

**ALBANY COMMON COUNCIL
MINUTES OF A REGULAR MEETING**

Monday, October 20, 2014

The Common Council was convened at 7:00 p.m. and was called to order by President McLaughlin.

The roll being called, the following answered to their names: Council Members Applyrs, Bailey, Commisso, Conti, Doesschate, Fahey, Flynn, Golby, Herring, Igoe, Kimbrough, Kornegay, Krasher, O'Brien and Robinson.

Also present was the following staff: Nala Woodard, Barbara Samel, Patrick Jordan and Cashawna Parker.

Council Member Robinson led with the Pledge of Allegiance.

PUBLIC HEARING

Clerk to the Common Council Nala Woodard read the notice of the public hearing on Ordinance Number 46.101.14 (AN ORDINANCE ADOPTING THE BUDGET AS PRESENTED BY THE MAYOR ON OCTOBER 1, 2014, FOR FISCAL YEAR 2015) and the following persons spoke:

1. Carol Tansey, 115 Krumkill Road, Albany, NY (Save Ladder #1);
2. Linda Bennett, 6885 Ramdonwood Drive, Schenectady, NY (Oppose red light cameras);
3. Jesse Calhoun, 604 Providence Street, Albany, NY (Save Ladder #1);
4. Raymond Dansereau, 275 South Main Avenue, Albany, NY (Reduce costs and property taxes);
5. James Meliti, 1057 Maggie Road, Newburgh, NY (Oppose red light cameras);
6. Robert Porter, 564 Park Avenue, Albany, NY (Oppose red light cameras);
7. Phil Hansen, 22 Manning Boulevard, Albany, NY
8. Marlon Anderson, 491 Livingston Ave, Albany, NY (Support red light cameras/Save Ladder #1);
9. Andres Rivera, 20 Corlear Street, Albany, NY (Save Ladder #!);
10. Daniel Plaat, 185 Elk Street, Albany, NY (Revenue sharing from NYS).

There being no further speakers, the President declared the public hearing closed.

PUBLIC COMMENT

1. Assemblywoman Pat Fahey, South Main, Albany, NY (Red light cameras);
2. James Meliti, 1057 Maggie Road, Newburgh, NY (Oppose red light cameras);
3. Patricia Reilly, Slingerlands, NY (Support red light cameras);
4. Richard, Berkley, 355 State Street, Albany, NY (Support red light cameras);
5. Robert Marino, State Coordinator for Campaign for Liberty (Oppose red light cameras);
6. Robert Arrino, Schenectady, NY (Red light cameras);
7. Jesse Calhoun, 604 Providence Street, Albany, NY (Red light cameras);
8. Marlon Anderson, 491 Livingston Avenue, Albany, NY (Support red light cameras);
9. Daniel Plaat, 185 Elk Street, Albany, NY (Unsafe Driving);
10. Phil Hansen, 22 Manning Boulevard, Albany, NY (Red light cameras).

There being no further speakers, the President declared public comment closed.

MINUTES FROM PREVIOUS MEETINGS

Majority Leader Herring made a motion to approve the minutes of the September 4, 2014 meeting, which was approved by unanimous voice vote.

CONSIDERATION OF LOCAL LAWS

The Local Laws on the agenda were held at the request of President Pro Tempore Conti..

REPORTS OF STANDING COMMITTEES

Public Safety – Chairperson Golby stated that the committee met on October 7, 2014 to discuss Ordinance Number 49.92.14 in relation to red light cameras and made a number of amendments, which was passed out of committee favorably.

Finance, Taxation and Assessment – Chairperson Comisso stated that the committee has been meeting over the pass two weeks. He discuss that several departmental are on the scheduled for their presentations. He stated that these meetings are posted on the council webpage on the city website.

Planning, Economic Development and Land Use – Chairperson Herring stated that the committee met on October 15, 2014 prior to caucus to discuss Resolution Number 96.92.14R appointing Mr. William Brandow to the Historic Resource Commission, which was recommended out of committee favorably.

CONSIDERATION OF ORDINANCES

Council Member O'Brien introduced ORDINANCE NUMBER 49.102.14, which was referred to the Planning, Economic Development and Land Use Committee:

AN ORDINANCE AMENDING CHAPTER 375 OF THE CODE OF THE CITY OF ALBANY (ZONING) CHANGING THE ZONING CLASSIFICATIONS OF 10, 32 AND 40 NORTH RUSSELL ROAD AND REAR 18 RUSSELL ROAD FROM GENERAL INDUSTRIAL DISTRICT (M-1) TO HIGHWAY COMMERCIAL DISTRICT (C-2) AND AMENDING THE ZONING MAP ACCORDINGLY

The City of Albany, in City Council convened, does hereby ordain and enact:

Section 1. Chapter 375 of the Code of the City of Albany (Zoning) and the Official Zoning Map are hereby amended to change the zoning classifications of 10, 32 and 40 North Russell Road and Rear 18 Russell Road from General Industrial District (M-1) to Highway Commercial District (C-2), said properties being more particularly described as follows:

All that parcel of land situated in the City of Albany, County of Albany and State of New York, identified on the tax map as follows:

Parcel 1
Section: 53.67
Block: 1
Lot: 3

Said premises more commonly known as 10 North Russell Road measuring 200.00' by 201.72'.

Parcel 2
Section: 53.67
Block: 1
Lot: 4

Said premises more commonly known as 32 North Russell Road measuring 300.00' by 389.12'.

Parcel 3
Section: 53.67
Block: 1
Lot: 5.1

Said premises more commonly known as 40 North Russell Road measuring approximately 1.79 acres.

Parcel 4
Section: 53.67
Block: 1
Lot: 6

Said premises more commonly known as Rear 18 Russell Road measuring 32.10' by 187.40'.

Section 2. The Council finds and declares that this action is an "Unlisted" action under Article 8 of the Environmental Conservation Law and the regulations promulgated thereunder (SEQRA), and directs that coordinated review be conducted for the determination and establishment of Lead Agency.

Section 3. This Ordinance shall take effect immediately.

Council Member Golby moved to amend ORDINANCE NUMBER 45.92.14 and as amended asked for a roll call vote thereon:

AN ORDINANCE AMENDING CHAPTER 359 (VEHICLES AND TRAFFIC) OF THE CODE OF THE CITY OF ALBANY BY ADDING A NEW ARTICLE XIV REGARDING A TRAFFIC-CONTROL SIGNAL PHOTO VIOLATION-MONITORING SYSTEM

The City of Albany, in Common Council convened, does hereby ordain and enact:

Section 1. Chapter 359 of the Code of the City of Albany is hereby amended by adding a new Article XIV to be entitled "Traffic-Control Signal Photo Violation-Monitoring System"

ARTICLE XIV
Traffic-Control Signal Photo Violation-Monitoring System

§ 359-138 Owner liability for failure of operator to comply with traffic-control indications.

A. Notwithstanding any other provision of law, the Parking Violations Bureau is hereby authorized and empowered to establish a demonstration program imposing monetary liability on the owner of a vehicle for failure of an operator thereof to comply with traffic-control indications in accordance with the provisions of this section. The Police Department and the Division of Traffic Engineering, for purposes of implementation of such program, shall be authorized to install and operate traffic-control signal photo violation-monitoring devices at no more than 20 intersections at any one time.

B. Such demonstration program shall utilize necessary technologies to ensure, to the extent practicable, that photographs produced by such traffic-control signal photo violation-monitoring systems shall not include images that identify the driver, the passengers or the contents of the vehicle; provided, however, that no notice of liability issued pursuant to this section shall be dismissed solely because a photograph or photographs allow for the identification of the contents of a vehicle, provided that the City of Albany has made a reasonable effort to comply with the provisions of this subsection.

C. The owner of a vehicle shall be liable for a penalty imposed pursuant to this section if such vehicle was used or operated with the permission of the owner, express or implied, in violation of Subdivision (d) of §

1111 of the New York State Vehicle and Traffic Law, (hereinafter Vehicle and Traffic Law) and such violation is evidenced by information obtained from a traffic-control signal photo violation-monitoring system; provided, however, that no owner of a vehicle shall be liable for a penalty imposed pursuant to this section where the operator of such vehicle has been convicted of the underlying violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law.

D. Notwithstanding any other provision of this section, no owner of a vehicle shall be subject to a monetary fine imposed pursuant to this section if the operator of such vehicle was operating such vehicle without the consent of the owner at the time such operator failed to obey a traffic-control indication. For purposes of this subsection, there shall be a presumption that the operator of such vehicle was operating such vehicle with the consent of the owner at the time such operator failed to obey a traffic-control indication.

E. For purposes of this section, "owner" shall mean any person, corporation, partnership, firm, agency, association, lessor or organization who at the time of the issuance of a notice of violation in which a vehicle is operated:

- (1) Is the beneficial or equitable owner of such vehicle; or
- (2) Has title to such vehicle; or
- (3) Is the registrant or co-registrant of such vehicle which is registered with the Department of Motor Vehicles of the State of New York or any other state, territory, district, province, nation or other jurisdiction; or
- (4) Uses such vehicle in its vehicle-renting and/or -leasing business; or
- (5) Is an owner of such vehicle as defined by § 128 or Subdivision (a) of § 2101 of the Vehicle and Traffic Law.

F. For purposes of this section, "traffic-control signal photo violation-monitoring system" shall mean a device installed to work in conjunction with a traffic-control signal which, during operation, automatically produces two or more photographs, two or more microphotographs, a videotape or other recorded images of each vehicle at the time it is used or operated in violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law.

G. A certificate, sworn to or affirmed by a technician employed, hired or contracted by the Albany Police Department, or a facsimile thereof, based upon inspection of photographs, microphotographs, videotape or other recorded images produced by a traffic-control signal photo violation-monitoring system, shall be prima facie evidence of the facts contained therein. Where the technician is not a police officer, the certification shall also be sworn to or affirmed by a police officer of the Albany Police Department. Any photographs, microphotographs, videotape or other recorded images evidencing such a violation shall be available for inspection in any proceeding to adjudicate the liability for such violation imposed pursuant to this section.

H. An owner liable for a violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law pursuant to this section shall be liable for a penalty of \$50. The Parking Violations Bureau may provide for an additional penalty not in excess of \$25 for each violation for the failure to respond to a notice of liability within the prescribed time period. The Parking Violations Bureau shall adjudicate liability imposed by this section.

I. An imposition of liability under this section shall not be deemed a conviction as an operator and shall not be made part of the operating record of the person upon whom such liability is imposed nor shall it be used for insurance purposes in the provision of motor vehicle insurance coverage.

J. A notice of liability shall be sent by first class mail to each person alleged to be liable as an owner for a violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law pursuant to this section. Personal service on the owner shall not be required. A manual or automatic record of mailing prepared in the ordinary course of business shall be prima facie evidence of the facts contained therein.

K. A notice of liability shall contain the name and address of the person alleged to be liable as an owner for a violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law pursuant to this section, the registration number of the vehicle involved in such violation, the location where such violation took place, the date and time of such violation and the identification number of the camera which recorded the violation or other document locator number.

L. The notice of liability shall contain information advising the person charged of the manner and the time in which he or she may contest the liability alleged in the notice. Such notice of liability shall also contain a warning to advise the persons charged that failure to contest in the manner and time provided shall be deemed an admission of liability and that a default judgment may be entered thereon.

M. The notice of liability shall be prepared and mailed by the Parking Violations Bureau or its designee.

N. If an owner receives a notice of liability pursuant to this section for any time period during which the vehicle was reported to the Police Department as having been stolen, it shall be a valid defense to an allegation of liability for a violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law pursuant to this section that the vehicle had been reported to the police as stolen prior to the time the violation occurred and had not been recovered by such time. For purposes of asserting the defense provided by this subsection, it shall be sufficient that a certified copy of the police report on the stolen vehicle be sent by first class mail, return receipt requested, to the Parking Violations Bureau.

O. If the owner liable for a violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law pursuant to this section was not the operator of the vehicle at the time of the violation, the owner may maintain an action for indemnification against the operator.

P. An appeal of an adjudication of liability pursuant to this section may be taken in accordance with Chapter 90 of this Code.

Q. An owner who is a lessor of a vehicle to which a notice of liability was issued pursuant to Subdivision H of this section shall not be liable for the violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law, provided that:

- (1) Prior to the violation, the lessor has filed with the Parking Violations Bureau and paid the required filing fee in accordance with the provisions of § 239 of the Vehicle and Traffic Law; and
- (2) Within 37 days after receiving notice from the Parking Violations Bureau of the date and time of a liability, together with the other information contained in the original notice of liability, the lessor submits to the Bureau the correct name and address of the lessee of the vehicle identified in the notice of liability at the time of such violation, together with such other additional information contained in the rental lease or other contract document, as may be reasonably required by the Bureau pursuant to regulations that may be promulgated for such purpose.
- (3) Failure to comply with Subsection Q(1) or (2) of this section shall render the owner liable for the penalty prescribed in this section.
- (4) Where the lessor complies with the provisions of this subsection, the lessee of such vehicle on the date of such violation shall be deemed to be the owner of such vehicle for purposes of this section,

shall be subject to liability for such violation pursuant to this section and shall be sent a notice of liability pursuant to Subsection H of this section.

R. Nothing in this section shall be construed to limit the liability of an operator of a vehicle for any violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law.

S. On or before [~~October 1, 2014~~] April 1, 2015, and every four months thereafter, until such time as the demonstration program authorized in Subsection A hereof shall be fully operational, the Chief of Police or his or her designee shall submit a written report to the Common Council on the status of said demonstration program. Such report shall include, but not be limited to, the locations selected for inclusion in the demonstration program and the cost to the City, both individually and collectively, of each location included in such demonstration project. Required reports shall be posted on the City of Albany website.

T. The Chief of Police or his or her designee shall submit to the Governor, the temporary President of the Senate, the Speaker of the Assembly and the Common Council, an annual report on the results of the use of a traffic-control signal photo violation-monitoring system on or before June 1, 2015, and on the same date in each succeeding year, in which the demonstration program is operable. Such report shall include, but not be limited to:

- (1) A description of the locations where traffic-control signal photo violation-monitoring systems were used;
- (2) The aggregate number, type and severity of accidents reported at intersections where a traffic-control signal photo violation-monitoring system is used for the year preceding the installation of such system, to the extent the information is maintained by the New York State Department of Motor Vehicles;
- (3) The aggregate number, type and severity of accidents reported at intersections where a traffic-control signal photo violation-monitoring system is used, to the extent the information is maintained by the New York State Department of Motor Vehicles;
- (4) The number of violations recorded at each intersection where a traffic-control signal photo violation-monitoring system is used and in the aggregate on a daily, weekly and monthly basis;
- (5) The total number of notices of liability issued for violations recorded by such systems;
- (6) The number of fines and total amount of fines paid after first notice of liability issued for violations recorded by such systems;
- (7) The number of violations adjudicated and results of such adjudications including breakdowns of dispositions made for violations recorded by such systems;
- (8) The total amount of revenue realized by the City from such adjudications;
- (9) Expenses incurred by the City in connection with the program; and
- (10) Quality of the adjudication process and its results.

U. It shall be a defense to any prosecution for a violation of Subdivision (d) of § 1111 of the Vehicle and Traffic Law pursuant to this section that such traffic-control indications were malfunctioning at the time of the alleged violation.

V. All funds in excess of the budgeted revenue from the system within a fiscal year, as reported in § 359-138(T)(8) above, received by the City in its General Fund shall be transferred to a Traffic Safety Fund. Expenditures from the Traffic Safety Fund shall be made only for programs, equipment, supplies and studies related to traffic safety, traffic law enforcement and traffic accident prevention; traffic-control devices and the maintenance thereof; and the maintenance, improvement or construction of safety-related infrastructure on public streets.

Section 2. This ordinance shall take effect immediately

Council Member Krasher made a motion to hold the vote on ORDINANCE NUMBER 45.92.14 for further information on his proposed amendment

**Note: There was a point of clarification on the motion under the new Mason's rules.*

The motion FAILED by the following vote of all the Council Members elected voting in favor thereof:
Affirmative –Bailey, Commisso, Flynn and Krasher

Negative – Applrys, Conti, Doeschate, Fahey, Golby, Herring, Igoe, Kimbrough, Kornegay, O'Brien and Robinson

Affirmative 4 Negative 11 Abstain 0

**Note: Council Members Golby, Flynn, Robinson, Bailey, Commisso, Krasher, O'Brien, Conti, Fahey and President McLaughlin spoke on this ordinance prior to passage.*

The ordinance passed by the following vote of all the Council Members elected voting in favor thereof:

Affirmative – Applrys, Conti, Doeschate, Fahey, Golby, Herring, Igoe, Kimbrough, Kornegay, O'Brien and Robinson

Negative –Bailey, Commisso, Flynn and Krasher

Affirmative 11 Negative 41 Abstain 0

The remaining ordinances on the agenda were held at the request of President Pro Tempore Conti.

CONSIDERATION OF RESOLUTIONS

Council Member Igoe introduced RESOLUTION NUMBER 100.102.14R, asked for passage and a roll call vote thereon:

RESOLUTION OF THE COMMON COUNCIL AUTHORIZING THE EXECUTION OF A PAYMENT IN-LIEU-OF TAX (PILOT) AGREEMENT WITH 115 KRUMKILL ROAD HOUSING DEVELOPMENT FUND CORPORATION AND 115 KRUMKILL HOUSING L.P.

WHEREAS, 115 Krumkill Road Housing Development Fund Corporation (the "HDFC") is a corporation established pursuant Article XI of the New York State Private Housing Finance Law ("PHFL"); and

WHEREAS, 115 Krumkill Road Housing L.P. (the "Partnership") is or will be the beneficial owner of the 210 apartment unit project (the "Project") located at 115 Krumkill Road, in the City and County of

Albany, State of New York and as further described in Exhibit A, attached hereto and made a part hereof (the “Property”); and

WHEREAS, the Partnership has entered into or shall enter into a nominee agreement with the HDFC whereby the HDFC shall hold legal title to the Project and the Property for the benefit of the Partnership; and

WHEREAS, the Partnership will rehabilitate, update and restore the Project and will maintain its use as affordable rental housing for qualified persons or families of low income; and

WHEREAS, the City of Albany has determined that the rehabilitation of the Project and its preservation as affordable housing is beneficial to and in the best interests of the public; and

WHEREAS, pursuant to Section 577 of the PHFL, the local legislative body of a municipality may exempt a project of a housing development fund company from local and municipal taxes, including school taxes, other than assessments for local improvements, to the extent of all or a part of the value of the property included in the completed project.

NOW, THEREFORE BE IT RESOLVED, that the Property and the Project shall be exempt from real property taxes to the extent described in Section 577 of the PHFL for a period of thirty (30) years, including city, county and school taxes, other than assessments for local approvals, and that the Mayor be and is hereby authorized and empowered to execute and enter into a PILOT agreement with the Partnership and the HDFC in a form approved by the Corporation Counsel, together with such other and further forms, documents and agreements necessary to amend, renew, supplement or effectuate the same.

RESOLVED, that this resolution shall take effect immediately.

The resolution passed by the following voice vote of all the Council Members elected voting in favor thereof:

Affirmative – Applyrs, Bailey, Commisso, Conti, Doeschate, Fahey, Flynn, Golby, Herring, Igoe, Kimbrough, Kornegay, Krasher, O’Brien and Robinson

Affirmative 15 Negative 0 Abstain 0

Council Member O’Brien introduced RESOLUTION NUMBER 101.102.14R, asked for passage and a roll call vote thereon:

RESOLUTION OF THE COMMON COUNCIL DECLARING ITSELF LEAD AGENCY FOR PURPOSES OF DETERMINING ENVIRONMENTAL SIGNIFICANCE IN ACCORDANCE WITH ARTICLE 8 OF THE ENVIRONMENTAL CONSERVATION LAW (SEQRA), AND ITS IMPLEMENTING REGULATIONS REGARDING THE PROPOSED REZONING OF THE PROPERTIES LOCATED AT 10, 32 AND 40 NORTH RUSSELL ROAD AND REAR 18 RUSSELL ROAD

WHEREAS, Ordinance 49.102.14 was introduced by the City of Albany Common Council on October 20, 2014, which proposed rezoning the properties located at 10, 32 and 40 North Russell Road and Rear 18 Russell Road from General Industrial District (M-1) to Highway Commercial District (C-2); and

WHEREAS, the City of Albany has prepared a short Environmental Assessment Form (short EAF), in conjunction with said proposed rezoning; and

WHEREAS, the action is preliminarily classified as an Unlisted action and is subject to the provisions of the State Environmental Quality Review Act (“SEQRA”), as set forth in Environmental Conservation law Article 8, and its implementing regulations; and

WHEREAS, the Common Council is the most involved agency and, as such, is the most appropriate Lead Agency to conduct a review of the plan in accord with SEQRA regulations.

NOW, THEREFORE, BE IT RESOLVED, that the Common Council of the City of Albany shall coordinate review of the proposed rezoning the properties located at 10, 32 and 40 North Russell Road and Rear 18 Russell Road and hereby declares itself lead agency pursuant to and under SEQRA;

RESOLVED, that this resolution shall take effect immediately.

The resolution passed by the following voice vote of all the Council Members elected voting in favor thereof:

Affirmative – Applyrs, Bailey, Commisso, Conti, Doesschate, Fahey, Flynn, Golby, Herring, Igoe, Kimbrough, Kornegay, Krasher, O’Brien and Robinson

Affirmative 15 Negative 0 Abstain 0

Council Member Herring asked for passage of RESOLUTION NUMBER 96.92.14R (RESOLUTION OF THE COMMON COUNCIL CONFIRMING THE APPOINTMENT OF WILLIAM J. BRANDOW AS A MEMBER OF THE HISTORIC RESOURCES COMMISSION), which had been previously introduced.

The resolution passed by the following voice vote of all the Council Members elected voting in favor thereof:

Affirmative – Applyrs, Bailey, Commisso, Conti, Doesschate, Fahey, Flynn, Golby, Herring, Igoe, Kimbrough, Kornegay, Krasher, O’Brien and Robinson

Affirmative 15 Negative 0 Abstain 0

The remaining resolutions on the agenda were held at the request of President Pro Tempore Conti.

MISCELLANEOUS AND UNFINISHED BUSINESS

NONE

ADJOURNMENT

Council President McLaughlin stated hearing no objections, that the Council was adjourned.

A true record of the Common Council Minutes of October 20th, 2014.

CASHAWNA PARKER
SENIOR LEGISLATIVE AIDE TO THE
COMMON COUNCIL