

FINANCE

Tuesday, September 19, 2017 – 5:30 p.m.

Police Training Room – Olean Municipal Building

Present: Members: Chairman Dougherty, Vice Chairman Crawford, Alderman Witte, Alderman Andreano, Alderman Gonzalez, and Alderman George. Others: Mayor William Aiello; Nicholas DiCerbo, Jr., City Attorney; Bob Ring, Director of Public Works; Keri Kerper, Community Development; Sue Cooper, City Forester, and Tiffany Taylor, Managerial Confidential Administrative Secretary.

1. Roll Call

Alderman Dougherty called the meeting to order at 5:30 p.m. and asked that the record show that all committee members were present except Alderman Smith, who was excused.

2. Approval of Minutes of the Previous Committee Meeting (Tuesday, September 5, 2017)

A motion to approve the minutes of the September 5, 2017 meeting was made by Alderman Gonzalez, seconded by Alderman George. Voice vote, ayes all. Motion carried.

3. Unfinished Business

- a. PL #55-17: (Crawford) To authorize the transfer of up to \$45,000 from General Fund Surplus to line item 5111.301, Tree Programs, to cover the cost of pruning 13 trees and removing 23 trees throughout the City of Olean.

Alderman Crawford stated that this was previously discussed, and we are now following up. He stated that Ms. Cooper had previously provided a list of trees to be trimmed or taken down, and the Council requested that she revisit the list and provide one which included only complaints. He stated that we had created a previous precedence where the City would take care of trees in the subway that were deemed a hazard to public safety. Funding for this was cut in the most recent budget, and he feels that although we are not required to continue providing this service per our Code of Ordinances, it seems like the right thing to do to clear out the “backlog” of the most dangerous trees. He stated that after we do this, we need to determine a process moving forward, as ignoring the issue is not a good long-term remedy.

Alderman Gonzalez stated that he received a new list via email today, which includes fifteen fewer trees than the previous. He questioned if the trees listed were all of those with prior complaints, to which Ms. Cooper replied that they are. When an abutting property owner calls about a tree, she goes and looks at it to make a determination. She stressed that she does not make promises or guarantees to the property owners regarding the action that the City may take on the tree. Alderman Gonzalez stated that the previous amount requested was \$45,000,

and he questioned what the cost for the revised list would be. Ms. Cooper replied that she is unsure.

Alderman Gonzalez commented that removing low priority trees with public monies, only because we have a complaint, is not best for the City as a whole during this time when we are in a budget crunch. Alderman Witte stated that she thought that the new list provided was for the most dangerous trees, and Alderman Gonzalez replied that the list was narrowed to only those with complaints, because the rationale for the fund transfer was because we wanted to “make things right”.

Ms. Cooper added that all trees have a potential to fall, but we can attempt to mitigate damages by dealing with trees that we know are hazardous now, rather than later. She feels we have a duty to traffic for hazards.

Alderman Gonzalez stated that the smaller list is certainly much more palatable; however, there is no list that will satisfy everyone. He feels that the fairest thing is to make a clean break and move on. Perhaps we can advise those with the most dangerous trees that they need to come down, and if they take no action, then it is on them.

Alderman Andreano expressed concern regarding liability, lawsuits and insurance claims if we had deemed a tree unsafe and told the property owner we would take it down. Mr. DiCerbo responded that we are a municipality, and with that comes some government immunity. As with sidewalks, we are not liable if it is not our sidewalk. We can still get sued, but that does not mean that we are liable.

Alderman Andreano questioned, if we are sued, what the odds are. Mr. DiCerbo replied that if a tree is not ours, why create a liability that we don't currently have? If we continue to remove trees in the subway that don't belong to us, we are creating a liability for ourselves. We shouldn't have a “take down” list to rely on, just a rating list, and we should send letters to homeowners that need to take their trees down.

Alderman Crawford stated that residents were told that a tree on South 5th Street was dangerous and that the City would take it down. It fell first. Mr. DiCerbo replied that it is on the homeowner. An insurance company may say that the City has an implied duty and liability, only because we currently do maintain trees in the right of way.

Alderman Gonzalez questioned if it is required anywhere that the City fund a program such as this. Mr. DiCerbo replied that in the Code, the City is required to have a Tree Board, which makes recommendations on the trees. If a homeowner does not like the recommendation by the Tree Board, they can appeal to the Common Council.

Alderman Gonzalez reminded the Council that they voted unanimously on the budget, and to cut this funding. Alderman Andreano stated that they also recognized that there would be situations where they would have to make reconsiderations. She questioned what is the City's responsibility, and what we are on the hook for.

Alderman George questioned the \$15,000 still put into funding for emergencies, and Ms. Cooper stated that the funding is gone.

Mr. DiCerbo questioned the list of those who we told we would take down their trees. Ms. Cooper stated that she had never told anyone that the City would do anything. She can't tell someone what we will and won't do. She stated that, if a homeowner is concerned with limbs, she always tells them that they are able to prune the tree themselves. Alderman George added that whenever he has spoken with Ms. Cooper, she always tells him the state and condition of the tree, but she has never stated that she will have a tree pruned or taken down.

Alderman George continued in stating that this is not easy. This was a 31 year program that we decided to break away from during the budget season, and this left us in a tough spot. He does not really know at this point where he stands.

Alderman Gonzalez stated that, when you own property, you are looking at certain risks. He does not feel that we should create a liability, where there has never been a liability.

Alderman Andreano questioned if there have ever been lawsuits regarding trees, and Mr. DiCerbo replied that there has been. Alderman Crawford questioned the outcome, and Mr. DiCerbo replied that we have always paid them, as it is cheaper.

Alderman Dougherty stated that even though it isn't a liability, he still feels that we created a precedence. This is what Ms. Cooper does. She made a list of dangerous trees, and we should take care of them. He doesn't feel that we should quit the program cold turkey.

Alderman Gonzalez questioned the list that Alderman Dougherty was talking about, as the one he has is of "complaint" trees that really aren't high risk. Alderman Dougherty stated that he is not so concerned with "complaint" trees as he is with the most dangerous ones. Alderman Crawford agreed, that we should clear out the most dangerous trees, and then work proactively by enforcing the current law.

Alderman Gonzalez stated that programs lose funding all the time in every level of government. They don't go through a "backlog" of people to ensure that they all receive services after the funding is lost. We could clear out the list, but then there could be a storm the next day, and we could have ten more dangerous trees.

Alderman Crawford stated that he feels that we could all be on board if we look at dangerous trees, regardless of complaints. We should get the ones down that are the greatest threat to public safety.

Mayor Aiello stated that we could identify these most dangerous trees through Ms. Cooper, and then send orders to remedy out to the property owners. If they do not take the trees down, then we will, and then if they don't pay the bill we send them, it will roll to their taxes. Alderman Gonzalez agreed with this idea. Mayor Aiello asked if there were any potential issues with this, and Mr. DiCerbo replied that he feels that this approach is the best way to handle the tree situation.

Alderman Andreano questioned if we could bid the tree removal as a group, rather than use the current cost scale based on size. Ms. Cooper stated that a contractor had won a bid at the beginning of the season to occasionally remove trees, and be paid based on the size. Mr. DiCerbo stated that, since we defunded the program, we can use the list created to send out a bid for the removal of all of them. This is not a part of the original bid process. His hope is that we have a larger company come in with a more competitive bid to remove all the trees at once.

A decision was made to make a list of the most dangerous trees, and then go out for bid to get a cost for the removal. After that, the bids will be brought back to the Council to make a decision regarding a possible funding transfer.

A motion to withdraw PL #55-17 was made by Alderman Gonzalez, seconded by Alderman Crawford. Voice vote, ayes all. Motion carried.

Alderman Gonzalez stated that we need to be careful when we discuss this, that we are not referencing a "backlog". He stated that we need to ensure that we state that we acknowledge that the funding cut leaves the City in a potentially vulnerable position, and we want to make it right.

Alderman Crawford stated that we need to make sure that we know how we are going to remedy the situation and keep on top of things moving forward. Mayor Aiello stated that we need a clear direction and need to decide if, from this point on, we are going to go by existing laws.

Alderman Gonzalez stated that the next step is to decide how we will revamp the system. Mayor Aiello stated that we can just start following the Code as it is written. Mr. Ring questioned if this means that they are no longer receiving complaints in DPW, and Mayor Aiello replied that when they get complaints, they should refer them to Ms. Cooper, who will then look at the tree and the property owner will be notified with an Order to Remedy, if necessary.

Mr. DiCerbo stated that we also need to work on the layers of bureaucracy because of the Tree Board.

Mr. DiCerbo questioned how much funding would need to go into the tree program for it to work. Ms. Cooper replied that \$40,000, plus the \$15,000 for emergencies, should be enough to get her through the year. Alderman Crawford questioned if it makes sense to revisit this, or if we are completely out of the tree business.

Alderman Dougherty questioned if there are any grants that we will use if we get rid of the tree program. Ms. Kerper replied that there are not, but that we could possibly lose the ability to be awarded for the tree inventory. Ms. Cooper added that if we have the tree inventory, we can get more grants for maintenance in the future.

4. New Referrals for Consideration

None

5. Discussion Item

- a. Proposed Legislation: To authorize the Mayor to enter into an agreement with Clark Patterson Lee for engineering services in connection with Walkable Olean – Phase II, Main Street (North Union to Front Street).

Ms. Kerper stated that, as DOT is a funding source for this project, we were required to send out a Request for Expression of Interest for engineering for the project. Four responses were received, and after review by a committee of DPW staff, Engineers and Community Development, scores showed Clark Patterson Lee as the appropriate company to award the project to.

She continued in stating that there have been recent meetings with Clark Patterson Lee, and revisions have been made and reviewed in their Scope of Services. Upon review, it was determined that additional revisions need to be made, so we are currently awaiting a revised Scope of Services, as requested. A final Scope of Services will be brought to the Council, along with costs, for a Resolution at a later date.

Alderman Crawford questioned the grant funding structure for the project. Ms. Kerper replied that the estimated project cost is \$1.563 million, with \$541,913 coming from the NYSDOT in form of a TAP grant, \$400,000 is coming from Empire State Development (who will reimburse 20% of the project from these funds), and there is a \$621,087 match on the part of the City.

Alderman Crawford questioned if the Scope of Services could be reviewed by the Council, and Ms. Kerper replied that although they can be, it is a very extensive, in depth document that will

be reviewed by Mr. Ring. She stated that there will also be time for public comment and Council review to help determine if any presented alternatives are appropriate, as well as to help fine tune the final project.

6. Approval of Committee Reports

None

7. Adjournment

A motion to adjourn was made by Alderman Andreano, seconded by Alderman George. Voice vote, ayes all. Motion carried. Meeting adjourned at approximately 6:50 p.m.