

Council Chambers  
Tonawanda, New York  
September 1, 2015

A Regular Meeting of the Common Council

Present: Council President Zeisz

Present Councilmembers: Gilbert, Smilinich, Hall, Koch

Pledge of Allegiance led by Council President Zeisz

Silent Prayer led by Sam Ciffa

***Commendation Certificate***  
**TRISTAN BETTERELLI**

**COMMUNICATIONS FROM THE MAYOR**

A letter from the Regional Director of the NYS Department of Transportation, dated August 28, 2015, regarding the installation of U.S. flags on the pedestrian bridge going over the Twin Cities Vietnam Veterans Memorial Highway

Ordered filed

**COMMUNICATION FROM CITY OFFICIALS AND CORRESPONDENCE**

The following monthly reports were received by the City Clerk:

July Activity Report of the Fire Department

August minutes of the Traffic and Safety Advisory Board

Referred to the Committee of the Whole

Ordered filed

A letter from Daniel J. Kancar, 109 Mullen Street, received August 26, 2015, expressing various issues he has been having with the City of Tonawanda Board of Appeals.

Ordered filed

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## COMMENTS BY THE PUBLIC ON RESOLUTIONS

Lynn Casal, 69 Grant Street ó I just have a comment on resolution #2 for the raising of the fees that you're charging for the Pavilion. First, is the Pavilion losing money right now? Is it in the green, red?

Council President Zeisz ó Red.

Lynn Casal ó It's in the red. Okay, I wasn't aware of that. My question is, is right now you're charging \$150 for during the week for residents and \$300 on a weekend which is obviously less than non-City residents. You're proposing raising it \$100 which is now more than what you were charging a non-resident so now residents will be charged more than a non-residents being charged before. I just feel that the Pavilion, from what I understand, what I remember, was brought to the community with (inaudible) for a resident's use and I just don't want to see it priced out of the range of people who actually live here. I think, if it's in the red, obviously, you need a raise but \$100 to me seems like a lot. Maybe \$50 or something like that, but I just wanted to make a comment about that because I don't want to see it not be able to be rented by the residents.

City Treasurer Joe Hogenkamp ó As far as the Pavilion, the profitability, or not profitability, at this point in time, it's kind of breaking even. My concerns I've expressed to the Mayor and the Council (coughing) is a need to build up a sinking fund so that at some point and time, 15 years from now when you need big capital improvements, you don't want to have to roll that onto property tax rates. So you want it to be self-sustaining, and I know the Mayor has tried (inaudible) in the beginning, with naming rights. That can go a long way. So those are the things, not that it's if we floated a bond for \$330,000, made the first two bond payments on that out of the proceeds from the rentals, so we've kept that off the tax rate but the concern really more for, the profit and loss type of thing, is to try and create a fund that it can sustain itself and make capital improvements.

Mayor Davis ó And Ms. Casal, just to let you know that , that meeting's with Mr. Warthling, about if there's plenty costs that aren't associated with that like snow removal, (inaudible) snow removal, it's security system needs to be upgraded at the tune of about \$20,000, the floor needs to be replaced, so when you factor all of those in so, in essence what we're trying to do is leave that cushion like you would for a house, when you buy a house, the roof needs to be replaced five years from now, you have that cushion to be able to make those repairs to it and not have to take out a loan in order to do that.

## MOTIONS AND RESOLUTIONS

207. By the Council seconded by the Council  
Resolved, that the Common Council minutes from August 18, 2015, be accepted as filed.

Ayes: Gilbert, Smilinich, Hall, Koch, Zeisz  
Nays: None

Resolution declared adopted

208. By Councilmember Smilinich seconded by Councilmember Koch  
Resolved, that the reading of the following resolution be waived.

Ayes: Gilbert, Smilinich, Hall, Koch, Zeisz  
Nays: None

Resolution declared adopted

209. By Councilmember Smilinich seconded by Council President Zeisz  
WHEREAS, the title of this Resolution/Ordinance has been published at least once in a newspaper of general circulation, more specifically, The Buffalo News, on August 21, 2015, in accordance with Section 2.047 of the City Charter.

NOW, THEREFORE, BE IT RESOLVED, that Chapter 30 entitled FEES, Article 11: PARKS AND RECREATION, Section 30-304. Niawanda Park Pavilion permits.

**Which now reads as follows:**

The fees required for the rental of the pavilion are as follows:

*City residents:*

Monday, Tuesday, Wednesday and Thursday .....\$150.00

Friday, Saturday and Sunday .....\$300.00

*Non-city residents:*

Monday, Tuesday, Wednesday and Thursday .....\$200.00

Friday, Saturday and Sunday .....\$350.00

**Shall be amended to read as follows:**

The fees required for the rental of the pavilion are as follows:

*City residents:*

Monday, Tuesday, Wednesday and Thursday .....\$250.00

Friday, Saturday and Sunday .....\$400.00

All Holidays charged at the weekend rate of \$400.00

*Non-city residents:*

Monday, Tuesday, Wednesday and Thursday .....\$300.00

Friday, Saturday and Sunday .....\$450.00

All Holidays charged at the weekend rate of \$450.00

*Optional Add-Ons:*

Wifi Internet Access - \$25.00

BE IT FURTHER RESOLVED, that all other Sections of said Ordinance shall remain unchanged and in full force and effect; and

BE IT FURTHER RESOLVED, that the above amendment shall take effect upon publication of its title in an official newspaper of the City of Tonawanda.

Ayes: Gilbert, Smilinich, Hall, Koch, Zeisz

Nays: None

Resolution declared adopted

- 210. By Councilmember Koch seconded by Council President Zeisz  
Resolved, that the reading of the next three resolutions be waived.

Ayes: Gilbert, Smilinich, Hall, Koch, Zeisz

Nays: None

Resolution declared adopted

- 211. By Councilmember Gilbert seconded by Councilmember Hall  
Whereas, the New York State Deferred Compensation Board (the "Board"), pursuant to Section 5 of the New York State Finance Law ("Section 5") and the Regulations of the New York State Deferred Compensation Board (the "Regulations"), has promulgated the Plan Document of the Deferred Compensation Plan for Employees of the City of Tonawanda ("Model Plan") and offers the Model Plan for adoption by local employers; and

Whereas, the City of Tonawanda, pursuant to Section 5 and the Regulations, has adopted and currently administers the Model Plan known as the Deferred Compensation Plan for employees of the City of Tonawanda; and

Whereas, effective November 14, 2014, the Board amended the Model Plan to adopt a provision allowing participants the ability to take loans against ROTH account balances.

Whereas, the Board has offered for adoption the amended and restated Model Plan to each Model Plan sponsored by a local employer in accordance with the Regulations; and

Whereas, the Deferred Compensation Committee has recommended to the Common Council that it is prudent and appropriate to amend the Deferred Compensation Plan for Employees of the City of Tonawanda by adopting the amended Model Plan and Schedule A: therefore be it

Resolved, that the City of Tonawanda Common Council hereby amends the Deferred Compensation Plan for Employees of the City of Tonawanda by adopting the amended Model Plan effective November 14, 2014, including the option provisions indicated in Schedule A.

Ayes: Gilbert, Smilinich, Hall, Koch, Zeisz

Nays: None

Resolution declared adopted

212. By Councilmember Koch seconded by Councilmember Smilinich

Resolved, that the 2015 General Fund Budget be amended to account Federal Grant Funds received and expended in 2015 from the United States Department of Homeland Security for Border Security Operation Stonegarden Program. (2013 Award \$15,251 #13-BUNBUS-06-001 Funds to be expended and received in Fiscal Year 2015)

Expense 001-3120-100	Police Department Salaries	ADD \$ 9,559
Expense 001-3120-202	Police Department Equipment	ADD \$ 3,492
Expense 001-1641-401	Fuel	ADD \$ 2,200
Revenue 001-0001-4003	Federal Operation Stonegarden	ADD \$15,251

NET BUDGET EFFECT -\$0

Ayes: Gilbert, Smilinich, Hall, Koch, Zeisz

Nays: None

Resolution declared adopted

213. By Councilmember Hall seconded by Councilmember Koch

Whereas, a \$25.00 Special Events application fee and application were received by the City Clerk for a Community Carnival and

Whereas, the application is being reviewed and commented on by all appropriate department heads to insure the safety and well being of our residents, and

Whereas, all details for the above named event must be coordinated with Amanda Lofft, Director of Parks and Recreation and the event chairperson, now, therefore be it

Resolved, that permission be granted to The Salvation Army, 46 Broad Street in Tonawanda to hold a Community Carnival on Sunday, September 6, 2015, from 10:00 A.M. to 5:00 P.M. and be it further

Resolved, that a Certificate of Insurance naming the City of Tonawanda as additional insured be filed with the City Clerk no later than September 4, 2015.

Ayes: Gilbert, Smilinich, Hall, Koch, Zeisz

Nays: None

Resolution declared adopted

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### **COMMENTS FROM THE PUBLIC AFTER RESOLUTIONS**

Dan Kancar, 109 Mullen Street ó I wonder if everybody had a chance to read the letter that I submitted?

Council President Zeisz ó Yes.

Dan Kancar ó I'd like to ask, who has oversight of the Board of Appeals if someone violates New York State Code of Ethics and the City of Tonawanda Code of Ethics?

Council President Zeisz - Well the City did pass a resolution

Dan Kancar - í I don't want to pass. I read both the City's and New York State's, I read the Sections 806 from New York State and the City of Tonawanda given to me by the City Attorney. My question is, who has oversight if I believe somebody abused their power of authority.

Council President Zeisz - Anything that would be brought to the City would have to be presented to a Board of Ethics which we have not had because there hasn't been a need to have one. So that being said, this week I'm actually in the process of putting a board together that would look at a potential issue, and that board then would make a recommendation to the Common Council.

Dan Kancar - Because I do believe the Chairman of the Board of Appeals broke the trust of the people of the City of Tonawanda violating Section 806 of New York State Code of Ethics and the City of Tonawanda Code of Ethics by profiting and benefitting which is a clear violation. I think he should have refused himself, I don't think, I know he should have refused himself when he was on the Board at that time when he took that job on. Whether you're a salesman or an employee, he profited and benefited from that job and if you read the Code of Ethics in Section 806, New York State and the City of Tonawanda Code of Ethics, he violated both. So I'm asking, if you do what you just told me and I find out from you or the Mayor who's judiciary duty it is, I think it would be the Common Council and the Mayor to tell me where it's gonna go, because if I feel it doesn't get the right attention, then I think I will take it to the New York State Attorney General's office, just to let you know. And I did ask prior, I asked before, if you would ask them if they would do an accurate minutes. If you went to the Board of Appeals to submit a building permit for building a home, are they going to record these meetings or have you heard back from them, or has anybody submitted that to them? I had asked that a while back.

Council President Zeisz ó We don't get í what we get is very limited minutes.

Dan Kancar - What I will say to you is that when I went there on April 27, my minutes, the things that I said, the things that my wife said and the things that the Chairman said were not in those minutes. There was a lot of things that were taken out that should have been in there because I believe if they were in there, they would have showed unfairly treatment to me and my wife. That's my belief and I feel that they should be reporting for both sides, whether it's for the Board of Appeals or the person that's submitting their permit or what have you, so that way nobody can argue, it's factual, it's right there on paper. If there's an issue that, say I had to take a case to Section 78 for New York State to argue my case, if I wanted to build a home, I'd have to prove that I'm in the rights and

they're in the wrongs and I would want everything on record. So I feel that they should be recording like you guys record the minutes here. So I'm asking if you would ask them again to record their minutes.

Council President Zeisz ó What I'dl do is I'dl have our City Attorney contact you when we have some information to share but that will be the first step to put a board together which, for anyone that doesn't know, the Board of Ethics has to be two people from the community, not affiliated with the City, and some having a job or being on a board, and then one member of the board can be a City employee.

Dan Kancar ó And beyond that, (coughing).

Council President Zeisz - Absolutely, absolutely.

Dan Kancar ó Like I said, I do feel that the Code of Ethics for New York State 806 and the City of Tonawanda Code of Ethics was violated and I think that he had influence by being on the board by voting yes. I think that influenced it by having a job like that and I think that he should be held accountable. You gotta hold people in power accountable.

Council President Zeisz ó That's true.

Lynn Casal, 69 Grant Street ó To bring another touch on the meeting minutes, I just want to read something real quick. It says, "a quorum is just a majority of the members of a public body. Again, it may constitute a meeting even if a public body takes no formal action, it applies to any gathering where a quorum is present to discuss or deal with a matter of public business regardless of what the gathering is called. The term applies to information gathering and fact finding sessions as well as deliberations in debate about policy and proposed decisions. It does not apply to (inaudible) social or ceremony gatherings. The Open Meetings Law requires public bodies to report minutes of their meetings, which would mean that room over there, and to make them public within two weeks, which I don't believe is being done right now. So I just want to make sure that meetings are being taken. Again, people are standing in the hallway again today, I don't know why it can't just be in this room where everybody can sit and hear with the microphones but I guess I'dl just keep mentioning it until something possibly is done.

#### **COMMENTS FROM THE COUNCILMEMBERS AFTER RESOLUTIONS**

Councilmember Gilbert ó I just want to take a second to congratulate Tristan and his family. There's not too many times when you see a young kid that will stand up and take action like that and that's not only a testament to him but a testament to his family on bringing him up right. I just wanted to congratulate on that.

Councilmember Smilinich ó I too want to congratulate Tristan. In the (inaudible) stated earlier, I filled in for Caitlin for a couple days and I want to thank everyone, all the department heads that came in a talked to me and shared their thoughts and everything, but more importantly, I want to thank you because it gave me a new found way that I look at the way you all do your jobs and I really have to take my hat off to you guys and girls. I wanted to thank the Recreation Department. Last week they had a, what was that called, the creek thing? Jump in the Creek or something like that. It was to promote the LWRP but it actually was a gathering of people who had the opportunity to see what our creek has to offer and it really was an amazing experience, although it rained a little bit, they did a great job with it, as they did with Movie Night Frozen on Friday night. Elsa was there painting faces of all the little Elsa's in the audience and it was really a nice time for everybody, very well attended, so thank you to the Rec Department. I just want to remind everybody that Sunday is the 7<sup>th</sup> Annual Classics on the Niagara, if you're on the Niagara River and you're not doing anything, come. It's a day of free fun.

Councilmember Hall ó I too would like to congratulate Tristan on that great thing, I mean we don't realize how serious it could have been (inaudible) we could be looking at multiple deaths right now. So it's great that somebody at that age had the know-all and the concern on how to do that.

Councilmember Koch ó All I'd like to say is to thank Tristan and congratulate him for his fast response and the Fire Department as well. Wonderful job. Thank you.

Mayor Davis ó Today we planted a tree for the Red for Jed Memorial down on East Niagara. I'd just like to thank all the members of the DPW that helped out over the weeks to clear that area and also to the clean up crew for all the work that they put in this year trying to make our city look even (inaudible). As Jackie mentioned, DBA Car Show. The night before, come by the registration tent, see me, I'd be registering everybody that comes in. Rails to Trails, we had a press conference and I think I've said it before, this has been over two decades in the making and it was nice to see work finally done, some train tracks that I used to (inaudible) on when I was a kid and what was even nicer, it happened right next to Brighton Road which is being repaved and I told the County Executive this then and I'm gonna say it now as a standing offer, that the County is more than willing and more than able to take over any City street it wants as a County Road in order to help us repave it, so I just want to throw that out there. City Hall will be lit up yellow in honor of Childhood Cancer Awareness Month. We stand with all of our smaller residents, both past and present that this debilitating disease has had. On September 12 from 12:00 to 6:00 PM, Chocolate & Wine Fest down at Gateway. I encourage everybody to attend; it should be a good time. And as Ms. Smilinich said, the LWRP Jump in the Creek event wasn't well attended but it was nice to see the possibilities that exist on our water ways so that's the whole reason why we did it. And I'm happy to say that my professional water bike racing career, I go out 1-0 because I beat our Director of Parks and Rec, Mandy Lofft, so thank you for the effort she put in.

Council President Zeisz ó Thank you to all of you for coming tonight, have a great night, drive home safely and we'll see you again. God Bless you.

**ADJOURNMENT**

114. By Councilmember Hall seconded by Councilmember Smilinich  
Resolved, that this Common Council adjourn until September 15, 2015.

Ayes: Gilbert, Smilinich, Hall, Koch, Zeisz

Nays: None

Resolution declared adopted

\_\_\_\_\_  
City Clerk

\_\_\_\_\_  
Mayor

\_\_\_\_\_  
Date Filed