

FINANCE

Tuesday, June 18, 2019 – 5:55 p.m.

Police Training Room – Olean Municipal Building

Present: Members: Chairman Witte, Vice Chairman Crawford, Alderman Andreano, Alderman Gonzalez, Alderman Dougherty, Alderman Smith, and Alderman George. Others: Mayor William Aiello; Nicholas DiCerbo, Jr., City Attorney; Fred Saradin, City Auditor; Bob Ring, Director of Public Works; Bob Bell, Fire Chief; Jeff Rowley, Police Chief, and Tiffany Taylor, Managerial Confidential Administrative Secretary.

1. Roll Call

Alderman Witte called the meeting to order at 5:55 p.m. and asked that the record show that all committee members were present.

2. Approval of Minutes of the Previous Committee Meetings (Tuesday, May 21, 2019)

A motion to approve the minutes of the May 21, 2019 meeting was made by Alderman Witte, seconded by Alderman Crawford. Voice vote, ayes all. Motion carried.

3. Monthly Finance and Bills Review

Alderman Witte explained that she sees that \$12,000 was spent for roller skates at the rink, and she thinks that this is a good program that kids will love. Mayor Aiello noted that some of this funding may be coming from Trust and Agency, and Mr. Saradin added that he believes some of the funding comes from donations and fundraisers. Mayor Aiello indicated that he would look into it.

Alderman Witte asked why the paint costs at the recreation center weren't included with the renovation project, and Mayor Aiello noted that not all inside doors were replaced and this was probably for minor touchup work.

Alderman Witte noted that the utilization of the Sidewalk Rebate Program, which paid out \$6,000 last month, is also good to see. She questioned if a bill has been received for outside legal counsel, and Mr. DiCerbo replied that he has requested one but has not received it yet. He advised that he will email the bill to each Alderman when it is received. Alderman Witte asked if it is normal to go two months without a bill, and Mr. DiCerbo responded that it depends on how much legal work is done in the two month period, and it is not uncommon to receive a bill every couple of months. He explained that he has requested that a monthly bill be submitted moving forward.

Alderman Witte asked who defended the first part of the North Union Street lawsuit, and Mr. DiCerbo replied that he had in his role as the City Attorney. Alderman Witte asked why he could not continue to defend the City for this lawsuit, and Mr. DiCerbo responded that in this case, a litigator is needed for the best defense. The first payment was a settlement on a debt that was owed, which he has experience with, but this second part requires a litigation specialist, like going from a general practitioner to a specialist for medical needs. He explained that there are certain things that, as an attorney, you know you should not touch and should refer to other attorneys, and this is one of those things. He noted that there were several things that he cleaned up when he began his position that should have been referred to outside counsel, but were not.

Alderman Witte asked if Mr. Eric Firkel is a litigation attorney, and Mr. DiCerbo responded that he is. He explained that he represents a lot of insurance companies as well as his partner, Mike Shane, who is also involved in this case. He explained that he would have no problem hiring Mr. Firkel as his attorney in a case like this if he needed personal defense. Mr. DiCerbo noted that, based on professional rules, when a threshold of \$3,000 in bills is reached, a Professional Retainer Agreement must be entered into, which has not occurred at this point.

Alderman Crawford explained that he had brought concerns prior, and he would like to reiterate those concerns. He feels that the City needs to tread carefully doing business with Mr. Firkel's law office, because in 2019 public perception is critical. He is not saying that he is guilty, but there has been a lot of public information out there, including the unanimous decision to refer Mr. Firkel's situation to the State Attorney General's office for further investigation. He feels that the Council and City's job is to mitigate risk and prevent risky behavior for the City of Olean. He would like to go on record and state that he is not in favor of this individual until such time that allegations have been cleared up. He does not feel that he should be representing the City of Olean in any pending lawsuit, as it puts the City in potential risk.

Mayor Aiello responded that all that is known about Mr. Firkel is what is in the paper, and if someone is privy to more information, they should share. Alderman Crawford responded that the people that are privy to that information reside at the County Legislature, which unanimously escalated the issue to the State Attorney General's office. Alderman Witte added that she feels the public needs to realize that the Council did not approve of this, and were not involved in this. She explained that this is not a financial issue, but an issue of perception.

4. Unfinished Business

- a. PL #02-19: (Crawford) To amend the City of Olean Code of Ordinances Chapter 2, Article VI, Division 3, Audit and Compliance Committee Reporting Policy.

Alderman Crawford explained that this has been a work in progress, and issues are being worked out from the time that this was last discussed, in December 2018. He explained that he has sat down with Ernest Kallenbach to go through what Mr. Ring previously worked up. He presented a printout of some potential changes to the policy to the committee.

Alderman Witte asked if the \$100,000 threshold for change orders is before the allocation for contingency, and Alderman Crawford responded that it is. He explained that he tried to capture all of Mr. Ring's needs. He noted that if a change order is for \$100,000, when contingency and field change allowances are added, one could be coming to the Council for \$125,000.

Mayor Aiello explained that for capital projects, such as the Recreation Center Project, there is a contingency fund, and the Council's approval is sought before using the contingency for additional items. He explained that there are change orders that are made within the original approved budget. He is not sure what this policy is referring to. Alderman Crawford responded that the contingency is typically dipped into for cost overruns. For example, if a project costs \$3 million and it is decided to add a \$400,000 item that is not in the original scope, a change order would need to be issued, but it would not necessarily require contingency spending. It could be a change to the original scope.

Mayor Aiello responded that if there is a change in the scope that requires funding beyond the project contingency, that he feels that he is not comfortable with approving up to \$50,000 in spending. He feels that the amount that requires Council approval should be less.

Alderman Dougherty noted that it was previously stated that the Mayor always comes to the Council for these sort of approvals, and he does, but there is no policy in place requiring him to do so.

There was some discussion regarding the North Union Street Project and what went wrong, and it was noted that a policy such as this would not have prevented the errors from occurring.

Mayor Aiello explained that the whole crux of this is to make sure that a project is fully funded before additional work is approved. He explained that with the Recreation Center, additional work was approved by the Council with funding from project contingency prior to the additional work occurring.

Alderman Gonzalez noted that he would like the policy to state that the Council should be notified if items in the scope are added or changed but also removed, as he feels that this is important as well.

Mr. Ring explained that he feels that the committee, during this discussion, is confusing scope changes with change orders. He explained that example change orders are change orders for

different gravel for the Farmers Market project, which is something that really does not affect the overall project. He explained that a scope change would be the removal of the replacement of sidewalks with the North Union Street Project. He explained that the scope changes are really what the Council should be concerned with.

Alderman Dougherty explained that he feels that the City and Council already do a lot of these things that are discussed, but that there is no formal policy that requires it.

Alderman Crawford explained that the second part of the policy is in regards to oversight and reviews of capital projects. He recommends monthly reviews of projects, although he is unsure if this is feasible. Mr. Saradin responded that he feels that it can be done. Alderman Crawford explained that he will have a further conversation with Mayor Aiello and Mr. Ring regarding this.

Mr. Saradin explained that he will have a printout each month that shows where a project started and where the City currently is in regards to the project. It was noted that an issue with the North Union Street Project that the ribbon cutting was in December or January, and another bill was received in April. Mr. DiCerbo noted that there was language in the agreement that allowed for an audit after the project was complete, which is standard language in many construction projects. He noted that the crux of the lawsuit mentioned earlier is that the City's experts disagree with the audited quantities.

Alderman Gonzalez explained that he is not against these policy changes; however, he wonders if this really would have prevented the issues with the North Union Street Project. Mayor Aiello noted that if there is to be further conversation regarding the project and the involved lawsuit that an executive session would need to be held.

Alderman Smith explained that he likes the idea of the monthly updates, but he feels that the Council should be careful, as this could create a whole new job set for people. This policy would not have prevented what happened.

A motion to postpone PL #02-19 to the Finance Committee meeting on July 16, 2019 was made by Alderman Crawford, seconded by Alderman Witte. Voice vote, ayes all. Motion carried.

5. New Referrals for Consideration

a. Discussion – Washington Street Project

Mr. Ring explained that part of the waterline replacement design has been sent to the Department of Health for the Washington Street Project, and it has received their full approval. He explained that before the project is put out to bid, funding needs to be in place. He

explained that he would like the Council's verbal assurance that a bond resolution can be prepared for this project so that it can be funded and put out to bid.

Alderman Crawford asked how quickly a BAN could be secured, and Mr. Saradin responded that it would take approximately 30 days. Alderman Crawford asked if there is a ballpark figure for this project, and Mr. Ring advised that he would have it for the Council's review on Tuesday.

Alderman Dougherty noted that he has learned that one of the reasons that the City should hold onto the airport is because it is asset leverage when the City goes to borrow. He explained that if the City backs out of the airport, that it becomes a liability.

Mr. Ring will work with Mr. Saradin and Municipal Solutions in order to have a bond resolution prepared for a future Council meeting.

6. Approval of Committee Reports

None

7. Adjournment

A motion to adjourn was made by Alderman Gonzalez, seconded by Alderman Dougherty. Voice vote, ayes all. Motion carried. Meeting adjourned at approximately 6:45 p.m.