

**MINUTES OF THE COMMON COUNCIL  
SEPTEMBER 1, 2015**

A meeting of the Common Council of the City of Oneida, NY was held on the first day of September, 2015 at 6:30 o'clock P.M. in Council Chambers, Oneida Municipal Building, 109 N. Main Street, Oneida, NY.

Meeting was called to order by Mayor Alden Smith

**PRESENT:** Councilors Brahim Zogby, Michael Bowe, Erwin Smith, Helen Acker, James Chamberlain, and Thomas Simchik

**ALSO PRESENT:** City Attorney Nadine Bell  
City Chamberlain Nancy Andrews  
City Clerk Susan Pulverenti  
City Engineer Jon Rauscher  
Comptroller Linda Pease  
Fire Chief Kevin Salerno  
Planning Director Cassie Rose  
Police Chief David Meeker

Mayor Smith said that the normal format is to go into Executive Session at the end of the meeting; however, he said he is requesting that Council do this at the beginning of the meeting to consult with our legal counsel. Mayor Smith said the Council will go the Mayor's Conference Room, so that the audience did not have to wait out in the hall. The City Attorney said Executive Session is on the advice of counsel to discuss pending litigation and potential litigation. Councilor Zogby questioned the rationale for this to be done first, and the Mayor said the City Attorney advised that she would like to share information with the Council previous to the meeting, and the Mayor said he chose to honor that request. Councilor Zogby said there is nothing on the agenda relating to Executive Session. The City Attorney said her concern is that there are certain things taking place in the City relating to litigation, and she wants the Council to be fully apprised of the situation. Attorney Bell said she wants the Council to have an understanding of what has been going on in the event that any of those issues come up.

**EXECUTIVE SESSION**

**RESOLUTION 15-211**

Moved by Councilor Acker  
Seconded by Councilor Chamberlain

**RESOLVED** that the meeting is hereby adjourned to Executive Session at 6:35 p.m. on the advice of Counsel to discuss pending litigation and potential litigation.

Ayes: 5  
Nays: 1 (Zogby)  
**MOTION CARRIED**

**PRESENT:** Mayor, Councilors, City Clerk, City Attorney

1. Advice of Counsel to discuss pending litigation and potential litigation.

Moved by Councilor Bowe  
Seconded by Councilor Chamberlain

**RESOLVED**, that Executive Session is hereby adjourned to the regular meeting at 7:25 p.m.

Ayes: 6  
Nays: 0  
**MOTION CARRIED**

**OLD BUSINESS**

*Codes Department Review Committee*

Mayor Smith said Councilor Chamberlain's committee has finished with their review, and he will be meeting with Councilor Chamberlain to go over the recommendations. It will then be brought to the Council.

*Centre City Apartments on Warner Street*

Mayor Smith said the housing project on Warner Street is moving forward and is on schedule. It is believed that applications will begin being accepted in January.

*Phelps Street and Liberty Street Cleanup*

Mayor Smith said both locations are moving forward with the environmental issues that need to be addressed before/during the cleanup and demolition. Each project should begin shortly.

*HP Hood*

Mayor Smith said the HP Hood project is continuing. There was a misunderstanding about the cutting of two City trees, but that issue is being resolved, and the trees were saved.

*Proposed Solar Project*

Councilor Zogby asked if there was anything to report on the solar initiative. Mayor Smith said, on advice of the City Attorney, there will be no discussions relating to the solar initiative at this time.

Michel DeBottis, Evergreen Valley Drive, asked the Mayor if that meant refusing to listen to the residents' concerns or refusing to comment. Mayor Smith said if there are going to be comments, on advice of Counsel, they cannot be related to the litigation. Mr. DeBottis said he would like the memo the Council previously received to become part of the City record and be received and placed on file. Mr. DeBottis asked that e-mails from him regarding the City's agreement versus the County's agreement also be received and placed on file. The City Attorney said the e-mails should be identified by date, and Mr. DeBottis said that would be done when he sends them to the City Clerk.

**SOLAR PROJECT MEMORANDUM FROM RESIDENTS**

**RESOLUTION 15-212**

Moved by Councilor Zogby  
Seconded by Councilor Acker

**RESOLVED**, that a memo to Mayor Smith and the Common Council from the residents of Deerfield Drive, Evergreen Valley Drive and Foxwood Terrace dated August 27, 2015 be hereby received and placed on file.

Ayes: 6  
Nays: 0

**MOTION CARRIED**

**SOLAR PROJECT EMAILS FROM A RESIDENT**

**RESOLUTION 15-213**

Moved by Councilor Acker  
Seconded by Councilor Zogby

**RESOLVED**, that e-mails and attachments from [oneidaheights@googlegroups.com](mailto:oneidaheights@googlegroups.com) on behalf of Michel DeBottis dated Tuesday, August 25, 2015 11:18 a.m. and Friday, August 28, 2015 2:07 p.m. to the Common Council and Mayor be hereby received and placed on file.

Ayes: 6  
Nays: 0

**MOTION CARRIED**

*Proposed Solar Project*

Darrin Lynch asked if site selection is still in process. Attorney Bell said that she has had a number of conversations with the resident's attorney and a conference call with the judge. The context of those discussions included settlement discussions and some of it involved alternative sites. The City Attorney said that in her opinion, it is inappropriate to discuss that. Attorney Bell recommended that because of pending litigation, Mr. Lynch contact his attorney.

John Nebzydoski, Foxwood Terrace, said that he wanted to reiterate some of the concerns of the residents of their neighborhood. He questioned the difference in rates between the City and the County. He said neither he, nor the Mayor, has the ability to understand all the intricacies of the solar contract, so there are advisors and consultants. Mr. Nebzydoski said he questioned the competency and integrity of the City's

advisors. He spoke of potential monies that could be lost because of lowered assessments if the solar project is placed in their neighborhood.

Joe Rocco said he is a CPA. He said this is a good deal for groSolar because of the investment tax credits they will receive, and the accelerated depreciation credits they will use for tax purposes. He said groSolar is also getting \$1M from NYSERDA.

Jill Christian-Lynch said groSolar has a highly effective marketing campaign. She said the City and Mayor were very anxious to bring solar to Oneida, and she mentioned the comparison of rates. She said the residents of the City take on all the risks with no guarantees. GroSolar's marketing was so effective that they convinced the Planning Commission that it would not be seen through a 50 ft. tree buffer. She said that she can see 200 feet into the woods, and it is peak season for leaves. She said that from the RFP to final sketch plat, the Mayor allowed groSolar to double the size of the project. She said she wondered if that was included in the original RFP, would other company's bids been more competitive. The City Attorney said the directions were that any comments are fine, if not related to the lawsuit.

Mike DeBottis, Evergreen Valley Drive, said if you read the PPA, there are no guarantees to the City. The alleged savings is based on projections. He said if you read the County's resolution, it questions how the same attorney could present to the Mayor and Council that this was a great deal. The City left monies on the table compared to the County's agreement and leased the property to groSolar for \$1 per year. He said the panels will be buried in ground, with underline transmission lines to connect to the grid. This is a fixture that you are not taxing. He said the downside risks are listed in the memorandum received on file earlier. He asked how the City could be put at financial risk and questioned if the City didn't read the contract or didn't get good advice. The City Attorney reminded Mr. DeBottis of no comments relative to the lawsuit.

John Reinhardt, Deerfield Drive, said on Wednesday, Sept. 26, the Mayor called him and said he was aggressively looking for a new location. The City Attorney said, once again, this relates to the lawsuit.

In response to a question from Shawn Lynch, Evergreen Valley Drive, the City Attorney said she asked that the Council not respond to questions involving the lawsuit. Attorney Bell said whenever any municipalities that she represents get sued, it is her recommendation not to discuss it. Inevitably, what is said comes back, and she said it already has. In discussions with the residents' attorney, what the Mayor or Council said at a particular meeting comes up in discussions and makes its way into the lawsuit. Attorney Bell said she is not willing to put the City in a position where legal rights or legal arguments are jeopardized or influenced by comments that are said are thrown at them. Attorney Bell said that the City is doing its best to defend itself and to make sure the City as a whole is protected. The recommendation is that while there is litigation pending; don't discuss it. Mr. Lynch said the six Councilors that represent our City are elected by the residents, not the City Attorney, and if they have some comments they should consider making them.

The City Attorney said there is an obligation to all taxpayers. The Council can still speak; she can only make requests. She said to the residents that the City has received FOIL requests and your attorney has already made representations to the court that he is waiting for those responses for the lawsuit. The Council and Mayor have an obligation to the City as a whole to protect the City. Jill Christian Lynch said she has filed many of those FOIL requests, and as a public entity, governing body of the City, there is a right to respond to peoples comments.

Kelly Lewin said she is not part of the litigation and asked for the time-frame. The City Attorney said the Court will hear arguments on Friday, and until a court makes any kind of decision, it is her recommendation that the City not comment.

In response to a question from Don Skinner, Florida, the City Attorney said she would be derelict in her responsibility to the City if she discussed her legal advice to the Mayor and Council.

Moved by Councilor Chamberlain  
Seconded by Councilor Simchik

**RESOLVED**, that the minutes of the special meeting of August 17, 2015, regular meeting of August 18, 2015, and Water/Sewer Due Process Hearings of August 18, 2015 be hereby approved as presented.

Ayes: 6  
Nays: 0

**MOTION CARRIED**

Moved by Councilor Smith  
Seconded by Councilor Chamberlain

**RESOLVED**, that Warrant No. 17 checks and ACH payments in the amount of \$414,793.97, as audited by the Voucher Committee, is hereby approved for payment in the usual manner at the discretion of the Comptroller.

Ayes: 6  
Nays: 0

**MOTION CARRIED**

**RESCIND INVOICES FOR FIRE INSPECTIONS ON CITY OWNED PROPERTY**

**RESOLUTION 15-214**

Moved by Councilor Zogby  
Seconded by Councilor Chamberlain

**WHEREAS**, the City of Oneida is the current owner of the property located at 101 Lake Street, Oneida, which formerly belonged to 230 E. Railroad Street LLC, 230 E. Railroad Street, Oneida NY 13421, **and**

**WHEREAS**, two past-due invoices for 2015 Fire Inspection “No-Show” fees remain unpaid from when 230 E. Railroad Street LLC was the owner of the property, **now therefore be it**

**RESOLVED**, that Common Council hereby approves the rescinding of Invoice #19767 in the amount of \$40.00 for Fire Inspection “No-Show” fees and further approves the rescinding of Invoice #19799 in the amount of \$100.00 for Fire Inspection “No-Show” fees on the property located at 101 Lake Street, Oneida, NY, which is currently owned by the City of Oneida.

Ayes: 6  
Nays: 0

**MOTION CARRIED**

**BUDGET TRANSFERS**

**RESOLUTION 15-215**

Moved by Councilor Smith  
Seconded by Councilor Simchik

**RESOLVED**, to approve the following budget transfers:

	<b>FROM</b>	<b>BALANCE</b>	<b>TO</b>	<b>BALANCE</b>
\$2,600	001.3410.0400 (SCBA)	\$5,520	001.3410.0403 (Contracts)	\$2,750
<i>(To contract Grant Writer for 2015 FEMA Fire Grant)</i>				
\$8,000	003.8110.0332 (Video Inspection)	\$42,515	003.8110.0308 (Chlorine)	\$8,086
\$12,937	003.8110.0332 (Video Inspection)	\$29,578	003.8110.0216 (FEMA Flood)	\$12,937
<i>(Purchase of chlorine and to repair an influent pump that was damaged in the 2013 flood)</i>				
\$29,578	003.8110.0332 (Video Inspection)	\$0.00	003.8110.0217 (Declorination & Disinfection Alt Stud)	\$67,575
\$45,000	003.8110.0326 (West Elm Street Sewer Extension)	\$0.00	003.8110.0217 (Declorination & Disinfection Alt Stud)	\$112,575
\$13,342	003.8110.0405 (Building Maint. & Repair)	\$0.00	003.8110.0217 (Declorination & Disinfection Alt Stud)	\$125,917

*(To fund PAA Pilot and Design)*

Ayes: 6  
Nays: 0

**MOTION CARRIED**

**PROFESSIONAL SERVICES PROPOSAL**

**RESOLUTION 15-216**

Moved by Councilor Simchik  
Seconded by Councilor Acker

**RESOLVED**, to authorize the Mayor to sign a Professional Engineering Services Proposal with O'Brien & Gere LLC, 333 West Washington Street, PO Box 4873, Syracuse, NY 13221 for Effluent Disinfection Design & Bidding Assistance (Study Phase Change Order Request) in the amount of \$72,750 at the Waste Water Treatment Plant.

Ayes: 6  
Nays: 0

**MOTION CARRIED**

**SERVICE PROPOSAL FOR ASBESTOS ABATEMENT**

**RESOLUTION 15-217**

Moved by Councilor Chamberlain  
Seconded by Councilor Simchik

**RESOLVED**, to authorize the Mayor to sign a Proposal for Asbestos Abatement Project Monitoring, Air Sampling & Analysis with A2Z Environmental LLC, 1502 Brewer Rd., Oneida NY 13421 in the amount of \$6,075.00 at the site located at 120 Phelps Street, Oneida.

Ayes: 6  
Nays: 0

**MOTION CARRIED**

**PROPOSED LOCAL LAW AMENDING ARTICLE I, SECTION 1.6 OF THE ONEIDA CITY CHARTER TO AMEND THE WARD BOUNDARIES OF THE CITY OF ONEIDA**

**RESOLUTION 15-218**

Moved by Councilor Acker  
Seconded by Councilor Zogby

**WHEREAS**, the City of Oneida is currently divided into six (6) wards, the boundaries of which were established by Local Law No. 3 of 1979; **and**

**WHEREAS**, as a result of the redistribution of population within City boundaries and between the six (6) wards located therein, the population of each ward varies significantly; **and**

**WHEREAS**, to address this issue, the Common Council retained the Herkimer-Oneida County Planning Department to amend the City's six (6) ward boundaries so that the population within each ward would be more equitably distributed; **and**

**WHEREAS**, a proposed redistricting plan for the City's ward boundaries, including an official map of the amended ward boundaries, was prepared by the Herkimer-Oneida County Planning Department; **and**

**WHEREAS**, on August 17, 2015, by Resolution 15-191, the Common Council, having reviewed the proposed redistricting plan and the proposed map of the amended ward boundaries, resolved to accept the redistricting plan prepared by the Herkimer-Oneida County Planning Department and further resolved that a resolution be prepared to place said redistricting plan on the November 3, 2015 general election ballot; **and**

**WHEREAS**, in order to effectuate the amendments to the City's ward boundaries the Common Council must adopt a Local Law that amends Section 1.6 of the Oneida City Charter titled, "Ward boundaries"; **and**

**WHEREAS**, said Local Law is titled, "A Local Law Amending Article I, Section 1.6 of the Oneida City Charter to Amend the Ward Boundaries of the City of Oneida." **and**

**WHEREAS**, said Local Law is subject to a mandatory referendum because the proposed redistricting will effect wards from which members of the Madison County Board of Supervisors are elected; **and**

**WHEREAS**, the adoption of said Local Law is an unlisted action for purposes of environmental review under SEQR; **and**

**WHEREAS**, the Common Council has determined that a short environmental assessment form (EAF) shall be required in connection with this matter; **and**

**WHEREAS**, the said EAF has been prepared and has been reviewed by the Common Council; **and**

**WHEREAS**, the Common Council has considered the adoption of said Local Law, has considered the criteria contained in 6 N.Y.C.R.R. Part 617.7 and has compared the impacts which may be reasonably expected to result from the adoption of said Local Law against said criteria; **and**

**NOW THEREFORE, BE IT RESOLVED**, that the enactment of the proposed Local Law is an unlisted action, there are no other involved agencies and the Common Council shall act as lead agency in this matter for purposes of SEQR review; **and**

**BE IT FURTHER RESOLVED**, the Common Council has determined this action shall have no significant adverse impact on the environment; that, accordingly, an environmental impact statement (EIS) shall not be required; and that this resolution shall constitute a negative declaration under SEQR; **and**

**BE IT FURTHER RESOLVED**, that the Common Council shall conduct a public hearing as to the enactment of the proposed Local Law at the Oneida City Hall located at 109 N. Main St. Oneida, New York on September 15, 2015 at 6:30 p.m., or as soon thereafter as the matter can be heard, at which time all persons interested in the subject shall be heard.

**CITY OF ONEIDA  
PROPOSED LOCAL LAW**

**A LOCAL LAW AMENDING ARTICLE I, SECTION 1.6  
OF THE ONEIDA CITY CHARTER TO AMEND THE WARD BOUNDARIES  
OF THE CITY OF ONEIDA**

Be it enacted by the Common Council of the City of Oneida as follows:

**SECTION 1. PURPOSE.**

In accordance with Section 1.6 of the Oneida City Charter, the City of Oneida is divided into six (6) wards. The boundaries of the six (6) wards were most recently established by Local Law No. 3 of 1979. Due to the redistribution of population within City boundaries, the population of each ward varies significantly. The Common Council of the City of Oneida has determined that it would be desirable to amend the boundaries of the six (6) wards so as to provide more equitable representation to the constituents of each ward. The purpose of this Local Law is to effectuate such change, effective January 1, 2016. Said change would be subject to a mandatory referendum. Therefore, an additional purpose of this local law is to place on the November 3, 2015 general election ballot, a referendum item which allows the electors of the City of Oneida to decide if they wish to change the boundaries of the City of Oneida's six (6) wards.

**SECTION 2. AUTHORITY.**

Pursuant to Municipal Home Rule Law Section 10(1)(i), cities are permitted to adopt and amend local laws not inconsistent with the provisions of the Constitution or not inconsistent with any general law relating to its property, affairs or government.

**SECTION 3. AMENDMENT OF SECTION 1.6 OF THE CITY CHARTER AND  
ADOPTION OF OFFICIAL WARD MAP.**

So that Section 1.6 of the Oneida City Charter, titled "Ward boundaries," shall be amended so as to read, in its entirety, as follows:

"Section 1.6. Ward Boundaries.

A. Division by Wards.

The City of Oneida shall be divided into six (6) wards.

**B. Official Ward Map.**

The map of the City of Oneida's six (6) ward boundaries adopted by the Common Council pursuant to Local Law No. \_\_\_ of 2015 shall be the official map of the six (6) ward boundaries of the City of Oneida. A copy of the official ward map is filed and available for inspection in the City Clerk's office."

**SECTION 4. MANDATORY REFERENDUM.**

Pursuant to Municipal Home Rule Law Section 23(2)(h), this Local Law shall be submitted for approval to the electors of the City of Oneida at the next general City election to be held on November 3, 2015.

**SECTION 5. EFFECTIVE DATE.**

This Local Law shall be effective upon filing with the Department of State after approval by a majority of the electors voting thereon in accordance with the requirements of Section 27 of the Municipal Home Rule Law.

Ayes: 5

Nays: 1 (Bowe)

**MOTION CARRIED**

Councilor Bowe asked that the Council receive and place on file an addition to the document that he asked to be received and filed at the last meeting relative the Ward redistricting. He said there will be drastic changes to the Wards, and he is not happy with the redistricting results.

**NEW BUSINESS - None**

*Comments from Mayor Smith and Councilor Simchik*

Mayor Smith said that he wants to make it clear that one of the most difficult things he has ever had to do is sit here and not respond to the things you have been questioning and not provide evidence of what he believes. Legal advice is legal advice, and hopefully this will be quickly resolved and he will feel comfortable to be able to engage the residents on those issues they feel so passionately about.

Councilor Simchik said he agreed with the Mayor that this is the worst feeling. He said that the neighbors of the HP Hood Project had questions and concerns, and the Council worked extensively with them to get those issues solved. Our hands are tied; a lawsuit has been filed, and we cannot work with any of the residents.

Motion to adjourn by Councilor Zogby

The meeting is hereby adjourned at 8:25 p.m.

CITY OF ONEIDA

\_\_\_\_\_  
Susan Pulverenti, City Clerk