

City of Willoughby Hills

Regular Council Meeting

Minutes of March 27, 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 7:00 p.m. by President Raymond C. Somich

Pledge of Allegiance

Roll Call of Council

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

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 of February 13, 2014

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilwoman Fellows to approve the Regular Council Meeting Minutes of February 13, 2014 as submitted.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Somich stated that the Regular Council Meeting Minutes of February 13, 2014 have been approved as submitted.

CORRESPONDENCE

Letter from Thomas J. Majeski to Mayor Robert M. Weger, copied to Council Members, Law Director Thomas Lobe, Council Clerk, dated February 28, 2014 re: Civil Service Commission Appointment (Emailed: March 5, 2014)
Interoffice Memo from Mayor Robert Weger to Council Members, Law Director, All Department Directors, Recreation Commission, dated March 18, 2014 re: Waiver of Security for Community Center Events Serving Alcohol (Emailed: March 17, 2014)

City Engineer's Report dated March 20, 2014 (Emailed: March 20, 2014)

Letter from Loretta Radebaugh, Clerk of Council City of Willoughby to Victoria Savage, Clerk of Council City of Willoughby Hills, dated March 18, 2014 re: Amending Sanitary Sewerage System Charges/Surcharge for Extra-Strength Wastes (Emailed: March 19, 2014)

Mayor's Address/State of the Cities Luncheon presented on February 18, 2014 (Emailed: March 21, 2014)

WH Community Center Rentals for March 2014 (Emailed: March 25, 2014)

FINANCIAL REPORTS FOR THE MONTH ENDING FEBRUARY 2014 CONSISTING OF: GENERAL FUND INCOME STATEMENT, CASH RECONCILIATION, PURCHASE ORDER REPORTS, FUND ANALYSIS REPORTS, AND EXPENSE REPORTS (Emailed: March 14, 2014)

EMAIL FROM RESIDENT LINDA FULTON TO ALL OF COUNCIL DATED MARCH 16, 2014 (Emailed: March 24, 2014)

NOTIFICATIONS

Civil Service Commission Meeting of March 21, 2014 – Notification of Meeting Time Change (Emailed: March 18, 2014)

Finance Committee Meeting of March 24, 2014 ([Emailed](#): March 18, 2014)
Planning and Zoning Commission and Architectural Board of Review Meeting of March 20, 2014 ([Emailed](#): March 18, 2014)
Rules and Legislation Committee Meeting of March 24, 2014 ([Emailed](#): March 18, 2014)
Cancellation of the Rules and Legislation Committee Meeting of March 24, 2014 ([Emailed](#): March 19, 2014)
Rules and Legislation Committee Meeting of March 27, 2014 ([Emailed](#): March 19, 2014)
Special Council Meeting of March 15, 2014 ([Emailed](#): March 13, 2014)
Cancellation of the Special Council Meeting of March 15, 2014 ([Emailed](#): March 14, 2014)
Utilities Committee Meeting of March 31, 2014 ([Emailed](#): March 24, 2014)

MINUTES

Joint Service Committee and Finance Committee Meeting of March 10, 2014 ([Emailed](#): March 20, 2014)
Planning and Zoning Commission and Architectural Board of Review Meeting of March 6, 2014 ([Emailed](#): March 21, 2014)
Planning & Zoning Committee Meeting of February 13, 2014 ([Emailed](#): March 25, 2014)
Planning & Zoning Committee Meeting of March 13, 2014 ([Emailed](#): March 25, 2014)

ON FILE

Vibrant NEO 2040 Newsletter: Vision Approved, Research Sections and Video
Willoughby Hills Senior Center Newsletter for April, Issue No. 72

MAYOR'S REPORT – Robert M. Weger

Asphalt and Limestone Bids back – lowest and best bids from Osborne and Ontario Stone – requesting Council pass ordinance tonight so we can be prepared to pave roads and start road repair

Acknowledgements:

Condolences to the O'Donnell Family on the death of Rose O'Donnell

Thanks to our Civil Service Commission Members Tom Kicher, Carolyn Patton and Tom Majeski for administration of the Full-Time Firefighter Testing. Interviews were held last Friday and the two candidates who received full-time appointments were Jeffrey Planisek and Cindy Sabo.

Congratulations to these individuals and thanks to all of our part-time firefighters who participated in the exam and who will remain on the list of available candidates as future positions become available.

Events:

Spring Craft Show – this Saturday, March 29th from 10 to 4pm

The Mayor stated that he now speaks to Council as a voice of reason, the issue raised here from the last meeting has so many concerns, he has hired Independent Counsel that is researching the issues, they can give an ethical evaluation to the concerns brought up by our Charter and the implications that it can cause and it has also been given to the State Auditors for their review. What does immediate mean, we were told that government doesn't work fast; it works slowly and methodically so we have no problems. What bothers him the most is that since November neither John Plecnik or Dave Fiebig have been in his office to discuss anything, this issue did not arise overnight; our current Charter has been in place for over four years, and should not be defined or interrupted by one individual, he has given a list of POs to Council for at least five years through the Finance Department and the Clerk's Office but listen to the Law Director in his report he will offer a plan to follow and resolve any conflicts so that the City does not have any repercussions so let's get this City going back on track and keep the residents first.

LAW DIRECTOR'S REPORT – Thomas G. Lobe

The Law Director stated that he would like to handout some documents, these are numbered pages, he has blowups in case there isn't enough to go around. We are going to go through the exhibit or attachments first. Basically he wants to give some perspective and give some legal guidance as to activities and procedures and policies and legal standards that must be met as it pertains to Article IX. Article IX has been in existence for forty-five years, and there are many, many issues as is evident from the numerous opinions exhibited last week. Before we go through the exhibits he wants to give you an outline of what he is going to talk about tonight. He is going to be talking

about the role of the (1) Law Director, (2) he is going to be talking about what has been done since the last Council Meeting of March 13th (3) he is going to give recommendations to this Council and to the City to try and address some of these problems that probably have not been addressed in the last forty-five years; (4) he is going to talk about the recent vote in and the attempt to remove Councilman Germano that took place at the last meeting (5) he is going to talk about the theme “What does Willoughby Hills really want in its Charter, how does it want to govern itself.”. He is going to show you that through past practices and we have to adopt the past practices, adopt the theme and blend them together and organize a plan; (6) he is going to show you current potential violations of 9.2 which if read strictly and narrowly are all violations subjecting everyone to immediate removal including himself.; (7) the issues and concerns of Section 9.2 in the Charter; (8) the actions of the Charter Review Commission of 2008 which gave some guidance and help here but it didn’t quite solve the problem and (9) if this Council or if this Administration attempts to utilize Section and Article IX again he is going to tell everyone how many votes are required, the number is five affirmative votes and also the procedures that are going to be to ensure that if any action is taken by this Council or by this Mayor or in this Council Chamber by anyone, pursuant to Article IX that he has a chance of making it defensible in Court because the end result is not what happens in this Council Chamber because ultimately it will be resolved in a Court of Law and that is where he has to ensure that due process, fairness and equity are in place and it can be affirmed. Then he will end on his recommendations. So if we just start, let’s just run through because they are going to be part of his discussion, page 1 is simply Article IX - PERSONNEL as currently constituted in the Charter, he will talk more about how this has not been changed since 1945 and went back and got the original Charters and we even got the Charter from 1975 and this is Article IX as drafted by Barry Byron who was our Law Director through the Schaffer Administration for approximately twenty years. But he wanted you to see it in its entirety because when you interpret anything you have to look at the entire Chapter you can’t just pick out a word or two and start interpreting it that way. Page 2 and on is really just a blowup of Section, Article IX, page 2 is the definition of Officers, page 3 and page 4 is Section 9.21 and 5, Section 9.3 is the Removal from Office which was the action that was attempted to be taken at the last Council Meeting and you will notice on page 7 is 9.31 is Removal by the Mayor, that the Mayor has the equal rights as enumerated that Council has to remove Council people and other representatives for a variety of matters including violations of 9.2 for gross misconduct, malfeasances and non-feasances as well as matters of moral turpitude, that is on page 7 and 8. Number 9 is going to be page 9, 9.33 a blowup and it is really going to give us some guidance as to whether or not the action taken last week has finality to it and we will read it at the appropriate time in his discussion. 9.34 which is part of Article IX is Removal by Council of Mayoral Appointees and in there you will see a long list and a long established of due process protocol that is absent in 9.1 and 9.2 if the Mayor or Council tried to remove somebody like a Councilman but if we tried to get rid of one of the secretaries here, there is this very expansive due process requirement that needs to be done. Page 14 is one of the legal remedies and that is basically the Willoughby Hills Charter provision for Recall which is another way to remove a Councilperson and on here you will notice that it says that twenty-five percent of the electorate where the State only requires fifteen percent and he will show you these details later on. Page 15 is another Charter provision on Recall which is the other alternative means to get rid of an elected official. Page 16 and 17 are basically just examples of what the Mayor just talked about on how the Administration has for about the last eight years, given on a monthly basis, all the financial reports from the Finance Department went directly to Council including Statements, Income Statements, and the POs, not a copy of the POs but a description of the POs for the last eight years. This is on Council and it is a public record. Eighteen is the, the second section of eighteen is the, page 18 under the Charter – Duties and Responsibilities which is in the Mayoral Section, the second paragraph you will see where it takes five affirmative votes at the bottom, right in the middle of the bottom paragraph that is going to be necessary to show how many votes are going to be necessary and the number will be five to take the action that Council attempted to take last week. Page 19 is just the State Statute for Recall, Page 20 is from our Charter it just gives some very limited determinations of some legislative intent that can and should be used and are applicable in tonight’s discussion. Page 21 is from our Codified Ordinances, what if something is not in the Codified Ordinances, that we refer and fallback to Robert’s Rules of Order to help guide us and he will be utilizing these in his analysis. Page 22 is something that the Clerk and he found from Robert’s Rules of Order that basically says under the question How can you get rid of Officers that we don’t like before their terms are up? And so you will see how he utilizes this in the analysis. Page 23 and 24 are basically in 2008 the appointment of the Charter Review Commission back in 2008 and the Members that were on it and then on 24 there is a note towards the bottom page, he thinks that it is highlighted on the blowup Section 9.3 which is the notes from meetings where it says removal from office it was suggested that this Section be deleted in its entirety due to the purposed changes in Section 2.21 and he will show you that Section 2.21 did pass and what he gave you notice on page 18. Page 25 and 26 are from the Finance Department right to Council where they get these financial reports on a monthly basis including the Purchase

Orders and just so everybody is aware the one in question is on page 26 it is highlighted up there so that you can see it roughly for \$4500. There were some issues concerning the \$4500 and \$7500, the Finance Director will address those in his report. Page 27, 28 and 29 those are Interoffice Memos that were prepared by our Finance Director Frank Brichacek concerning the Gatsby Drainage Project. Chronologically, these are the types of documents that we are assembling for our own review that Council should review and they have also been given to Independent Counsel which he will address later as well as to the State Auditors for their ultimate review. Finally on page 30 there are some recommendations that he will ask the City to go forward on; 31 are the actions that he has done; 32, 33 and 34 are certain documents that he is going to want if we really want to close these gaps up that there are going to be a series of three documents that every vendor who comes to the City will have to prepare like on page 33 and 34 those types of analysis to tell us who they are, what they are doing and if they have a connection to the City. And even page 32 and he is going backwards a little bit, before they receive any money they will warrant and represent under oath that there has not been any influence and further that they warrant and represents that no officer or employee as defined by the City has any financial interest either as owner, shareholder, subcontractor or employee, these are just real rough drafts of documents that really need to be fully evaluated, fully vented and fully completed but these are going to be just some of his suggestions.

The **Law Director** said let's start at the top then; What is the Role of the Law Director? The role of the Law Director is not to determine whether there is a violation of 9.2; that responsibility is to the Mayor and Council pursuant to Section 9.1. The Law Director simply gives advice and guidance for the assessment of potential violations; each Councilperson has the right to raise these issues about potential violation and proceed in accordance with law, Charter equity but there must be special attention given to due process especially when attempts are made to remove an elected official. When you want an extreme position you should have extreme safeguards, you should have extreme due process; failure to do that will result in disastrous litigation on behalf of the City. On unrelated matters, he has always tried to institute and utilize and set forth some safe guards; when we had the Equalization Board we always sent out certified mail, we had a transcript there, we had sworn witnesses and that is only for some monetary tax matters and we had a transcript made. Now what happened last week would never have been defensible in Court because his concern is not what happens in these Council Chambers but what happens two weeks after the Council Chambers when litigation is brought forth in a Federal Court and whether or not if due process has been followed. A review in Court, not his Council's concern, not this Administration's concern, not the City's concern, but it is his concern when you go to Court, if you have a record of proceedings so it can review, it can look back, it can determine, it can analyze, it can judge whether or not that body, this Council, this Administration, a BZA, a Planning Commission has properly adjudicated the matter in a fair matter. Minimally we would want sworn testimonies, certified documents, transcript and other evidence to ensure that the due process is adhered to. Finally, and let's not forget this throughout this, application of the law, especially when asking for an extreme procedure, must be done uniformly, equally and not selectively. At hand, we have three different issues arising out of the same facts, we have State Law issues, we have Auditing issues, and we have Charter issues. As it pertains to the State Law issues, he has taken the liberty because he gladly will pass that cup because we have issues between Council people and throughout the years, he has always got Independent Counsel when asked for because he should not be judging or giving legal advice when there is a dispute between the Mayor and Council or between Councilmen, it is always best to have an independent party. During the O'Ryan Administration he absolutely stepped aside and chose Independent Counsel on some of those issues. During the Lorenz Administration he did the same thing; when we had the Airport there were certain people who said Lobe can't handle it, I want someone else to handle it and he gladly allowed for them to do it. When we had the Heritage Litigation some people said that Lobe can't handle it again, we want somebody else, he gladly took on Council's recommendation to get additional Counsel and all of those matters did work out. So let's now talk about what he has done, what the City has done since the last Council Meeting to resolve or address these concerns: (1) he immediately had Frank Brichacek go back, our Finance Director, and review all of the Landco purchase orders and we went back only to 2008 and he has done that and he has forwarded those matters on jointly to the State Auditor's Office. The State Auditor's Office has that information and they will be continuing to get information from us for their review, when their review will happen is sometime in the future, that is up to the Auditors. The Auditors are the State Auditors that come in routinely and they will review it. Their findings can range anything from criminal charges to findings for recovery for a lawsuit to maybe recoup the monies and/or citations or some commentary on our audit books, that is up to them to do and they will do that independently, they were notified immediately. (2) He immediately sought Independent Counsel and he tried to find an experienced Law Director to ensure that all claims of bias and if there are claim of bias against him he doesn't take it personally, it is expected. He knows everybody at the Table. He knows the Mayor now; he doesn't know Mr.

Hallum that well, Mr. Plecnik and he have a lot of common friends, Mr. Germano, Mr. Fiebig, he talks with his wife more than he talks with his own wife probably because he is in that office. So he thinks it good to have Independent Counsel. He went out and normally he would have taken the time to discuss it with everybody, but he wasn't given that opportunity. So he went with the Law Firm of Matty, Rademaker and Greve, they are from Downtown, he didn't want to stay in Lake County cause someone would say that it is Lake County and who knows who in Lake County so he went out of County. This is the same firm that Council last time chose when there was an issue between former Mayor Lorenz and Council and so he thought it was a good choice and was the same thing that that Council seemed to be satisfied with its actions, even though there were no formal action taken by them, he knows that some Council people wanted more, or less, but he thinks that they were happy in their independent approach and so they have Dave Matty handling it and he will get to his resume, he has been a Law Director for about thirty plus years in multiple jurisdictions, he thinks that he is still the Law Director in Bratenahl, Brecksville and he also represents about ten other Cities in various capacities. He is doing it together with his associate Mark Marong. (3) He made the Service Director Nate Catania available to Independent Counsel and he is going to be available further to them, Mayor Weger has already made himself available to Independent Counsel, he has provided over hundreds of pages to Independent Counsel for its review and he is continuing to supplement them daily he even had Vicki helping me out in getting some of the records to see voting, agendas and minutes and things of that matter. He obtained the minutes from the Charter Review Commission which he showed you on page 27, page 28 which will be part of the discussion here tonight, he sought out residents in the community to assist with the legislative intent and past practices going back to the 70's concerning this Article IX, he contacted our City Engineer and obtained his records, his emails and got him available to even be available to Independent Counsel if need be, he met with the Clerk to review Council Records, past practices and procedures, analyzed Robert's Rules of Order and the Policy and Procedures for tonight and discussed these matters with previous Council Members from the past concerning this matter and we also forwarded this on to the State Auditor as previously mentioned. He is going to start with his recommendation now and he is going to end with his recommendations. Page 30, as is evident we have problems with Article IX, he will delve into those but my recommendations are: (1) that Council create a Council Charter Review Commission to review Article IX in its entirety and many questions are going to have to be answered should the City modify or delete Article IX, should it tailor make it to what our needs are which is really under 1A we need to define the parameters and extent that tailor-fit the means and the spirit of Willoughby Hills in the year 2014; (2) Either Council or the Administration should start setting up standards, definitions and legal procedures to guide this Council, this Administration and all future Administrations and all future Councils, and protect "Due Process of Law" in the event that anyone wants to take these types of extreme measures which are in our Charter; (4) Pass Ordinances to forbid contracts being granted to certain vendors that may have a potential conflict of interest after careful review and consideration; (5) As he stated last week, adopt a "Conflict of Interest Policy" for all vendors and also for employees, Boards, Commissions and Volunteers; (6) Implement a "Disclosure of Vendor Contract" prior to anyone receiving payment certifying that no influence has been utilized to obtain the contract and that the company has disclosed of all family members, as will be defined, including officers, shareholders, subcontractors and any and all business entanglements so that we can capture exactly who we want to capture and exclude those who we want to exclude; (8) Review of all Article IX potential violations prior to any employment or appointment to the City Boards or Commissions, seven excuse me, the interesting thing on that is we just got Mr. Hallum on board and this Council vetted him and he is in violation; (3) is also adopt a Nepotism Policy that is suitable for the City of Willoughby Hills; (9) a Citywide Ethics Policy to be signed by every officer and employee in the City of Willoughby Hills, we don't have these types of documents in our files, he can tell you why, cause we have a Finance Department that is run by a part-time Finance Director, not a full-time and the Assistant who is full-time is his assistant doubles-down as the Human Resource Director, we are just short on manpower but we have got to try to get these documents in place as is evident by last week. Most importantly we have to follow-up with Independent Counsel so that they can do a full review and (11) we have to follow-up with State Auditor pursuant to Finance Director Brichacek Memo of 3/14 and 3/24. Now if it is the desire of certain Members of Council to remove Frank Germano the vote at last Council Meeting under any and all circumstances was final and binding pursuant to Section 9.33, let's look at page 9 and if you strike out the unnecessary verbiage and this part of Section 9 right below it would read "The decision of Council in removing any officer or employee after compliance with Section 9.3 shall be final". Recall of Councilman Germano is still a legal right especially noting that the electorate placed him there and it should be the electorate who can still remove him. There is still a long and difficult question of legality whether or not an x-amount of Council people can subvert the electoral process who put Mr. Germano in there. The theme that he wants to talk about tonight so if and when the Charter Commission is instituted whether or not Nepotism Policies are set in place whether these sample documents for sub-contractors is set in place whether our personnel files are

bolstered with the documents that he is recommending. You have to remember this is still a small community and many of the positions in here are volunteer positions, there are many, many good people that have volunteered that have put themselves in violation; the City has to figure out because it hasn't done that job in Article IX for forty-five years. There are going to be many issues that need to be defined so that we can understand fully how far we want to go. Definitions of direct, indirect; definitions of family members for our City versus other Cities and also to figure out what type of goods and services we want for the betterment of our community. He has to bring up a situation that puts himself in line for being a non-compliant and he is doing this in the interest of disclosure, he will let the Council and the Mayor decide whether or not it is a violation of 9.2 but Mr. Fiebig holds currently the lease for himself as Law Director, he could tell you that he entered into that lease prior to him even being on Council, he could tell you that the lease also has that he is a businessman and a lawyer and the lease is with a business but he does pay certain rents; some Council people could consider that to be indirect compensation; he is not saying that it is and he is not saying that it is not but he is throwing it on the Table in full disclosure. There are other issues that have recently occurred some really good people some people that were awarded recognitions last week who give of themselves their whole family, the Motuzas. Rick Motuza of the Nicklee Corporation provided the best prices, probably below market price, probably lost money for athletic uniforms for many years, he was a City vendor. If we are going to have a strict interruption should that have been done, that is what gets us back to his theme what type of community do you want to be. He also provided T-shirts for the Santa Shop and recycle magnets, Dick Motuza provided great prices and quality trophies yet the son was on the Recreation and the mother was one of the best clerks that we ever had. But all of those could be considered 9.2 violations and he doesn't think that it is the intent, he can tell you that it is not the practice of what we want to capture for this City. He can mention other good people that are currently here: Dan Phillips provides shirts, he is on the Recreation, he is sure that he loses money besides him and his family donating time and his sister is on the Recreation Commission is this also what we want to capture for a violation. Mort and Flo O'Ryan from the 70's they violated it for thirty-five years if you want to be strict and technical. We had issues involving Chief Harmon and his wife both worked here at the same time. We have currently the Germano brothers; one brother is the Prosecutor with Frank as a Councilman. We have had Clerk of Council Terry Poppy and her brother as a Councilman. He went back and he has potential violations in the 70's, the 80's, the 90's, he has got a lot of them. It is interesting to note that Barry Bryon who was our Law Director, who absolutely wrote the Charter and Article IX and was the Law Director for twenty-five years allowed these types of violations to occur, he could throw out some names that maybe some of the old-timers will remember: it was Randy Slusarz who was on Recreation, he was the Recreation Coordinator and his mother was Clerk of Council, he was also the Tax Administrator and his mother was Clerk of Council. There were a lot of duality issues throughout the years, what happens is, if you do this thing literally and very narrowly there are going to be a lot of unexpected consequences. He has been asked by various individuals in the audience to find out what are the violators of 9.2, some of the questions were Frank Germano and his wife who is on Recreation, Chris Hallum and his wife who is on Recreation and he has made a list now of potential violators and they would be four Councilman at the Table. Councilman Hallum, Councilman Fiebig, Councilwoman Fellows because of all the good work her husband did on many committees including the Charter Review Commission which is almost ironic because we were reviewing the Charter and we had him there and he was a great benefit to us and Councilman Germano. In addition to those four Councilman, the current, and this is just a snapshot of today, nonelected officials would be Chief Harmon, Recreation Coordinator Denise Edwards, Property Staff Member Devin Edwards, Mayor's Executive Assistant Gloria Majeski, Recreation Member Lynn Hallum, Prosecutor Michael Germano, BZA Member John Klements, Recreation Commission Chair Dan Phillips, Property Staff Member Kyle Overmyer, Property Staff Brad Nelson, Recreation Member Dee Germano, let's not forget himself, Tom Lobe and Civil Service Chair Commission Tom Majeski. If we attempted to uniformly and strictly remove all of the above individuals Council, Administration, Fire, Recreation, BZA, Law Department would be gutted. Council has an equal right to do under 9.1 what it wants to do. The Mayor could do the same thing, what if the Mayor decides, unilaterally to start making rules under Section 9.1, if you look at 9.31 which he thinks is page 7, what if the Mayor decided to selectively take out certain people for violations and we ended up in Court. What would be the chance of sustainability the chance of defensibility, he thinks that nobody really thinks that would be sustainable. So the entire Article IX basically is a two-step process, first is there a violation and second you automatically go to what he is calling the death penalty automatic removal. There are no other options, there's no other priorities and even on Article 2 it just talks about if it is a violation it does not talk about the degree of violation, it does not talk about the priority of violations or if certain violations are a Class A or a Class B or things like that, it says any violation; and then when you go to 9.3 for the removal it says shall and immediately. Now immediately in his opinion does not mean nor does it say immediately go to a vote, immediately should be read in its entirety, immediately initiate due process, which he will explain later. Each Council Member and he doesn't

make the decision for you, each Council Member makes their own decision and then get yourself five Council people and you could run the City. As he said, Article IV, especially Article 9.2 and Article 9.3 need to be reviewed. Okay, there are no parameters, there are no guidelines there are no definitions and the person who drafted this, Barry Byron as he indicated had been the Law Director for the City from 1965 through 1990 and he operated through the Mel Schaffer, Mort O’Ryan and part of the Campbell Administrations and his interpretation and his practice would also be a factor if and when we ever went to Court that past practices had not defined it, had not interrupted it in the same way as being currently defined and interrupted today. His review of the historical documents do not reveal any debate nor interruption similar to that which occurred last week, that too would be a factor in the event if litigation was ever filed. Problematic though it is still on the books, it is still there so it cannot be totally ignored but it has been ignored to a large extent. Let’s look at the last Charter Review Commission, if you can go to page 23 and page 24; twenty-three is just basically just the notes from the City where a motion was made by Councilman Germano and he believes that it was seconded by Councilwoman Fellows to confirm the appointment of nine members of the Charter Review Commission: Chris Biro who is still our Councilman, Linda Fulton who was one of the people raising the questions and was also the appointed and anointed secretary for the Commission, Andy Gardner who is a lawyer with a major Downtown Law Firm, McDonald-Hopkins, Wilhelmina Kamis also known as “Billie”, Pete Corbissero, Dale Fellows, Joyce Grady who is a lawyer, Tony Manfredi who is here tonight and James Shannon. When he went through the minutes and he couldn’t get them until, he couldn’t get them from last week, we did find on page 24 he found an interesting commentary, now these Charter Review Minutes were prepared by Linda but these meetings went on probably for an hour and a half, sometimes two hours and we methodically went through, as he said last week, under the direction of Dale Fellows, chapter by chapter; they made a lot of changes but there were a lot of things that the Commission just couldn’t get to because they ran out of time so to make sure that it could get on the November ballot. But the only notation he could find and they are not audio taped, they are not videotaped was if you look at towards the bottom it says Section 9.3 Removal of Office – It was suggested that this Section be deleted in its entirety due to proposed changes in Section 2.21. Section 2.21 did go on the ballot and it did pass. If you would turn to page 18 you will see that it was in fact adopted as a result of the Charter Review, the last few lines amended 11-4-08, and in there he also wants you to look at that same paragraph where it says five (5) members; the Commission wanted to delete exactly the paragraph that was being utilized last week. It didn’t get communicated, it didn’t get done, wherever it was, but we know what the intent was; but it wasn’t done, and it is still on the books, so it still has to be adhered to. He is just showing you that even that Commission had difficulties, realized the problems and in fact wanted to do away with it but it didn’t take the ultimate step and do it. Now in the event that anybody on this Council wants to remove anybody else, for any reason, for violation of 9.2 misfeasance, malfeasance as noted on Section 2 if you can get to those pages, just go to probably page 1, under Section 2 there’s Section 2.21 , and 2.22, if anyone wants to proceed he is now going to institute how many votes it is going to take and the procedures that need to be followed so that in the event it does proceed and someone is removed that it will be defensible in Court. Let’s first talk about how many votes it is going to take, it is going to take five (5) affirmative votes, abstentions and things of that nature won’t apply. Why five? Last week the official vote was as he had reviewed it with our Council Clerk was three (3), three (3), one (1) and under any rules, that would not pass. The required number of votes to remove, you have to look at 9.31 and 9.32, if you could go to 9.31 which is page 7, that is the Removal by the Mayor it doesn’t say how many votes it needs, okay, 9.32 that is Removal by Council, that doesn’t say how many votes you need, but interesting in 9.34 it does say, 9.34 would be page 10, so it goes, 9.31, 9.32, 9.33 is the finality, 9.34 this is Removal by Council of a Mayoral Appointee, so if Council wanted the Mayor to remove Gloria, Debbie Doles, a secretary, they would have to get, and you’ll see this on page 12, you would have to have a written compliant and it would have to be signed by five (5) Members of Council and after they go through this procedure they would have to have five (5) Members of Council vote on the removal. Now it doesn’t make sense that Council can remove an elected official and yet Council can’t remove a secretary, or somebody else in that type of status with a lesser number. So the number must be and should be five (5) when you read Section Article IX in its entirety. Now we can also fall back on Robert’s Rules of Order too which is in our Code when you do interruption and what you’ll see is that Robert’s Rules of Order is pages 21 and 22; this Robert’s Rules of Order Section is in our Codified Ordinances and it says in the absence of a rule or the requirements to conform to a general law, the procedure of Council shall be governed by Robert’s Rules of Order; and page 22 is some documents that the Clerk and himself found and you’ll see that under the heading of How Do You Get Rid of Officers You Don’t Like Before Their Term, on the second paragraph, it says by a two-thirds vote, it is on the second paragraph, it is a little hard to read there, is five (5) Members of Council. You can also go to Section 2.21 which he believes is page 18 which we have already talked about and if you wanted to get rid of various directors, 2.21 on the bottom, which we talked about, you see right in the middle, this is what was passed, affirmative vote of five (5) or more Members of

Council. Therefore, he is declaring that if Council, or even if Council wanted to try to attempt to utilize this procedure at this time, noting all the legal issues, at minimum you need five (5) affirmative votes. Now let's talk about, we know how many votes it would take, let's talk about the procedure, okay, he has to question the procedure last week, because he does not feel that it would not have met proper due process issues and it is his duty to try and institute a due process and it is easy in this particular case because if you go back to page 7 and 8 which is 9.31 and 9.32 again, you'll see that there is no procedure, there is no due process when there is removal by Mayor or removal by Council but on Section 9.34 there is a long procedure and he is making, he is directing that we follow at minimum this procedure, what would that procedure be, and he is now on page 11 which is a portion of 9.34. The first procedure would have to be the filing of a written complaint; (2) the complaint would have to set forth the charge or charges, page 12, (3) such complaint would be signed by at least five (5) Members of Council, (4) that written complaint signed by five (5) Members of Council shall be filed with the Clerk, (5) the Clerk shall cause a copy to be served upon the accused officer, (6) the service will be at least within ten (10) days for a hearing, so you have to have a ten (10) day gap, (7) there would be a formal hearing, (8) the hearing would be open to the public, (9) he is now on page 13, the accused officer or employee may appear in person and he is even entitled to Council, (11) the accused can examine all witnesses, (12) he can answer all the charges against him, (13) decision by the Council to remove him would then require the concurrence of at least five (5) Members of Council. Those would be the minimum standards that should be followed in 9.31 and 9.32 which are set forth in 9.34 which shows the clumsiness of Article IX in its entirety. He would even go farther and require that people get sworn in and have a transcript of the proceedings so that if Council does take this extreme action it could be defensible in Court. Again, let's go back to the recommendations he thinks one or all of these should be instituted, we have a problem, historically it has not been applied to, taking action could lead to unexpected dire consequences and it hasn't been done for forty-five years, he thinks that it should be started tonight by this Council and/or by this Administration or jointly to rectify all of these issues. He stands open to questions.

President Somich thanked Mr. Lobe for a very thorough, detailed report, and asked if there are any questions for our Law Director this evening? **Councilman Hallum** asked if the Law Director could give us the definition of, because one of things that it says in here is gross misconduct, malfeasance or nonfeasance; could you define that a little for us, so that we could understand for sure. The **Law Director** replied that he would probably go and get you multiple definitions probably just like a jury instruction, that is how they do it when you have jury trial and there is an issue, the lawyers are allowed to give the judge various definitions, he would start first with some of the primers like Black's Law Dictionary and then he would also maybe go to the election law if you went to those extremes, he could maybe get you those definitions, he did not prepare for that tonight; here's a good one, nobody has been able to tell him what moral turpitude is either but it is in a lot of the legal documents but misfeasance, malfeasance, nonfeasance he could get you those and he could give you some guidance if somebody wanted to go to some of those directions, he did not prepare for that tonight, Mr. Hallum. **Councilman Plecnik** had addressed Mr. Lobe by stating that in his report the Mayor said to us that he was disappointed that Councilman Fiebig and himself had not come into his office to have a discussion with him because these problems had been going on for some time; at this point he would like to pose the question to Law Director Lobe, to the Mayor, to our Finance Director Frank Brichacek, to our City Engineer did any of you have any awareness of the fact that these public contracts were going to Landco; did you have any awareness of the fact that Landco was connected in any way, shape or form to Councilman Germano? **Councilman Plecnik** stated that he thinks that it is important for all of us to know at this point, he thinks that the Mayor implied that he did, when he stated that we should have talked about these issues with him before that we have had these problems for years, so he (Councilman Plecnik) would really like to know at this point if any of the officers sitting at the dais had any knowledge of this issue prior to the Council Meeting. The **Law Director** questioned the Mayor if he wanted to answer, the Law Director replied no, no for the Mayor. **Finance Director Brichacek** replied that as far as the Purchase Order being awarded to Landco, he certainly would have been aware that was being awarded to Landco, since he signs all Purchase Orders, he doesn't blindly sign Purchase Orders without reviewing them, so he certainly at the time the PO was issued knew that the PO was being issued to Landco just like the hundreds of other POs that cross his desk during the course of a year; did he know whether or not Landco was owned by Councilman Germano's parent, no he did not. **Councilman Plecnik** questioned if the Finance Director knew if he worked for Landco, and the **Finance Director** replied no he did not; just as he specifically didn't really know where all the other Council Members work. **Councilman Plecnik** had one follow-up question for the Finance Director, how then was Landco paid; we have seen cancelled copies of the checks, did any of the Germano family come into the office to collect them or was all the bills and checks mailed back and forth, how was it you didn't know, was it that they were mailed or was there actually Germano in the officer personally. The **Finance Director** stated that typically our payments are mailed. **Councilman Plecnik** asked if the Finance Director could confirm that; the **Finance Director** replied that he does

not personally handout checks. **Councilman Plecnik** stated that he would pose the question for the Finance Director to research and come back to Council at; the **Finance Director** replied that would be impossible to research; **Councilman Plecnik** stated but your policy is to mail out checks; **Finance Director** stated that their policy is to mail out checks, we will occasionally give them to the vendors when they come in and request that they be delivered in person, we normally sent checks by US mail and he would say that probably ninety-eight, ninety-nine percent of the time checks are mailed. **President Somich** stated that to remind everyone that we are still in the Law Director's Report so the questions should be addressed to the Law Director at this point; this is part of his report and any follow up to him. **Councilman Germano** wanted to say a few words about what Mr. Lobe has just summarized; **Councilman Germano** wanted to express that he is very disturbed about what he has just heard; it appears that there are many conflicts of interest that not only did exist in the past but currently, he feels compelled, better yet, as his fellow Council People have soundly stated a duty to bring this matter to the floor Council in accordance with Section 9.32. The conflicts that Mr. Lobe just indicated is a very long list which even included himself and Councilman Fiebig as a direct conflict of interest with the Charter or at very minimum a very sound indirect conflict. As his fellow Council People found it an absolute necessity to charge him at the last meeting with a conflict and immediately moved to remove him from Council. He feels that he is duty bound to hold Mr. Fiebig to the same treatment as well as the rest of the individuals that are on the list. **Councilman Plecnik** addressed President Somich by stating that he had just told him that all questions should be directed to the Law Director and he doesn't even think that this is a question. **Councilman Germano** stated that he believes that everyone on here on Council; **Councilman Fiebig** asked for **Point of Order**; **President Somich** stated that he will allow him to speak at a later time, but at this point we are in the middle of the Law Director's Report, the idea is that he had asked for questions of our Law Director and if you have a question for the Law Director you can ask for that, if you have other business to bring up, you are welcomed to do that later. **Councilman Plecnik** stated to that point, even if it is not appropriate at this time, for the other Directors to respond, perhaps they should wait for their own reports, he still would like to have a question answered by Mr. Lobe; **President Somich** replied that the same applies to him as everyone else, and that is we are right now dealing with questions of Mr. Lobe and **Councilman Plecnik** stated that is what he is asking, could **Mr. Lobe** answer his question; **Mr. Lobe** replied that he thought Mr. Germano worked for somebody else, as long as he has known him, he thought that he had worked for somebody else. **Councilman Plecnik**, asked who did you think he worked for; **Mr. Lobe** replied the Union Hall; **Councilman Plecnik** questioned, what is the Union Hall; **Mr. Lobe** replied he didn't know, he really doesn't know, it is like he doesn't know where Mr. Fiebig works, he doesn't know where, he thinks he knows where Mr. Biro works, he is not quite sure where even Ray works, that all he can tell you. **President Somich** stated that at this point, it sounds like more of a hearing then like a Law Director's Report, for if we do proceed to further action that would include a hearing, he thinks that witnesses and testimony would be appropriate and cross-examination as you are doing now, he doesn't believe is an appropriate action at this point as part of our Law Director's Report. **Law Director Lobe** stated that he never hired Mr. Germano, or Landco. **President Somich** asked if there were any other questions for the Law Director as part of his report this evening. **Councilman Fiebig** stated that the Law Director mentioned that the Commission he had ran out of time to discuss that issue, do you know that as a fact, that they ran out of time and that they specifically didn't address 2.21 and removing 9.3 because they ran out of time or do you think that the minutes reflected that there was discussion about it and that they had actually decided to leave that in. The **Law Director** replied that he would have to go on his rough recollection, he knows that the Commission worked hard, the Commission had a big agenda, we started from the beginning to the end, we tried to keep meetings to a hour and a half and sometimes they spilled over to two hours, okay he can see Tony Manfredi shaking his head out there and they did a lot of good work and there are some issues like 5.15 that they just couldn't address, they couldn't get to everything in fact, he thinks that they did make ten changes, some were housing keeping, some were pretty big like Section 2.1 and they did a lot of work but there does come a time when it has to go to the ballot, he thinks that it was ninety days before and he felt that they went through it and they just couldn't do everything; it is not a slur on them because he was with them sixty-seventy percent of the time and he got the impression that they just ran out of time; they did good work, they shoveled their way through it and they just could not get to everything, that is his impression. **Councilman Fiebig** stated okay that is his impression, **Mr. Lobe** stated that the members of the Commission could chime in on it. **Councilman Fiebig** stated that we would appreciate that because minutes as you know, can not reflect the law or what the actual written word is; minutes are simply a discussion point and simply reflect what happened in the meeting, they are not what is the plain reading of whatever law or whatever decision or whatever ordinance that we write, the minutes are not the law, the Ordinance is the law, so of course you understand that. The **Law Director** stated that he agrees with that, in fact, he didn't imply to anybody here that somehow it got changed, in fact he had specifically said that this was the intention it just didn't get done; he used it only to show that even the Commission recognized that there is a

problem. It is still in existence, he said that three times and **Councilman Fiebig** stated that it is; **Law Director Lobe** stated that he is not ignoring the fact that it is there, it is still there, it has been on the books for forty-five years and it continues to be as we sit here today, absolutely, positively. **Councilman Fiebig** stated that he is intrigued on the Law Director's thought on that, your opinion on that but if he may offer an opinion that the reason that it is absent in 9.2 is that elected officials are held to a higher standard and that they would feel that you don't need to go through that process because we are held to a higher standard, when we take an Oath of Office and we are given the public's trust there is a certain amount of trust embedded in that Oath and therefore, there is a higher standard there, so he would give that opinion that is why it is in there, but of course, he wasn't on the Commission, the Law Director was, Councilman Biro was, there are a couple Members here, we could talk about that obviously we do need to do another Charter Review Commission, that comes up every eight years so where we are today, he believes, is about year six, so we certainly will and he is sure that this whole process and what came to light here, if it has been done in the past, it is unfortunate but he also wants to point out that there have been hundreds of people who have worked here, who have held office, and who have done so ethically and honorably and have done a tremendous job here for the City of Willoughby Hills. To point out a few of them that say well, that this did violate some things, doesn't make it right, it does not make it right. If we have the opportunity to correct it, we are duty bound to correct it and we must. **Law Director Lobe** replied that his first recommendation is to not even wait for the Administration's Charter Review Commission; one of the ways, there are three ways to change the Charter, (1) an individual can do it by initiative petition to change it, (2) a Charter Review Commission or (3) this Council can even take action prior even to two years and that is what he is asking, maybe just a Charter Review Commission on just two subjects, be it 5.15 which is a big burning issues for years, and maybe this so that later on when the Charter Review Commission in two or three years has it they can take some of the big issues out that is his number one recommendation. The **Law Director** stated that Council doesn't have to do it, he is just saying maybe now is a good time to do it, that is all he is saying. **Councilman Fiebig**, Mr. Lobe, he doesn't mind that you are interrupting his question, **Law Director** apologized, that's okay, because that fine, **Councilman Fiebig** stated that he didn't want to interrupt while the Law Director gave his presentation so that's fine, that's okay, but what he wanted to ask is your interpretation of this, is it subject to a second opinion and would Council have the opportunity to look to other Counsel because as he brought up in the meeting two weeks ago, he didn't feel comfortable going to the Law Director with this, he didn't feel comfortable going to the City Prosecutor, the two lawyers who are supposed to represent us, Council, because you were on vacation with the Mayor and obviously the Prosecutor is the brother of Councilman Germano, so are we able to do that; Councilman Fiebig hears now that the Law Director has hired or the Law Director has authorized to hire, but **Councilman Fiebig** thought that was what Council was suppose to do, authorize to get Counsel for the Mayor and one of the Council people and the Law Director also indicated the Road Superintendent and was it Mr. Brichacek so you are lawyering up, so should Council be lawyering up? The **Law Director** replied that was a misstatement, what he did is exactly what he is allowed to do, he is allowed to get an assistant for the City at the same rate of pay under the provisions in the Charter and his Ordinance (retainer), he did so at the rate of \$95.00 an hour. The **Law Director** stated that he got the approval from the Mayor because, he said Mayor, I should probably get somebody else to do it, so he did it. Nobody is lawyer up here, nobody is lawyer up. All he did is do exactly what should be done as in the past and get somebody independent. He didn't have the opportunity to discuss it because nobody discussed it with him and he wanted to take quick, swift immediate action. Just like nobody said hey Frank why don't we report this to the State Auditor's Office just in case; we didn't bring it to you (Council) we just did it on our own, so all he is saying or requiring is that people at least cooperate with the Independent Counsel Dave Matty who this Council chose before, that is all he is saying and he is going to make those decisions on a lot of the State and ethical issues. **Councilman Fiebig** asked but who does he go to? The **Law Director** replied that you are stuck with him. The **Law Director** apologized but here is another part of the problem, one of the things that he has recommended is and this is a prime point for this, because when politics and personalities get in the way, he has always stated that the Law Director should be an elected position because he and every Law Director in every Jurisdiction is always being accused of being a lap-dog for the opponent or somebody who doesn't like someone. Many jurisdictions like Parma, Rocky River to avoid these types of issues, they have an elected Law Director. **Law Director Lobe** stated that he recommended that at the last Charter Review Commission and he has recommended it before on this dais and he recommends it again so at least somebody can say that he is not beholding to anybody and Mr. Fiebig he has said that he talks with Mr. Fiebig's wife more than he talks with Mr. Fiebig, or the Law Director stated even his own wife; the Law Director went on to say that he sees Mr. Fiebig more than he sees the other Council Members; he has been in Washington with Mr. Fiebig and Mr. Fiebig's wife, and at dinner too, we can all make these types of statements; the Law Director thinks that everyone at the Table has been friendly, the Law Director stated that he is very friendly with Chris Biro, the Law Director's wife and Mr. Biro's wife go back to

kindergarten, we all have relationships, **Councilman Fiebig** replied that he agrees, there is a big difference though, there is a big difference between being friends and being friendly and going out to dinner and we have all done that; where the issue is, where there is a contract for the City goes to direct or in direct benefit to a family member and that is the issue bring up all these other things gets away from what the original issue was, there is a direct and indirect financial relationship with Mr. Germano and Landco and Landco had a contract with the City. Now back in 2007 when the Law Director came to Joyce and himself, and said that you would like to rent a little closet and it is not that much bigger than a closet, and you said that you wanted to rent some space there, it was fine and when he (Councilman Fiebig) became a Councilman he said Tom is that any kind of conflict of interest and you (the Law Director) had advised Councilman Fiebig no, it is not. However, in your words and Councilman Fiebig had agreed with this as under an abundance of caution, you disclose it, and you don't vote on any contract where his salary is involved. **Councilman Fiebig** replied that he did disclose it and he has not voted on any salary of the Law Director. That is akin to I have a lemonade stand on Chardon Road and people come to the lemonade stand and buy lemonade and you might work for the City or you might not but that is a relationship that we have within the City there is no...he is not dependent on the City of Willoughby Hills for you, the Law Director to pay rent to his company, and likewise, he (Councilman Fiebig) is not influenced by my vote obviously on Council by anything the Law Director does or says within those walls. **Councilman Fiebig** further stated that he even offered the Law Director the opportunity to leave and that would be fine and we would break the lease. So to say that is a violation or make that akin to what has happened to the Germano-Landco situation is certainly a stretch...**President Somich** asked Mr. Fiebig if he had any other questions relative to the presentation this evening. **Councilman Fiebig** replied yes he does. **Councilman Fiebig** stated that the Law Director had mentioned regarding 4 or 5 votes, the 4 or 5, again are we getting into an opinion about does Section 9, sorry he forgot the exact number, 9.34 and how you had 5 affirmative votes in that section and how that would apply to another section of the Charter. Again, that seemed to be a stretch to make that and our default that we follow is Robert's Rules of Order is that we would use Robert's Rules of Order when there is an absence of a clear directive and he thinks that would apply that there is an absence of a clear directive there because we would follow Robert's Rules of Order. So he would respectfully disagree with that assessment and if we need to we may need to get another legal opinion on that matter if you say that you are ruling on this as the Law Director. **Councilman Fiebig** thinks that the Law Director is an advisor to Council, but he doesn't believe that the Law Director has ruling authority for Council. **President Somich** stated that he thinks that is appropriate that he intercede here because what he heard very explicitly was that he started by saying that he is not ruling on anything, he is making recommendations this evening, that will put us in the best position to avoid any long-term litigation that may come against us. So **President Somich** stated that he never heard the rules....**Councilman Fiebig** stated that he did here that, that is why he jotted it down...**President Somich** stated that it was a recommendation of what we would follow based on what vote would be taken and what he could enforce in the Courtroom. **Councilman Plecnik** stated that he did have a few questions that relate to the legal issues that our Law Director brought to bear tonight and one phrase that he used several times was the minimum standards that should be followed and he thinks that one of the catch phrases of the Ohio Ethics Commission...**President Somich** asked that Councilman Plecnik please put this in terms of a questions...**Councilman Plecnik** responded that this is a question, one of the catch phrases is that State Law sets the minimum standard but that Cities and other public boards can raise the standard and Councilman Plecnik does believe that in this instance the Charter raises the standard for us as public officials, but putting that to the side for a moment, he thinks that it is important for everyone on Council to have an understanding of the Law Director's opinion as to what does violate the minimum standards and right now specifically he would like to refer everyone to Ohio Revised Code Section 29...**President Somich** asked Councilman Plecnik to get to his question...**Councilman Plecnik** responded in order to get to his question, given the long presentation that the Law Director gave, he has to give the background. Councilman Plecnik proceeded by stating that Ohio Revised Code Section 2921.42 entitled Having an Unlawfully Interest in a Public Contract forbids us under Subsections (A)(1) and (4) from either authorizing or employing the authority or influence of the public officer to procure authorization of any public contract and he is summarizing quickly now just because President Somich wants him to reach the question, otherwise he would read the entire statute, and 4 simply forbids having an interest in the profits or benefits of a public contract. **Councilman Plecnik** stated that if he is not mistaken, there was a fiscal officer in Madison who recently resigned because he worked for a furniture company that had a \$600 contract with his company, but to go one step further, he is aware of a Court Case....**President Somich** interrupted by asking if the question was still coming....**Councilman Plecnik** replied that the question is coming, that question is coming Mr. President., it would come faster than the Law Director's Report ended. **President Somich** responded by saying that we asked him (Law Director) to be

thorough; President Somich stated that there was no reason for that comment. **Councilman Plecnik** replied that he thinks that there was. **Point of Order was requested by Councilman Fiebig...President Somich** stated that we are in the portion of the meeting where we are asking follow-up questions to the presentation that was made, not to submit additional opinions or additional commentary but to relate to the comments that were just presented. **Councilman Plecnik** responded by stating that the only way to ask this question is to give sufficient background aligned with the lengthy discussion the Law Director had engaged with us and in line with the example, Councilman Plecnik wanted to cite for the Law Director for maybe he is familiar with this case, this is **State of Ohio vs. Robert Rousseau decided in 2004**, where a Board of Elections employee went to jail and his appeal was rejected from his conviction because as a Board of Elections employee, his company of which he was merely an employee, had a contract with the County Commissioners, even though he knew none of the County Commissioners, he had no influence over their vote, he was simply an employee, so we see some very severe cases that is all Councilman Plecnik is saying where simply having an interest....**President Somich** interrupted by asking if there was a question here....**Councilman Plecnik** responded by saying, yes, Mr. President, we have some very severe cases where even this modest interest results in jail time and what he is asking the Law Director is if he is advising us that it is okay, if say his (Councilman Plecnik) parents wanted to have a contract with the City, to have a Purchase Order cut to them, signed by the Mayor where he (Councilman Plecnik) had voted on the appropriations, it is okay and legally permissible for that to occur, for he thinks that every Member of Council deserves to know what they legally can and cannot do and it is the Law Director's job to tell us that. So **Councilman Plecnik** wants to know how does he avoid running a fowl of 2921.42 and does he (Law Director) that Councilman Frank Germano engaged in legally permissible behavior under that statute which is the minimum standard; put the Charter to the side for the moment, we have to comply with State Law irrespective of what the Charter says. Thank you Mr. President, thank you Mr. Law Director. The **Law Director** responded by saying, okay, let's try this again, there are three issues: one is a state issue which Independent Counsel is looking at that would cover the 29 section that he (Councilman Plecnik) is mentioning which is under the Criminal Code, that is why he (Law Director) purposely went out and got Independent Counsel because there was a rise of his bias so he went out and got an experienced Law Director who is in the process of looking at that and he is looking specifically at those particular matters as it particularly pertains to Mr. Germano. So if the Law Director came down with a ruling and said that there is nothing, then of course they would want a different somebody who differs with the outcome wants an independent, he already went out and got the independent; he is in the process of reviewing it. Number two is we also went further than that, we also went to the State Auditor that looks at with different standards that can include even criminal charges and findings for recovery and so we got a second independent body. The **Law Director** stated that what he is saying today is that the Charter provisions, that is all he commented on where you need the five votes. These three different ways to approaching things, be it the State Law, the Independent Counsel with an Auditor which we put him notice and our Charter issues. They all arise out of the same facts but they are different standards, different laws, different procedures and they have to be reviewed differently. The Charter provisions are going to be determined, that was the main purpose of his speech, by this Council. The Independent Counsel is going to review those other issues to take the bias out of the Law Director, from him and he is in the process of doing it and what is his decision, the Law Director doesn't know what his decision is, that is why he is independent and hopefully he will come up with a decision. And we even went so far with the Auditors which is a State Auditing Body and they are going to look at and we are providing the same type of documents to all three so they can look at it and the Law Director hopes that this answers the question. **Councilman Plecnik** asked just to refocus the question, to put Mr. Germano to the side, because as he said at the last meeting, we should focus solely on facts of the law and not emotions and certainly not politics, he is asking the Law Director, right here, right now, as a legal matter, if he wanted to vote on, not Germano, if he wanted to vote on an appropriation tonight and then that appropriation is then ultimately paid to a company owned a 100 percent by my parents, that I also work for, is that a conflict of interest under 2921.42 in his (Councilman Plecnik) case, his hypothetical case, that is his question, yes or no. The **Law Director** responded to Councilman Plecnik by stating that no legal answers are yes or no, let's start there. It all depends upon the facts and the circumstances and what you have to do is get out all of the facts. One of the first facts especially under the Ohio Ethics is was undue influence used, was influence used to get the contract that is one of the first and major issues that have to be resolved. That is why if you tell him there was no influence, then there is a good

chance that the answer would be no. If you said that you utilized major influence then the answer is going to be maybe a yes. **The Law Director** said that he is trying to give a short answer which is impossible. But the primary, the tilting point, with the Ohio Commission and he has been a Special Prosecutor on these matters back in the '90s on these things, that is the first thing that you look at was the use of influence...**Councilman Plecnik** asked President Somich if he could follow-up with one more question on that point, if you look at Section 2921.42 specifically (A)(4) it doesn't deal with whether you authorized or used influence, that's the misdemeanor as opposed to the felony and there you are merely criminalized for having an interest in a public contract, it states nothing of interest or he should say influence so Councilman Plecnik hears the Law Director on the felony issue but with respect to the misdemeanor it would still be criminal conduct simply to have an interest in the profits or benefits of a public contract entered into by or for the use of the political subdivision or governmental agency or instrumentality for which the public official is connected and Councilman Plecnik thinks that it is pretty clear that everyone at this table is connected to the City of Willoughby Hills so it seems to him that (A)(4) explicitly says merely to "have an interest in the profits or benefits of a public contract" would be a misdemeanor under Ohio Law; **Councilman Plecnik** asked the Law Director if he was wrong in his interpretation. **The Law Director** responded that he believes so. First thing is that Councilman Plecnik is confusing two different things. There is Civil Law and there is Criminal Law, he (Councilman Plecnik) has jumped into the Criminal Law so to say that there is a violation of something there is different burdens of proof and he has been a Prosecutor and Defense Counselor for many years. What you can prove sometimes in a Civil Arena you can't prove in a Criminal Arena. The classic case of that is the O.J. Simpson, he was found not guilty in a Criminal Arena but he was found guilty in a Civil Arena so you can't just mix the Civil and Criminal and say that is the right application because there are different burdens of proof, there are different elements and there are different standards so it is not that simple. Each one has to be viewed on its own and that is why he (Law Director) got Independent Counsel for the State Issues which will go into that 29. We got the Auditors to go into the other potential auditing issues that could even arise to criminal conduct and then we have our Charter and our Charter does not get into criminal conduct or anything else, it just goes for removal, it's a remedy. **The Law Director** hopes that puts it into perspective and he thinks that it is an over simplification and it is confusing the issue because there is a big difference between Criminal Law and Civil Law and the two don't meet, you don't take Depositions, Burdens of Proof, Standard of Proof, everything, it is absolutely different; it is unfair to relate the two in his opinion. **Councilman Plecnik** asked President Somich for one last question to the Law Director, **Councilman Plecnik** stated that the Law Director distinguished Criminal Law and Civil Law based on burdens of proof and procedure but in his hypothetical, he is admitting that he works for the company, he is willing to sign a sworn oath that he worked for the company that my parents own a 100% of it and beyond a reasonable doubt, is established in that instance, his own admission surely satisfies it, so taking away...**President Somich** interrupted by asking what this has to do with the discussion that we just heard from this evening, we have already talked about getting a third party counsel to come in and give us their recommendations and their evaluations, we have already talked about the need to go to our Charter Review Commission and have this thoroughly discussed, what relevance does your question have tonight about a hypothetical situation about a vote, a hypothetical vote that doesn't exist and does have, other than to, once again, perhaps prove a point or show case here, is there truly a reason why you are asking these continuous questions. **Councilman Plecnik** responded to President Somich by stating to answer his question directly, the reason is every Member of Council should be aware of what a conflict of interest is and what behavior is and is not permissible and it is the responsibility of the Law Director to tell us that and he is trying to understand aside from burdens of proof, what we are allowed to do and not allowed to do under 2921.42 and he has not heard an answer as to how it is legal to have an interest in the profits and benefits of a public contract when that statute explicitly says it is a misdemeanor crime, thank you Mr. President. **President Somich** asked if there were any other questions for our Law Director; President Somich stated that he thinks that he has done a major job this evening of giving us clarification on a lot of issues and following up with additional commentary. **Councilman Biro** stated that he appreciated Mr. Lobe's explanation of what we need to do; he was part of that Charter Review with Linda and Dale Fellows and it is a long and arduous processing, taking a lot of time and he felt that you get a good sense of what our Charter is and the discussion were phenomenal. He doesn't specifically remember 9.3 per say, but obviously at the next Charter Review he would imagine that that gets a lot of attention and he hopes it does. He thinks that there is the idea of malfeasance and what not, we need to better define that and he would recommend that all of our

Council gets involved with something like that, questions and reading minutes and making sure that they are part of that discussion too, that is Councilman Biro's hope. **President Somich** stated let's move on to our Finance Director....**Councilman Fiebig** stated that he did have one more follow-up, the State Auditor's Office was contacted but the Ohio Ethics Commission was not. The **Law Director** replied that at this time he sent it to the Independent Counsel first to make those reviews and get the facts and he would make the determination whether to go directly to....**Councilman Fiebig** said so you did include them; you did ask them to go to the Ohio Ethics Commission. The **Law Director** responded, no, he asked them to review it Independently as to whether it should proceed to them upon garnishing all the facts they will make the decision. **Councilman Fiebig** asked the Law Director if he made the County Prosecutor aware of this. The **Law Director** responded no, and he said that we could have gone a lot of routes if we were given the opportunity to do it; he wanted to be proactive by doing something immediately, like what happened before, and in this case he could take it there, but he decided not to. The **Law Director** stated that he did not do that because he followed what would be the normal and standard procedure by getting Independent Counsel to review the facts and then he will make the determination where and how go; the Law Director stated that he has no problem with that and he will make that decision. The **Law Director** stated that he has no idea where his decision is going to end up, all he can do is give him all the facts and let him make the independent decisions. **The Law Director** stated that he has no idea where the Auditor's Office....they can take it to the County Prosecutor's Office too; those are absolute potential end resulting issues in both of those cases. **Councilman Fiebig** stated that the name Landco doesn't in any way for our Purchase Orders or our Reports say the name Germano so unless somebody had specific knowledge of that, they wouldn't...a State Auditor or other people that would be looking at this from the outside would not have any idea, just like he as a Councilperson reading over reports and seeing dozens and dozens of lines of reports, he never made that connection until he saw Mr. Germano driving a truck with the name "Landco" on the side of the truck. So that is why it came up and he mentioned it last week, for those of you who may not have heard, this is why this issue came up. So **Councilman Fiebig** stated that he guesses that the questions would go back to, and if Mr. Brichacek said that he did not know that Landco and Germano were connected are there other companies that do business in the City where there is a connection whether it's the son of a Councilperson, or a daughter of a Councilperson or a parent who owns a company that does some business through here and if there is how would we know that other than the sworn oath that a Councilperson takes to uphold our Charter and assuming that every Councilperson here has read the Charter and understands how you cannot have that direct or indirect conflict of interest. The **Law Director** responded by saying that is why it is one of his recommendations was to have two documents for the vendors, one, a disclosure document for all vendors to try to disclose this before they do any work and then even a sworn statement by the vendor before they get the money, he thinks that it was on pages 32 and 33; those are just samples of what he would like to get because you want to get as much information for both sides, okay, so those were one of his suggestions because otherwise you may not know. That is one of the Law Director's suggestions, look at pages 32 and 33 and that is just a sample, it has to be worked up and then everybody has to sign similar ethics things, so there is really three more documents, two to the vendors and one to them, so that is his recommendation and he hopes, for it will clear up a lot things and it will give us some guidance so that if anybody does violate, we have a clear cut understanding. Okay, it gives us at least a better case; those are recommendations. **President Somich** stated that we are going to move on to our Finance Director's Report.

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

Finance Director Brichacek stated that he had a couple of things to report tonight. First of all to clear up the issue regarding the Purchase Order that was issued to Landco; in November \$7500 Purchase Order was issued to Landco, actually after the last Council Meeting, he went back to his office and researched it because it didn't ring true in his mind, as to why the documents said \$7500 and the report said \$4500, but he had determined why. In the November Purchase Order was issued to Landco, in the amount of \$7500 authorizing five (5) days work at \$1500 per day, during the month of November the work was completed, the invoice submitted by the Street Superintendent along with an invoice for three (3) days work totaling \$4500 at that time it was the Street Superintendent who indicated that the work was complete. So at that point we issued a check for \$4500 and since the work was complete, the Purchase Order would be closed and so in the process of closing the Purchase Order, we issued a final payment against the Purchase Order, the check was issued, \$4500 as encumbrance was released, that still leaves a \$3000 balance on the Purchase Order; when the Clerk enters the payment, indicates that it is a

final payment, the software automatically makes an adjustment to adjust the available balance of the PO to zero and since that particular report that is run with the Purchase Order when it was issued and closed in the same month, the software listed the PO for the final balance of the Purchase Order which is \$4500. The Finance Director also wants to clarify, so he will go back and check his records to see if there is any evidence, whether or not, the payment to Landco was mailed or picked up by an employee because the assistant who does distribute the checks is supposed to maintain a log; we do have a log of when checks are picked up in person, he has asked her to maintain a log and have the person sign-off, so if the check was picked up by an individual and not mailed it should be in that log assuming that she has maintained the log.

Councilman Plecnik had one question for the Finance Director, based on the log that you had described, you could determine whether the check was picked up or whether it was mailed and if someone picked it up, we could know who; the **Finance Director** replied, yes, in the log she would record who pick it up, the check and who pick it up; if nothing appears in the log, then the presumption is that it was mailed. **Councilman Plecnik**, asked if the Finance Director could send an email to all of Council, the Mayor, the Law Director, which just gives us this information whether the log was used, if a name was used, if it was picked up and if so, by who and if not, then presumably it was mailed, could you get us that information by email. The **Finance Director** replied that he absolutely intends to do that. The Finance Director further stated that our procedures are transparent and our records are open; he will let you know whatever he finds tomorrow.

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

Reported activity on a few projects:

(1) Working on an overflow drainage swale on Eddy Road at the east-end of the City commonly known as the Marvaldi property; however, we have been communicating with the affected residents and they have some hesitation about putting the soil on their property and providing an easement so the City Engineer is continuing to communicate with them; however, that project is a little doubtful.

(2) Working on a stream restoration project also on Eddy Road but at the west-end of the City, commonly known as the Knecht/O’Brien Project and the City Engineer has been communicating with Lake County to get our final plans complete.

(3) Started the survey for the Lamplight Culvert Replacement Project now that the weather has cleared up a little bit and he is hoping to schedule a meeting with the affected residents on April 14th at approximately 6:30pm in Council Chambers that meeting is tentative; however, notices will be distributed to the residents on Lamplight Lane when it is final.

Responded to Mr. Plecnik’s questions as to the City Engineer’s involvement on the project, he had no knowledge of which contractor was involved in that project (Gatsby Storm Sewer Extension Project); he was not involved in the selection, supervision or approval of payment to that contractor (Landco) and the reason for that is that it is outside of his basic scope of his services so that project was totally coordinated by Nate.

COMMITTEE REPORTS

The following Reports have been listed alphabetically by Committee.

FINANCE – Raymond C. Somich, Chair

Committee Members: Nancy E. Fellows, Frank A. Germano

Chair Somich reported that at the Finance Committee Meeting held this past Monday, March 24th. We discussed all of the legislation that was later discussed by the Rules and Legislation Committee actually done earlier this evening, so all of the Finance Committee’s recommendations are consistent with what he is sure that we will be hearing from Councilwoman Fellows.

RULES & LEGISLATION – Nancy E. Fellows, Chair

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

COMMITTEE MEETING OF MARCH 27, 2014
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Members Present: Vice President Nancy E. Fellows, Chair, Councilman David M. Fiebig, President Raymond C. Somich

Also Present: Councilman Frank A. Germano, Councilman Christopher Hallum, Councilman John Plecnik, Law Director Thomas G. Lobe, and Mayor Robert M. Weger
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Purpose of the Meeting was to discuss **Pending Legislation** and any other business.

Meeting convened at 6:30pm

Order of Business

Legislation for upcoming Council Meeting on March 13, 2014:

Ordinance 2014 – Bowen 2 year Contract Modification (Retainer), 3rd Reading last Council Meeting of Feb 27, 2014, to be discussed in combined Finance/Service Meeting March 10, 2014. The City Engineer, Pete DiFranco had voiced honoring contract. **After discussion it was the consensus from the Service Committee Members [meeting held after Rules] to recommend to Council to Withdraw/Table this Ordinance.**

Ordinance 2014-10 – Community Center modification (original Ordinance 2012-58) to reflect rates of specific rentals and the alcohol policy. **Discussed prior to Rules at the Recreation Committee of Council, consensus from the Recreation Meeting to Council is to amend the appropriate areas of the Ordinance [special rates and alcohol policy] and adopt.**

Appropriations: Consensus of the Rules Committee to read for the 3rd time and adopt:

Ordinance 2014-11 Trailard Lane Storm Sewer Extension

Ordinance 2014-12 Rockefeller/White Storm Water Cross-over

Ordinance 2014-13 Knecht/O'Brien Culvert on Eddy Road

Ordinance 2014-16 Eddy Rd Storm Sewer Overflow Swale

Ordinance 2014-17 Pleasant Valley Road West Sewer project

Ordinance 2014-20 - Judgment entry for Bishop Willoughby Co., Ltd. (formally Sears Hardware store, which will become a motorcycle retail and service establishment) Zoning Change from B2 -> B3. This is a Court Order, which Council must follow. There is no urgency in suspending the 3 Reading Rule. Adhering to the 3 Reading Rule, provides opportunity for residents to comment. **It is the consensus of the majority of the Rules Committee to leave on 2nd Reading.**

Ordinance 2014-21 - CRA (Community Reinvestment Area Program) Dunkin Donuts, Tax Abatement of 50% for 10 years. After much discussion citing the two different tracks this project is on, (1) Planning and Zoning where the footprint of the current design of the Dunkin Donuts building and parking area are too large for the parcel purchased, and (2) the “whole concept” of the Project and the City providing a “good faith” provision in providing a Tax Abatement for this new establishment. The following comments were made from:

Councilman Fiebig – “this legislation is not ready, as the project is yet to be determined”

Councilman Somich – “people will look at this as a “whole concept”, and yes this legislation will need to be changed”

Councilman Plecnik – “this project needs to go through Planning and Zoning first”

Economic Developer Steve Roszczyk – “if we do not give a CRA (Tax Abatement) to this owner, they will probably not go forward with the project”

Honoring a Tax Abatement for this new establishment is agreed, the concern is the sequence of approving legislation before the Project has been cleared/approved by the Planning & Zoning Commission of the City.

It was the consensus of the majority of the Rules Committee to place on 1st reading.

Ordinance 2014-22 - Service Contract (3yr, 1/1/2014-12/31/2016). 1%, 1%, 2% with \$500 Ratification Bonus for each employee. This contract follows the Police Contract with salary percentage increases. Councilman Plecnik inquired as to who wrote/drafted the contract? The summary of the contract identifies Mayor Weger, Finance Director, and Tom Lobe negotiating with the Union Representation, and that the Mayor's Executive Assistant Gloria Majeski drafted the document. Sadly, a display of unprofessionalism followed.

Resolution 2014-2 will be presented at this coming Council meeting to Joan Motuza for her years of dedicated service to the City of Willoughby Hills.

Resolution 2014-1 - will be presented to former Councilman Malecek at the March 27th Council meeting for his years of leadership and dedicated service the City of Willoughby Hills.

Public Portion

Public portion opened at 7:13 p.m. Resident Joe Zawatski of 28914 Eddy Road voiced his personal opinion (displeasure) with councilmatic actions.

Public portion closed at 7:15 p.m.

Meeting adjourned at 7:15pm

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 8:40pm

1. Dan Phillip

President of the Recreation Commission
2423 Pine Valley Drive

Re: No financial gains from the City; Resident for eight years, involved with the Recreation Commission and the Economic Audit Task Force, donated a lot of time to the City and it irks him as a resident to see this great City become all about negativity, feels it affects the property values because people won't want to get involved with the City because of all the negative stuff that is going on; brought up positive stuff such as in 2008 and 2009 the City was in financial distress, in 2008 he had heard that there was \$17,000 in the bank account and \$50,000 in bills, he has no idea if that was true, what he does know is true thanks to Mayor Weger, Council at the time, Willoughby Hills Administration and Staff working very closely together, they did turn around in 2009 and had a carryover of about \$52,000 heading in the right direction. Now comes the worst economic time in probably all of our lifetimes here and thank god we have someone like Mayor Weger in office who didn't have a political agenda, he had the City at heart. This guy's style, and he knows him and has talked with him many times, is roll up the sleeves and get in the trenches, remember this position is Part-Time, this guy is giving his heart, soul, and his health to this City and as most of you know has suffered a minor stroke and has a slight slur of speech. But he has numerous conversations with him, his mind is still there, the guy knows what he is doing, he knows what he is talking about; to the fact, during the worst economic times, something that we should be proud of, he never talks about, no one talks about, is that Council and himself, in 2013, he is hearing numbers of \$600,000 carryover and we're over here complaining about a \$4500 PO that kind of stuff as resident irks him. He goes back and finds that this is being done with very little cuts to City Departments and Programs, yes he did ask people to do more with less and they responded, that is what great leaders do. Therefore he urges the people to stop listening and responding to negative attacks on people and the City itself, yes we do have to address legal issues, but he is embarrassed as a resident how some of this stuff is being brought up and surfaced something to him sound like a political game, he doesn't usually speak up but he sees some familiar faces in the audience, they are the ones who make time to show up for all the negative things that go on in the City right now he has two kids and he doesn't have time for negativity but there are a lot of good things going on in this City and people don't want to talk about it and it is being over shadowed by a \$4500 PO. One of our ex-Presidents once said, Don't ask what your Country can do for you, ask what you can do for your Country; he is here to say Don't ask what the City can do for you, start asking what you can do for your City and start volunteering.

2. Linda Fulton

2990 Marcum Boulevard

Re: Who would have ever thought that the inquiry that she had would have manifested into all of this; but she feels Council took an Oath when you became a Councilman to up hold the laws of the United States, the State of Ohio and the Charter of Willoughby Hills. Each one of you received a copy of the Charter, have you read it? Do you go over it periodically to know if you are doing things right, if the City is doing things right, that goes for the Mayor too; do you look over the Charter all the time and if you did, then you know that you were doing wrong. She doesn't have anything against all of the volunteers that we have in the City, they do a great job, but the thing is nepotism is here, what are we going to do about it? We now know about it, the public knows about it, the City knew about it, overlooked it, is that right? You took an Oath to abide by the Charter and she thinks that it is time that you do it; it doesn't mean that you have to remove everybody, she wouldn't expect that, but going forward you need to do the right thing and follow what the Charter says. Yes, the Charter needs to be looked at again, she also feels that being Council, it was recommended maybe Council look at this and form a committee, but she feels that everybody would be bias, you need people on this committee that is not part of the City.

3. W. James Walsh

38755 Berkshire Hills Drive

Re: His wife and he have lived at that address since 1988, his family lived in the home prior since the mid '40s and he lives in the City of Willoughby Hills with a certain degree of pride. He actually had two points, but the young man Dan, summarized the first one; let's all be proud of our City, he doesn't want to go to work, he doesn't want to hear the chuckles, he doesn't want to hear, hey we saw you in the News Herald this morning, don't do that, all of you do your job, he knows that they all want to and make us proud, help us to be proud Willoughby Hills residents which he knows is the intent and has been that way for many years; some of us remember a time when that wasn't the case and he will let that stand on its own. The second thing that he wanted to mention, if the Charter Review Commission does take form, and if you are looking for resident input, he would like to volunteer his services; would love to work on something like that and if you need to see his background he could provide a resume to Council Clerk, and the Mayor's Assistant.

4. Tony Manfredi

730 Pebblebrook Drive

Re: Served on the Charter Review Commission and he attended every meeting and we did work and diligently on it and we did look at item 2 and we did look at 9.3 but what we did was this, we looked at and we said let it stay for right now because we voted on ten of them and all ten were passed on the votes, so you see, we did a good job; he doesn't want to remove any of those good jobs; let's put things in the proper perspective, he knows each and every one of you and he considers each and every one of you his friend, but here's the thing, let's do it with integrity and civility because we all uphold the right for each and every individual to express his or her opinion. Let's do it with decorum and respect for one another this is what it is about in the City. It's not my agenda, it's not your agenda, it's the people's agenda. So let's work diligently to fulfill that obligation.

5. Steve Atkins

2909 Oakwood Drive

Re: There has been a lot of concern of the residents of Willoughby Hills about the provisions of the Charter have been ignored and violated for so long that it becomes indefensible; he thinks he supports the convictions that if we don't agree with the Charter, we need to abide by them so that we can or make the changes so that we can abide by them. Just wanted to say that if you need help with the Commission, he certainly would be willing to offer his two cents to be a part of it.

6. Joe Zawatski

28914 Eddy Road

Re: First thing that he wanted to say to everyone, looks what is out here tonight, after that very creative circus by Mr. Plecnik from two weeks ago, it is nice to see our residents come out tonight because he thinks that they are actually in support of our City. This isn't as well written as Dan's, but the first thing that he is going to say is how atrocious while Dan stood up here and talked about what was going on, and what has happened with the Mayor during the last couple of years, for you Mr. Plecnik to sit there and shake your head, no. How appalling, how appalling it is, for you guys to turn this into a circus, really. You know that there are a lot of people in here that volunteer and help this City and do a lot of good for the City and they do it because they care about this City; he can look up there and tell you one, two, three, four, five people who showed up at the last pancake breakfast that showed up about at 6:15 in the morning, he can also tell you about two of you that showed up about ten o'clock with your councilman shirts on that walked around pouring coffee telling people all about your agenda. One of you trashing Gloria, like you do when you are supposed to be supporting your own citizens and the other one trashing a really lovely young girl. **Councilwomen Fellows** requested **Point of Order, please.** **President Somich** requested Mr. Zawatski to make his comments more generalized. Mr. Zawatski replied that they are general. He just hopes that you guys sleep well at night, but it is time for you as Tony says, to get back and support your City and do what you are actually elected to do. **President Somich** stated that we will ask, just like it has been recommended from one of the residents to please do this with civility and respect and to try to keep the inflammatory comments down and that pertains to on this Dais as well as in our audience.

7. Robert Kowalsky

2585 Timberline Drive

Re: Ordinance No 2014-20 – when you read this it says the Court did it, so you have to pass it, and you had it on Three Readings but the truth is it was never not going to be passed because you are stuck with the Court. You are all happy with this man here, our Economic Development Director, who was the Publisher of the News Herald, when we had that shameful three days... **President Somich** interrupted by requesting non-inflammatory comments, please. Mr. Kowalsky replied, what to the newspaper. He was the publisher, that's a fact, in fact, his opinion of that is you said after this report comes through with the Independent, Mr. Lobe, where will it go, you don't know where it will go, Mr. Kowalsky said he thinks he knows where it will go, it will go to the newspaper rather than go to you to decide what to do. But here is the story with this one here, you have now placed, this is very important, B-3, you have placed it on the other side of the street when everybody voted for B-2 on that side of the street. Okay, now, you have done this over and over and over again and disregarded the whale and the whale is the residents, their vote, no one asked this man, who is doing this, he isn't guilty, hey you could do this through the Court, he is thinking, hey, I'll do it through the Court. When we hear about it, did anybody ask him, did anybody write a letter did anybody say hey, how did it get to you guys. Did you authorize them to go to Court, did this Council authorize to go to Court. Did you say, ya bring this to us. You previously in other years have been involved with that Court Case to change the zoning pass the people's vote. Now when this comes up and it will come up first, he really expects a lot of discussion here because you can do it for more than three minutes, you all can do it for more than three minutes so let's see how much you stand next to the Charter for each and every one of you. Explain to me how this got there.

8. Tanya Taylor Draper
Stratford Place

Re: This is very disappointing and concerning this whole thing here tonight, she just has to say that. Changing gears, she just wanted to ask about the Internet Café that reopened on Chardon Road, it is near their Community Stafford Place and they are quite concerned that we are going back to some of the old atmosphere that was here before so we just wanted some information on the Council's decision to allow that to reopen or exist.

Public Portion was closed at 8:57pm

UNFINISHED BUSINESS

Law Director Lobe addressed the issue of Internet Cafes by stating that the Internet Cafes are legal; there has been a big splash that they are illegal but technically the Ohio General Assembly never found them illegal, they regulated them and they kept regulating and they kept regulating them to run them out of business that is what really happened. They have a new version now of these Internet Cafes and they think that it is now legal again and they are going to side step the Attorney General on this one, so they have to register with the Attorney General and the Gaming Commission of the Ohio Attorney General's Office who in fact is reviewing those matters; that is what we have been told, it has always been regulated exclusively by them, we have our eyes on them, they have always been legal but we are watching them so we will keep you advised, in fact Mr. Wyss who does our Certificates and does collect the money from them, if they are going to be legal, they are still going to have to pay; but we are watching them and we are trying to get opinion by getting some advice from the Attorney General as to whether or not, what they currently are doing is still legal and he has not come down with that opinion. The **Law Director** stated that she could call him with any questions, she has his number.

President Somich stated that one of the questions that was raised in Public Portion was about the Committee, the Charter Review Committee of Council that perhaps could begin soon at the recommendation of the Law Director or whether that is being done through the Mayor's Office that is actually a committee of residents, not a committee of council people or administrators; **President Somich** stated that he is not even sure if a single councilperson can serve on it, perhaps some of that could be, but it is not made up of entirely of council members or administrators, it is made up of residents.

Councilman Plecnik stated that it is a good thing that he is a heartless attorney or his feelings might be hurt. He doesn't think that he is going to mention the name of the person who said what he said because we all know who the crazy person was that came up to the microphone and comes up to the microphone every single meeting and attacks him personally **President Somich** interrupted by stating that we had just asked not to have inflammatory comments and the word "crazy" certainly is one, please sir, please. **Councilman Plecnik** stated that it is hard to describe otherwise, but he will say this the word "circus" was used, if he wanted a circus he might bring people

here to say things and tell them what to say that were closely related to him, he might for instance donate over a \$1,000 to someone's campaign so that they would mention his name, time and time again, or over a \$1,000 in in-kind and cash contributions but he has never mentioned the name of the Mayor's Secretary. He also might, if he was the Treasurer of someone, if he was the Treasurer of someone, or if they were his Treasurer, he might also want them to come up and consistently attack the Members of Council, but he is not here to have any attacks backwards or forwards he will just say this, Mr. Mayor if you want to say something to him from here in out say it to my face don't have your former Treasurer or the man you were Treasurer for, say it for you.

President Somich wanted to say that he has received a couple of anonymous letters over the last two weeks relative to some of the events that happened here at the last Council Meeting and if those people are in the audience or if they are watching on television unfortunately, an anonymous letter has no creditability and one of them even asked him to please read that at the meeting and read it in front of, make sure that he shares it with the Council people; an unsigned letter has no validity whatsoever. Our City certainly gives you every opportunity to speak in Public Portion, to address your concerns, he has never heard in all of the years that he has lived here of anybody who has been in anyway hindered or disadvantaged or taken advantaged of because they spoke their mind in public portion; we are not that kind of community so if you have your comments and you would like to share them, please come to Public Portion and do so, but we cannot read those letters or share those letters if they are anonymous.

President Somich wanted to address one point, as an education, one person did sign the letter, complained because some Members of Council they suspect have another job and they said that we should be working full time on the City so to clarify that for anyone who is not aware all of these positions in Willoughby Hills are Part-Time positions the pay, the salary is accordingly with the Part-Time position there is nobody on this Dais here that could survive on the pay that they receive. We do this partially, a very small amount for compensation and the great majority of that is because we truly do care or at least that is the reason that we should be here because we care so much about the City. So he just wanted to clarify that for anyone who is under the impression that these are suppose to be Full-Time, these are not Full-Time positions.

Councilman Fiebig addressed the decision to allow Internet Cafe to be in the City by stating that was not something that came before Council and was not something that was given to us as an opportunity to vote. As Mr. Lobe said that came from the State of Ohio through a Ruling it would be his preference that they weren't here because he did hear from businesses that are need by and from residents that are not happy with but Council has not been given that opportunity to allow them back in. We could perhaps do something like a moratorium on them or further regulate them beyond what the State of Ohio does, we could perhaps look into that to see if that is the case but he doesn't know that we have the votes on Council to do that. **Councilman Fiebig** commented on the Court Order by stating again, Council did not specifically do a motion on that was the Law Director's advice to go ahead and let them sue us basically is how that happened and he understands the frustration in the community for that because we did specifically pass a Zoning Map and we do try to control our own and we want to have that process unfortunately that was the situation and they did sue and successfully sued to have their business be in there, we understand property rights and the ability for someone to buy property or rent property to run a business but Council didn't specifically do that to answer your question on that. **Councilman Fiebig** stated that we really do need to work as a Community, that we need to work together as a Council and the Administration but it does start with ethical behavior and the fact that these issues came to light is troubling to him, disappointing, troubling, all those words. His heart is with this City and he hopes that you are all with him on that as well. With the heart being in the right place, that we need to have ethical behavior. We need to follow the Charter and the Laws of the State of Ohio. If we could begin discussion about setting up because of this issue and perhaps other issues, a Committee of Council call it say, Ethical Practices Committee of Council and set it for a short period of time; we can review these issues and we can do it in Committee rather than in full Council and we can thoroughly debate these issues prior to a Charter Review which according to our Charter they shall happen once every eight years so rather than wait we can do that and then give that to the Charter Review Commission and say that these were our recommendations, adopt a nepotism policy which he thought that the City already had one, or at least he thought there was an Ethical Practice Policy in place. There certainly is the Oath of Office that all Directors take and all employees take and all elected officials take so we certainly have that but perhaps we need to go one step further and Council could as a body make those recommendations to Council to ask the Administration to adopt those and to follow those.

Councilman Biro stated that Mr. Fiebig brought up a good point; he thinks that it would have served the City better had we brought these issues before Council in a Committee to discuss before almost being forced to a vote. Councilman Biro stated that he thinks that the communication needs to continue so that we can be respectful of each other and each other's opinion but we have to get away from the adversarial aggressive approach and work together as our citizens want us to do.

LEGISLATION

ORDINANCE NO. 2014-20 – THIRD READING

1st Reading: February 27, 2014

2nd Reading: March 13, 2014

AN ORDINANCE PROVIDING FOR THE CONSENT AND RATIFICATION OF THE TERMS AND CONDITIONS SET FORTH IN THE AGREED JUDGMENT ENTRY AND ORDER DATED FEBRUARY 13, 2014 CASE TITLED BISHOP-WILLOUGHBY COMPANY, LTD. VS. THE CITY OF WILLOUGHBY HILLS, CASE NO. 13CV002709 AND DECLARING AN EMERGENCY.

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilman Fiebig to adopt Ordinance No. 2014-20.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-20 has been adopted.

ORDINANCE NO. 2014-21 – SECOND READING

1st Reading: March 13, 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 Second Reading.

ORDINANCE NO. 2014-22 – SECOND READING

1st Reading: March 13, 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.

President Somich stated that this Ordinance has been discussed in the Finance Committee; however declared that Ordinance No. 2014-22 would remain on Second Reading.

ORDINANCE NO. 2014-23

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR OF THE CITY OF WILLOUGHBY HILLS TO ENTER INTO A PARTICIPATION AGREEMENT WITH THE OHIO DEPARTMENT OF TRANSPORTATION FOR THE CITY'S SODIUM CHLORIDE (ROCK SALT) REQUIREMENTS FOR THE 2014-2015 WINTER SEASON AND DECLARING AN EMERGENCY.

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Germano to suspend the Three Reading Rule for Ordinance No. 2014-23.

Councilman Plecnik stated that he feels strongly as a general matter that we need to follow the Three Reading Rule so that Council gives not only themselves but the public an opportunity to consider each and every piece of legislation unless there is an emergency or some other matter of importance that required Council to waive the Rule, he thinks that this is one of those rare instances where the waiver of the Rule is appropriate given the pricing situation, the timely nature of the legislation and the reality that quick action is necessary.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that the Three Reading Rule for Ordinance No. 2014-23 has been suspended.

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilwoman Fellows to adopt Ordinance No. 2014-23.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-23 has been adopted.

ORDINANCE NO. 2014-24

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.

President Somich declared that Ordinance No. 2014-24 would remain on First Reading. President Somich stated that if there was anyone who has interest this Ordinance, the tentative discussion has been to approve and adopt at the next Regular Council Meeting so that we can take advantage of certain timing issues, so if anyone has a concern, please voice it over the next couple of weeks.

ORDINANCE NO. 2014-25

AN ORDINANCE ACCEPTING THE BID OF OSBORNE CONCRETE & STONE FOR THE PURCHASE OF ASPHALT FOR THE YEAR 2014 AND DECLARING AN EMERGENCY.

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilman Germano to suspend the Two Day Notification Rule for Ordinance No. 2014-25.

President Somich stated that there was a question if the Members had the Ordinance in time. **Council Clerk** replied, yes they did; it was on the Agenda. The **Law Director** asked if they everyone received it two day early; is there a debate or even a question that they did. **President Somich** stated that in the area of caution he thinks that we should do it because it wasn't done until Tuesday and he is not sure when it was received. The **Clerk** replied that it was on the Agenda, **Councilwoman Fellows** confirmed that it was on the Agenda and the Clerk sent us the information on Tuesday. **President Somich** questioned the Members if they received the Ordinance on Tuesday. **Council Clerk** stated that she had the email notification that they did. **President Somich** stated that if everyone received the Ordinance on Tuesday, then we are covered on this. **Councilman Biro** withdrew his motion and **President Somich** stated that we do not need the Two Day Waiver, so what are the wishes of Council.

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilwoman Fellows to suspend the Three Reading Rule for Ordinance No. 2014-25.

Councilman Plecnik stated that for the reasons that he had stated for Ordinance No. 2014-23 he also believes that it is appropriate to waive the Three Reading Rule in this instance.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that the Three Reading Rule for Ordinance No. 2014-23 has been suspended.

MOTION WAS MADE BY COUNCILWOMAN FELLOWS, seconded by Councilman Fiebig to adopt Ordinance No. 2014-25.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-25 has been adopted.

ORDINANCE NO. 2014-26

AN ORDINANCE ACCEPTING THE BID OF ONTARIO STONE CORP. FOR THE PURCHASE OF LIMESTONE FOR THE YEAR 2014 AND DECLARING AN EMERGENCY.

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Germano to suspend the Three Reading Rule for Ordinance No. 2014-26.

Councilman Plecnik stated that for the same reasons that we waived the Three Reading Rule for Ordinance No. 2014-23 and Ordinance No. 2014-25 he believes that it is appropriate to waive the Three Reading Rule for Ordinance No. 2014-26.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that the Three Reading Rule for Ordinance No. 2014-26 has been suspended.

MOTION WAS MADE BY COUNCILMAN GERMANO, seconded by Councilwoman Fellows to adopt Ordinance No. 2014-26.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-26 has been adopted.

NEW BUSINESS

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilman Germano to declare a Sharp MX-M350, Serial #31390 copy machine that is currently in the basement; the value is, we bought it out for about \$600 last year off of the lease but apparently it is unfixable so therefore the value is less than a \$100.

Councilwoman Fellows stated although it seems frivolous and this is surplus but she has asked before that if she is required to make a vote on a motion she would like the information before she is voting on it. **Councilman Fiebig** question if we could find out where that was from, what is the situation with it, did we buy a new one, flush it out just a little bit more Mr. Mayor. The **Mayor** replied, yes, it is a Sharp, it is the old copy machine that was upstairs; it went to the Clerk downstairs and she tried to use it a couple of times and it doesn't work but we have a new replacement upstairs.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared that the Motion passed to declare the item as surplus.

President Somich stated that if it was the wishes of Council, he would entertain the Motion to establish a Charter Review Commission of Council that can go forth from this day. If there is anybody that would like to do that yet or you can certainly take more time to think about it. **Councilman Hallum stated that he would like to make a motion based on the Law Director's advice that we create a Charter Review Commission to specifically look at Article IX and he believes that there was another Article that he is not familiar with so he doesn't know if it is appropriate to consider that one as well, at this point, just Article IX is our major concern right now.**

President Somich stated that perhaps it might be wise to say especially Article IX and that way they could look at the other ones too would that be appropriate. The **Law Director** responded that this Council can form a Committee, this Council is not limited to what the Charter says who has to be on Charter Review Commissions, you may want to if you so decide to include residents or other people too; he would suggest that you first put it into Committee and find out what kind of Committee you want and who you may want on it because if it is only Council then you are going to be criticized that we didn't get good outside advice. The **Law Director** stated that he thinks that is what he would probably recommend first to maybe put it into Committee to determine if you want one and who should be on it and how many people and things of that nature and then come back and make a proper motion. **Councilman Hallum stated fair enough, he will withdraw his motion.**

President Somich asked Councilwoman Fellows if it would appropriate for Rules and Legislation, would that be acceptable for you. **Councilwoman Fellows** replied that yes, it would be acceptable unless another Committee Chairman wants to take it on. **President Somich** thanked Councilwoman Fellows for taking that on and stated that he is on the Committee as well so we will work together on it.

Councilman Plecnik stated that there was one other item that he wanted to bring to Council's attention and he understands that this has been a very difficult evening for a lot of people; this has been a very difficult few weeks. As a Law Professor he feels strongly that it is our duty to uphold the law, sometimes that is controversial, sometimes it is easy, sometimes it is hard but rain, shine, snow what have you it is our job to do it nonetheless. Whether it is the most popular thing that he ever does, or the least, he will uphold the law. Whether he gets one term or twenty terms he will uphold the law and he thinks that Council needs to know one more fact with respect to the Landco situation, he thinks that the Law Director should refer to this as well to Independent Counsel. **Councilman Plecnik** stated that he will allow the members to take, **President Somich** interrupted for he wanted to ask Councilman Plecnik's consideration of something, because we already know that this is something that is going to be discussed by other outside attorneys, it is going to the State Auditor, may we take all the information that you have gathered and send it to the appropriate parties for their consideration, including by our Law Director, do we need to do this formally right now, in front of everyone and tying up all of our time in explanation when the decision is going to be made by these other people. **Councilman Plecnik** replied that since the ultimate decision is going to be made by the public and the people, he said yes he does believe that they have a right to know.

Councilman Plecnik distributed information and informed everyone that they are receiving a different packet or a different piece of information by the way, but it doesn't really matter, which one you get, they are all Ohio Ethics Commission Reports that Councilman Frank Germano submitted and signed either electronically or in his own hand and every single report demonstrates not only that Landco is not only his employer, but that it is his sole employer going back to the year 2005. There is no question that Councilman Germano has a direct or at least an indirect financial interest in Landco and all Councilman Plecnik has heard tonight have been excuses, well everybody does it, this person might do it, that person might do it, you know what, even if every person in the world except for me did it, it doesn't make it right or wrong because someone else did it, it is right or wrong in and of itself. Councilman Plecnik doesn't see any way any attorney could disagree that he (Councilman Germano) has a financial interest in Lanco and you don't need to be a lawyer or even a law professor to know that a Councilman should not vote on appropriations, a Councilman should not vote on appropriations that are ultimately paid to company that not only do his parents own, but he works for and is his sole employer according to his sworn statement that he had submitted time and time and time again and Councilman Plecnik is just disappointed that this issue wasn't brought to light by someone else years ago. As the Mayor said in his report, this came up a very long time ago. These issues have gone on for a very long time and it shouldn't have been incumbent on him (Councilman Plecnik), the new guy to bring it to Council and the public's attention. This should have been dealt with a very long time ago and the one thing that he is grateful for that since the public does know, he doesn't think that Landco will ever get another contract from the City of Willoughby Hills.

FOR THE GOOD OF THE ORDER

Councilman Somich:

President Somich stated that the Mayor did mention our condolences to the O'Donnell Family and the O'Donnell Family has been very important to our Community for a very long time; it was only a few short weeks ago that we honored Larry O'Donnell and Rose was with him and it was very, very tragic that we lost Rose O'Donnell so suddenly and tragically, especially when that "team" together has been so vital to our community both in terms of their performance and their service but also in terms of being role models for working hard and not asking for much in return and getting the job done. And it is a great loss to our community, it is a great loss to anybody who knew them and it is very, very tragic that the events that lead to her sudden massive heart attack and we sincerely regret that happened and our condolences go out from all of us to the O'Donnell Family, it is a loss to our community.

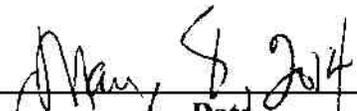
ADJOURNMENT

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Biro to adjourn the Regular Council Meeting of March 27, 2014.

Roll Call: 7 AYES - unanimous

MOTION PASSES

President Somich declared the Regular Council Meeting of March 27, 2014 to be adjourned at 9:27pm

APPROVED: 
Date


Raymond C. Somich
President of Council

ATTEST: 
Victoria Ann Savage, CMC
Clerk of Council