

THE HONORABLE BODY
Council Chambers
Municipal Building
North Tonawanda, New York 14120
Tuesday, October 20, 2009
6:00P.M.

REGULAR SESSION CALLED TO ORDER BY PRESIDENT SCHWANDT

ROLL CALL

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

Absent: None

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

APPROVAL OF THE MINUTES OF THE REGULAR SESSION OCTOBER 6, 2009

MOVED by Alderman Donovan **SECONDED by Alderman Brick**
That the minutes of the regular session held October 6, 2009 be approved as circulated and
filed in the Office of the Clerk-Treasurer.
CARRIED.

PROOF OF PUBLICATION PUBLISHED SEPTEMBER 29, 2009

1) Legal Notice – Public Hearing – City Clerk-Treasurer

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

AUDIENCE PARTICIPATION –

Joseph Michno, 420 St. Joseph Drive – Opposes the proposed project at St. Joseph Church
and stated that raw sewage is being pumped into the river.

Neil Lavoy, 619 Wardell – Criticized attorney for United Church Home Society. Stated
that citizens are informed and intelligent regarding proposed project at St. Joseph Church.

Mike Gondek, 257 Brentwood Drive – Questioned the City’s decision to challenge the DEC
and wondered how much the challenge will cost taxpayers.

John Grzebinski, 617 Williams Avenue – Hopes the Council is faithful and prepared.

Ed Pitz, 598 Williams Avenue – Stated that he did not receive a letter regarding the
rezoning of St. Joseph Church property and had no knowledge about the project.

Dan Tronolone, Attorney for United Church Home – Asked the Council to table vote
regarding the rezoning of the property at 1451-1459 Payne Avenue to give them time to
respond to misinformation and answer questions.

Tim Green, 89 Brundage – Defended statements made by Senator Maziarz and opposes the
St. Joseph Church project as currently outlined; stated that residential housing should be
put in that area.

I.2 Mayor

October 15, 2009

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

**Re: Annual Lease Agreement between the City of North Tonawanda and
 621 Payne Avenue LLC for Youth Center Program**

Dear Honorable Body:

Enclosed please find a copy of a Lease Agreement that was provided to the City this week for the yearly rental of the premises that we use for Youth Center programs and other yearly activities through the Recreation Department. The City is leasing the gymnasium and four (4) additional rooms located at the building commonly know as the Gersh Academy. The Youth Center is run by the Department of Youth, Recreation, Parks and Senior Citizens and has been very successful at this site and the terms and conditions of the proposed lease agreement are unchanged from previous years, with the exception that the requested rent by the landlord has been slightly increased in the amount of \$100.00 from \$2,000.00 to \$2,100.00 per month. The lease agreement runs from September 1, 2009 through August 31, 2010.

Accordingly, if your Honorable Body is in agreement with this lease agreement please pass a resolution approving said lease agreement and authorizing the Mayor to execute same on behalf of the City of North Tonawanda, subject to the review and approval of the City Attorney's Office.

Very truly yours,
 Lawrence V. Soos
 Mayor

MOVED by Alderman Pasiak

SECONDED by Alderman Donovan

That the Common Council hereby approves the annual lease agreement, which runs from September 1, 2009 through August 31, 2009, between the City of North Tonawanda and 621 Payne Avenue LLC, for the Youth Center Program and authorizes the Mayor to execute same on behalf of the City of North Tonawanda, subject to the review and approval of the City Attorney's Office.

Ayes: Brick, Pasiak, Sommer, Donovan, Schwandt

(5)

Nays: None

(0)

CARRIED.

II.1 Attorney

October 15, 2009

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

**Re: Proposed Amendment of 2009 Volunteer Fire Department Contract
 Active Hose Company**

Dear Honorable Body:

Attached, for your consideration, is an Amendment to the existing 2009 contract between the City of North Tonawanda and Active Hose Company. The amendment has become necessary in light of the change in status of their building to privately owned, as a result of the City's recent sale of the building to their company.

Should your Honorable Body concur, please pass a resolution to approve the amendment to the 2009 contract for Active Hose Company for signature by the Mayor, subject to

review and approval of all documentation by the City Attorney. Should you have any questions or need more information, please do not hesitate to contact me.

Very truly yours,
Shawn P. Nickerson
City Attorney

MOVED by Alderman Brick **SECONDED by Alderman Pasiak**
That the Common Council hereby approves the amendment to the 2009 contract for Active Hose Company and authorizes the Mayor to sign the contract, subject to review and approval of all documentation by the City Attorney.
Ayes: Brick, Pasiak, Sommer, Donovan, Schwandt (5)
Nays: None (0)
CARRIED.

II.2 Attorney

October 15, 2009

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

**Re: Proposed Retainer Agreement for Constitutional Challenge to DEC
Wetland Program Designation**

Dear Honorable Body:

Attached is a proposal from Craig A. Slater, Esq., a partner at Harter Secrest & Emery, LLP, to pursue a constitutional challenge to the recent DEC wetlands designation(s) within the City of North Tonawanda.

Should your Honorable Body concur, please pass a resolution to permitting the Mayor to sign a retainer agreement with Harter Secrest & Emery, LLP, Twelve Fountain Plaza, Suite 400, Buffalo, NY 14202, as outline in the attached Legal Services Proposal, subject to any further review by the City Attorney. If 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 Pasiak**
That the Common Council hereby authorizes the Mayor to sign a retainer agreement with Harter Secrest & Emery, LLP, Twelve Fountain Plaza, Suite 400, Buffalo, NY 14202, as outline in the aforementioned Legal Services Proposal, subject to any further review by the City Attorney.
Ayes: Brick, Pasiak, Sommer, Donovan, Schwandt (5)
Nays: None (0)
CARRIED.

IV.1 Engineer

October 15, 2009

Honorable Lawrence V. Soos, Mayor
and Common Council Members
City Hall
North Tonawanda, New York 14120

**Re: City Incinerator Building Environmental Assessment
795 Walck Road
Award of Environmental Engineering Agreement**

Dear Honorable Body:

As you may be aware, the City received a Restore New York Grant from the Empire State Development Corporation in the amount of \$310,000 to remediate and demolish the City's former incinerator building at Walck Road and Zimmerman Street.

In order to begin the project, the City must hire an environmental consulting firm to provide engineering and analytical services, to perform an asbestos survey, analytical testing, and a phase II environmental report, before any remediation or demolition may begin.

Accordingly, I respectfully request that the Common Council, award the 795 Walck Road City Incinerator Building Environmental Assessment Professional Consulting Services Agreement to Stearns and Wheler, LLC, University Centre, Suite 100, 415 North French Road, Amherst, NY 14228, in an amount not to exceed \$16,500; authorizing the Mayor to sign said contract, subject to review by the City Attorney.

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

MOVED by Alderman Donovan

SECONDED by Alderman Brick

That the Common Council hereby awards the 795 Walck Road City Incinerator Building Environmental Assessment Professional Consulting Services Agreement to Stearns and Wheler, LLC, University Centre, Suite 100, 415 North French Road, Amherst, NY 14228, in an amount not to exceed \$16,500; authorizing the Mayor to sign said contract, subject to review by the City Attorney.

Ayes: Brick, Pasiak, Sommer, Donovan, Schwandt

(5)

Nays: None

(0)

CARRIED.

IV.2 Engineer

October 15, 2009

Lawrence V. Soos, Mayor and Common Council Members
City Hall North Tonawanda
216 Payne Avenue
North Tonawanda, New York

Re: Buffalo Bolt Industrial Park Road and Infrastructure Construction
Award of Construction Contract

Dear Honorable Body:

As you are aware, the Buffalo Bolt Industrial Park Road and Infrastructure Construction Project received funding in the amount of \$1,200,000 from the New York State Capital Assistance Program in 2008 as proposed by New York State Assemblyman Robin Schimminger of the 140th District.

On Tuesday, October 13, 2009, twelve (12) bids from qualified contractors were received for the Buffalo Bolt Industrial Park Road and Infrastructure Construction. The corrected bid results are as follows:

- | | |
|--|--------------|
| • Scott Lawn Yard | \$783,415.00 |
| • New Frontier Excavating & Paving, Inc. | \$850,332.24 |
| • Milherst Construction, Inc. | \$913,195.00 |
| • L.D.C. Construction Co., Inc. | \$929,270.25 |
| • Northeast Diversification, Inc. | \$956,515.00 |
| • Visone Construction, Inc. | \$973,205.00 |
| • Yarussi Construction, Inc. | \$970,750.00 |
| • Buffalo Creek, Inc. | \$990,461.00 |

- Del Prince & Sons, Inc. \$1,097,585.00
- Mark Cerrone, Inc. \$1,112,636.00
- Sicoli Construction Services, Inc. \$1,184,140.00
- Pinto Construction \$ 1,313,286.14

The City's Consultant for the project, TVGA Consultants, who prepared the plans, specifications and estimate have reviewed and tabulated the bid results and are recommending an award of contract to the lowest bidder, Scott Lawn Yard.

Accordingly, I respectfully request that the Common Council award the Buffalo Bolt Industrial Park Road and Infrastructure Construction to Scott Lawn Yard, 5552 Townline Road, Sanborn, NY 14132, at their low bid in the amount of \$783,415.00; authorizing the Mayor to sign said contract, subject to review by the City Attorney.

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

MOVED by Alderman Pasiak

SECONDED by Alderman Brick

That the Common Council hereby awards the Buffalo Bolt Industrial Park Road and Infrastructure Construction to Scott Lawn Yard, 5552 Townline Road, Sanborn, NY 14132, at their low bid in the amount of \$783,415.00; and authorizes the Mayor to sign said contract, subject to review by the City Attorney.

Ayes: Brick, Pasiak, Sommer, Donovan, Schwandt

(5)

Nays: None

(0)

CARRIED.

VII.1 Accountant

September 30, 2009

Honorable Lawrence V. Soos, Mayor
and Common Council
City Hall
North Tonawanda, New York 14120

Dear Honorable Body:

In accordance with General Municipal Law, as amended by Chapter 376 of the Laws of 1988, I have attached a copy of the City of North Tonawanda Single Audit with Independent Auditor's Report, for the fiscal year ended December 31, 2008. The City Clerk-Treasurer will publish a legal notice in the newspaper stating that these reports are available to the public.

The auditor's opinion is that the General Purpose Financial Statements present fairly, in all material respects, the respective financial position of the governmental activities and each major fund of the City of North Tonawanda as of December 31, 2008, and the respective changes in financial position thereof, and the budgetary comparison for the General Fund for the year ended in conformity with accounting principles generally accepted in the United States of America.

Copies of the audits will be mailed to the appropriate Federal and State Agencies.

If you have any questions on these documents, please feel free to contact me.

Very truly yours,
David R. Jakubaszek
City Accountant

MOVED by Alderman Donovan

SECONDED by Alderman Brick

That the Common Council hereby receives and files the aforementioned 2008 Single Audit.

CARRIED.

VII.2 Accountant

October 15, 2009

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 October 20, 2009, and further authorize the Mayor and City Clerk-Treasurer to respectively sign and countersign said Warrant.

Very truly yours,
David R. Jakubaszek
City Accountant

MOVED by Alderman Pasiak SECONDED by Alderman Brick
That the Common Council hereby authorizes for payment the current Abstract of Claims for Common Council Audit dated October 20, 2009 and further authorizes the Mayor and City Clerk respectively sign and countersign said Warrant:

01	General Fund	\$128,701.23
02	Water Fund	29,243.51
04	Sewer Fund	30,962.09
06	Capital Project Fund	168,115.48
07	Trust & Agency Fund	635.32
17	Home Rehab Program	500.00
	Final Total	<u>\$358,157.63</u>

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

VII.3 Accountant

October 15, 2009

Honorable Lawrence V. Soos, Mayor
and Common Council
City Hall
North Tonawanda, New York 14120

Dear Honorable Body:

Please be advised that I sent out a Request for Proposal for the professional service for Health Reimbursement Arrangements (HRA) and Flexible Spending Account (FSA) administration, to include debit card services.

I received a formal proposal from four of those firms and have evaluated each of them. Based on my evaluation, all four firms are qualified to do the work third party administrator. I have tabulated the per-person (PP) and per-monthly (PM) costs associated with each type of coverage, as follows:

<u>Provider</u>	<u>Flexible Spending Account</u>	<u>Health Reimbursement Arrangement</u>	<u>Both</u>
P&A Group	\$5.00 PP/PM	\$5.00 PP/PM	\$7.00 PP/PM
Ceridian	\$5.70 PP/PM	\$ 4.70 PP/PM	NA
Ameriflex	\$5.25 PP/PM	NA	NA
WageWorks	\$5.25 PP/PM	NA	NA

Accordingly, based on my evaluation, I recommend that the P&A Group be engaged to provide administrative services for the HRA and FSA plans, for one year, with the option of renewal for up to four additional years.

Very truly yours,
David R. Jakubaszek
City Accountant

MOVED by Alderman Pasiak

SECONDED by Alderman Brick

That the Common Council hereby approves the P & A Group to provide administrative services for the HRA and FSA plans, for one year, with the option of renewal for up to four additional years.

Ayes: Brick, Pasiak, Sommer, Donovan, Schwandt

(5)

Nays: None

(0)

CARRIED.

VII.4 Accountant

October 15, 2009

Honorable Lawrence V. Soos, Mayor
and Common Council
City Hall
North Tonawanda, New York 14120

Dear Honorable Body:

In accordance with Article V, Division 2, Section 5.023 and Section 2.2 of the Budgetary Transfer Policy, please authorize the City Accountant to make the following transfers of fiscal year 2009 appropriations, based on the request of Department Heads, copy attached:

<u>Control Number</u>	<u>Dollar Amount</u>	<u>From Appropriation Account</u>	<u>Into Appropriation Account</u>
6	7,000.00	1-3120.277 Police ERT Equipment	1-3120.100 Police Personal Services - Overtime

Very truly yours,
David R. Jakubaszek
City Accountant

MOVED by Alderman Pasiak

SECONDED by Alderman Brick

That the Common Council hereby authorizes the City Accountant to make the following transfer of fiscal year 2009 appropriations, based on the request of Department Heads:

<u>Control Number</u>	<u>Dollar Amount</u>	<u>From Appropriation Account</u>	<u>Into Appropriation Account</u>
6	7,000.00	1-3120.277 Police ERT Equipment	1-3120.100 Police Personal Services - Overtime

Ayes: Brick, Pasiak, Sommer, Donovan, Schwandt

(5)

Nays: None

(0)

CARRIED.

COMMUNICATIONS FROM OTHERS

A.
Nancy Donovan

October 16, 2009

Robert G. Ortt
City Clerk-Treasurer
216 Payne Avenue
North Tonawanda, NY 14120

Re: Proposed Local Law

Dear Mr. Ortt:

Please be advised that Alderman Dennis Pasiak and myself, are requesting that the Common Council take the appropriate action to lay the proposed local law establishing real-property tax exemption for eligible conversions of non-residential real property to mixed-use property in accordance with New York State Real Property Tax Law Section 485-a, on the table and allow it to remain in its final form for at least seven (7) days prior to adoption. After such adoption, this local law must be referred to the Mayor's office for a public hearing on its provisions. After said public hearing and formal filing with the Secretary of State, this local law will become effective.

Very respectfully,
Nancy Donovan
Alderman, Third Ward

MOVED by Alderman Donovan SECONDED by Alderman Pasiak
That the Common Council hereby lays the following Local Law on the table for 7 days:

LOCAL LAW NO. 6 FOR 2009

A LOCAL LAW ESTABLISHING REAL PROPERTY TAX EXEMPTION FOR NON-RESIDENTIAL REAL PROPERTY CONVERTED TO MIXED-USE PROPERTY ACCORDANCE WITH SECTION 485-a OF THE NEW YORK STATE REAL PROPERTY TAX LAW

WHEREAS, Councilmen Nancy Donovan and Dennis Pasiak present in writing the following proposed Local Law:

A Local Law Establishing Real Property Tax Exemption for eligible conversions of Non-Residential Real Property to Mixed-Use Property in accordance with New York State Real Property Tax Law Section 485-a:

Be it enacted by the Common Council of the City of North Tonawanda, as follows:

1. Qualified Mixed Use property, as defined in New York State Real Property Tax Law Section 485-a, which is located within the City of North Tonawanda shall be exempt from County taxation and County special ad valorem levies in the same manner and to the same extent as provided in the applicable city, town or village local law.
2. The purposes of this local law, Qualified Mixed Use property is defined as property in which will exist, after completion of residential construction work or a combination of residential construction work and commercial construction work, a building or structure used for both residential and commercial purposes, subsequent to the effective date of this local law.

- 3.(a) Such Real Property shall be exempt for a period of eight (8) years to the extent of one hundred percent of the increase in assessed value thereof attributable to such reconstruction, alteration or improvement and for an additional period of four (4) years; provided, however that the extent of such exemption shall be decreased by twenty percent for each year during such additional period of four years and such exemption shall be computed with respect to the "exemption base", with the exemption base being determined for each year in which there is an increase in assessed value so attributable from that of the previous year's assessed value.

Exemption Table:

Years 1 – 8:	100% of exemption base
Year 9:	80% of exemption base
Year 10:	60% of exemption base
Year 11:	40% of exemption base
Year 12:	20% of exemption base

- (b) No such exemption shall be granted unless:

1. Such conversion was commenced subsequent to the date on which this local law becomes effective;
2. The cost of such conversion exceeds the sum of ten thousand dollars (\$10,000.00), or such other amount as set forth in the city, town and/or village local law adopting this statute;

- (c) For purposes of this section, the term "conversion" shall not include ordinary maintenance and repairs. (The following shall not be considered conversion except to the extent that they are a part of an addition, remodeling or modernization: exterior painting; the replacement of exterior siding; interior painting; plastering; paneling or wallpapering; replacement of flooring or floor coverings; repairs to electrical or plumbing systems. This is illustrative only and not exhaustive.)

4. Such exemption shall be granted only upon application by the owner of such real property on a form prescribed by the New York State Board of Real Property Services, the original of which shall be filed with the assessor for the City of North Tonawanda and/or such other city, town or village that has approved this exemption. Such application shall be filed on or before the tax status date applicable to the City of North Tonawanda and/or such other city, town or village that has approved this exemption and within one year from the date of completion of such conversion.
5. No such exemption shall be granted concurrent with or subsequent to any other real property tax exemption granted to the same improvements to real property, except, where during the period of such previous exemption, payments in lieu of taxes or other payments were made to the local government in an amount that would have been equal to or greater than the amount of real property taxes that would have been paid on such improvements had such property been granted an exemption pursuant to this section. In such case, an exemption shall be granted for a number of years equal to the twelve year exemption granted pursuant to this section less the number of years the property would have been previously exempt from real property taxes.
6. The provision of this section shall only apply to Non-Residential Real Property converted to mixed-use property.
7. This local law shall take effect immediately and shall apply to all assessment rolls prepared on the basis of taxable status dates occurring on or after the effective date of this local law.

RESOLVED, that the North Tonawanda Common Council shall, consistent with state law, formally lay this local law on the table and allow it to remain in its final form for at least 7 days prior to adoption. After such adoption, this local law must be referred to the Mayor's office for a public hearing on its provisions. After said public hearing and formal filing with the Secretary of State, this local law will become effective.

CARRIED.

The following agenda item was pulled before the meeting.

**B.
GT Custom Build Homes**

October 13, 2009

Honorable Mayor Lawrence V. Soos
Respected Common Council Members of North Tonawanda
216 Payne Avenue
North Tonawanda, NY 14120

Re: William St. Subdivision

Dear Mayor Soos & Council Members:

We have recently completed the William St. Subdivision and realize that there are three Williams Streets in our area (Tonawanda's and Wheatfield). Therefore we are requesting a street name change within our subdivision to Walter Drive.

Walter Kroetsch did live in North Tonawanda from 1949 to 1993. He bought the property on Williams St. in 1972.

Walter served his country during World War II, stationed at Los Alamos, New Mexico, building the atomic bomb which ended the war with Japan. He retired from Bell Aerospace after 43.6 years of faithful service and he served his community as a volunteer and Treasurer of the Sweeney Hose Co. #7 for 30 years.

With the above information in mind, we are in agreement in requesting the name change to Walter Drive.

Thank you in advance for your consideration in this matter.

Respectfully,
Thomas DiMatteo, President
G. T. Custom Built Homes, Inc.
Jean M. Kroetsch

AUDIENCE PARTICIPATION

Carrie Carney, 36 Brundage – Thanked the Council for voting no to the rezoning at 1451-1459 Payne Avenue.

Neil Lavoy, 619 Wardell – Thanked the Council for voting no to the rezoning at 1451-1459 Payne Avenue.

Dennis Barberio, 168 Stenzil Street – Questioned whether Mr. Sommer attended a meeting between Mr. Wojtaszek and Senator Maziarz encouraging him to slow the Wal-Mart process. Questioned whether Ms. Donovan reviewed the budget and upheld her financial obligation.

Brian Szlis, 383 Ward Road – Wondered what happens with the 1451-1459 Payne Avenue property now that the rezoning was not approved.

Kathy Kern, 1248 Greenbrier Lane – Questioned the Haz-Mat drop off in North Tonawanda.

Mike Gondek, 257 Brentwood Drive – Stated that leaf pick up should start later in the year.

ADJOURNMENT

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

Time of Adjournment: 7:08 P.M.

Respectfully submitted,

Robert G. Ortt
Clerk-Treasurer