

City of Willoughby Hills

Council
CHRISTOPHER L. BIRO
DAVID M. FIEBIG
FRANK A. GERMANO
CHRISTOPHER HALLUM
JOHN PLECNIK

Regular Council Meeting Minutes of April 10, 2014

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 7:05 p.m. by President Raymond C. Somich

Pledge of Allegiance

Roll Call of Council

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

Absent: Councilman Frank A. Germano

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

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilwoman Fellows to excuse Councilman Frank A. Germano from attending the Regular Council Meeting of April 10, 2014.

Roll Call: 6 AYES – unanimous **MOTION PASSES**

President Somich declared that Councilman Germano has been excused from attending the Regular Council Meeting of April 10, 2014.

Disposition of the Journal

Regular Council Meeting of February 27, 2014

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Hallum to approve the Regular Council Meeting Minutes of February 27, 2014 as submitted.

Roll Call: 6 AYES – unanimous **MOTION PASSES**

President Somich stated that the Regular Council Meeting Minutes of February 27, 2014 have been approved as submitted.

CORRESPONDENCE

City Engineer's Report dated April 3, 2014 (Emailed: April 3, 2014)

Mayor's Court Monthly Statement to City Council of Fines and Other Monies Received or Collected for the Month Ended March, 2014 (Emailed: April 8, 2014)

Email from Clerk of Council to the Mayor serving as Safety/Service Director, dated April 4, 2014 re: Ohio Department of Liquor Control-Baker Candies, Inc. Unit D, 2804 SOM Center Road, Willoughby Hills, Ohio 44094 (Emailed: April 14)

NOTIFICATIONS

Cancellation of the Board of Building and Zoning Appeals Meeting of April 8, 2014 (Emailed: March 28, 2014)

Cancellation of the Planning & Zoning Commission and Architectural Board of Review Meeting of April 3, 2014 (Emailed: March 28, 2014)

Planning and Zoning Commission and Architectural Board of Review Meeting of April 3, 2014 will be held for they do have a pending project to be reviewed (Emailed: March 28, 2014)

Rules and Legislation Committee Meeting of April 7, 2014 (Emailed: March 31, 2014)

Service Committee Meeting scheduled in conjunction with the Lamplight Lane Culvert Replacement Meeting of April 14, 2014 (Emailed: April 1, 2014)

Second Annual Empowering Local Leadership Conference scheduled for May 29th and May 30th, 2014

MINUTES

Rules and Legislation Committee Meeting Minutes of March 27, 2014 (Emailed: March 28, 2014)

RULES AND LEGISLATION COMMITTEE MEETING MINUTES OF APRIL 7, 2014 (Emailed: April 10, 2014)

President Somich stated before continuing with this evening's meeting the Chair would like to make a statement because he has received a number of comments from the general public, some attending minutes, some watching on television relative to the control that the Chair has exerted in this position over the last few weeks of meetings and so with the assistance of our Council Clerk, he had asked her to please look up the areas of the Charter and also in Robert's Rules that would pertain to the responsibilities of the Chair in these meetings. Unfortunately, the Charter really doesn't have much other than to say that the President shall preside over the meetings so it relates to Robert's Rules of Order for any areas of the Charter that are not distinctly covered. So there are a couple of very short areas that he would like to read that are found in Robert's Rules: The President is responsible for enforcing the rules and the decorum of debate. It is the President's duty to protect the assembly from frivolous or dilatory motions and from any attempt by a few members to push an action through without following the democratic process. If members are using dilatory practices to obstruct the meeting, the chair needs to remain calm and courteous, but firm. The Chair can do one of two things: not recognize the members or rule the motions out of order. However, the Chair must not do either of these two things to speed up a meeting. These are strictly measures to be taken if a member is clearly being dilatory. The President is there to serve the wishes of the entire assembly and should not allow any personal feelings to affect his or her judgment. A Chairman requires exceptional ability and most of that ability must be in the nature of controlling but to control others a Chairman must show that he can control himself but even observance of the rules can not suffice, the Chairman should exhibit tact and common sense. So it is with after considering all that and reading other paragraphs as well, the chair would like to make a follow up statement to what he made at the very first meeting back in January and he also has repeated it subsequently but he would like to just elaborate just a bit further that in order for us to conduct civil meetings to be very productive in terms of what we accomplish at these meetings he is again, the Chair is again asking for a level of respect, a tone of respect not only from the dais in terms of what we say about each other, of what we say about the members of the audience, what we say about members in our community but he also asks everyone that is attending these meetings, whether you are here tonight, or whether you are watching on television and come back another time, that we have this tone, this attitude of respect. There are a few other words that he looked up to explain what we cannot tolerate and this would be words that have these tones: incendiary, inflammatory, aggressively provocative, confrontational, insulting, incensing, agitating, quarrelsome, belligerent, militant, combative, truculent, hostile, argumentative, and defiant. If those words, if people express those feelings, those emotions, then it is just not acceptable in this environment to do that. You can state your opinions, you can state facts, you can express everything that is in your heart and in your mind, but we ask that you do it in other than those tones, if that is done on the dais or that's done from the audience during public portion then you will receive a warning, we will ask you not to continue in that tone, if you do continue in that tone, despite the warning, then you will forfeit your privilege to be heard in this environment. Thank you.

President Somich stated that at this time, we would like to have the Mayor's Report.

MAYOR'S REPORT – Robert M. Weger

Researching the possibility of a traffic study for the intersection of Bishop and White Roads. We are temporarily alleviating the traffic congestion which had become a safety concern at a.m. and p.m. rush hour by directing traffic until the study is complete and permanent measures can be instituted

Update on WE-Schools STREAM Program Tour

Receipt of Clover Development Check

Plans for Dodd Road Subdivision

Color Run Meeting Recap

Bocci Court Meeting Recap

Acknowledgements:

Congratulations to Willoughby Hills United Methodist Church – 60 years

Welcome to WINT (Integrity) Radio on their sign on to formerly WELW 1330 AM on March 31, 2014, and servicing our community

Thanks to Lake County Tribune Writer Gail Stuehr, who we will miss in the front row of our Council meetings as she has been assigned other duties and will not be covering our meetings any longer

Events:

Easter Party – Saturday, April 12th from 1 to 3pm

Councilwoman Fellows asked the Mayor if there were going to be specific postcards, or letters or notification to the residents that are directly on the route of the Color Run so that they know and are aware of the event. The **Mayor** replied yes, letters have gone out already and the suggestion of a postcard would be easier and that would be going out closer to the race, this way people won't have to open it; sometimes when they see a letter from the City they leave it on their counter and don't open it so we are going to do postcards.

LAW DIRECTOR'S REPORT – Thomas G. Lobe

Two matters on the Law Director's Report one is litigation and the other is Internet Sweepstakes. Let's start with litigation. There is a recently filed case called Tanner Gates vs. Patrol Officer Gerardi and Patrol Officer Leonbruno; it is filed in Cuyahoga Common Pleas Court it is Case No. 14CV824344 assigned to the docket of Judge Maureen Clancy of Common Pleas Court. Insurance Counsel has been placed on notice, James Climer who is an experienced Attorney in this particular area from the Law Firm of Mazanec, Raskin & Ryder and they have represented the City in the past on various matters.

Next matter is Internet Sweepstakes. What has really happen here, as you know, about four or five years ago, people came in with a model that they thought was outside of the gambling laws and they infiltrated many, many cities all throughout Ohio and there were eight-eight county prosecutors that never did anything and then after about two years, after the casinos opened up, Cuyahoga County Prosecutor Tim McGinty then started to prosecute these matters on a criminal bases and aggressively doing it, specifically against one man, a manufacturer of a VS2 machines and then the legislature took over and they started to regulate them and regulate them and regulate them and basically everything went out of business. And then there is the Attorney General who never took a formal position on this. He worked with the legislature and he said that he assisted local but he was leaving it up to local governments to figure out what to do with these things and most governments like us allowed, if they weren't criminal, and they weren't under zoning, they allowed them and they regulated them and we made some good money off of this things. Well, now that they have been out of business, they came back with a new business plan and we met with their lawyers and had a lawyer who gave him (Lobe) a legal opinion, of course, a somewhat basis opinion, he is sure and they even met at the location, the Chief and he met at the location. It is kind of an ingenious theory that they say it is not a game of chance or a game of skill because on the board you can play like six games and you can press a game and you press another button and it tells you if you are going to win or lose. So there is no skill and there is no chance because the outcome is predicted and they are thinking that this takes it outside the realm of the gambling because there is no skill and no chance. They have about sixty of these already in the State of Ohio, there is one in Mentor-on-the-Lake and they are planning on doing one in Willowick and again, our Cyber Playground opened up the same way. The owners have been very open with us and their lawyers and everything and that is how they think that they get around this thing. After the last meeting, he believes that he mentioned that we were going to follow-up because he thought that they had to register with the Ohio Attorney General. Well they don't because their business plan is outside the scope of it, in fact he (Lobe) talked with a Brian Mooney who heads up from Northeast Ohio, the Charitable Gambling Operations for the Attorney General Office and he (Lobe) knows Brian for many years, and last time he told Brian that he wished the State Attorney General would come down with an opinion because he (Lobe) truly believes that it is a State-wide concern as opposed to we in Willoughby Hills and somebody in Coshocton County or Wooster trying to figure out if it is or is not. There are two criminal cases that have already sprung up, one in Coshocton and one is Wooster, he was told, he has not found them or anything, but even if there is a conviction he does not know what legal significance or importance that would be on our particular case because every case is different. So in the interim, the Chief and he had met and when he did talk with Brian Mooney he said that the State Attorney General will take no action unless we ask for a formal referral to them. And even then they will only assist; they will not take over the prosecution because he thinks that they want us to be responsible if it is not successful, which he does take

umbrage again for the same reasons. The Chief and he met and he also talked with Jimmy Lyons who is the Mentor-on-the-Lake Law Director and he too is in a little quandary because like he (Lyons) said what do we do. Lobe had the Chief talk to the Chief in Mentor-on-the-Lake and then today at about 4:30pm he got an email from Brian Mooney from AG's office and he says that without even a formal request from us the AG is sending in the BCI to review these matters. So let's see what they do; he shot an email back to Brian and said that he is going to keep this status-quo for now, and he will wait for their findings. Lobe called the Chief and told him and it is kind-of an unusual twist, he thought they were taking a sideline seat but now they want to jump in on it. So we will see what the BCI and the AG want to do but that is where it is for right now.

President Somich asked what BCI stood for. **Lobe** replied that the Bureau of Criminal Investigations out of Richfield, it is an arm of, it is an investigating arm for the Attorney General and even the County Prosecutors use the BCI for DNA, or even for figure prints or some other analysis. There are about three or four offices of the BCI throughout the State, the closest one that we have is in Richfield. **Councilman Plecnik** stated that he had heard that there were some new creative arguments to try to reopen these gambling facilities but this is the first that he has heard these specific legal argument because he is understanding that when you go to the screen it tells you in advance whether the game is going to be a winner or a loser for you. **Lobe** replied if you have ever been to Vegas or anything, there will be like a video game and it will be like Blackjack or Deuces Wild on the screen and there are six games and you touch the screen and the game pops up, whatever the game is, okay, and then you could put a bet in and then it says next play and when you hit next play it says zero points or it will say a hundred points, it tells you if you are going to win or lose. **Councilman Plecnik** replied by saying so why would he bet if he knows whether he is going to lose. **Lobe** he thinks it is really, and he is guessing and the Chief and himself talked about it, it really comes down to the compulsive nature of some and even on slots, to just keep pressing, it is the compulsive nature, it is a form of entertainment or whatever it is but that is it and like the next one, some say zero, some say you win ten points, some say that you win a hundred points and some say zero, zero. **Lobe** stated that he played around with it a little bit and you play it and sure enough it comes up exactly what it tells you. **Councilman Plecnik** asked if he could go in there and just press win, win, win, win, win, win, win, he said he supposes that they probably have such little amounts of money that it wouldn't be worth the trouble, but that is very curious. **Lobe** stated that their new business motto is that it is not a game of chance and it is not a game of skill because the outcome is absolutely predicted and it told you, so they think that they are outside the purview of the gambling statutes which got them into trouble last time under games of chance so they came back with new machines and they are not VS2 machines, they are the ones that no one else went after and that is what they are doing. **Lobe** said that he thinks people just like to press a button. **Councilman Fiebig** stated that if it looks like a duck, and quacks like a duck, it probably is a duck. So it sounds a lot like gambling, it looks like gambling, and it will probably be determined that it is gambling. **Councilman Fiebig** questioned if they have paid their fee and asked if they were registered with the City; they paid a \$5,000 yearly fee, and then was it \$45.00 per terminal. The **Mayor** replied it is \$50.00 per machine. **Councilman Fiebig** repeated \$50.00 per machine and went on to say that they have about; the **Mayor** interjected that they have 50 machines now. **Councilman Fiebig** asked that when the Mayor was there, were there people there. **Lobe** replied that the Mayor did not go, it was himself and the Police Chief. **Councilman Fiebig** repeated, just you and the Police Chief, and asked whether the Law Director observed any people there. **Lobe** replied no, they went before hours, he thinks that the hours start at around 11:00am and they had let them in at 10:30am so that they would have a preview. The owner is the same owner as before, and he said that "he is building his business back up" and that he is very, very slow now because they were out. **Lobe** went on to say that when they purchased, it is a yearly fee, that \$5,000 goes from the date of application for one year; **Lobe** thinks that he bought it last year, September, so it is still in even though he was out of business and so he thinks that it goes until next September, so he is good for that....**Councilman Fiebig** said so, we did not get another \$5,000 fee after they closed...**Lobe** replied, no. **Councilman Fiebig** stated so they are still within a year period. **Lobe** replied in fact he gave us that \$5,000 when these things were being shut down and we took his money, okay, and Mr. Wyss is over there and he is going to go look at and make sure that we collect, but they were very open, let us look at it, let us try the thing and they are more ingenious as to how to get around the gambling issues. And again, last time eighty-seven (87) counties didn't go after them and now they have modified it further, it has a lot of earmarks to it. **Councilman Fiebig** questioned if the Law Director has had any conversations with County Officials, Coulson, or anybody. **Lobe** replied not yet; last time he did, last time he passed this by the County Prosecutor Chuck Coulson and again, he (Coulson) did not have the gumption to do anything at the time, second of all, most of the gambling charges are misdemeanors so they are outside of his authority so he is basically relying upon every little prosecutor in Willowick and in Mentor-on-the-Lake, etc...and we don't know what we are doing with it. But they are ingenious in their approach. **Councilman Fiebig** said okay, we could go after it in our own approach if we wanted to, we could wait, it sounds like and he thanked Law Director Lobe for the report, but it sounds like we have to go after them and shut them down, regulate them out of existence or let them go and see what happens with BCI. **Lobe** replied that the big issue is are they criminal and if they are criminal, you have to have the right quantum proof, you have to get experts, and things of that nature here to prove it.

Criminal verse Civil is sufficiently different, the last thing the he (Lobe) want to do is shut them down and not be able to convict them and that is always the fear, that has always been the fear and that is why people have put the brakes on things. **Councilman Fiebig** stated that there were definitely some issues about parking and that up at that Plaza that he had got feedback on, so he doesn't know if they were necessary, yes, they definitely helped the City coffers but they may have hurt surrounding businesses who were trying to get their pizzas sold or their Chinese restaurant or their banking done so we should be monitoring to know what kind of traffic there is especially if it almost possibly illegal. **Lobe** responded by saying that he had talked about that with the Police Chief and his opinion is that they were not must of a nuisance at all, in fact it was a little old lady who locked her keys in the car or something else, just one or two of those little things that was standard things that could happen anywhere and Lobe said that he would let the Chief speak for himself, but it was not a big issue. **Councilman Hallum** stated that he had heard both good and bad actually he had some businesses that said it was great because the people there, when they wanted to eat they were ordering from the local, real close by, restaurants, Becky's Bistro in general, **Councilman Hallum** stated that he knows that she lost business when they (Internet Café) closed down. **Councilman Hallum** stated that he also heard from others that said that the parking lot was trashy and they were cleaning it up every morning, so there has been good and bad. **Councilman Plecnik** wanted to ask just one more follow up question, he is trying to picture the screen and you can see win or lost, he is wondering if that win or lost, that takes out of gambling and typically appears in the same place or places on the screen because he thinking about how he could get around the gambling rules, it might be to tell everyone listen it will be no fun if you know what is going to happen, but if you bring a little piece of masking tape with you and you put in the corner of the screen where it gives the answer, then you will get all the fun of gambling and it will be legal so he would say just trying to conceptualize what they may be trying to do they might actually be telling people to cover or block a small part of the screen, he doesn't know, he hasn't seen the screen so maybe it says it all over it and it is not possible to do. **Lobe** replied that you have to hit the button to see what it is going to say, or you could probably not even look to see what it is going to say to get the excitement of if you are going to win or lose but you have the ability to find out. **Councilman Plecnik** respond, so you could ignore hitting the button and continue to play, okay, he (Plecnik) sees. **Lobe** stated that he thinks that you almost have to go there and see it, he (Lobe) is not good at verbalizing it properly, but yes you could do that. **Lobe** continued to say that it says next play it says you lose or zero, or five, ten or a hundred and sure enough you hit play and it is exactly what it says, zero, one, five or a hundred. Councilman **Plecnik** responded by saying that you could have conscious blindness if you choose to. **Lobe** responded by saying that he supposes.

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

Announced that there are three appropriation ordinances on the agenda this evening: Ordinance No. 2014-28, Ordinance No. 2014-29 and Ordinance No. 2014-30. He requested that each of these ordinances be placed on First Reading and referred to the Finance Committee at its next regularly scheduled meeting, Monday, April 21, 2014.

Relative to proposed Ordinance No. 2014-30, he had received an email today from a member of City Council with several questions which he will now answer. Relative to Ordinance NO. 2014-30, the email reads as follows:

“I have a couple of questions...concerning The Classic TIF Fund. Per your memo, I am a little confused/surprised at you not having knowledge of the city's responsibility/liability to this fund. Is this the first time it has come up in what, 3 years you have been our Finance Director and previous to this our Internal Auditor? Or is it that the City has been making payments/deposits on this project, but you did not realize the stipulations to the payback? Just wondering? Maybe we should discuss at the upcoming Finance meeting.”

The Finance Director went on to explain in his memo to the Mayor and Members of City Council dated April 3, 2014, this ordinance appropriates \$6,100 from the Classic TIF Project Fund to provide for the following items:

- \$1,500 for fees charged by Lake county for the collection of the TIF Pilot payments; and
- \$4,600 for the final amount due to the Ohio Department of Transportation for improvements to SOM Center road that ODOT managed on the City's behalf.

The Finance Director stated that he served the City in the position entitled Internal Auditor from late April 2008 through December 31, 2010. He was appointed the City's Finance Director on January 1, 2011. The following are the Finance Director's specific response to the Councilmember's questions:

Is this the first time that these expenses have come up in the three plus years that he has served as Finance Director? The County Auditor has charged the City for TIF Pilot collections since 2011. As the Finance

Director stated in his memo, when preparing the City's \$19.7 million budget, this \$1,500 was overlooked.

The SOM Center Project was begun in 2008. The project was handled by the City's former Engineer and Finance Director. The project was bid in 2010 and the City paid ODOT its share of the project cost as bid in two payments during 2010. The former Finance Director and former City Engineer did not provide for the possibility of the City owing ODOT any further money based upon the actual cost of the completed project by encumbering fund on a Purchase Order as they probably should have. This project is long completed. Why ODOT is now invoicing the City, almost four years later, they would have to explain. Why the former Engineer and Finance Director did not confirm that the City's liability to ODOT for the project was paid in full and the project was completed before they closed the City's PO to ODOT, only they can explain.

The Finance Director stated that he was not part of the process. During this period of time you may recall that the City's financial records were in deplorable condition. The City's records were declared unauditably by the State. The Finance Director stated that his focus was on trying to reorganize the City's financial records, develop solid business practices, financial reporting and to bring the City into compliance with the requirements of the City's codified ordinances and the Ohio Revised Code. Finance Director Brichacek stated that he believes that Mr. Mirtel and he accomplished those goals. Since 2008, the Finance Department has operated with integrity, respect and transparency.

Has the City been making payments/deposits on this project but you did not realize the stipulations to the payback? No payment is issued by the City of Willoughby Hills until he is satisfied that the payment is proper and appropriate. The final payment to ODOT for the SOM Center Road that we are discussing tonight was not issued until he determined that the amount invoiced to the City was actually the City's liability. He believes that the City's last financial and compliance audit by Auditor of State Dave Yost supports this contention.

Finance Director Brichacek concluded his report by stating that he hopes that this clarifies this issue for City Council and the Citizens of Willoughby Hills. As he mentioned previously, the City Finance Department operates with integrity and in an open and transparent manner. Our work and our records are open for public inspection at any time. He only asks that any discourse be conducted in a respectful and professional manner.

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

Reported activity on a few projects:

This past Monday we had a meeting with the Home Owners Association of Strafford Place. There were several City representatives there and we discussed their basement flooding problems. We have a follow-up meeting scheduled in two weeks and we are working to come up with solutions to help them.

The City Engineer reported that he has a tentative meeting scheduled for next week on Wednesday, April 16th with the residents that will be affected by the Eddy Road Drainage Swale to determine if they are on board and want to proceed.

The City Engineer reported that he is also responding to a letter from NOACA to provide anticipated improvement projects over the next twenty years for their report which helps them plan for funding.

The City Engineer stated, as the Mayor had mentioned, he has received final plans for the Clover Development Project and we are currently reviewing those. They are hoping to start construction this summer.

The City Engineer reported that he had met with a resident from Lamplight Lane this afternoon regarding the Culvert Project and we have an Open Meeting scheduled for this coming Monday, April 14th for any other interested residents.

The City Engineer stated that these are just some highlights and his full City Engineer Report can be found online.

Councilman Fiebig stated that in the City's Engineer's Memo he had mentioned Lamplight, the culvert that is going to be built there and raising the road it would still, though, if he read this right, it would still flood the street at a sufficient rainfall of 25 or 50. The **City Engineer** replied correct. **Councilman Fiebig** said that is the thing that he wasn't quite clear on; so to go any further we would be talking about going back to CT type of project that they came up with where you are digging retention basin and we're doing a significant amount more work, is that right? **City Engineer** replied correct and just to give you an idea typically when a new culvert goes in it is only designed for an 20 year storm anyway, anything beyond that becomes cost prohibitive. **Councilman Fiebig** said right, but wasn't that put in with the idea that it was a ten to twenty-five or was it just poorly designed, which is it? City Engineer replied that is a good question, he

doesn't have the history, just in his brief experience with it, it seems to be a poor design and it would be pretty difficult to keep the road dry just because of the flood plain in that area is at a certain elevation and that road dips down into that flood plain so much the road would have to be raised many feet to get out of it. **Councilman Fiebig** said that we are going to raise it enough to, by the City Engineer's estimation; the 25 year rain event is going to be able to past through, is that right? **City Engineer** replied no, it will actually be the ten year. **Councilman Fiebig** confirmed not the twenty-five. **Councilman Fiebig** stated that in the estimation he did mention some landscaping around his pool area, is that built into our budget. **City Engineer** replied that they still have not designed it, so nothing has been built in yet. Based on his conversation he probably will incorporate some additional landscaping or contingency just in case, but as he (City Engineer) told the resident, we are not anticipating that this project will increase any flow reaching that area. Currently the water is getting through, either through the culvert or over the road; we're simply trying to put all that water under the road.

COMMITTEE REPORTS

The following Reports have been listed alphabetically by Committee.

RULES & LEGISLATION – Nancy E. Fellows, Chair

Committee Members:

David M. Fiebig, Raymond C. Somich

COMMITTEE MEETING OF APRIL 7, 2014

Members Present: Vice President Nancy E. Fellows, Chair, Councilman David M. Fiebig, President Raymond C. Somich

Also Present: Councilman Christopher Hallum and Mayor Robert M. Weger

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

Meeting convened at 6:36pm

Order of Business

Legislation for upcoming Council Meeting on April 10, 2014:

Ordinance 2014-21 - CRA (Community Reinvestment Area Program) for Dunkin Donuts, tax abatement of 50% for 10 years. 11.11.15 of the Zoning Code will allow the Planning & Zoning Commission to do some trade-offs with such items as parking and landscaping, however, the drive-thru will need an additional variance beyond our Zoning Code. Therefore, the Planning & Zoning Commission is far from passing on this establishment and its terms and/or needs. **As recommended by the Law Director, the Rules and Legislative Committee of Council recommend that this Ordinance stay on 3rd Reading.**

Ordinance 2014-22 - Service Contract (3yr, 1/1/2014-12/31/2016). The Contract was reviewed in the Finance meeting of March 24, 2014. **It is the consensus of the Rules Committee for this Ordinance to Council be read the 3rd time and adopted.**

Ordinance 2014-24 – Pertains to the purchase of an Asphalt Hauler (Hot Box) and related accessories for the Service Dept. **Ordinance 2014-1** which increased the bid limit to \$50,000, will go into effect on April 11, 2014 (tomorrow) (Adopted Feb. 27, 2014, signed March 11, 2014) therefore the Rules committee recommends to Council that this Ordinance be read the 2nd time and due to the time sensitive nature of this order, suspend the 3 Reading Rule and adopt, so the equipment can be ordered and placed in the queue for construction.

Ordinance 2014-27 – An Ordinance identifying the Mayors 2006 Trailblazer surplus. The Mayor is not planning to replace this vehicle and desires Council suspend the 3 Reading Rule so that this vehicle can be advertised at the same time that 3 police vehicles (?) will be advertised. **If this is true, then the Rules and Legislative Committee recommends to Council suspend the 3 Reading Rule and adopt.**

Ordinance 2014-28 - An Ordinance to appropriate funds for the Asphalt Hauler. Just a reminder it is prudent business to appropriate funds for an item prior to approving the purchase so we know if we have the funds and where the funds will be coming from. **Rules and Legislative Committee recommends to Council that this be the 1st Reading.**

Ordinance 2014-29 – An Ordinance to appropriate funds for the repair of a sinkhole on Worrell Road. Incidentally, this has already been repaired and on a side bar the potential sink hole on Rt. 91 has been repaired as well. **Rules and**

Legislative Committee recommends to Council that this be the 1st Reading.

Ordinance 2014-30- An Ordinance identifying expenses not appropriated on the 2014 Operating Budget. **Rules and Legislative Committee recommends to Council that this be the 1st Reading.**

Additional Business:

Concerning Council Policy #5, states notification of all city employees is to be in writing to the Council Clerk's office within 72 hours of hiring. This was implemented so that new employees would not incur overtime to be introduced in person to Council and since Council approves all salaries, it is important to have a grasp of how many city employees there are and what department they will be working in. The Administration asked how Council wants Administration to provide this information to them (Council)? It is the recommendation from the Rules and Legislative Committee to Council that it is the responsibility of Administration to determine what method they deem appropriate and convenient for them to share information on newly hired City and Safety Forces to the Clerk. Council President Somich suggests if a newer Safety Force Member is on duty while Council is in session, then that may be an excellent opportunity to stop in to be introduced.

Discussion concerning the appointment of a Charter Review Ad Hoc Committee for the specific purpose of reviewing Article IX of the Willoughby Hills Charter. Suggestions for committee member expertise includes an attorney, someone that has previous experience in reviewing City Charters and one that has knowledge of Ethics. In addressing our Finance Director's recommendations to become more knowledgeable about nepotism, conflicts of interests, and employment issues, it may be advantageous for Council members, the Mayor, Executive Assistant and City Directors to attend an Ethics Seminar to be held at Lakeland Community College on June 5, 2014, from 7-9 p.m.

Public Portion

Public portion opened at 7:12 p.m. Mr. Kowalsky questioned why an Ad Hoc Committee is being considered to be formed before we have results from the investigative attorney hired by the Law Director? Also, questioned why Council is not involved in negotiating contracts? Linda Fulton agrees with Mr. Kowalsky's comment about waiting for the investigation results, also, why Council members are not upholding the oath they took to uphold the laws of the City.

Public portion closed at 7:27 p.m.

Meeting adjourned at 7:28pm

Councilwoman Fellows stated that she had spoke with the Police Chief this week and she could not remember the last time we had an ordinance to deem police cars as surplus and actually it was back in May almost a year ago where we did, one, two, three, four, five vehicles; three 2008 Dodge Chargers, one 2007 Charger and a 2006 Ford Crown Victoria. From speaking with the Chief he had also indicated that there are now four more vehicles that were discussed back in October and then January of this year. So we have on the docket nine vehicles that need to go to surplus. The **Mayor** replied no, only four vehicles plus the Mayor's and then another one will be ready in two or three weeks. **Councilwoman Fellows** said okay, can we have a Memo of which ones they are now since we have nine of them here because even the 2009s a couple of months ago were nearly a hundred thousand miles. The **Mayor** replied sure. Because we have 2009 Chargers, 2008 Chargers, 2007 Chargers and a 2006 Crown Vic. The **Mayor** said okay. **Councilwoman Fellows** further stated so we are becoming like a used car lot. The **Mayor** said that we have four sitting down there in the used car lot, his is half way there and the fifth one is coming. **Councilman Fiebig** had a follow-up, he knows that we could talk about that in discussion for the legislation, if you want to wait there, but just a quick follow-up, there are four over there now, have they been sitting there for four, five months. The **Mayor** replied one has been sitting there for over a year because the gentleman that bid on it didn't pick it up and the second bidder didn't pick it up and the third bidder didn't pick it up so we are going to go with it again and the others have been waiting for either the description or things to get fix on them. **Councilman Fiebig** said so the question arose because you had asked for the Three Reading Rule to be suspended so that you could, we could advertise them all together but is this an on-line auction and don't we do them individually anyway. The **Mayor** replied, yes individually, but we have to advertise it in the newspaper still and if we advertise it at one time we save money. **Councilman Fiebig** said so there is a little bit of savings there for doing a group of six or five in Willoughby Hills' auto lot. **President Somich** stated that it is still a State requirement to post that in the paper. The **Mayor** replied right. **Councilman Fiebig** said that one of the vehicles that is over 100,000 miles, one of the police cruisers now, he believes there are two of them now over a 100,000 now so one you are talking about rotating out but we don't have a plan to replace them...**President Somich** injected that he thinks that we are getting way off the Finance Report at this point, so if you want to bring it up under New Business. **Councilman Fiebig** responded that he would like to talk about it in Finance, it is definitely questions that we have, it is a serious concern.

OTHER COUNCIL REPRESENTATIVE REPORTS

There were no other Council Representative Reports given.

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 7:51pm

1. Linda Fulton

2990 Marcum Boulevard

Re: Parking Lot over by the Plaza where the Internet Café is, there was a problem with parking, especially for the businesses there and it was decided upon at one time, that for the most part Internet Café people were suppose to park in the back to allow space for the patrons up in front, but it might be definite now that they are not open until 11:00am, that might free up some area. Nepotism – Definition from Weber’s Unabridged Dictionary of the English Language, “patronage bestowed or favoritism shown on the basis of family relationship as in business and politics”. Council, Administration we do have a problem with nepotism, though it has been going for years, it has now been brought to everyone’s attention, it doesn’t mean that it should keep going on and she feels that the major example would be both Mike Germano and Frank Germano; it is clearly nepotism and she thinks that it should be handled ASAP, one has to go. She won’t belabor the fact that all of you took an Oath to abide by our Charter and it is not being done and that is very upsetting to her. Whether it is wrong or whether it is right, it is still the Charter and you have the duty to uphold it and it is not being done. Yes, you have legal representation that was hired by Law Director Lobe and she is not too sure if he had the authorization to do that, he has authorization to hire an assistant but she is not too sure in this case, she thinks Council should have been advised first before the attorney was hired. The Article IX, she really felt that the Law Director kind of throw our Charter under the bus. He in her opinion did not really say whether it was right or wrong and she feels that it is his duty to advise Council on these matters and was Independent Counsel really necessary. To just sum it up, she feels that the Charter Review Commission that was in 2008, we did go over Article IX and it was left as to be discussed later and it never was for whatever reason, that reason she does not know but it still remains, it is there and it should be abided.

2. Robert Kowalsky

2585 Timberline Drive

Re: One of these ordinances is for the Service Department – He really thinks that the City should do the Service Department stronger; he thinks the City should make it bigger, he knows that they are not our emergency and he knows that they are not our protection but they can be a lot of help to the residents, definitely. He would suggest creating an “Intra Structure” Department where we could record all the bad things, the holes and the drainage and everything so that we know it and then the Service Department would actually enlarge by having accreditations of different purposes. He said that he didn’t have a report regarding the Noise Abatement so he is going to give his report today. Two planes flying in too low with too much noise and this wasn’t at 10:00am it was after at 2:00pm, but he doesn’t know because Mr. Germano is here and his name was on the TV to have that. When we get to the gamblers, our problem is that they are coming here to make a profit, that is our problem and the question is do we want them here? So what can we do and very simply, this is what we can do, tell them that they have to invest a lot more here, to be here, it’s that simple. So you all should get on your regulations now, so when the other herd comes from Tennessee and Kentucky and every other place, you know they are all sitting there going what are we going to do; we put little wins and losses on the screen and everybody is happy and all the wallets come out and we’re happy and everybody is happy except the big guys who are putting a lot of money into all these casinos here but why should we fight that. You know the Ad-hoc Committee for the Airport, that was a great idea, didn’t it work out good for you guys. You really protected us with that and now we are with the gamblers. So why don’t you start with regulation that says you have to have more than fifty screens, we want you to invest here and say to us we want to come to Willoughby Hills to get the money and we want to put our money into that.

Public Portion was closed at 8:00pm

UNFINISHED BUSINESS

Councilman Hallum wanted to respond with regard to the Noise Abatement, even though he is not the City's Representative, he did happen to go to the meeting this morning. **Councilman Hallum** reported that one of the things that he had no idea that when the planes take off apparently they are not allowed to turn until they hit 1900 feet height wise, but that height is above sea level not above ground level and that ground there is already almost a 1,000 feet above sea level, so really, at 900 feet they can start turning according to the law. So 900 feet is not really that high when you think about it. So that was very interesting to him, when you think of 1900 feet that is quite a ways up there, and now you are realizing it is only 900 feet. They also said, to answer Mr. Kowalsky's question, that definitely there have been less complaints since this Noise Abatement group has been together because they have been making the users of the airport more aware of being a good neighbor and also they said that there has been a real switch, it used to be 80% were training flights that were going in and out of there and 20% were corporate and now it has really flipped where it is 80% corporate and 20% training which is a big deal because training is where they continue to circle and land and circle and land and they spend a lot of time buzzing our houses in the area and so the corporate jets take off and then they are gone. Just some information that he received this morning that he thought was very helpful. By the way the public is welcomed to attend these meetings and Mr. Kowalsky, if you call the airport and make those reports, they will actually find out who the companies were and they will address that.

President Somich passed the gavel to the Vice President to report because we had a couple of comments made this evening relative to the traffic and the parking and the businesses in that strip and as the Councilman in that District, he did go after the closing of and they have been closed now for awhile, so it was a month or so ago, but he did talk to the pizza business, he talked to the Chinese restaurant and he talked to the bank and he talked to the managers or owners of all of those. Two restaurants both expressed regret that the business was gone. Both of them told President Somich that they are getting less business now then when they were getting...both of them are getting less business then they are before hand and in particular, the Chinese restaurant is getting a lot less because they were actually buying food from them and serving it. So they were not only getting outside patronage but they were getting business from the business. The bank had the opposite opinion, the bank was actually pleased because they said that people were using their ATM more now that there wasn't traffic and there weren't people going in and out as fluidly. So there were two pros and one con and President Somich got that report from probably the three largest businesses that are in that plaza.

LEGISLATION

ORDINANCE NO. 2014-21 – THIRD READING

1st Reading: March 13, 2014

2nd Reading: March 27, 2014

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A COMMUNITY REINVESTMENT ACT AGREEMENT BY AND BETWEEN THE CITY OF WILLOUGHBY HILLS AND NIYATI ENTERPRISE LLC AND DECLARING AN EMERGENCY.

President Somich declared that Ordinance No. 2014-21 would remain on Third Reading.

ORDINANCE NO. 2014-22 – THIRD READING

1st Reading: March 13, 2014

2nd Reading: March 27, 2014

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO EXECUTE AN AGREEMENT BETWEEN THE CITY OF WILLOUGHBY HILLS AND THE CITY, COUNTY, AND WASTE PAPER DRIVERS UNION, LOCAL 244 AND DECLARING AN EMERGENCY.

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilman Hallum to adopt Ordinance No. 2014-22.

Councilman Plecnik wanted to ask just one question of the Law Director, because he (Plecnik) wasn't personally present and he believes that most Members of Council weren't present during the negotiations, the one question that he has is in the Law Director's opinion, having reviewed the contract, does it reflect all the negotiated agreements

that the City reached with the Service Union, that it is accurate in all respects and the Law Director thinks that it is ready for passage. The **Law Director** responded by saying yes.

Roll Call: 6 AYES - unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-22 has been adopted.

ORDINANCE NO. 2014-24 – SECOND READING

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A PURCHASE AGREEMENT WITH CONCORD ROAD EQUIPMENT CORPORATION FOR A 4.0 TON CAPACITY ASPHALT HAULER INCLUDING RELATED ACCESSORIES AND DECLARING AN EMERGENCY.

MOTION WAS MADE BY COUNCILWOMAN FELLOWS, seconded by Councilman Biro to suspend the Three Reading Rule for Ordinance No. 2014-24.

Councilman Plecnik stated that as we all know he has always loathed to waive the Three Reading Rule but he does take it very seriously when Rules and Legislation have very carefully considered an issue and thinks that we need to move forward in advance, he believes that this is the project that we colloquially have referred to as the “hot box” and given the state of our road and repair and how poor the current hot box is, he thinks that it is reasonable to move one reading early on this issue.

Roll Call: 6 AYES - unanimous

MOTION PASSES

President Somich declared that the Three Reading Rule for Ordinance No. 2014-24 has been suspended.

MOTION WAS MADE BY COUNCILWOMAN FELLOWS, seconded by Councilman Fiebig to adopt Ordinance No. 2014-24.

Roll Call: 6 AYES - unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-24 has been adopted.

ORDINANCE NO. 2014-27

AN ORDINANCE TO DECLARE CITY VEHICLE(S) AND/OR EQUIPMENT AS SURPLUS PROPERTY AND GRANTING AUTHORIZATION TO SELL SAID SURPLUS VEHICLE(S) AND EQUIPMENT ON THE OPEN MARKET, UPON SUCH TERMS AND AT SUCH PRICES AS ARE DEEMED MOST ADVANTAGEOUS TO THE CITY OF WILLOUGHBY HILLS AND DECLARING AN EMERGENCY.

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Biro to suspend the Three Reading Rule for Ordinance No. 2014-27.

Councilman Plecnik stated that for the reasons stated earlier he thinks that it is reasonable to waive the Three Reading Rule for Ordinance No. 2014-27.

Roll Call: 6 AYES - unanimous

MOTION PASSES

President Somich declared that the Three Reading Rule for Ordinance No. 2014-27 has been suspended.

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilwoman Fellows to adopt Ordinance No. 2014-27.

Roll Call: 6 AYES - unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-27 has been adopted.

ORDINANCE NO. 2014-28

AN ORDINANCE AMENDING SECTION 1 OF ORDINANCE NO. 2013-43 TO COMPLY WITH STATE BUDGETARY LAWS REQUIRING MUNICIPALITIES TO MAINTAIN POSITIVE ACCOUNT BALANCES THROUGHOUT THE YEAR BY PROVIDING FOR 2014 OPERATING BUDGET REVISIONS SPECIFICALLY FOR THE ACQUISITION OF A 4.0 TON CAPACITY ASPHALT HAULER AND REPEALING CONFLICTING LEGISLATION.

President Somich stated that Ordinance No. 2014-28 would remain on First Reading.

ORDINANCE NO. 2014-29

AN ORDINANCE AMENDING SECTION 1 OF ORDINANCE NO. 2013-43 TO COMPLY WITH STATE BUDGETARY LAWS REQUIRING MUNICIPALITIES TO MAINTAIN POSITIVE ACCOUNT BALANCES THROUGHOUT THE YEAR BY PROVIDING FOR 2014 OPERATING BUDGET REVISIONS SPECIFICALLY FOR THE WORRELL ROAD SINKHOLE REPAIR PROJECT AND REPEALING CONFLICTING LEGISLATION.

President Somich stated that Ordinance No. 2014-29 would remain on First Reading.

ORDINANCE NO. 2014-30

AN ORDINANCE AMENDING SECTION 1 OF ORDINANCE NO. 2013-43 TO COMPLY WITH STATE BUDGETARY LAWS REQUIRING MUNICIPALITIES TO MAINTAIN POSITIVE ACCOUNT BALANCES THROUGHOUT THE YEAR BY PROVIDING FOR 2014 OPERATING BUDGET REVISIONS SPECIFICALLY FOR THE CLASSIC TIF CAPITAL PROJECT FUND NO. 423 AND REPEALING CONFLICTING LEGISLATION.

President Somich stated that Ordinance No. 2014-30 would remain on First Reading. President Somich further stated that Ordinance No. 2014-28, Ordinance No. 2014-29 and Ordinance No. 2014-30 will be considered by the Finance Committee on April 21st at 6:00pm.

NEW BUSINESS

Councilman Fiebig, Chair of the Planning and Zoning Committee of Council stated that just prior to this evening's meeting the Members had received a letter from the Planning & Zoning Commission regarding some zoning changes that they would like to propose to us, if it is the wish of Council President we could hold a Planning & Zoning Committee Meeting of Council to discuss those further, perhaps prior to our next Regular Council Meeting Thursday, April 24th at 6:30pm. **President Somich** responded by saying that he unfortunately had not had a chance to read the email, but he did see the email come through on his phone, he thinks that it is a great idea and certainly if Planning & Zoning can meet at your earliest convenience to consider that it would be appreciated.

FOR THE GOOD OF THE ORDER

Councilman Plecnik:

Reminded everyone of the Willoughby-Eastlake Public Library Systems' Political Action Committee is hosting their fund raiser at the Croatian Hall this Saturday, April 12th, doors open at 6:00pm. Tickets are \$45.00, \$80.00 per couple. It is a wonderful cause we take so much benefit from the Willoughby Hills Library.

Announced that we are getting very close to Slovenska Pristava's Opening Day Picnic, Sunday May 25th, just giving a little early notice. Councilman Plecnik stated that he knows some members on the dais are members and will be excited to welcome them all there. Slovenska Pristava's is a Slovene Organization located in Hapersville but he dares to say that 2/3 to a half of our members tend to be from Willoughby Hills, it is a real nice event for all of us it will begin at 1:00pm with a Mass by Father Boznar of St. Vitus Church but will go well into the evening with events, good food and good company.

Councilman Hallum:

Charity Event being held at local establishment the Brindaliers, it is happening on Saturday and it benefits Women's Safe and the Cleveland Clinic Children's Hospital.

Councilman Fiebig:

Wished all the students in the Willoughby-Eastlake School District a happy, Safe Spring Break and to all our residents celebrating the holy week, a Happy Easter.

Reaffirmed the Easter Party is Saturday at 1:00-3:00pm and will be held at the WH Community Center.

ADJOURNMENT

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Biro to adjourn the Regular Council Meeting of April 10, 2014.

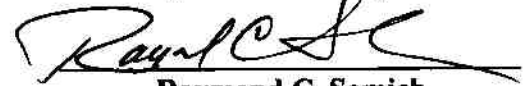
Roll Call: 6 AYES - unanimous

MOTION PASSES

President Somich declared the Regular Council Meeting of April 10, 2014 to be adjourned at 8:13pm

APPROVED: _____

Date



Raymond C. Somich
President of Council

ATTEST: _____

Victoria Ann Savage, CMC
Clerk of Council