the Common Council, of the donation of facade easements and development rights, and the making of recommendations to the City government concerning the acquisition of facade easements or other interests in real property as necessary to carry out the purpose of this act;
 - vii. Increasing public awareness of the value of historic, cultural, and architectural preservation by developing and participating in public education programs;
 - a) Formulating recommendations concerning the preparation of maps, brochures, and historical markers for selected historical and/or architectural sites and buildings;

- b) Informing and educating the citizens of North Tonawanda concerning the historic and architectural heritage of the City by publishing appropriate maps, newsletters, brochures, and pamphlets, and by holding programs and seminars;
- viii. Making recommendations to City government concerning the utilization of state, federal, or private funds to promote the preservation of landmarks and historic districts within the City;
- ix. Recommending acquisition of a landmark property or other real property by the City government where its preservation is essential to the purposes of this act and where private preservation is not feasible;
- x. Approval or disapproval of applications for certificates of appropriateness pursuant to this act;
- xi. Inventorying and designating all historically significant buildings, structures, sites, or districts within the City of North Tonawanda, enlisting the voluntary assistance of interested civic and social organizations. The initial inventory shall be completed within two years of the effective date of this local law or the date of first appointment of members to the Commission created hereunder, whichever is later, or such other extended times as adopted by resolution of the Commission. Such inventory shall be reviewed, updated, or revised, where necessary, each year thereafter before the submission of the annual alterations shall be distributed to the City Building Inspector, Clerk, Historian, and Assessor;
- xii. Advising and assisting owners on physical aspects of preservation, renovation, rehabilitation, and reuse, or procedures for inclusion in the National Register of Historic Places and on participation in state and federal preservation programs;
- xiii. Conferring recognition upon the owners of landmarks or properties within an historic district by means of certificates, plaques, or markers;
- xiv. Requesting advisory opinions on any matter before the Commission from the Mayor, the Common Council, the Zoning Board of Appeals, the Planning Board, and any other body, agency, or department of the City;
- xv. Reviewing and making advisory recommendations on any matter before the Commission to the Mayor, the Common Council, the Zoning Board of Appeals, the Planning Board, and any other body, agency, or department of the City;
- xvi. Applying for, accepting, and expending grants and funds for goods and services from private and public sources;
- e) The Commission shall meet at least monthly, but meetings may be held at any time on the written request of any two of the Commission members or on the call of the chairman or the Mayor.
- f) A quorum for the transaction of business shall consist of four (4) of the Commission's members, but not less than a majority of the full authorized membership may grant or deny a certificate of appropriateness.

Section 3. Designation Of Landmarks And Historic Districts

- a) The Commission may designate an individual property as a landmark if it:
 - i. Significantly contributes to or is directly related to the history and development of the City of North Tonawanda; or
 - ii. Is identified with historic personages; or

- iii. Embodies the distinguishing characteristics of a design style; or
 - iv. Is the work of a designer whose work has significantly influenced an age; or
 - v. Because of a unique location, represents a significant segment of the City's history.
- b) The Commission may designate a group of properties as a historic district if it:
- i. Contains properties which meet one or more of the criteria for designation of a landmark; and
 - ii. By reason of possessing such qualities, it constitutes a distinct section of the City;

The boundaries of each designated landmark and historic district shall be specified in detail and shall be filed, in writing, in the City Clerk's Office for public inspection.

- c) Notice of a proposed designation shall be sent by registered mail to the owner of the property proposed for designation, describing the property proposed and announcing a public hearing by the Commission to consider the designation. Where the proposed designation involves so many owners that individual notice is infeasible, notice may instead be published at least once in a newspaper of general circulation at least 30 days prior to the date of the public hearing. Once the Commission has issued notice of a proposed designation, no building permits or other land use approvals shall be issued by the Building Inspector, Planning Board, or Zoning Board until the Commission has made its decision.
- d) The Commission shall hold a public hearing prior to designation of any landmark or historic district. The Commission, owners, and any interested parties may present testimony or documents at the hearing which will become part of a record regarding the historic, architectural, or cultural importance of the proposed landmark or historic district. The record may also contain staff reports, public comments, or other evidence offered outside the hearing.
- e) The Commission shall refer its individual landmark and historic district designations to the Common Council for approval, approval with modifications, or disapproval. Within 30 days of the referral, the Common Council shall approve, approve with modifications or disapprove the designation. The Common Council shall apply the same standards as the Commission and shall render its decision based upon the same record. If the Common Council fails to act upon the Commission's referral within thirty (30) days, the Commission's determination shall be deemed approved.
- f) The Commission shall forward notice of each property designated as a landmark and of the boundaries of each designated historic district to the office of the Niagara County Clerk for recordation.

Section 4. Certificate of Appropriateness for Alteration, Demolition, or New Construction Affecting Landmarks or Historic Districts

No person shall carry out any exterior alteration, restoration, reconstruction, demolition, new construction or moving of a landmark or property within a historic district, nor shall any person make any material change in the appearance of such a property, its light fixtures, signs, sidewalks, fences, steps, paving or other exterior elements visible from a public street or alley which affect the appearance and cohesiveness of the individual landmark, property within a historic district or the historic district as a whole, without first obtaining a certificate of appropriateness from the Commission.

Section 5. Criteria for Approval of a Certificate of Appropriateness

- a) In passing upon an application for a certificate of appropriateness, the Commission shall not consider changes to features that are not visible from a public street or alley except where alterations to such architectural features will impact upon the integrity, support, or exterior appearance of the individual property and/or adjacent properties in a historic district.
- b) The Commission's decision shall be based upon the following principles:
 - i. Landmarks and properties which contribute to the character of a historic district shall be retained, with their historic features altered as little as possible;
 - ii. Any alteration of a landmark or property within a historic district shall be compatible with historic character of the individual property and/or historic district; and
 - iii. New construction shall be compatible with the historic character of the individual property and/or historic district.
- c) In applying the principle of compatibility, the Commission shall consider the following factors:
 - i. The general design, character, and appropriateness to the property of the proposed alteration or new construction;
 - ii. The scale of proposed alteration or new construction in relation to the property itself, surrounding properties, and the neighborhood;
 - iii. Texture, materials, and color and their relation to similar features of other properties in the neighborhood;
 - iv. Visual compatibility with surrounding properties, for buildings including but not limited to the proportion of the front façade, proportion and arrangement of windows and other openings and roof shape, and for the site including but not limited to the rhythm or spacing of buildings and structures in relation to the street and adjacent properties, features such as drives, walks, walls, fences, hedge rows, terraces and stairs, and major landforms or topographic features. The importance of historic, architectural, or other features to the significance of the property.
 - v. The importance of historic, architectural, or other features to the significance of the individual property and/or surrounding historic district.

Section 6. Certificate of Appropriateness Application Procedure

- a) Prior to the commencement of any work requiring a certificate of appropriateness the owner shall file an application for such a certificate with the Commission. The application shall contain:
 - i. Name, address, and telephone number of applicant;
 - ii. Location and photographs of property;
 - iii. Drawings of proposed changes, if available;
 - iv. Perspective drawings, showing relationship to adjacent properties, if available;
 - v. Samples of color or materials to be used;

- vi. Where the proposal includes signs or lettering, a scale drawing showing the type of lettering to be used, all dimensions and colors, a description of materials to be used, method of illumination and a plan showing the sign's location on the property;
 - vii. Any other information which the Commission may deem necessary in order to visualize the proposed work.
- b) No building permit or other land use approvals by the Building Inspector, Planning Board, or Zoning Board shall be issued for such proposed work until a certificate of appropriateness has first been issued by the Commission. The certificate of appropriateness required by this act shall be in addition to and not in lieu of any approval that may be required by any other ordinance of the City of North Tonawanda.
 - c) The Commission shall approve, deny, or approve the request with modifications within 60 days from receipt of the completed application. The Commission may hold a public hearing on the application at which an opportunity will be provided for the property owner and any interested parties to present their views.
 - d) All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Clerk's Office for public inspection. The Commission's decision shall state the reasons for denying or modifying any application

Section 7. Demolition Hardship Criteria

- a) A certificate of appropriateness for a proposed demolition of an individual landmark or structure included within a historic district shall only be issued in cases of hardship, unless the Building Department, upon due deliberation, has made an express finding that the structure presents an imminent threat to the health, safety and welfare of the City. In addition to establishing to the Commission's satisfaction, an imminent plan of reuse or redevelopment of the affected property, the applicant for an income producing property shall establish that:
 - i. The property is incapable of earning a reasonable return, regardless of whether that return represents the most profitable return possible;
 - ii. The property cannot be adapted for any other use, whether by the current owner or by a purchaser, which would result in a reasonable return; and
 - iii. Efforts to find a purchaser interested in acquiring the property and preserving it have failed.
- b) Before approving the removal, relocation or demolition of an individual landmark or structure within a historic district, the Commission may suspend the application for up to 180 days to allow the applicant to consult in good faith with the Commission, local preservation groups, and the public in a diligent effort to seek a less intrusive alternative to demolition.

Section 8. Alteration Hardship Criteria

- a) An applicant whose certificate of appropriateness for a proposed alteration has been denied may apply for relief on the ground of hardship. In order to prove the existence of hardship, the applicant shall establish that the proposed alteration is more cost effective at installation and has a demonstrated life span greater than a good preservation solution; and the proposed alteration will result in maintenance and/or operating costs less than a more appropriate preservation approach.

Section 9. Hardship Application Procedure

- a) After receiving written notification from the Commission of the denial of a certificate of appropriateness, an applicant may commence the hardship process. No building or demolition permit or other land use approvals by the Building Inspector, Planning Board, or Zoning Board shall be issued unless the Commission makes a finding that a hardship exists.
- b) The Commission shall hold a public hearing on the hardship application at which an opportunity will be provided for the property owner and any interested parties to present their views.
- c) The applicant shall consult in good faith with the Commission, local preservation groups and interested parties in a diligent effort to seek an alternative that will result in preservation of the property.
- d) All decisions of the Commission shall be in writing. A copy shall be sent to the applicant by registered mail and a copy filed with the City Clerk's Office for public inspection. The Commission's decision shall state the reasons for granting or denying the hardship application.

Section 10. Enforcement

All work performed pursuant to a certificate of appropriateness issued under this ordinance shall conform to any requirements included therein. It shall be the duty of the Building Code Enforcement Officer to inspect periodically any such work to assure compliance. In the event work is found that is not being performed in accordance with the certificate of appropriateness, or upon notification of such fact by the Commission, the Building Code Enforcement Officer shall issue a stop work order and all work shall immediately cease. No further work shall be undertaken on the project as long as a stop work order is in effect.

Section 11. Maintenance and Repair Required

- a) Nothing in this ordinance shall be construed to prevent the ordinary maintenance and repair of any exterior feature of a landmark or property within a historic district which does not involve a change in design, material, color, or outward appearance.
- b) No owner or person with an interest in real property designated as a landmark or included within a historic district shall permit the property to fall into a serious state of disrepair so as to result in the deterioration of any exterior architectural feature which would, in the judgment of the Commission, produce a detrimental effect upon the character of the individual property and/or surrounding historic district as a whole or the life and character of the property itself.

Examples of such deterioration include:

- i. Deterioration of walls or other vertical supports of buildings or structures, or site retaining walls and/or stairs;
- ii. Deterioration of roofs or horizontal members of buildings or structures;
- iii. Deterioration of architectural features such as towers, chimneys or parapets or site features such as stairs or terraces;
- iv. Deterioration or crumbling of materials, such as masonry and wood;
- v. Deterioration of weather-protective materials and measures for buildings, structures and general site conditions;
- vi. Deterioration of any feature so as to create a hazardous condition which could lead to the claim that demolition of all or a portion of a property is necessary for the public safety.

Section 12. Violations

- a) Failure to comply with any of the provisions of this ordinance shall be deemed a violation and the violator shall be liable to a fine of not less than \$500 nor more than \$1,000 for each day the violation continues.
- b) Any person who demolishes, alters, constructs, or permits a designated property to fall into a serious state of disrepair in violation of this ordinance shall be required to restore the property and its site to its appearance prior to the violation. Any action to enforce this subsection shall be brought by the City Attorney. This civil remedy shall be in addition to and not in lieu of any criminal prosecution and penalty.

Section 13. Appeals

Any person aggrieved by a decision of the Commission relating to hardship or a certificate of appropriateness may pursue all appropriate remedies under Article 78 of the New York Civil Practice Law & Rules.

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

Nays: None (0)

CARRIED.

II.2 Attorney

February 23, 2006

Hon. Mayor and Common Council
City Hall, 216 Payne Avenue
North Tonawanda, New York 14120

Re: Request by T-Mobile for Waiver of Certain Provisions of North Tonawanda's
Local Law for Siting of Wireless Telecommunications Facilities

Dear Honorable Body:

Attached for your review is a request for waiver with respect to our municipal permitting process, so that T-Mobile can replace two of its existing antennas with another model so that all of the antennas at 1327 Erie Avenue site will have the same model number. The company contends that the replacement of the existing antennas is merely maintenance work and would be covered under our building permit process. T-Mobile has offered to submit a site plan, engineering information, an escrow fee, building permit information and insurance in lieu of the permitting process required for a new tower or new antennas.

After review, if your Honorable Body concurs, please pass a resolution to waive the siting requirements as required under our local law for location or new co-location of telecommunications towers and allow T-Mobile to replace two existing towers as part of its ongoing maintenance at 1327 Erie Avenue site.

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

Very truly yours,
Shawn P. Nickerson
City Attorney

MOVED by Alderman Brick SECONDED by Alderman Sommer
That the Common Council hereby tables the aforementioned request.
CARRIED.

VII. Accountant

February 23, 2006

Honorable Lawrence V. Soos, 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 1, 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 March 1, 2006 and further authorizes the Mayor and City Clerk respectively sign and countersign said Warrant:

01	General Fund	\$294,338.05
02	Water Fund	49,263.09
04	Sewer Fund	32,463.23
06	Capital Project Fund	1,431.11
07	Trust & Agency Fund	80.88
08	Community Development	8,254.69
11	General Fund Encumbered	23,240.57
12	Water Fund Encumbered	148.20
	Final Total	<u>\$409,219.82</u>

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

XXVI. Annual Vacation and Sick Leave Reports

.1 Treasurer

MOVED by Alderman Sommer SECONDED by Alderman Brick
That the Common Council hereby receives and files the aforementioned Annual Vacation and Sick Leave Report.
CARRIED.

XXXII.1 Community Development

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

Re: 2006 Comprehensive Grant through the Governor's Office for Small Cities

Dear Honorable Body;

Per our discussion at a recent workshop meeting, this Department, in conjunction with the Lumber City Development Corporation, has initiated an ambitious economic development

and community development initiative. Further, as you are aware, I presented an overview of our accomplishments in 2005 which included securing \$1,215,384.00 in funding for the City.

In addition, I ask this Honorable Body to secure consulting services for the submission of the 2006 Governor's Office for Small Cities Comprehensive Grant Application for the amount of \$650,000.000. This Grant will specifically target downtown revitalization initiatives in the Webster, Main, Manhattan, and Oliver Street areas. Consequently, I am requesting, pending review by the City Attorney, that the Common Council authorize the Mayor to sign an agreement with Camoin Associates, Saratoga Springs, NY, to prepare the 2006 Comprehensive Grant Application. As you are aware, Camoin Associates is the consultant who prepared the Market Analysis for the downtown area. The agreement is not to exceed \$9,000.00 and the cost of these services is an eligible cost for payment through 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 Donovan

That the Common Council hereby authorizes the Director of Community Development to secure consulting services for the submission of the 2006 Governor's Office for Small Cities Comprehensive Grant Application for the amount of \$650,000.000. This Grant will specifically target downtown revitalization initiatives in the Webster, Main, Manhattan, and Oliver Street areas and further authorizes the Mayor to sign an agreement with Camoin Associates, Saratoga Springs, NY, to prepare the 2006 Comprehensive Grant Application, pending review of the City Attorney.

Ayes: Brick, Rizzo, Schwandt, Donovan, Sommer

(5)

Nays: None

(0)

CARRIED.

XXXII.2 Community Development

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

Dear Honorable Body:

The Department of Community Development is desirous of submitting an application under the 2006 Small Cities Community Development Block Grant (CDBG) Program to the New York State Governor's Office for Small Cities. The application will be for a Comprehensive Grant which will address a series of interrelated needs in a specific area. As you are aware, we will be targeting use of the funds for the area (Sweeney, Main, Webster, Manhattan, and Oliver Streets) where we have completed a downtown redevelopment plan. We are required to hold two public hearings for citizen input.

Based on the above, I am respectfully requesting the following:

- 1) That this Honorable Body allow me to hold two public hearings on Wednesday, march 8, 2006 and Wednesday March 22, 2006 respectively. The hearings will be held at 6:00 pm in the City Council Chambers.
- 2) That upon review of all comments and concerns re: citizen input, the Honorable Body authorize the Mayor to sign and submit this application to be reviewed no later than Monday, April 3, 2006, by 4:00 PM.

Thank you for your consideration in this matter.

Sincerely,
James B. Sullivan
Director of Community Development

It would now be appropriate to set a date for a public hearing regarding the
aforementioned rezoning.

Sincerely,
Thomas M. Jaccarino
Clerk, Planning Board

MOVED by Alderman Donovan **SECONDED** by Alderman Brick
That the Common Council grants permission to the City Clerk to schedule a public
hearing, regarding the aforementioned rezoning, on Wednesday, March 22, 2006 at
5:00PM.

Ayes: Brick, Rizzo, Schwandt, Donovan, Sommer (5)

Nays: None (0)

CARRIED.

ADJOURNMENT

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

Time of Adjournment: 7:27 P.M.

Respectfully submitted,

Thomas M. Jaccarino
City Clerk