

CITY COUNCIL MEETING

December 5, 2011

Page 280

Mayor Nelson called the meeting to order and asked the Clerk to call the roll:

PRESENT: Mayor Nelson, Councillors Ashley, Cilley, Morley, Powers, Skamperle and Vaugh

ABSENT: None

PUBLIC HEARING

1. A public hearing on a local law to authorize a property tax levy in excess of the 2% cap was held. No one being present to speak, the hearing was declared closed.

2. A public hearing on a Local Law to amend Chapter 177 (Sections 5 and 6) of the OMC entitled Sewer Rates was held. No one being present to speak, the hearing was declared closed.

3. A public hearing to adopt the Preliminary 2012 Budget, as amended was held. The following spoke:

- Robin Duncan, Forsythe's Rifles Treasurer, asked Council to continue their support.

- Amy and Penelope Longbottom, 503 Franklin Street, asked Council to approve the Library funding.

- Maureen Kravec, President of the Friends of the Library, asked Council to support the Library funding.

- Robert Longbottom, 503 Franklin Street, stated the Library is important to the community and urged Council to fund them. No one else being present to speak, the hearing was declared closed.

CITY COUNCIL MEETING

December 5, 2011

Page 281

4. A public hearing to offer for sale, by public auction, City-owned property located at 805 Ford Street was held.

Sandra Gooshaw, 310 Seymour Street, stated she is interested in purchasing this property. No one else being present to speak, the hearing was declared closed.

PRESENTATION

1. Kevin Murphy, Wladis Law Firm, stated that he was retained last week to review the C-14 report as per the Council resolution which authorized the performance of the investigation that led to the C-14 report. Mr. Murphy said that we also looked at the one single FOIL request that concerns the C-14 report. Mr. Murphy stated that we have gone through those documents and have prepared a letter addressed to City Council in a sealed envelope, which he just handed to the City Clerk. Mr. Murphy said we believe that our advice to Council is protected by attorney/client privilege and attorney/work product privilege, however if the Council wishes to waive that privilege, he can go into further detail about what the letter says or he can leave the letter with Council and his firm would be available for further consultation.

Mayor Nelson asked Council if they wanted to know what the letter says. Councillor Morley said Mr. Murphy should read it aloud because that is what we hired his firm to do. Mr. Murphy stated he has no objection if the letter is read, and he would be happy to summarize the letter for the Council and the audience. Mr. Murphy added that he wanted Council to know if they read the letter aloud, they're waiving the attorney/client relationship we have with respect to that, and if you want to do that he'd be happy to let you know what the letter says. Councillor Morley questioned if his findings are going to tell us if we can release the document or not. Mr. Murphy said yes. Councillor Morley asked if he saw anything in the report that needs to be redacted. Mr. Murphy said no, but that doesn't summarize what the letter says. Councillor Powers questioned if by breaching this now, will it have any impact on further work that we require from your company.

CITY COUNCIL MEETING

December 5, 2011

Page 282

Mr. Murphy said yes if there are additional services required beyond what we've put in the letter. Mr. Murphy said he doesn't think revealing the contents of this letter would create a breach of attorney/client relationship on any new projects, only the C-14 report project. Councillor Morley questioned if Council should go into executive session to review this letter. Councillor Vaugh said let him read or summarize it now. Mayor Nelson asked Mr. Murphy to summarize his letter.

Mr. Murphy stated that the FOIL Law acts on a presumption that public documents should be disclosed, however there are certain exemptions which allow a party to withhold documents from disclosure. Mr. Murphy said it is their review based on the resolution that authorized the creation of this report, the subject of the report and the nature of the report, that it is not mandatory that this report be disclosed because it is protected by the attorney/client relationship and is protected by the attorney/work product privilege and the intra agency communication. Mr. Murphy said the FOIL also requires that people not apply these types of exemptions as a blanket form to a document or a report. Mr. Murphy said one is supposed to look further and determine if there are portions of the report that can be released and in fact the NY Courts have told us that if there are factual statements contained within the report, one merely releases those factual statements then that does not breach the attorney/client privilege. Mr. Murphy added that we believe there are certain portions of this report that fall into that category and his letter details exactly what they are. Mr. Murphy stated there were six issues or questions included in the resolution and with three of the six, it is clear that there is some factual information that can clearly be released and should be released under FOIL Law to comply with its intended purpose, and in addition with the manner in which this report was constructed. Mr. Murphy said there are a number of attachments to the report and we believe that a number of these attachments are nothing more than recitation of factual statements in the manner of which they are constructed and what they are. Mr. Murphy said we've included a list of those documents that we believe can and should be released under FOIL Law. Mr. Murphy stated that what we're telling you is that under the law the majority of the report can be held back, it is properly exempted from disclosure and there are limited portions that we believe should be disclosed

CITY COUNCIL MEETING

December 5, 2011

Page 283

and similar to your discussions tonight, whether Council wanted him to summarize his letter. Mr. Murphy stated that Council has the opportunity if you prefer to waive the attorney/client relationship with respect to all or portions of the report. Mr. Murphy said our letter goes on to say in those circumstances we are sometimes asked by clients what our advice would be with respect to that. Mr. Murphy said generally speaking, not about this specific document, but our general advice to clients and to you would be that the FOIL Law presumes disclosure and advocates for disclosure. Mr. Murphy said we suggest in certain circumstances however that they keep documents confidential; those would be circumstances where disclosing a report would disclose litigation strategy and where disclosing a report would disclose confidential information that if disclosed could be a detriment to the agency. Mr. Murphy also cautioned about disclosing reports before someone has all of the information that they might want to have about something, for instance is we have a partial report that you can hold back and a basis for having a second portion of that report, we would counsel that our client consider whether or not this is the appropriate time for disclosure. Mr. Murphy stated with respect to this report, we reviewed the report itself and reviewed the resolutions which required the report to be prepared. Mr. Murphy said we reviewed the particular FOIL request that was seeking disclosure of the report. Mr. Murphy said what we did learn in the process was that in order to prepare this report, the City Attorney looked at a large volume of documents and determined which of those documents were relevant to the preparations of the final report. Mr. Murphy stated that we did not review all of those documents because that wasn't part of our charge with respect to this. Mr. Murphy stated that he doesn't know what's in those documents and he wouldn't tell you that the City Attorney's report is deficient; he's merely telling you that he hasn't seen those documents and doesn't know what's in them, and therefore whatever advice he could give you does not in any way rely on what's in those documents. Mr. Murphy asked if City Council had any questions. Councillor Skamperle questioned why Mr. Murphy hadn't seen the documents that are in the report. Mr. Murphy stated he meant that he understood there are two boxes of documents that were reviewed in order to prepare this report. Mr. Murphy said this report includes within it, a timeline annotated by certain documents.

CITY COUNCIL MEETING

December 5, 2011

Page 284

Mr. Murphy added that his firm has reviewed the full report and reviewed all the documents that comprised the report, including the exhibits. Mr. Murphy explained that we did not review the documents that are not part of the report because that was not part of our charge at this point in time. Mr. Murphy added we've suggested particular documents should be disclosed but we aren't going to review the rest of the boxes as that wasn't our charge. Councillor Morley questioned if the City will be harmed by releasing this document. Councillor Morley asked if the City is safe to release this report. Mr. Murphy said he doesn't believe there is anything in the document that suggests any strategy for litigation. Mr. Murphy said the report does make specific legal advice with respect to one or two things, for instance if someone is going to sell a parcel of real estate pursuant to this program, what would we need to do that properly. Mr. Murphy said the report does go through those steps to do it properly, but the report does not say or make a recommendation of what or if any action should be taken next. Mr. Murphy said if you are concerned that if we release this report it would reveal Council's recommendation as to what to do next, he did not see a recommendation of what to do next. Mr. Murphy said the report was very specific with respect to what it didn't do. Mr. Murphy said the introduction to the report was fourteen pages and had forty-five exhibits. Mr. Murphy added that the introduction indicates the report is limited to responding to the six questions that were raised and identified in the resolution and said the first sentence of the resolution was a broad directive to the City Attorney to go investigate and then after that enlisted the six issues in particular that Council wanted the attorney to look at. Mr. Murphy stated the way the report is drafted it identifies those six issues and provides a response to each one of those. Mr. Murphy said the report dealt with factual questions not specific recommendations, not any actions beyond the report or what those actions should be. Mr. Murphy said the report doesn't disclose Council strategy of what should happen. Mr. Murphy said the only caution he can give Council is for him to be more specific in his advice, he would prefer to look at the other two boxes of material. Mr. Murphy added that he didn't see anything in there that jumped out at him or caused that report to be investigated that would create liability for the City.

CITY COUNCIL MEETING

December 5, 2011

Page 285

Councillor Cilley stated Mr. Murphy said several documents could be released under FOIL, and questioned if there were any that shouldn't be released. Mr. Murphy responded that there were forty-five exhibits that were intra communications between City employees and he recommends not releasing them because they prevent future emails among City employees to openly discuss issues.

Councillor Morley moved to release these documents and Councillor Skamperle seconded the motion.

Mr. Murphy said there are three reasons not to release report. Mayor Nelson questioned if his letter recommends which information to release. Mr. Murphy said yes, of the fourteen pages of text and forty-five pages of attachments, most is undisclosable. Mr. Murphy said the Clerk can release the documents in their letter.

Councillor Vaugh said he has additional questions about the C-14 report and it may be harmful to release the report before additional questions are answered. Mr. Murphy questioned if those questions could change the meaning of the report.

Councillor Cilley said he doesn't want to act on a letter he hasn't read, he heard the summary but hasn't read the letter and wants to read it before taking action. Councillor Skamperle stated he wants to go into executive session and read the attorney's letter.

Councillor Powers moved to adjourn to executive session, and Councillor Morley seconded the motion.

The vote to adjourn to executive session was:

CARRIED, AYES ALL

Upon returning from executive session, all members of Council were still present.

CITY COUNCIL MEETING

December 5, 2011

Page 286

Mr. Murphy said he had nothing further to add and invited Council to contact his firm if they need anything further. Mayor Nelson thanked him for the quick turnaround of information.

CONSENT AGENDA

Mayor Nelson moved that the claims as enumerated in General Fund Warrant #20-2011 in the amount of \$206,360.08 and Library Fund Warrant #20-2011 in the amount of \$2,298.25 and Capital Fund Warrant #20-2011 in the amount of \$22,971.28 and Community Development Fund Warrant #20-2011 in the amount of \$6,434.74 and Community Renewal Fund Warrant #20-2011 in the amount of \$1,983.00 and HOME Fund Warrant #20-2011 in the amount of \$0.00 and AHC Funds Warrant #20-2011 in the amount of \$0.00, RESTORE Program Warrant #20-2011 in the amount of \$0.00 and NSP Funds Warrant #20-2011 in the amount of \$0.00 and NY Main St. Program Warrant #20-2011 in the amount of \$0.00 as audited, be and the same are ordered paid and Councillor Morley seconded the motion.

The vote was:

CARRIED, AYES ALL

ITEMS FOR COUNCIL ACTION

1. Councillor Morley moved a local law to authorize a property tax levy in excess of the limit established in General Municipal Law §3-c, and Councillor Powers seconded to wit:

Local Law No. 2 of the year 2011
City of Ogdensburg, County of St. Lawrence

A local law authorizing a property tax levy in excess of the limit established in General Municipal Law §3-c

Section 1. Legislative Intent

CITY COUNCIL MEETING

December 5, 2011

Page 287

It is the intent of this local law to allow the City of Ogdensburg to adopt a budget for the fiscal year commencing 1/1/2012 that requires a real property tax levy in excess of the “tax levy limit” as defined by General Municipal Law § 3-c.

Section 2. Authority

This local law is adopted pursuant to subdivision 5 of General Municipal Law §3-c, which expressly authorizes a local government’s governing body to override the property tax cap for the coming fiscal year by the adoption of a local law approved by a vote of sixty percent (60%) of said governing body.

Section 3. Tax Levy Limit Override

The City Council of the City of Ogdensburg, County of St. Lawrence, is hereby authorized to adopt a budget for the fiscal year commencing 1/1/2012 that requires a real property tax levy in excess of the amount otherwise prescribed in General Municipal Law §3-c.

Section 4. Severability

If a court determines that any clause, sentence, paragraph, subdivision, or part of this local law or the application thereof to any person, firm or corporation, or circumstance is invalid or unconstitutional, the court’s order or judgment shall not affect, impair, or invalidate the remainder of this local law, but shall be confined in its operation to the clause, sentence, paragraph, subdivision, or part of this local law or in its application to the person, individual, firm or corporation or circumstance, directly involved in the controversy in which such judgment or order shall be rendered.

Section 5. Effective date

This local law shall take effect immediately upon filing with the Secretary of State.

City Comptroller Philip Cosmo explained this is a precautionary measure and added that we are not proposing going over the 2% tax cap.

CITY COUNCIL MEETING

December 5, 2011

Page 288

Mr. Cosmo stated a recent NYSCOM publication pointed out the rationale of why we should pass this override measure to protect us as long as the state mandates are in place.

The vote was:

CARRIED, AYES ALL

2. Councillor Skamperle moved a local law to amend the OMC Section 177 entitled Sewer Rates as dictated by the adoption of the 2012 budget, and Councillor Morley seconded to wit:

Local Law # 3 of 2011

§177-5 Rates for metered premises.

The following rates for sewer rents are hereby fixed and established to every lot, parcel of land, building or other premises now or hereafter being charged at a metered rate for sewer service within the City of Ogdensburg, New York, effective the first billing date after January 1, 2012:

| Meter Size (inches) | Water Allowed | Minimum (gallons) Quarterly Charge |
|------------------------|---------------|---|
| 5/8" | 16,322 | \$ 79.00 |
| 3/4" | 21,694 | 105.00 |
| 1" | 33,264 | 161.00 |
| 1 1/4" | 43,801 | 212.00 |
| 1 1/2" | 54,959 | 266.00 |
| 2" | 109,504 | 530.00 |
| 3" | 164,463 | 796.00 |
| 4" | 219,008 | 1060.00 |

\$4.84/1,000 gallons of water used

§ 177-6 Flat rates within the corporation limits of the City.

The following schedule of rates for sewer rents is hereby fixed and established for every lot, parcel of land, building or premises now or hereafter being charged at a flat rate for sewer service within the City of Ogdensburg, New York, effective the first billing date after January 1, 2012:

| | | |
|----|---|---------------|
| A. | Single family residence per year | \$ 316.00 |
| B. | Multi-family residence, or each family unit of each tenant per year | 316.00 |
| C. | Combination residential-commercial for each individual unit per year | 316.00 |
| D. | Apartment houses, for each individual unit | 316.00 |
| E. | Rooming Houses: Private homes with additional rooms to rent or commercial rooming houses: | |
| | (1) Minimum annual rents | 316.00 |
| | (2) Additional rooms to hire | 79.00 |
| | | (annual rent) |

Mayor Nelson stated this is a \$9.00 increase that will be charged to everyone who uses the sewer system, even non-profits.

Councillor Morley suggested raising the sewer rate to \$7.00 instead of \$9.00. City Manager Arthur Sciorra explained that this \$9.00 increase is to maintain operations and prevent equipment failure.

Councillor Powers questioned how much money we're currently saving with building upgrades. Public Works Director, Kit Smith, stated we have cut the heat, power and lights, but the wastewater is expensive to treat and we have put off equipment upgrades due to the loss of the Cheese Plant. Mr. Smith said we will see savings next year.

Councillor Morley questioned if we can reduce this rate by one dollar.

The vote was:

AYES: Mayor Nelson, Councillors Ashley, Cilley,
Powers, Skamperle and Vaugh

NAYS: Councillor Morley

APPROVED, 6 TO 1

3. Mayor Nelson introduced a resolution to adopt the 2012 preliminary budget as amended, and Councillor Morley seconded to wit:

RESOLUTION TO ADOPT
THE CITY OF OGDENSBURG'S 2012 BUDGET

THEREFORE BE IT RESOLVED, that the City of Ogdensburg adopts the 2012 Preliminary Budget as amended in the attached schedules,

BE IT FURTHER RESOLVED, that the following rates shall be in effect for 2012:

1. The City Real Property Tax Rate for 2012 shall be
\$ 16.2113 per thousand dollars of assessed valuation.

(A copy of the 2012 budget adjustments follow these minutes.)

The vote was:

AYES: Mayor Nelson, Councillors Ashley, Cilley,
Powers, Skamperle and Vaugh

NAYS: Councillor Morley

APPROVED, 6 TO 1

4. Councillor Powers moved an ordinance to offer for sale, by public auction, City-owned property located at 805 Ford Street, and Councillor Skamperle seconded to wit:

ORDINANCE #7 of 2011
AN ORDINANCE TO OFFER FOR SALE AT PUBLIC AUCTION
CITY OWNED PROPERTY

BE IT ORDAINED AND ENACTED by the City Council of the City of Ogdensburg, New York, as follows:

SECTION ONE

The following property shall be offered for sale at public auction by the City of Ogdensburg:

| <u>ADDRESS</u> | <u>LOT SIZE</u> | <u>TAX MAP #</u> | <u>MINIMUM PRICE</u> |
|-----------------|-----------------|------------------|----------------------|
| 805 Ford Street | 19 x 84 | 48.071-9-8 | \$100.00 |

SECTION TWO

The City Council reserves the right to reject any or all bids or to withdraw any parcel from sale. Conveyance is to be made by Quit Claim Deed. The City does not guarantee clear property title in the transfer of property by auction and conveyance will be made by Quit Claim Deed.

SECTION THREE

This ordinance shall become effective ten days after publication.

The vote was:

CARRIED, AYES ALL

5. Councillor Vaugh moved a resolution to approve the transfer of the financial administration of funds from the St. Lawrence County Industrial Development Agency to the Massena Business Development Corporation that were contributed by the City of Ogdensburg to the Northern Corridor Transportation Group, and Councillor Morley seconded to wit:

RESOLUTION TO APPROVE TRANSFER OF FINANCIAL
ADMINISTRATION
OF FUNDS CONTRIBUTED TO THE NORTHERN CORRIDOR
TRANSPORTATION GROUP

WHEREAS, the resolution dated March 8, 2010 authorizes funds to be administered by the St. Lawrence County Industrial Development Agency, and

WHEREAS, the Industrial Development Agency no longer desires to administer these funds, and

WHEREAS, the funds will now be administered by the Massena Business Development Corporation, and

NOW THEREFORE BE IT RESOLVED, that City Council approves the transfer of financial administration of the \$5,000 funds contributed by the City of Ogdensburg from the St. Lawrence County Industrial Development Agency to the Massena Business Development Corporation.

Councillor Powers said he previously asked this group to come back before Council with their marketing scheme and budget, but they never did. Councillor Cilley said if we don't agree with this, they will return our \$5,000. Councillor Skamperle said they provided their budget information in one of our updates. Councillor Skamperle added they have done quite a bit of marketing and they're on the Northern Economic Development agenda with the State and the Lt. Governor is on board and is sitting on a Transportation Bill in the Senate. Councillor Skamperle added they have a meeting tomorrow night if anyone would like to attend.

CITY COUNCIL MEETING

December 5, 2011

Page 287

Mayor Nelson said it was important to note that this resolution was not the one that appropriated the \$5,000 and explained that the first time they came before us, we requested additional information. Mayor Nelson added that this money came from last year's budget.

The vote was:

CARRIED, AYES ALL

6. Mayor Nelson said Council had a motion on the floor to release the C-14 investigation report to the public.

Councillor Morley said he wanted to clarify that his motion was to release the C-14 document in full, with one copy available in the City Clerk's Office, not the Library or anywhere else.

Councillor Cilley said he thinks this motion needs to be amended. After much discussion amongst Council, Councillor Cilley moved to amend this motion and Councillor Morley seconded as follows:

The C-14 document will be released in full, with one copy available for inspection in the City Clerk's Office and copies will be released pursuant to present and future FOIL requests.

Mayor Nelson said it's important to note that Council conferred with an outside attorney on this, and we are of the opinion to release this information based on the advice from the attorney and the questions answered.

Councillor Cilley questioned if the FOIL can be transmitted electronically with a FOIL request.

The vote to amend the resolution was:

CARRIED, AYES ALL

CITY COUNCIL MEETING

December 5, 2011

Page 288

The vote on the resolution as amended was:

CARRIED, AYES ALL

OLD BUSINESS

1. Councillor Skamperle said we have discussed the cost of cleaning out the pipe that runs through the City marina and we received a \$20,000 bid this summer but were waiting for the water levels to go down, and we would re-bid the project. Councillor Skamperle said the water level is down now and he would like to re-explore this. City Manager Arthur Sciorra stated that we are looking at cutting the pipe to make a larger water flow through there and are starting a project to repair docks west of the gazebo and build new transient docks. Mr. Sciorra said we will be ready to present this project to Council in a few weeks if we have the plans, which will include this pass through.

2. Councillor Vaugh said we received a letter from the NYS Budget Office reviewing the Growth Fund programming audit, and we've hired Harris Beach. Councillor Vaugh asked the City Attorney, Andy Silver for details of what they are reviewing. Mayor Nelson said we talked about this a couple meetings ago, and what they're doing is bringing us into concert with the Public Authority Accountability Act.

Councillor Vaugh asked if there was any concern as far as Harris Beach reviewing local Charter laws or just conforming with state laws. Councillor Vaugh asked if there is any review of the Growth Fund by-laws. City Attorney, Andy Silver said they've been hired to bring the Growth Fund into compliance with the Public Authority Accountability Act. Mr. Silver said there may be by-law revisions necessary as a result of that. Mr. Silver said they are going to give the Growth Fund a play book to initially become compliant and stay compliant. Mr. Silver added their initial services were estimated at \$5,000 with \$400 charged for every year thereafter.

CITY COUNCIL MEETING

December 5, 2011

Page 289

Mr. Silver said they've done this kind of work before and can do it faster and more cost effective than he can, and added it was a smart move by Council. Councillor Vaugh said in their letter they mention government practices of the corporation, and he questioned if they will review local municipal code and the charter as far as being compliant with the Growth Fund. Mr. Silver said that issue hasn't been discussed specifically, just the operating issues the Growth Fund faces will be touched on by Forrest Beach. Mr. Silver added that he believes they will review the Charter and the Growth Fund by-laws.

3. Councillor Vaugh stated Council received a memo from Mr. Silver regarding the cost of living adjustment increase for the City Manager. Mayor Nelson stated this is a personnel item. Councillor Vaugh said he thought it was a contractual item and the Comptroller has certain duties so he is not sure why Council is being dragged into this. Mr. Silver said yes Council received this memo from him but he is not sure Council wants to discuss it and obtain legal advice publically; they would waive their attorney/client privilege.

ITEMS FOR DISCUSSION

1. Councillor Powers stated in light of the release of the C-14 information, he'd like to call for an investigation. Councillor Powers requested that Council use the Wladis Law Firm to do the following additional duties:

1. Investigate the leak of the C-14 report; find out which individual violated their oath of office and prolonged this investigation; and
2. Determine and discuss with the law firm potential personnel matters down the road related to this investigation.

Councillor Powers moved a resolution regarding the leaking of the 14 pages of the summary report or any information compiled by City Attorney Andy Silver for the C-14 report, and to allow Council to confer with the Wladis Law Firm to discuss the investigation of potential personnel matters, and Councillor Morley seconded the motion.

CITY COUNCIL MEETING

December 5, 2011

Page 290

Councillor Vaugh questioned if we need to obtain quotes. Councillor Powers answered no, we have already retained their services.

Mayor Nelson stated he would like to ask one more time if the person who leaked this information would come forward so we can avoid this resolution. No one came forward. Mayor Nelson asked the City Clerk to take an official roll call vote of the City Council, City Manager and City Comptroller. The roll call asking each of the individuals, if they leaked the C-14 summary pages resulted as follows:

Mayor Nelson, no
Councillor Cilley, no
Councillor Morley, no
Councillor Powers, no
Councillor Skamperle, no
Councillor Vaugh, no
Arthur Sciorra, no
Philip Cosmo, absent

The vote to approve additional legal services was:

AYES: Mayor Nelson, Councillors Cilley, Morley, Powers,
Ashley and Vaugh

NAYS: Councillor Skamperle

APPROVED, 6 TO 1

Mayor Nelson stated there was a need for an executive session to speak with the Council's attorney, and no action was expected.

On a motion duly made and seconded, the meeting was adjourned.