

City of Willoughby Hills

Regular Council Meeting Minutes of September 24, 2015

All Council Meetings shall be recorded by audio recording device and will be held in perpetuity and shall be part of the official records and minutes. Written minutes of Council shall be shortened whenever possible.

Meeting Called to Order at 7:02 p.m. by President Raymond C. Somich

Pledge of Allegiance

Roll Call of Council

Members Present: Vice President Nancy E. Fellows, Councilman David M. Fiebig, Councilwoman Jennifer Sommers Greer, Councilman Christopher Hallum, Councilman John Plecnik, President Raymond C. Somich, Councilman Christopher L. Biro

Also Present: Mayor Robert M. Weger, Law Director Thomas G. Lobe, Finance Director Frank J. Brichacek, Jr., City Engineer Pietro A. DiFranco, Clerk of Council Victoria Ann Savage

Disposition of the Journal Regular Council Meeting Minutes of July 9, 2015

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilman Plecnik to adopt the Regular Council Meeting Minutes of July 9, 2015 as submitted.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that the Regular Council Meeting Minutes for July 9, 2015 have been approved as submitted.

President Somich: Next item, this is the first meeting after our “technically”...we had a recess so there is a lot of Correspondence, Notifications.

CORRESPONDENCE

EMAIL of September 12, 2015 From Mayor’s Assistant to Council Office and President Somich; provided to the Members on September 14, 2015 RE: School Zone – Update to Discussion at Council Meeting of 9/10/15

Interoffice Memo from Finance Director Frank J. Brichacek dated September 14, 2015 RE: Notice of Acceptance of a \$5,000 Grant from the Lake County Stormwater Management Department to Finance the Repair of a Sinkhole on Worrell Road (**Emailed:** September 14, 2015)

Letter from Clerk of Council to the Law Firm of Wiles/Richards, Attorneys John W. Wiles and Michael C. Lucas, dated September 15, 2015 RE: Public Records Request included as Exhibits:

(1) Interoffice Memo from Clerk of Council to Members of Council as well as Administrative Staff RE: Public Records Request of Attorney Michael Lucas of Wiles/Richards, dated September 8, 2015;

(2) **EMAIL** from Law Director Lobe to Members, the Mayor and Finance Director dated September 13, 2015 RE: WH Memo from Clerk and Law Department RE: Public Records Request;

(3) **EMAIL** from Law Director Lobe to Members, the Mayor and the Mayor’s Assistant RE: Ms. Fellows Responses to Issues; (1) Response to Public Records and (2) Legal Advice for March 13, 2014-Law Directors Follow-Up Questions and

(4) **EMAIL** from Councilman Hallum to Council Members Fiebig and Plecnik, dated March 27, 2014 RE: Gatsby Lane & Dodd Hills Project – Landco along with copies of: Purchase Order dated 11/4/2013 to Landco Developers

Inc. for the Gatsby Lane Storm Sewer Extension Project and Landco Construction Invoice dated November 8, 2013, Purchase Order dated October 22, 2014 to Landco Developers Inc. for the Dodd's Hill Road Sinkhole Repair Project and Landco Construction Invoice of November 3, 2013, Invoice from Carr Bros. Inc. to Landco, dated October 24, 2013, Invoice from Waterworks to Landco dated October 25, 2013 and City of Willoughby Hills Check made to Landco Developers Inc. dated November 20, 2013 in the amount of \$7,348.25

City Engineer's Report dated September 17, 2015 (Emailed: September 17, 2015)

FINANCIAL REPORTS FOR THE MONTH ENDING AUGUST, 2015 CONSISTING OF: GENERAL FUND INCOME STATEMENT, CASH RECONCILIATION, PURCHASE ORDER REPORTS, FUND ANALYSIS REPORTS, AND EXPENSE REPORTS (Emailed: September 9, 2015)

NOTIFICATIONS

Special Meeting of the Finance Committee of Council scheduled for September 21, 2015 (Emailed: September 16, 2015)

Planning & Zoning Commission and Architectural Board of Review Meeting of September 17, 2015 CANCELLED for there were no pending projects (Emailed: September 12, 2015)

Special Meeting of the Rules and Legislation Committee of Council scheduled for September 21, 2015 (Emailed: September 16, 2015)

Special Meeting of the Safety Committee of Council scheduled for September 21, 2015 (Emailed: September 17, 2015)

MAYOR'S REPORT – Robert M. Weger

Excellent State Audit received for Calendar Years 2013 and 2014 – Congratulations to Finance Director Brichacek, the Finance Department, and all City Hall employees for this unqualified audit.

Acknowledgements:

Thanks to former Council President Dave Reichelt for his assistance on installing iPod usage capability at the Community Center

Congratulations to Willoughby-Eastlake School of Innovation – Ribbon cutting was held on September 15th

Congratulations to all City Hall employees, including Firefighter Jill Baus, Firefighter Nicki Vencl and Chief Rich Harmon on a very successful Touch-A-Truck event last Saturday

Events:

Saturday, September 26th – Pat O'Brien fun Day – Noon to 3pm

Charter Review Commission Ballot Issue Town Hall Meetings on Monday, September 28th and Tuesday, September 29th at 7pm

Dunkin' Donuts is set to pen on Monday or Tuesday

Put on your calendar now for the fall – **Sunday, October 4, 9am – 5K Run sponsored by Cleveland Clinic, Classic Lexus and the City of Willoughby Hills – all proceeds benefit St. Noel Food Pantry and WHISPER – Sign up now!**

LAW DIRECTOR'S REPORT – Law Director Thomas G. Lobe

Two matters for tonight, the first one is the Law Department wants to make it crystal clear that I am still looking for the names of the attorney or attorneys that allegedly gave advise to three Council Members for their comments on March 14, 2014 when they attempted to oust Mr. Germano from office. As everyone knows on March 14, 2014, Councilmen Fiebig, Fellows and Plecnik accused Frank Germano and Landco of corruption, felonies and other matters and attempted to remove him from the office. They said that they took these actions specifically not Mrs. Fellows but the other two did say that they took these actions because they had received legal advice suggesting that this was the proper form and procedure for their accusations. I have asked many times, on the record and in writing who are the attorneys that gave this advice. Mr. Plecnik and Mr. Fiebig have never responded to me and I am only trying to investigate potential, legal defense in event that litigation is brought forward for their actions on March 14th. In the event that litigation is brought forward by Mr. Germano or Landco on various legal theories the law allows a legal defense called advice of counsel. If Mr. Plecnik and Mr. Fiebig truly received legal counsel that may be their actions on March 14th can be justified because the received advice from an attorney. As such, I need to know the name of the attorney or the attorneys that they mentioned that gave them this advice so that I can prepare a potential

proper defense. It also has to be noted that it must be a true attorney-legal client relationship that materialized. Simply getting advice at a coffee shop or over the phone may not amount to true legal advice. If there was a lawyer, I need those names right now. Mrs. Fellows has advised me in writing that she did not seek or receive any legal advice for her actions on March 14th. I do want to make the record clear that all three of them have told me that they had purposely did not come to me for advice due to some personal reasons. I want the record to further to note that on that evening in question on five to seven occasions I had attempted to stop the proceedings and asked that it not proceed. Mr. Fiebig and Mr. Plecnik had been asked and still continue to refuse to answer a simple question, who are those lawyers and I am asking them at this time if they want to tell me who those lawyers are so that the City can start investigating a potential legal defense in the event that any legal actions are taken.

Councilman Fiebig: Mr. President, if the Law Director has some knowledge of potential legal action that is one of the required issues to go into Executive Session for, so I would advise you to ask for an Executive Session, we would be glad to go into Executive Session to talk about potential litigation which you are eluding to.

Law Director Lobe: I am not, I am simply...there has not been threatened or imminent but I do think that at this time when the lawyer for Mr. Germano took a private matter and made it public and sent those letters to your house and my next issue is going to be the public records. At this time it is not imminent but I do want to be proactive and so I am asking now and what I will even do is I'll allow you to even send it to me in writing so you don't have to say it right here. How much time do you need to tell me in writing so that there is not a misconception because I have been accused of misconception and miscommunication, so if you want some time to do it there that's great.

Councilman Fiebig: If you have any knowledge Mr. Lobe, you have any potential litigation it is your duty to inform Council and inform the potential people who would be involved in any sort of litigation and it is also inappropriate to talk about this in a public form, it's a requirement that you go into Executive Session for that.

Law Director Lobe: Mr. Fiebig, let me assure you, I know the law, I'm following the law and there is no threatened or imminent litigation but I am cautious...

Councilman Fiebig: That's what you said....

Law Director Lobe: No, I said the exactly the opposite...

Councilman Fiebig: You want to investigate...

Law Director Lobe: I do want to...I'm being proactive in the event that it happens. I would be foolish not to be proactive, okay, that's all I am doing. And you have a duty under Chapter 111 to cooperative with the Law Department. Now I am offering you an alternative, if you want to, but I do not need advice when we go into Executive Session. And I will allow you to put it in writing. But again, I just want the record to be clear that the Law Department is trying to get these answers. And if they don't give it to me that's fine. But I also want to make sure that I am asking for it in a clear, crystal clear method and manner. So I'll take it by your silence again that you are not going to tell me on the dais, that's fine, I would hope that within three days or whatever time is reasonable that you can tell me in writing that would be good because I do have some concerns that you really didn't get the legal advice because, I can not... after even upon review, any lawyer told you to do it in this forum, under this style. I have some real issues with it. I had issues with it that night and I have more issues today, so that's all I'll say on that particular topic as to the name of the lawyer. So I'll take it for right now there's silence at that part of the table and I will move on to the next issue unless Mr. Plecnik wants to add in on it.

Councilman Plecnik: I would just say that I voted the way that I voted in that March 14th Meeting because I sincerely believe and I still do believe for the Mayor to give City contracts to a Member of Council violates

our Charter. I am proud of that vote and I would vote that way again and that's our best defense frankly from any sort of lawsuit and I frankly feel that every time the Mayor goes out publicly or the Law Director says at these meetings that Councilman Germano is exonerated when there has never been an investigation under our Charter, is irresponsible and puts our City at risk for a lawsuit. So I would ask our Law Director to protect our City and to stop waiving or attempting to waive the clearest defense which is that taking City contracts gives you at least an indirect interest in a City contract which our Charter absolutely prohibits and I will never support elected officials taking personal benefit from our tax dollars and I will vote to remove any Council person whose family owned company and employer takes City contracts.

Law Director Lobe: Okay, I just want everybody to understand and I am quoting from Mr. Plecnik on March 14th, he has said on the record, and this is what I am trying to get to, "he has given this an enormous amount of soul searching an officer of the court spoken to many attorneys and prosecutors and they have all said the same thing they told him he has an obligation to come to this meeting and to disclose the conflict prior to voting on any legislation or he could be opened up either for censure or criminal violation of himself". Now when a person says that and I'm quoting and those are the minutes that were approved, I'm just trying to figure out who that lawyer was, okay, I'm not getting into all the other things and I'm not getting back into but the Ohio Ethics found zero evidence, I'm not going there. That report is that report and it is crystal clear. This is what he said and I'm trying to find out who it is. Now that's the question from the Law Department. You said that you had talked with many lawyers, I just want the name. So if you don't want to answer that question, I understand it, I'll move on. You want to put it in writing, I'll move on. But the Law Department wants to make it crystal clear that I've asked for it and I want to get it just in case. If he doesn't give it to me, that's great. I'll move on then.

Sadly it's on the same topic. The lawyers for Mr. Germano have made a public records request and they have asked the City for public records from the City and its server and also from the private servers of these same three Councilmen to provide any and all documents provided to a group of state officials concerning Frank Germano and/or Landco. There should be no public records on their private servers and the Clerk and myself timely forwarded this request to all three Councilmen. The City with its consist compliance with public records searched the City server for emails involving the subject of Landco and Frank Germano. Ms. Fellows, Mr. Fiebig and Mr. Plecnik were asked to review their work and personal computers for compliance on the limited subject, limited time period. The only one to respond that she did in fact looked was Ms. Fellows who indicated that she cannot find any documents in her private or work email concerning the subject of Landco or Frank Germano. I did have a follow up question to her and I reminded her of the legal obligation to advise the requestor whether she may have had the record and it cannot be found or destroyed. We would have a legal obligation to advise the requestor of that potential document and attempt to revive and restore that document. She has still not answered that question as posed to her earlier last week. Mr. Fiebig and Mr. Plecnik both wanted me to deny the request in total as overly broad and I sent a four page memo which is part of the record tonight advising them that the better legal approach isn't minimum attempt of compliance.

Councilman Fiebig: Mr. Lobe can I correct you please. Mr. President, can I...he is saying something that is absolutely not true, I stand to...since he is making some accusations here, I did respond to his email, he said that I did not, I did respond in a timely way. I provided you with the only email that I found which was the one that was read at this Council Table just a few minutes ago and I have made it very clear that you are welcome to look at and have full excess to my City emails which are stored here at City Hall.

Law Director Lobe: That email was produced by...I got it from Vicki at City Hall...I'll go back and read...

Councilman Fiebig: Now I would be very glad to try and help as I stated with any public records request but it has to be specific. What exactly....and that is the response, that's the proper way to respond to an overly broad request. You can't use one single person's name and say that I want two years of emails that has that person's name in it. That's overly broad.

Law Director Lobe: Well, you know what that's your opinion that is not how...

Councilman Fiebig: That's not my opinion, no that is the...I have certification in it, I've talked to people at the AG Office that is the fact, it is on page 13 of the manual.

Law Director Lobe: Let me assure you that the Attorney General and we went through this last time, the Attorney General will tell you that they are not allowed to give out opinions so that was stated before and let me tell you something, that is absolutely a wrong and mischaracterization of what the Attorney General said. I'm telling you right now the Attorney General even has a disclaimer on its website that says that you are not allowed to use them for legal advice but rather you are to go to the Law Department of your jurisdiction. And the consistent actions of this City have been for the last twenty years since I've been here has always been for compliance. I have never, ever as the Law Department regardless of how the question was posed ever said your not getting the records because they're overly broad or I don't understand what the question is; just the opposite. Vicki and I have always regardless of why, gone back and even asked them to explain, in fact we have a duty under our policies, our practices and our Ethics Model to ask them how we can get them the documents. So to say what the Attorney General says, I'm telling you is not proper. I'm not debating this right now. I'm going to go through here and I just want to make the second point, the point that I was going to get before I was interrupted and I don't mind the interruption, is that if they know that a record exists that says that it was sent by Mr. Plecnik, Councilman Plecnik, Councilman Fiebig, Councilwoman Fellows and that they did something and asked these entities in their Councilmatic capacity, even if it is on their private email the Attorney General who would agree with me on this one, says that it is the context of the email, not from which server it is sent. So if you know of it, that's the question, that's the specific question that I asked Mrs. Fellows and that is the question that I want answered tonight. So if you did produce one, are you also saying that you know of no other emails that could possibly be in that category, that's the question. So that's the question that I would like answered and I want to make sure again that the Law Department is asking the right question because if a document is so produced that is not produced by these three I don't want the blame to be on the Law Director that he didn't ask the right question. I think that I have made myself clear; if you have it, please produce it. If you don't want to answer or you don't or you say that you don't have it, I am done with my Law Director's report, that's the only purpose here. So if you know of a document of that nature, you have a duty even if it's not...lost or destroyed, you have a duty to disclose it or at least of its existence and we have to attempt to retrieve it. So the question is out there, it is a limited question, I don't want other things about this, it's a real simply question. I take it by their silence....

Councilman Fiebig: Well Mr. Lobe...it sounds to me...

President Somich: Just a minute, Just a minute, you need to be recognized here first; Mr. Lobe that concludes your report here this evening?

Law Director Lobe: Absolutely concludes my report.

Councilman Fiebig: It sounds to me that you are fishing for a specific email that you have some knowledge of and please tell me what it is that you are looking for and that's the public records request. If there is a public record, it's absolutely available to anybody, I've turned over my entire emails, I've given the password out, anybody can have any of the public records that I've created as a Councilman here at the City of Willoughby Hills. Now private emails are a different subject...

Law Director Lobe: Absolutely....

Councilman Fiebig: If there is a political discussion that I'm having, if there are some private things that I am discussing over email that is not a public record and you are not entitled to those.

Law Director Lobe: Again, let me assure everybody at the dais much to their chagrin it's the Law Department that makes the determination as to whether it's a public document. In my email to them of September 11th I asked for the full array of potential documents so that I can make that determination as whether it's a public record. They cannot do it, okay, but that's the law...

Councilman Fiebig: That's not the law...**President Somich:** Mr. Fiebig, you're out of order...

Law Director Lobe: The second point is this, it's very interesting, I want to make sure that it is crystal clear, so

that I nail down the issue, perfectly it is whether it was sent, received or copied on your private emails or work emails so just because you didn't generate it I want to make sure that the question is very clear, is it sent, received or copied on. This is, I don't want to get into national politics like a Hillary Clinton thing where somebody is doing work, governmental work on a private server, so that's the question, sent, received or copied. And that's the question, so now its even more specific. If you haven't answered great, if not I'd like to move on. I just want to make sure that the Law Department is asking specific questions.

FINANCE DIRECTOR'S REPORT – Frank J. Brichacek, Jr.

The Finance Director read the following email previously provide to the Council President and the Members of City:

From: Frank Brichacek

Sent: Thursday, September 24, 2015 4:13 PM

To: Chris Biro; Chris Hallum; Chris Biro Personal; David Fiebig; Jennifer Greer; John Plecnik; John Plecnik; Nancy Fellows; Ray Somich

Cc: Robert Weger; Law Director Personal; Gloria Majeski; Christopher Collins; Fire Chief Harmon Gmail; Willoughby Hills Fire Chief Harmon; Mark Grubiss; Willoughby Hills Recreation Dept.; Willoughby Hills Court; Willoughby Hills Council; Fred Wyss; Willoughby Hills Finance Dept.; Debbie Doles; Law Director Personal

Subject: Audit Report for the Years Ending December 31, 2013 and 2014

Dear Council President Somich and Members of City Council,

The City received notification from Ohio Auditor of State Dave Yost late last night that the results of the City's Compliance and Financial Audit for the Years Ending December 31, 2013 and 2014 have been released by his office. I am extremely happy to report to you that for the first time in anyone's memory, the City received a **completely clean audit report**. The Auditor reported the following results for the 2013 and 2014 years:

- The Auditor expressed an unqualified opinion on the City's financial statements (Pages 1 and 2 of the report)
- The Auditor did not find any reportable weaknesses/deficiencies, either material or immaterial, in the City's system of internal controls over financial reporting (Page 107 of the report)
 - Because the audit team did not note any immaterial weaknesses in the City's internal control or procedures, the Auditor did not find it necessary to issue a management letter with recommendations for improvements.
- The Auditor reported finding no areas of non-compliance (Page 107 of the report) either with:
 - Local, State or Federal Laws; or
 - Other regulations, contract or grant provisions.
- There were no findings for recovery issued to as a result of misspent moneys.

The Auditor's Office is currently mailing the paper copies of his report however if you would like to review the report, it is available on the State Auditor's website. Follow this link:

https://ohioauditor.gov/auditsearch/Reports/2015/City_of_Willoughby_Hills_14_13-Lake.pdf

I reviewed the City's past audit reports, going back to 1998 and cannot find a comparable report to this one. The City has come a long way from the 2006 and 2007 years when the City's records were in such a condition that they could not be audited. In her report for those years, State Auditor Mary Taylor reported that she found the City's records and internal controls to be in such shambles that her office was unable to express an opinion on the City's financial statements. In addition to numerous non-compliance citations and recommendations for procedural changes, State Auditor Taylor reported the following:

“The City could not provide a complete and accurate cash receipts ledger for both FY2007 and FY2006. The City's receipt ledger contained many unsupported entries. Consequently, we were unable to verify the occurrence and completeness of receipts and we were unable to verify the classification of individual receipt line items on the financial statements.

The City could not provide a complete and accurate cash expenditure ledger for both FY2007 and FY2006. The City's expenditure ledger contained many unsupported entries. Consequently, we were unable to verify the occurrence and completeness of expenditures and we were unable to verify the classification of individual expenditure line items on the financial statements.

The City did not reconcile all cash accounts as of December 31, 2007 and 2006.

As a result of paragraphs two through four, we could not determine the existence, occurrence, completeness, rights and obligations of individual funds' transactions or balances."

With Mayor Weger's hiring and confirmation by City Council of former Finance Director Joseph Mirtel in January of 2008, the City began to address Auditor Taylor's findings. As a result, the City's financial reporting and internal controls improved to the point that the Auditor was able to express an unqualified opinion for the years 2008 and 2009. Since then, the City has implemented all of the Auditor's recommendations for improved performance, made other changes on its own and has been able to consistently improve its procedures and reporting to the point that we are today.

The entire staff, led by Mayor Weger, is responsible for the results that I am reporting to you today. I would especially like to thank the Finance Department Staff, Assistant Finance Director Debbie Doles, Finance Assistant Sharen Michney-Halkiewicz, former Finance Assistant and current Mayor's Court Clerk Janeen Mullin , for their hard work and dedication to the City that helped us to get to the enviable position we in are in today. I would also like to thank the City's Directors: Police Chief Christopher Collins, Fire Chief Richard Harmon, Street Superintendant Mark Grubiss, former Street Superintendant Nate Catania, Building Commissioner Fred Wyss, Law Director Tom Lobe, Recreation Coordinator Denise Edwards, City Engineer Pete DiFranco, Executive Assistant to the Mayor Gloria Majeski and the City's late Economic Development Director Steve Rosczyk whose unwavering support, commitment to change and to improving the City brought us to the point that we are today.

I would also like to thank Mayor Robert Weger for his unwavering support that he has provided to me as Finance Director and to the staff of the City during this process. Mayor Weger has consistently demanded excellence in his staff and provided the staff with the support and tools necessary for the staff to achieve excellence.

Finally, I would like to thank the members of City Council, both past and present, for supporting and working with the staff of the City for the betterment of the City of Willoughby Hills and its residents.

If you have any questions regarding this matter, please do not hesitate to contact me.

Sincerely,

Frank J. Brichacek

Director of Finance

City of Willoughby Hills, Ohio

(440) 918-8731

FrankBrichacek@WilloughbyHills-oh.gov

Councilwoman Fellows: Thank you Frank, so much for all of your work and all the individuals that you provided Kudos too in the letter. I'm saddened that you didn't include Vick in that as our Council Clerk.

Councilman Biro: I also agree, it's just amazing where we are now and where we were back in the dark days of 2007 and '08 when we couldn't virtually get any information or any accurate information and so it truly is unbelievable that we got to this point where there are no findings and we are totally unqualified so I...we are very lucky to have a group of people like this who work so hard to get us to this point so I want to thank them, the Mayor and his staff personally for that hard work.

Councilman Fiebig: For some of the new members, they should probably be aware that in 2006 and 2007 when Bob Weger was Council President, Council moved to go to a line-by-line budgeting during those years which made

auditing of those records very, very difficult. And it's in 2008 when those were changed back to standard auditing procedures that things did clear up.

President Somich: Wow. I will pass this (gavel) because I was Chairman of the Finance Committee at that time and for anybody that can remember the nightmare that we lived through in those days when purchase orders were being issued without qualifications, bills were being paid without qualification, reports were miss added, pages did not, were not sequentially given to us, any conceivable mess that could come out of the Finance Department unfortunately was occurring in the City. And it is because of the leadership that was in City Hall at that time, it was not Council's fault; Council tried to get a handle on that and one of the ways that we did was to get very, very intricately detailed in terms of watching every possible expense as quickly as we could identify it so that was the movement for that purpose Mr. Fiebig, if you aren't aware of that....

Councilman Fiebig: It made it difficult to audit that was the problem.

President Somich: No that wasn't the problem. The problem was that when they came to audit there was no information it had been mysteriously disappeared, numbers didn't track, data was missing, it had nothing to do with line items. It had everything to do with the fact that there was not control and there was not meaningful data. So that needed to be done, it was part of the solution, certainly not part of the problem. And as soon as we could remove that we did because it was something that was extra work on everybody's part and we removed that as quickly as could but it was part of the solution at the time. And anybody who would like to check the minutes and check with any of the Members that were there at that time who are perhaps not politically motivated at this time will remember it accurately.

Councilman Fiebig: Thank you for your opinion.

President Somich: That's why I passed the gavel.

Finance Director: President Somich, I would like to say as a former auditor, I spent two years in the State Auditor's Office, that line-by-line budgeting would not in any way impact the ability to perform an audit. As the Auditor pointed out it's the fact that the records weren't accurate or complete or missing, is what made it impossible for them to perform an audit. Their opinion was that records weren't reliable.

CITY ENGINEER'S REPORT – Pietro A. DiFranco, P.E.

No formal report was given.

COMMITTEE REPORTS

The following Reports have been listed alphabetically by Committee.

Councilman Biro: Mr. President, just one note, I was unable to make the meeting on the 10th of this month and I want to thank you for reading those minutes from the Personnel Relations Committee (PRC) because those minutes were pertinent to the legislation that was on the docket, so I just wanted to personally thank you, unfortunately, I couldn't make it but I appreciated you taking that over for me.

FINANCE – Raymond C. Somich, Chair

Committee Members:

Christopher L. Biro, Nancy E. Fellows

COMMITTEE MEETING OF SEPTEMBER 21, 2015

Members Present: President Raymond C. Somich, Chair, Vice President Nancy E. Fellows, Councilman Christopher L. Biro

Also Present: Councilman Christopher Hallum, Councilwoman Jennifer Sommers Greer, Finance Director Frank Brichacek, Mayor Robert M. Weger

Purpose of the Meeting was to discuss **City Finances** and any other business.

Meeting convened at 6:10pm

Order of Business

RE: City Finances

The Finance Director distributed reports for the City's Finances through August 31st and made a few notes in a few areas. Our Income Tax collection is about 1.8% ahead of last year's which is a nominal amount but we earlier had been behind so that was a good report. Also even healthier the Court income is up about 15% ahead of last year which is even better news in terms of the revenue. The savings...he also talked about a savings of about \$47,000 that had been encumbered as of the end of the year, as of 12/31/14 and actually some of that, a good portion of that was not spent so we were able to maintain that in the General Funds without making those deductions. So although for the first 8 months of the year we actually operated at \$16,000 of a deficit for that period of time because we didn't spend that \$47,000 that was encumbered we actually have through the end of August, \$31,000 more in our General Funds than we did at the end of the year.

And the continued good news is that the next four months after that August 31st Report are expected to continue consistently with the spending and the revenues so if that happens then we are looking good in terms of our bottom line as of 12/31 anticipating that.

To that point, we've asked our Finance Director to update the budgets to give us an updated Budget Report which he is working on to have for the next Finance Meeting so we can project where we will be as of 12/31 with our budgets and with our projected income and expenses. And that next Finance Meeting for those of you who want to be a part of that previously had been scheduled for the middle of October but we moved that up to October 5th to accommodate some schedules so that meeting will be held here in Council Chambers on October 5th at 6:30pm.

We also talked about HB 5 which Councilwoman Fellows already alluded to relative to requiring us to revise our City Tax Code and there were several points that Mr. Brichacek made on that. One is a little negative, that some of the interest and penalty charges, its negative for the City, it is good for our residents, some of the interest and penalty charges that will be changed probably will generate less revenue for this City than we have had in the past which again from the residents' standpoint is probably good to hear. There will be a new Income Tax Board of Review with certain members that will be there but they cannot be any staff members or City Council Members on that. It is anticipated that there will be more items to come to that Board of Review because of some of the changes that are happening in the Tax Code. And more issues are now appealable. And also that...okay if there is a compromise not cannot be struck between Administration and the individual as a dispute it would go before that Board. Also mentioned that in the new Code all gambling income is taxable which is consistent with the State of Ohio. And as we mentioned a few minutes ago, RITA is requesting passage of that by mid-November so that they can get that across their entire coverage area and handled by the end of the year. Included also the State mandated that standard payment due dates will be moved up and this will give us a very short term windfall because some of the money that typically would come in, in January will come in, in December. And this pertains to the 2016-2017 period of time so it doesn't change the overall amount of money coming in but it will move up and improve our cash flow a little bit in December of 2016.

Councilwoman Fellows also asked about the ambulance that we recently ordered to be refurbished and it was responded that has come in and had been paid in-full. You may also may recall that we had some grant money that is getting us some improvements with cots for the ambulance system and that has not yet been received.

Public Portion

Linda Fulton asked about the 1.2 million carryover in General Funds from 2014 and asked how much has changed. And we reiterated as I did just a few minutes ago here that actually that amount has increased so that the carryover that we had as of the end of the year through the first 8 months actually is \$31,000 higher. She also asked why we are borrowing money when we do have a carryover and Mr. Brichacek explained that there a number of reasons for that including low interest rates, including maintaining a balance for cash flow, a cash balance that we would have available for us, also so that we have matching funds available to us if we could get certain grants received that require that. So there are a number of good business reasons that perhaps change that answer if you are looking to that question as a resident. She also asked if we could transfer the funds in-between the different accounts as part of that 1.2 million and Mr. Brichacek replied that there are some legal restraints between some of those funds. **That ended Public Portion which started at 6:38pm and ended at 6:42pm**

Meeting adjourned at 6:43pm

Councilman Hallum: This may be more directed to Mr. Brichacek but I just wanted to make sure that I understand, are we basically saying that assuming status-quo for the rest of this year, that we would once again balance the budget.

Finance Director: We are moving in that direction, I haven't done a projection for end-year but we are moving in that direction.

President Somich: That's the information that we are going to try to have on October 5th.

RULES & LEGISLATION – Nancy E. Fellows, Chair

Committee Members: David M. Fiebig, Raymond C. Somich

COMMITTEE MEETING OF SEPTEMBER 21, 2015

Members Present: Vice President Nancy E. Fellows, Chair, President Raymond C. Somich

Also Present: Councilman Christopher L. Biro, Councilwoman Jennifer Sommers Greer, Councilman Christopher Hallum Finance Director Frank Brichacek, and Mayor Robert Weger

Purpose of the Meeting was to discuss **Pending Legislation** and any other business.

Meeting convened at 6:46pm

Order of Business

The amount provided in the 2015 Budget for Liability Insurance is \$95,000, 80% from the General Fund (80%) - \$76,000 and (20%) from the Sewer Fund - \$19,000

HCC Public Risk Ohio (U.S. Specialty Insurance Company), obtained through Custis Insurance Service, Inc., 4254 Lake Road, Sheffield Lake, Ohio 44054, submitted a quote in the amount of \$103,936.00 (difference of \$8,936.00) and USI Midwest submitted a proposal the "Property and Casualty Insurance Program for the City of Willoughby Hills" in the amount of \$75,068 (\$72,151 Pool Insurance and \$2,197 Crime Insurance). To date the difference between the two companies is \$28,868. *If the insurance company selected is over the amount of funds budgeted \$9,000, the excess may be taken from funds aligned with the Economic Developer position.*

Both of the bids received are for a 3 year contract.

Ordinance 2015-38 – An Ordinance authorizing and directing the Mayor to enter into a contract for General Liability Insurance. HCC Public Risk Ohio obtained through Custis Insurance Service for \$103,936.00.

Rules and Legislative Committee recommended that this Ordinance stay on 2nd Reading.

Ordinance 2015-39 - An Ordinance authorizing and directing the Mayor to enter into a contract for General Liability Insurance. USI Midwest for \$75,068, pool strategy.

Rules and Legislative Committee recommended that this Ordinance stay on 2nd Reading.

Rob Beglin from USI joined us and answered many questions. NOTE: His email to Council on Tuesday, September 22, 2015 has been provided below:

From: Rob Beglin [<mailto:Rob.Beglin@usi.biz>]

Sent: Tuesday, September 22, 2015 1:11 PM

To: 'Council@willoughbyhills-oh.gov'; 'chrishallum@willoughbyhills-oh.gov'; 'jennifergreer@willoughbyhills-oh.gov'; 'davidfiebig@willoughbyhills-oh.gov'; 'chrisbiro@willoughbyhills-oh.gov'; 'nancyfellows@willoughbyhills-oh.gov'; 'raysomich@willoughbyhills-oh.gov'

Cc: 'Gloria Majeski'; 'Frank Brichacek - City of Willoughby Hills (frankbrichacek@willoughbyhills-oh.gov)'

Subject: Property and Casualty Insurance

Distinguished Council Members;

I want to thank you for the opportunity to discuss our quote at the Rules Committee meeting last evening. I also wanted to follow up on our conversation because I truly believe the PEP pool to be one of the best options for property and casualty insurance coverage for the City of Willoughby Hills.

In reviewing my notes from the meeting there appeared to be two primary concerns that were raised regarding the pool, the first being the stability of the pool and the second being the opt-out provision. These are two of the most common concerns we address with all

potential all new members. I would like to reiterate some of the points I made during our conversation last evening. The pool is one of the most financially stable pools in the state. The PEP board employs YORK Risk Services to oversee the everyday operation of the PEP Pool. YORK's business is running municipal pools. They currently manage the finances, claims, underwriting and risk management services for 14 pools nationwide. All of their services for PEP are provided through PERSO, a wholly owned subsidiary of YORK, that deals exclusively with the PEP pool members. Based in Blacklick Ohio, PERSO handles all claims and risk management services for PEP members.

The PEP pool believes in a strategy of slow and steady growth. In the past 28 years the pool has grown from 12 initial members to just over 500 in 2015. (I have attached PEP's 2014 annual report and financials. Included in the reports are a list of all active members as of 2014.) PEP underwrites to a very pessimistic loss forecast. For 5 years running we have not come close to the losses forecasted by the actuarial team. This makes the pool cash rich. Being that we are technically a non-profit those excess premiums are returned to members in the form of reduced premiums, multi-year rate guarantees and in some cases excess premium disbursements. Additionally the pool contracts with a third party vendor to indecently evaluate the PEP financials. For over ten years straight the pool has received a AAA Unsurpassed rating by Demotech. This is comparable to an A+ rating by A.M. Best. In a worst case scenario in which losses exceed forecasts, PEP buys reinsurance to cover these losses. This reinsurance cost is factored into the annual premium.

The concern that was raised was the stability of the pool and the long term well-being of the City of Willoughby Hills. This is the exact reason the PEP pool was created. PEP has been owned by the same individuals since its inception 28 years ago, that being municipal of the State of Ohio. The retention rate for the pool is over 98%. For 28 years in a row the pool has grown in both membership and financial stability. In contrast your current carrier has changed ownership three times in the last five years. They do not focus solely on municipal entities, rather they write all aspects of insurance. This is why they offered much lower caps on their 3 year rate guarantee. Their premiums are tied not only to your performance but the performance of the insurance market in general.

PEP has offered a three year rate guarantee based on a 60% loss ratio. They have further committed that if you exceed this loss ratio they will cap increases at 7% for those lines that exceed the loss ratio. All other lines will receive a flat renewal. I know you did not receive this type of guarantee from our competitor.

The second concern was the opt-out provision. As I stated above this is one of the largest hurdles we face when discussing PEP with new members. As I stated in the meeting their our three options for leaving the pool;

1. You have no open liability claims. You ask the next carrier to provide prior acts coverage back to the inception date of the PEP program, the same as you would do for a claims-made based insurance coverage. You take the balance of the CRF (Cumulative Reserve Fund) and apply the balance to the next carriers premium.
2. You have small open liability claims. You ask the next carrier to provide prior acts coverage back to the inception date of the PEP program, the same as you would do for a claims-made based insurance coverage. You take the balance of the CRF (Cumulative Reserve Fund) and apply the balance to the open claims.
3. You have open liability claims. You take the balance of the CRF (Cumulative Reserve Fund) and apply the purchase of tail coverage through the PEP pool. The tail coverage will cover any existing claims and any other claims that occurred during the PEP policy period. The premium for the tail coverage is underwritten by the pool at the time a member gives notice. It is based on the length of time the member was in the pool and their claims history. Historically we have seen the cost of the tail coverage to be 1 to 1 ½ times the members annual liability contribution. The annual contribution for the City of Willoughby Hills is \$34,647 based on the quote we presented.

I have attached a coverage comparison between our quote and the incumbent carrier. In almost every case the Public Entity coverage exceeds the current coverage. Most importantly PEP provides third party Cyber-Liability limits of \$11,000,000 with a \$0 deductible. We can also provide 1st party liability coverage for a reasonable premium. It is estimated that the average Cyber-liability loss costs \$200 for each record that was compromised. This coverage is included within the premium quoted through PEP.

Finally I want to call to your attention the financial saving being offered through our quote. The PEP quote presented is \$29,632 below our competitors quote. That amounts to a three year savings of \$88,896. Even if you have a less than desirable claims history the increase would be capped at 7% per line of coverage with the PEP pool. If you stay until you are fully vested in the pool at year six the saving would be approximately \$175,000 plus the vested balance in the CRF fund. We estimate that the cost to purchase tail coverage would be between \$35,000 and \$52,000 based on an average loss experience. Even if you left after year three, which we hope you don't, your saving would still far exceed the cost of the tail coverage.

The best way to judge the integrity, coverage and services of the pool is to ask their members. Included in our proposal is a list of municipalities that are similar in size to Willoughby Hills. Additionally the following is a list of municipalities in your area that are currently insured by the pool:

Lake County Agricultural Society
Lake County General Health District
Village of Perry
City of Berea

Village of Valley View
City of North Canton
Village of North Kingsville
Village of Rock Creek
Ashtabula Township Park Commission

Please don't hesitate to contact any of these members, or those listed in the annual report. I appreciate your time and your patience as you work through this process. If there are any additional questions I can answer regarding the pool, its coverages or services please don't hesitate to contact me.

Best Regards,
Rob

Rob Beglin
Vice-President
USI Midwest, LLC
800-233-7488 Toll Free
866-972-7405 Fax
51320 VOIP
131 N. Ludlow - Suite 700
Dayton, OH 45402
937-913-1320 Direct
513-290-5296 Cell

Councilwoman Greer and Councilman Hallum both voiced their reasons for staying with the traditional insurance coverage and **“could not support”** –**Hallum speaking for himself and Councilwoman Greer**, the “pool” insurance strategy at this time.

Ordinance 2015-40 – This Ordinance is in reference to H.B. 5 legislation aimed at creating uniformity in the collection and administration of municipal income taxes in Ohio. While legislation requires municipalities to adopt this new statute, the existing tax Ordinance will stay in place for 6 years for reference if needed. Among the ways the bill creates uniformity between cities is by mandating the format and deadlines for tax filing. This is required before the January 1, 2016 deadline to comply with the provisions and limitations specified in Chapter 718 of the ORC; need for passage at a November 2015 Council meeting at the latest. **Rules and Legislation Committee recommended this be on 1st Reading.**

NOTE: This Ordinance was not read at the Council meeting since it was determined that we have not heard back from RITA concerning any changes (additions, deletions, etc.). There is ample time to still have 3 Readings with passage in November 2015. – Council President Somich.

Public Portion

Public portion opened at 7: 24 p.m. Frank Cihula addressed the Mayor, inquired about City properties and if both insurance companies were aware of them?

Public portion closed at 7:25 p.m.

Meeting adjourned at 7:25pm

Councilman Hallum: One minor thing is that you used the word “select” and I don't think that Jennifer Greer and I selected anything we just said that we didn't support, **we didn't feel that we could support it.** So I don't know that it makes a difference...I just...Council selects, we just say whether we support or not.

President Somich: And I would like to provide an update, it's not a correction but there were some items that were on Ordinance 2015-40 that we were waiting back from RITA to confirm and we expected that to happen very quickly so we anticipated that would happen this week and that it would not be a big deal to be concerned with; we were going to put that on First Reading which was the vote that we had taken there amongst ourselves. Subsequent to that meeting we have been advised that....we haven't been advised at all, we have not received any feedback from RITA on those particular issues so in talking today with our Finance Director we are still optimistic that they will come but because there are a number of those we are going to delay the First Reading this evening until we are confirmed that what we are reading is in fact consistent with what RITA will allow. That still gives us plenty of time if we begin the First Reading at the next meeting we'll have time to finish that in time to get that to RITA on their schedule.

OTHER COUNCIL REPRESENTATIVE REPORTS

Councilman Fiebig: I had the opportunity to meet with the Chagrin River Watershed Partners as one of their Trustees on September 15th; it was a regular quarterly meeting of the Chagrin River Watershed Partners which we are a partner of that helps protect our waterways and provides resources to us as homeowners in the community. It was the usual business of the meeting in approving the budget and the dues and so forth but there was a specific highlight that I think that I would share with everyone, that the Manakiki Golf Course has received EPA Great Lakes Restoration Initiative so they are going to partner with them on a project of restoring, let's see, I believe its 640 feet in the Deer Creek Gully Brook Watershed so they're bundling that together also with the Green Ridge Golf Course. So they would be reducing soil erosion and improving the quality of nutrients and streambed sediment that enters the Chagrin Watershed and obviously in Lake Erie which is a major source of water for us. There is more information at CRWP.org. They did stress the Member Out Reach that they do and I know a number of residents that have taken advantage of that. If you have a creek or a stream that runs through your property and there are some questions that you might have as to how to manage it, how to maintain it as an example not allowing grass clippings to go into it will help keep it active and vital and healthy. So CRWP.org you can also contact me and if there are any questions that you might have regarding streamline and wetlands and that sort of thing on your own property within our Watershed District. That was September 15th it was at the Gates Mills. They do rotate their meetings, this was at Gates Mills and it is a good organization that does help keep Lake Erie water fresh and that's obvious important to us to have good, clean water.

PUBLIC PORTION

Section 107.08 – Public Meetings of Municipal Bodies of the Codified Ordinances of the City of Willoughby Hills:

(a) All meetings of any municipal body are declared to be public meetings open to the public at all times. All meetings shall provide a reasonable opportunity to hear public opinion.

Public Portion was opened at 7:50pm.

1. Virginia Bing
36951 Beech Hills Drive

Re: In preparation for the election, I wanted to see because I haven't had a chance really to come many times to the meetings and I don't watch them on TV. I wanted to read the minutes and understand whose voted for what, what kinds of things, how people line themselves and etc. and I was quite chagrined to see that there are very few recent minutes and I'm sure that Ms. Savage is very busy but in preparation for an election minutes is the way that we can find out who is voting for what on what topics that might be important to us, so I would really encourage, if you could free up Ms. Savage's time to do the rest of July, August and September meeting notes, the minutes, so that they could be of public record and be available for us to look at in preparation for an election.

- 2 Cheryl Ota
2960 Marcum Boulevard

Re: I attended a function last night at the Community Center and I just wanted to make note that I hope that somebody is going to repair the sidewalks there. It is the sidewalks between the handicapped parking area and the front door. And they are very bad and I hate to see someone fall with a walker or a cane or a wheel chair, so I wanted to make that known.

Public Portion was closed at 7:52pm.

UNFINISHED BUSINESS

Law Director: Ms. Bing, I am not going to make...I am not going to come too much in the defense of the Clerk; the law does require that in this day and age that you almost have to verbatim minutes, okay and as such our minutes are almost verbatim which the law requires and that takes a long time. And I am not trying to make an excuse for Vicki but also just so you know there is a tape of it so you can listen to the entire meeting. So you know that our policy is that the tape is truly the official record and the minutes are simply a guide to the tape. So even if you don't have the minutes maybe it is even easier to drive around in your car

and listen to us or listen to this Council you have that opportunity and Vicki does have that available to you every time, any time and all the time, okay.

Virginia Bing: Absolutely, I will find those, but I was surprised to see that some times, many times minutes were published within two weeks and I have sat on Boards myself, and that is a very important part, it may not be law, but it would be a very nice thing to catch up. We're behind a lot. And I know that she is busy, it's part time; I know that there are all sorts of reasons but I think that it is something that is important to the residents.... **President Somich:** Thank you. **Law Director Lobe:** Great, thank you.

LEGISLATION

President Somich: Moving on to legislation, we have **Ordinance No. 2015-38** and **Ordinance No. 2015-39** and we will read them; it will be the second reading for both. But I urge all of my colleagues, this is a very interesting situation that we have, there is a large difference in the amount for these two ordinances relative to our insurance costs there's also very clear differences in the coverage and in the pool verse the traditional style so at the next meeting we will need to vote on this so that we are covered by the City so any individual research that you can do, anybody that you want to talk to in the City or other insurance experts I do think...I do want to thank Mrs. Fellows for having a great person here last time to share a lot of information with us and I encourage you all to read his email that he sent the next day because there is a lot of great information and we will need to make this tough decision next time so please be ready for that.

ORDINANCE NO. 2015-38 – SECOND READING

1st Reading: September 10, 2015

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT(S) FOR GENERAL LIABILITY INSURANCE COVERAGE FOR THE CITY OF WILLOUGHBY HILLS AND DECLARING AN EMERGENCY.

President Somich declared that Ordinance No. 2015-38 would remain on Second Reading.

ORDINANCE NO. 2015-39 – SECOND READING

1st Reading: September 10, 2015

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A CONTRACT(S) FOR GENERAL LIABILITY INSURANCE COVERAGE FOR THE CITY OF WILLOUGHBY HILLS AND DECLARING AN EMERGENCY.

President Somich declared that Ordinance No. 2015-39 would remain on Second Reading.

ORDINANCE NO. 2015-40

AN ORDINANCE AMENDING PART ONE – ADMINISTRATIVE CODE, TITLE NINE – TAXATION, BY THE ESTABLISHMENT OF A NEW CHAPTER 186 – INCOME TAX EFFECTIVE FOR TAX YEARS BEGINNING JANUARY 1, 2016 OF THE CODIFIED ORDINANCES OF THE CITY OF WILLOUGHBY HILLS.

President Somich: As I mentioned earlier we did have **Ordinance No. 2015-40** that was placed on the Agenda, I explained already why, so if no one has any problem with that we will not read that for First Reading so that we'll have an accurate ordinance when we do read it for the First Reading.

NEW BUSINESS

There was no new business brought forth to be addressed by the Members.

FOR THE GOOD OF THE ORDER

Councilman Biro:

Shout out to the Mayor and Administration for a clean audit.

President Somich:

Cleveland City Music: Willoughby Hills Friday, October 16th at 7:30pm – St. Noel Church

Mayor Weger:

City Annual Halloween Party – October 16th – 6-8pm

ADJOURNMENT

MOTION WAS MADE BY COUNCILMAN BIRO seconded by Councilman Hallum to adjourn the Regular Council Meeting of September 24, 2015.

Roll Call: 7 YES - unanimous

MOTION PASSES

President Somich declared the Regular Council Meeting of September 24, 2015 to be adjourned at 7:50 pm.

APPROVED: October 4, 2015
Date

Raymond C. Somich
Raymond C. Somich
President of Council

ATTEST: Victoria Ann Savage
Victoria Ann Savage, CMC
Clerk of Council