

**REGULAR COUNCIL MEETING
MONDAY, DECEMBER 16, 2019
COUNCIL CHAMBERS
www.lackawannany.gov**

Regular session of the Lackawanna City Council met in the Council Chambers, Council President Annette Iafallo presiding. The meeting was preceded by the Pledge of Allegiance led by Council President Annette Iafallo.

Meeting called to order
NB: Meeting being recorded

Roll Call: Council: Present: Ingram, Schultz, Moretti, Surdyke, Iafallo

Dept. Heads: Present: Law, Comptroller, Recreation, Public Safety, Development
Public Works

Approval of Minutes: of regular meeting of December 2, 2019

Moved by Iafallo seconded by Ingram to adopt minutes of regular meeting as written
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

Departmental Reports:

1. **City Clerk-** Monthly Revenue Report for November 2019
2. **City Treasurer-** Total receipts deposited into the General Fund Account for November 2019
3. **City Comptroller-** A/P Check Listing #18, dated December 5, 2019
4. **City Comptroller-**A/P Check Listing #19, dated December 10, 2019
5. **City Comptroller-**A/P Check Listing #20, dated December 11, 2019

Moved by Iafallo seconded by Schultz to receive and file departmental reports one thru five
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

Communications from the Mayor:

Resolution between Erie County and Lackawanna

6. To: City Council

Please review and consider approving the following resolution between the County of Erie and the City of Lackawanna regarding \$150,000.00 to be divided equally for:

- * Lackawanna Little Loop Football: \$50,000.00
- * Newly proposed dog park at East Milnor: \$50,000.00
- * Lackawanna Youth Diamond Sports: \$50,000.00

(Complete communication on file with City Clerk)

GEOFFREY M. SZYMANSKI-MAYOR

Moved by Iafallo seconded by Ingram to approve attached resolution with County of Erie
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

Communications from Department/Division Heads:

Budget Transfer-Legal Advertising

7. To: City Council

I am requesting you approve the attached budget ordinance transferring \$5,000.00 from the General Fund to budget code A1410.465 Legal Advertising. Due to an unusually large amount of Legal Notices, including Advertisement for Bids, Promotional Exams, Civil Service announcements, etc., we have exceeded our typical budget allotment for this item.

The annual budget request for specific line items is fairly consistent year-to-year, however this particular line item is not as predictable as it is not possible to anticipate the number of Legal Notices this office will receive from various departments-all of which come out of the City Clerk's budget.

Thank you for your anticipated cooperation in this matter.

JEFFREY P. DEPASQUALE-CITY CLERK

Moved by Iafallo seconded by Schultz receive and file, act on ordinance

Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

7. (A) AN ORDINANCE AMENDING THE 2019-2020 BUDGET ORDINANCE ADOPTED JUNE 13, 2019

BE IT ENACTED by the City Council of the City of Lackawanna, New York as follows:

SECTION 1. That the 2019-2020 Budget Ordinance adopted June 13, 2019 is hereby amended to increase line item A.0000.1255 Clerks Fees and increase line item A.1410.465 Legal Advertising

SECTION 2. That the 2019-2020 Budget Ordinance is hereby amended to increase budget code A.0000.1255 Clerk Fees by \$5,000.00.

SECTION 3. That the 2019-2020 Budget Ordinance is hereby amended to increase budget code A.1410.465 Legal Advertising by \$5,000.00

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

Moved by Iafallo seconded by Schultz to adopt ordinance as written

Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

Municipal City Code Section 204-Taxicabs

8. To: City Council

As you are aware, the City of Lackawanna, specifically the Clerk's Office, is responsible for regulating taxicab companies that do business AND are physically based in the City of Lackawanna. This area of responsibility is regulated by Municipal City Code Section 204-Taxicabs.

With the proliferation of other ride sharing services such as LYFT and UBER, I don't feel having a separate section of the City Code that targets taxicab companies as reasonable and prudent. Unlike taxicabs, which are stringently regulated, the other ride sharing services for the most part are not. This provides the other ride sharing services a great advantage financially.

What I am proposing is the elimination of Municipal City Code Section 204 in its entirety. It is obsolete. In addition, I feel taxicab companies that are based within city limits should be required to register with the Clerk's Office just like any other business, so we continue to know what businesses are based in the City.

I am requesting your Honorable Body to consider this request and direct this communication to the City Attorney for his opinion.

Thank you for your time and consideration.

JEFFREY P. DEPASQUALE-CITY CLERK

Moved by Iafallo seconded by Ingram to receive and file, refer to Law Department
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

Deputy Clerk Position

9. To: City Council

As you are aware, the current Deputy Clerk will be vacating her position, effective December 16, 2019. Interviews for the position were held on Tuesday, December 10th so that a replacement could be named sooner rather than later.

As part of this process, I previously provided you a list of duties and responsibilities of the Deputy Clerk Position and as you are aware the responsibilities are many. In order to facilitate the training and bring the replacement up to speed without sacrificing the quality of service the Clerk's Office provides our residents-I am respectfully requesting that the attached resolution appointing a new Deputy Clerk be acted upon at the regular meeting of December 16, 2019.

Thank you for your time and consideration.

JEFFREY P. DEPASQUALE-CITY CLERK

Moved by Iafallo seconded by Surdyke receive and file, act on resolution

Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

9. (A) Resolution #22, 2019

BE IT RESOLVED, that Grace Marrano, residing at 221 Sharon Parkway, Lackawanna, New York; is hereby appointed to the position of Deputy City Clerk of the City of Lackawanna, New York, effective December 17, 2019, for a term of two (2) years, said appointment to expire on December 31, 2021.

THIS RESOLUTION SHALL TAKE EFFECT IMMEDIATELY

Moved by Moretti seconded by Surdyke to adopt resolution as written

Yeas: Ingram, Schultz, Moretti, Surdyke

Abstained: Iafallo

Carried 5-0

Budget Transfer-South Park Building

10. To: City Council

Please approve the creation and funding of line item A.1620.424 South Park Building-Gas. The funding will be transferred from A.1900.990 Contingency.

If you have any questions please feel free to contact me.

CAROLYN A. NICOMETO-CITY COMPTROLLER

Moved by Iafallo seconded by Surdyke receive and file, act on ordinance

Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

10. (A) AN ORDINANCE AMENDING THE 2019-2020 BUDGET ORDINANCE ADOPTED JUNE 13, 2019

BE IT ENACTED by the City Council of the City of Lackawanna, New York as follows:

SECTION 1. That the 2019-2020 Budget Ordinance adopted June 13, 2019 is hereby amended to create line item A.1620.424 South Park Building-Gas and increase appropriations.

SECTION 2. That the 2019-2020 Budget Ordinance is hereby amended to create line item A.1620.424 South Park Building-Gas by \$5,000.00.

SECTION 4. That the 2019-2020 Budget Ordinance is hereby amended to decrease budget code A.1900.1990 Contingency by \$5,000.00.

THIS ORDINANCE SHALL TAKE EFFECT IMMEDIATELY

Moved by Iafallo seconded by Surdyke to adopt ordinance as written
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

Memorandum of Understanding-Website Manager

11. To: City Council

As per the request of Mayor Szymanski please put the above-referred agreement on the agenda for council approval.

RICHARD S. JUDA, JR.-CITY ATTORNEY

Moved by Iafallo seconded by Surdyke to approve request
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

Memorandum of Understanding between City and CSEA

12. To: City Council

After substantial negotiations with the CSEA Local 1000, the City has reached a tentative agreement for Council approval on a new contract. The Mayor is in agreement and recommends the proposed salary agreement attached hereto.

Please place this matter on the upcoming agenda for Council approval.

(Complete contract on file with City Clerk)

RICHARD S. JUDA-CITY ATTORNEY

Moved by Iafallo seconded by Moretti to approve request
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

Recreational Facilities-Zombie Grant-Wind Turbines

13. To: City Council

Please place the following Items on the Council Agenda for December 16, 2019

1. Authorization for Solicitation of Proposals for Consultant to Design Recreational Facilities including a Splash Pad at Memorial Park;
2. Authorization to Utilize Zombie Grant to procure Part Time attorney services for 6 months to prosecute derelict bank controlled residential properties in the City, and also to assist in homeless prevention; and
3. Approvals and Determinations for Repowering of Wind Turbines on the former Bethlehem Site.
 - a. Determination Project is Consistent with Local Waterfront Revitalization Plan
 - b. Approval of Special Use Permit for Turbines 9 and 14
 - c. Authorization for the Mayor of the City of Lackawanna to execute all documents necessary to rescind the existent Voluntary Payment Agreement and PILOT (Exhibits A and B), effective upon the date of the commencement of payments due under the new proposed Host Community Benefit Agreement; and
 - d. Authorization for the Mayor to execute a Host Community Benefit Agreement with the fundamental terms in compliance with those attached as Exhibit D, and subject to final approval of the form of the Agreement by the City Attorney.

RICHARD STANTON-DIRECTOR of DEVELOPMENT

Moved by Iafallo seconded by Schultz to receive and file, act on resolutions
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

13. (A) Resolution #23, 2019

WHEREAS, the City of Lackawanna (Grantee) has been allocated approximately \$325,000 in CDBG funds through the County of Erie to further develop recreational activities at Memorial Field along Ridge Rd; and

WHEREAS, the City does seek to design and develop a Splash pad and other amenities which will both provide benefits to local youth and families and increase the intensity of use of facilities along Ridge Rd. that have the potential to bring more pedestrians into the City's commercial corridor; and

WHEREAS, to meet its desired goal the City submits that the project should be designed in such a manner as to maximize on its location between South Park and Ridge Road, while respecting its natural setting; and

WHEREAS, to meet the same goals set forth above professional services are necessary to design the facilities to be placed in Memorial Park; and

NOW BE IT RESOLVED, that the Lackawanna City Council authorizes the City Department of Development to solicit Professional Services to design and layout an active recreational facility that will include a Splash pad, within the foot print of Memorial Park.

THIS RESOLUTION SHALL TAKE EFFECT IMMEDIATELY

Moved by Iafallo seconded by Moretti to adopt resolution as written
Yeas: Ingram, Schultz, Moretti, Surdyke, Iafallo

Carried 5-0

13. (B) Resolution #24, 2019

WHEREAS, the City of Lackawanna (Grantee) received on or about March 1, 2017 a grant of approximately \$100,000 from the Local Initiatives Support Corp (LISC) to address the blighting influence posed by foreclosed properties in the City, and also to assist homeowners threatened with the loss of their homes; and

WHEREAS, the City of Lackawanna has previously allocated those resources to a part time contractor who monitored foreclosures, brought their existence to the Code Enforcement Department to check on blighting Conditions, and identified available resources to those in possession of homes in foreclosure; and

WHEREAS, the part time contractor has now moved on to full time employment and there remains approximately \$39,000 in the initial grant which may be utilized to address blighting influences of foreclosed property, and assist those threatened with foreclosure; and

WHEREAS, the City Department of Development and Law Department have determined that the remaining fund may be sufficient to procure part time counsel with experience in bankruptcy and foreclosure prevention to assist in targeting enforcement efforts against zombie properties, which may also provide secondary benefits in preventing homelessness to former homeowners; and

WHEREAS, LISC has approved the attached amended work plan submitted to them by letter of the Director of Development dated November 29th, 2019, a copy attached hereto; and

WHEREAS, the Law Department has indentified a lawyer willing to work, under the Law Department’s mentorship to carry out the elements of the approved work plan by:

- i. Monitoring Real Property and Action and Proceedings filings in Erie County NY to identify bank commenced foreclosure actions, and also bank filed Lis Pendens pertaining to property in Lackawanna; and
- ii. Identifying new filings in City Permit and Inspections Software to Code Enforcement Officers to have them inspect to see if there are signs of properties being vacated (Where bank controlled properties are identified as vacant and having housing violations Code Enforcement Officers will document conditions on updated software in their ordinary course of business-code enforcement time is not to be chargeable against the LISC Grant).
- iii. Preparing and disseminating information packages for homeowners advising them of services and programs available to help them save their homes (this was a task previously performed by previous Zombie Program Coordinator), and where risk of homelessness appears imminent attempt to connect them with County Services; and
- iv. Where conditions on bank controlled properties are found to be in violation of State or Local Codes Enforcement Officers will provide initial Notice of Violations in Regular Course of Business, and Attorney hired under Grant will monitor for compliance with NY RPAPL 1308-1311 and commence enforcement action and prosecute the same; and

NOW BE IT RESOLVED, that the Lackawanna City Council authorizes the City Law Department to procure part time counsel as an independent contractor to fulfill the above listed elements of the now approved LISC approved amended work plan, subject to all costs of procuring and retaining the independent contract attorney being paid by the LISC Grant.

THIS RESOLUTION SHALL TAKE EFFECT IMMEDIATELY

Moved by lafallo seconded by Surdyke to adopt resolution as written
Yeas: Ingram, Schultz, Moretti, Surdyke, lafallo

Carried 5-0

13. (C) Resolution #25, 2019

WHEREAS, Niagara Wind Power, LLC, and/or its affiliated entities (hereinafter the Developer) currently operates 10 free standing towers supporting wind energy conversion turbines (hereinafter WECS) in the City of Lackawanna (the City), and four more WECS in Hamburg, all on sub-portions of the former Bethlehem Steel Property, as more fully defined in the Full Environmental Assessment Form by TerraForm Power LLC, which is dated August 2019 (the FEAF); and

WHEREAS, the Developer reports a majority of its turbines along the Lake Erie shoreline in Lackawanna and Hamburg are no longer functioning, and replacement parts from the manufacturer are no longer available; and

WHEREAS, the City currently receives about \$100,000 per year from the developer on 8 of the 10 turbines pursuant to a certain Voluntary Payment Agreement dated December 2005 set to expire on or about 2023 (attached hereto as Exhibit A), and an additional approximate \$51,400 pursuant to a PILOT Agreement dated July 1, 2010 (Attached hereto as Exhibit B) for the remaining 2 WECS with total payments to the City equaling approximately \$151,400 per year; and

WHEREAS, the Developer expressed an intent to replace the problematic Turbine components within the Nascent of the Towers together with the blades, with components made by a different purportedly more reliable manufacturer (the Project), and has sought Erie County Industrial Development Agency (ECIDA) assistance in the desired repowering Project, and

WHEREAS, the ECIDA has conducted a coordinated SEQRA Review of the Project and has also worked closely with representatives of the City of Lackawanna, the City of Lackawanna School District, the Town of Hamburg, and the Town of Hamburg, and the Town of Hamburg School District (hereinafter collectively referred to as the Governmental Parties) to negotiate a fair schedule of PILOT payments based upon a review of best payment schedules discerned around the State for WECS Systems; and

WHEREAS, on or about November 20th, 2019 the ECIDA completed their environmental review of the Project and adopted the Negative Declaration attached hereto as Exhibit C; and

WHEREAS, also on or about November 20th, 2019 the ECIDA approved terms of a new 15 year PILOT Agreement with the Developer, to replace the existent PILOT Agreement, and the existent Voluntary Payment Agreement with a new payment of \$10,000 per megawatt of faceplate production capacity for years 1-10, and then increasing 10% after year 10. Said payments would equal \$250,000 per year for all the City WECS, to be split pro rata based upon existent tax rates for the three taxing jurisdictions in the City. The County PILOT approval was further conditioned on an additional host community payments to the City of \$1,000 per megawatt of capacity (\$25,000 per year). Under the County approved PILOTS the City net payments would be approximately \$153,000 in years 1-10, and approximately \$159,000 per year in years 11-15; and

WHEREAS, the Project is sited within the existent City's Local Waterfront Revitalization Plan boundaries, and also within the City's Brownfield Opportunity Area; and

WHEREAS, pursuant to §-223-8 of New York's State's Local Waterfront Revitalization Law prior to approving a Project within an LWRP the City must first determine consistency of the project with the existent LWRP; and

WHEREAS, prior to the development of ten existent WECS at the site the City determined the Project was consistent with the same LWRP which remains in effect today;

WHEREAS, in order for the Project to move forward the following approvals are required of this governing body:

1. Determination of the Plans consistency with the City's LWRP; and
2. An approval to issue Special Use permits for the 2 WECS identified as Turbines 9 and 14 in figure 2 of the FEAF; and
3. Authorization for the Mayor of the City of Lackawanna to execute all documents necessary to rescind the existent Voluntary Payment Agreement and PILOT (Exhibits A and B), effective upon the date of the commencement of payments due under the new proposed Host Community Benefit Agreement; and
4. Authorization for the Mayor to execute a Host Community benefit Agreement with the fundamental terms in compliance with those attached as Exhibit D, and subject to final approval of the form of Agreement by the City Attorney.

And it is now

DETERMINED that the Project is consistent with the City’s existent LWRP for the following reasons:

1. The proposed land use in both water enhanced and water dependent based upon the winds Necessary to power the Project coming off the Lake, and
2. The proposed land use is a productive re-use of underutilized land impacted by prior industrial uses; and
3. The proposed land use will not impair the productive use of available port lands at the site, And elsewhere; and
4. The existing land use does not impair coastal fish and wildlife habitats, and further has potential to reduce the emissions which could otherwise impair such resources; and
5. The Project in and of itself will not significantly impair reasonable access to coastal resources
6. The proposed structure does not increase the likelihood of flooding in coastal zones or elsewhere; and
7. The Project is consistent with both the adopted zoning for the former Bethlehem site, and the applicable plan for the Brownfield Opportunity Area in which it is sited; and
8. The remaining criteria of the LWRP are not relevant to the instant repowering Project, for the reasons set forth in the Developer’s letter to the City’s Director of Development dated November 15th, 2019 (attached hereto as Exhibit E) and otherwise.

And it is now

RESOLVED, that this governing body hereby approves and authorizes the issuance of Special Use Permits for the 2 WECS identified as Turbine 9 and 14 in Figure 2 of the FEA; and it is further

RESOLVED, that the Mayor of the City of Lackawanna is authorized to execute all document necessary to rescind the existent Voluntary Payment Agreement and PILOT (Exhibit A and B), effective upon the date of the commencement of payments due under the new proposed Host Community Benefit Agreement; and it is further

RESOLVED, that the Mayor of the City of Lackawanna is authorized to execute a Host Community Benefit Agreement with the fundamental terms in compliance with those attached as Exhibit D, and subject to final approval of the form of the Agreement by the City Attorney.

THIS RESOLUTION SHALL TAKE EFFECT IMMEDIATELY

Moved by lafallo seconded by Moretti to adopt resolution as written

Yeas: Ingram, Schultz, Moretti, Surdyke, lafallo

Carried 5-0

Business Registration:

Cynthia Dimitrievski- 143 Highview Circle-DBA Cindylou’s Homecookin-717 Ridge Road

Moved by lafallo seconded by Ingram to approve business registration

Yeas: Ingram, Schultz, Moretti, Surdyke, lafallo

Carried 5-0

Gregory Burroughs- 6860 Boston State Rd., Hamburg, NY-DBA Ferrous Mfg. Inc. -1951 Hamburg Turnpike

Moved by lafallo seconded by Schultz to approve business registration

Yeas: Ingram, Schultz, Moretti, Surdyke, lafallo

Carried 5-0

Adjournment:

Moved by lafallo seconded by Ingram to adjourn the meeting

Yeas: Ingram, Schultz, Moretti, Surdyke, lafallo

Carried 5-0

Annette lafallo-Council President

Jeffrey P. DePasquale- City Clerk