

THE HONORABLE BODY
Council Chambers
Municipal Building
North Tonawanda, New York 14120
Tuesday, January 15, 2008
7:00 P.M.

REGULAR SESSION CALLED TO ORDER BY PRESIDENT SOMMER

ROLL CALL

Present: President Sommer
Aldermen Brick, Pasiak, Schwandt, Donovan

Absent: None

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

APPROVAL OF THE MINUTES OF THE REORGANIZATION MEETING JANUARY 2, 2008

MOVED by Alderman Brick **SECONDED** by Alderman Donovan
That the minutes of the reorganization meeting held January 2, 2008 be approved as
circulated and filed in the Office of the City Clerk.
CARRIED.

APPROVAL OF THE MINUTES OF THE REGULAR SESSION JANUARY 2, 2008

MOVED by Alderman Brick **SECONDED** by Alderman Donovan
That the minutes of the regular session held January 2, 2008 be approved as circulated and
filed in the Office of the City Clerk.
CARRIED.

AUDIENCE PARTICIPATION

Keith Craigie, 347 Brentwood Drive – Questioned the sale of the property on Walck Road.

COMMUNICATIONS FROM CITY OFFICIALS

I.1 Mayor

January 4, 2008

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

Dear Common Council,

Please be advised that I have appointed Suzanne Needler as the new Bingo Inspector for
2008. Her contact is as follows:

Suzanne Needler
1649 Fillner Avenue
North Tonawanda, NY 14120

Her term will be effective immediately and will expire December 31, 2008.

Thank you for your attention to this matter.

Sincerely,
Lawrence V. Soos
Mayor

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

I.2 Mayor

January 11, 2008

North Tonawanda Common Council
City Hall, 216 Payne Avenue
North Tonawanda, New York 14120

RE: Appointment to North Tonawanda Plumbing Board

Dear Honorable Body:

Please be advised that I am reappointing William Petty, 1395 Master Street, North Tonawanda, NY 14120 to the Plumbing Board beginning immediately and the term will be for three (3) years, expiring December 31, 2010.

Furthermore, I am reappointing Leonard Joyce, 1652 Fillner Avenue, North Tonawanda, NY 14120 to the Plumbing Board beginning immediately and the term will be for two (2) years, expiring December 31, 2009.

Thank you for your attention to this matter.

Sincerely,
Lawrence V. Soos
Mayor

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

I.3 Mayor

January 9, 2008

North Tonawanda Common Council
City Hall, 216 Payne Avenue
North Tonawanda, New York 14120

RE: Appointment of Chairman to North Tonawanda Zoning Board of Appeals

Dear Honorable Body:

Please be advised that I am appointing Jerome DiVirgilio of 767 Payne Avenue, North Tonawanda, New York to be the Chairman of the Zoning Board of Appeals effective immediately replacing the current Chairman, William L. Paton.

Thank you for your attention to this matter.

Sincerely,
Lawrence V. Soos
Mayor

MOVED by Alderman Pasiak SECONDED by Alderman Brick
That the Common Council hereby receives and files the aforementioned communication.
CARRIED.

I.4 Mayor

January 11, 2008

**North Tonawanda Common Council
City Hall, 216 Payne Avenue
North Tonawanda, New York 14120**

RE: Appointments Traffic Safety Committee

Dear Honorable Body:

Please be advised that I am reappointing Daniel Andrey, Margaret Andrey, and Police Advisor Robert Frank to the Traffic Safety Committee effective immediately for a term of three (3) years expiring December 31, 2010.

Thank you for your attention to this matter.

**Sincerely,
Lawrence V. Soos
Mayor**

MOVED by Alderman Schwandt SECONDED by Alderman Brick
That the Common Council hereby receives and files the aforementioned communication.
CARRIED.

VII. Accountant

January 10, 2008

**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 January 15, 2008, and further authorize the Mayor and City Clerk to respectively sign and countersign said Warrant.

**Very truly yours,
David R. Jakubaszek
City Accountant**

Enclosing an existing picnic shelter, to include the addition of restrooms and a kitchen, installation of a sanitary sewer and water service, relocation of vehicular parking to behind the shelter, installation of landscaping and a natural playground, and the construction of a fishing pier.

The cost estimate for this phase is \$833,000.

At this time, the Community Development Department is requesting authorization to submit an application to the Niagara River Greenway Commission for funding of these Phase I improvements.

The application will be co-sponsored by the City and the North Tonawanda Waterfront Commission.

Thank you for your attention to this matter.

Sincerely,
James B. Sullivan
Director

MOVED by Alderman Sommer

SECONDED by Alderman Pasiak

That the Common Council hereby authorizes the Community Development Department to submit an application to the Niagara River Greenway Commission for funding of the Phase I improvements to Gratwick-Riverside Park.

Ayes: Brick, Pasiak, Schwandt, Donovan, Sommer

(5)

Nays: None

(0)

CARRIED.

COMMUNICATIONS FROM OTHERS

A.

Gratwick Hose - Re: Exemption Petitions:

50 years:

Carl Steedman
Richard Ellman
Joseph Miranto
Roger Behm

Glenwood Boddy
William Stoeckel, Jr.
Alfred Henneberger

35 years:

Philip Belczak Douglas Hanes
Frank Sarzyniak Dennis Proefrock
James Rexinger

25 years:

George Frazer

MOVED by Alderman Brick

SECONDED by Alderman Schwandt

To issue Exemption Certificates as follows:

50 years – Carl Steedman, Glenwood Boddy, Richard Ellman, William Stoeckel, Jr., Joseph Miranto, Alfred Henneberger, Roger Behm

35 years – Philip Belczak, Douglas Hanes, Frank Sarzyniak, Dennis Proefrock, James Rexinger

25 years – George Frazer

CARRIED.

B.

Stephen Ash - Re: Proposal to Establish February 1, 2008 as a Community School Day of Caring and Sharing.

MOVED by Alderman Donovan

SECONDED by Alderman Brick

- Whereas a group of approximately 25 teachers and support staff in Western New York State, U. S. A., known as Educators Totally Committed (E.T.C.), all of which are from the Kenmore-Town of Tonawanda School District and the Clarence School District, accompanied by students of all age groups in these districts, have held an annual Sleepout on the first Friday of February since 1988 in order to help people in need in the western New York area, and
- Whereas these are people in need located in every neighborhood of our world community, and
- Whereas people in need of basic everyday necessities are dependent upon the compassionate concern and action of those who are able to help, especially people who are able to help who are located in their own community, as they have a clearer insight into the specific needs of the people who need help, and
- Whereas E.T.C.'s three-phase responsible social program of awareness, commitment and compassionate action can be easily applied world-wide to children in relation to the concerns of people in need in their own immediate community, and
- Whereas children given the opportunity to come together on a particular, designated day can maximize the cumulative worldwide effect of channeling their efforts to help people in need in their own community and can use this day as a springboard to encourage people worldwide to help people in need on a more regular basis throughout the entire year, and
- Whereas E.T.C. is presently working with the United Nations Educational, Scientific and Cultural Organization (UNESCO) to establish the first Friday in February of each year as a WORLD WIDE SCHOOL DAY TO HELP PEOPLE IN NEED, now,

THEREFORE BE IT RESOLVED that the North Tonawanda Common Council proclaims the first Friday in February 2008: February 1, 2008 as City of North Tonawanda Community School Day of Caring and Sharing in support of E.T.C.'s efforts to establish through UNESCO the first Friday in February of each year as a WORLD WIDE SCHOOL DAY TO HELP PEOPLE IN NEED, and encourages our residents to support in any appropriate manner E.T.C.'s continued efforts to help people in our community who are less fortunate.

CARRIED.

C.

Center for Municipal Solutions

October 16, 2007

Hon. Mayor & Common Council
216 Payne Avenue
North Tonawanda, NY 14120

Re: Application of T-Mobile for a Special Use Permit to Co-locate Antennas on the Existing Tower at 706 Sandra Lane, which is leased from the City.

Dear Honorable Body:

We have reviewed the supplemental submission for the application received on September 27, 2007 and October 2, 2007 and have the following comments: (Please note the items are numbered the same as our last letter dated February 12, 2007.)

3.) Section 8-F of the Local Law states:

Application must provide documentation to verify it has the right to proceed as proposed on the Site. This would require an executed copy of the lease with the landowner or landlord or a signed letter acknowledging authorization. If the application owns the site, a copy of the ownership record is required.

Documents in the original application show Global Signal as the owner and it appears Crown Castle is now the owner. Therefore the name, address and phone number for the tower owner, required in Section 8-I-4 of the local law; submitted in the original application, must be corrected.

b) As stated in the February 12, 2007 letter *“The lease between Omnipoint and Global (now Crown), Attachment 3, illustrates the expansion of the fenced area on the West side, South corner of the compound. This conflicts with the submitted construction drawings illustrating the expansion on the East side, North corner.”* The applicant’s response to this item refers to the new construction drawings with no explanation. The new construction drawings show the exact same conflict as outlined before. Later in item 3d, it states that *“Crown has advised that the original intended OCI leased area was outside of the area covered by the ground lease so OCI proposes to use the area noted in the construction drawings.”*

This statement does not change the fact that the applicant is required to submit accurate and consistent documentation. If the leased area is changed, the corrected/amended lease must be submitted, documenting that OCI has the right to proceed in the proposed area.

c) As stated in our February 12, 2007 letter: *“The lease between the City and Sprint Spectrum later transferred to Global Signal, in section 11.1 states that the city’s consent is required for subletting. No consent has been provided.”* and

d) As stated in our February 12, 2007 letter, *“It was also discussed in the pre-application site visit and conference call, that this consent must include permission to expand the fenced compound as proposed.”*

The City has approved the Subletting. See attached letter which must be included in the application.

7.) Section 8-I 10 of the Local Law states:

The type, locations and dimensions of all proposed and existing landscaping, and fencing

a) As stated in our February 12, 2007 letter: *“Applicant must state that they will paint the posts green as well as adding the green-colored slats in the fence in the front (street-side) of the compound.”*

The new construction drawings show the green slats to be added but there is no mention that the fence posts will be painted green. Acknowledgement of this requirement is needed.

b) As stated in our February 12, 2007 letter: *“It was discussed that there will be plantings placed in front of the compound (on the street side), except immediately in front of the gate:*

1) The “shrubs” illustrated in the site plans do not appear to be large enough to screen the fence. The plantings must be, at the time of planting, at least as tall as the fence.”

The new construction drawings illustrate four foot six inches (4’6”) tall arborvitaes are proposed. As agreed to in the February 19, 2007 conference call, the trees must be at least six feet (6’) tall.

13.) Mr. Capozzi from the City Building Dept informed us that an expansion of the turn around area would not be required due to the compound's close proximity to the road.

14.) Section 8-Y of the Local Law regarding SEQRA requirements:

As stated in our February 12, 2007 letter: *“The application does include a Full EAF. There is information in the EAF that conflicts with the application. On page two (2) item A-2 and page three (3) item B-1 b both refer to the current size of the compound and the ‘after completion’ size. Both state the same figure. The application and construction drawings propose an expansion to the compound. This must be corrected.”*

a) This is still the case in the new EAF. The numbers have been changed, from “.008 acres” to “.06 acres.” However it still states the same number for “Presently” and well as “After Completion.” This can not be accurate if the compound is to be expanded. See page 3 item #2.

b) On page 2, the “Name of Action” has now changed to “Installation of new equipment cabinets” – This is a Co-location of WTF and should state such.

19.) Section 24-A - Indemnification

A. Any application for Wireless Telecommunication Facilities that is proposed for City property, pursuant to this Law, shall contain a provision with respect to indemnification. Such provision shall require the applicant, to the extent permitted by the Law, to at all times defend, indemnify, protect, save, hold harmless, and exempt the City and its officers, Councils, employees, committee members, attorneys, agents, and consultants from any and all penalties, damages, costs, or charges arising out of any and all claims, suits, demands, causes of action, or award of damages, whether compensatory or punitive, or expenses arising there from, either at law or in equity, which might arise out of, or caused by, the placement, construction, erection, modification, location, products performance, use, operation, maintenance, repair, installation, replacement, removal, or restoration of said Facility, expecting, however, any portion of such claims, suits, demands, causes of action or award of damages as may be attributable to the negligent or intentional acts or omissions of the City, or its servants or agents. With respect to the penalties, damages or charges referenced herein, reasonable attorneys' fees, consultants' fees, and expert witness fees are included in those costs that are recoverable by the City.

The statement in the law, quoted above, was submitted in the first application but was not on T-Mobil letterhead and it was not signed. Now the applicant states *“Because OCI has no direct contractual relationship with the City, it is inappropriate for the City to require an indemnity from OCI.”* As stated in our February 12, 2007 letter: *“The indemnification (paragraph above) needs to be on T-Mobile letterhead and signed by the applicant.”*

T-Mobile/Omnipoint is the Applicant. They need to indemnify the city. This is not a contractual issue.

We need answers to items three (3), seven (7), fourteen (14) and nineteen (19) before we can recommend the City schedule the Public Hearing. If you have any questions please contact me at (518)439-3079 or Sue Marino at (585)349-0584.

Sincerely,
Richard A. Comi
CMS

MOVED by Alderman Pasiak

SECONDED by Alderman Brick

That the Common Council hereby approves T-Mobile's request to co-locate on the existing telecommunications tower located at 706 Sandra Lane provided the applicant adheres to the conditions set forth in a letter from the Center for Municipal Solutions dated January 14, 2008 and also contingent upon T-Mobile indemnifying the City of North Tonawanda.

Ayes: Brick, Pasiak, Schwandt, Donovan, Sommer

(5)

Nays: None

(0)

CARRIED.

