

City of Willoughby Hills

Regular Council Meeting Minutes of February 12, 2009

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.

7:03 p.m. Regular Meeting of Council Called to Order by President of Council.

Pledge of Allegiance

Roll Call of Council

Members Present: Councilman Frank A. Germano, President Kevin D. Malecek, Vice President David A. Reichelt, Councilman Raymond C. Somich, Councilman Christopher L. Biro, Councilwoman Nancy E. Fellows, Councilman David M. Fiebig

Also Present: Mayor Robert M. Weger, Finance Director Joseph G. Mirtel, City Engineer Richard Iafelice, Clerk of Council Victoria Ann Savage, Todd Cipolo attending for Law Director Thomas G. Lobe

Absent: Law Director Thomas G. Lobe

Disposition of the Journal **Regular Council Meeting of January 22, 2009**

MOTION WAS MADE BY COUNCILMAN REICHELT, seconded by Councilman Somich to approve the Regular Council Meeting Minutes of February 12, 2009 as submitted.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Malecek declared that the Regular Council Meeting Minutes of January 22, 2009 have been approved as submitted.

Correspondence

- Mayor's Monthly Statement to Council for the month of January 2009
- Interoffice Memo from Mayor Robert Weger to Council President and Council Clerk, dated February 4, 2009 re: Surplus Vehicle
- Ohio EPA to Mayors, Council Members, dated January 28, 2009 re: Water Quality Projects for Economic Stimulus Assistance in 2009
- Willoughby Hills – Engineer's Report for the month of February 2009
- **EMAIL: RECEIVED FROM G. A. MARTELLO TO COUNCIL, DATED FEBRUARY 11, 2009 RE: AIRPORT & CULVERT ALONG WITH RESPONSE FROM PRESIDENT OF COUNCIL KEVIN D. MALECEK**
- **LETTER FROM TIM GRENDALL, 18TH SENATE DISTRICT/OHIO SENATE TO CUYAHOGA COUNTY COMMISSIONERS, DATED FEBRUARY 11, 2009 RE: AIRPORT MASTER PLAN**
- **FINANCIAL REPORTS: CASH RECONCILIATION, PURCHASE ORDERS AND FUND BALANCE CHANGE ANALYSIS FOR MONTH ENDING JANUARY 2009**

Notifications

- Board of Building & Zoning Appeals, dated January 26, 2009 re: Notification that the BZA will not meet February 10, 2009 for there were no appeals
- Planning and Zoning Commission & Architectural Board of Review Meeting of February 5, 2009
- Rules & Legislation Committee Meeting of February 9, 2009
- Rules & Legislation Committee Meeting of February 12, 2009
- Utilities Committee Meeting of February 2, 2009

Minutes

- Planning and Zoning Committee Meeting of January 20, 2009
- Rules and Legislation Committee Meeting of January 20, 2009
- Rules and Legislation Committee Meeting of February 9, 2009

MAYOR'S REPORT – Robert M. Weger

Services

- **WHISPER Program** – **WHISPER** is the **Willoughby Hills Isolated Senior Program for Everyday Relief**. The program was developed following the City's involvement in United Way of Lake County's Day of caring in June 2008. The assigned project brought to light the need for assistance to our elderly in the City of Willoughby Hills by the coordination of various agencies to provide the required voluntary services.
- **Pool Pass Subsidy Program** provided through an Agreement with the City of Willoughby
- **RITA Tax Assistance** – Friday, March 6, 2009 and Monday, March 16, 2009, from 12-7pm
- **AARP Tax Form Assistance for Seniors with Federal and State Forms**
- **Grinding of Brush Pile for mulch to be available to residents** – will be posted on the City's Website
- **Update on the Cuyahoga County Airport – Master Plan**
Requested legislation to be prepared to bring litigation against the Cuyahoga County Commissioners for failure to complete an official public records request
Requested legislation to be prepared to bring an injunction against the Cuyahoga County Commissioners for this submission of the Master Plan, based on their willingness not to provide the documents that they were legally bound to provide to the City for they were requested on April 25th.
Alternative 38 calls for the relocation of Bishop Road, the Mayor stated that he will not approve of the relocation of Bishop Road for it is a City owned Road and Mayor Coleman of Highland Heights stated that he is in agreement and will not approve the relocation of Bishop Road within the City of Highland Heights.
- **Power Failure** – Telephone System, 9-1-1 System, everything within City Hall was down, experienced equipment malfunction – power was finally restored at 4:00 p.m. today

Appointments

- Ashley Santangelo has been appointed to serve as a Part-Time Police Dispatcher

Events

- **Annual Pancake Breakfasts:**
Recreation Commission sponsored: Sunday, March 1 & March 8
W.H. Lions Club sponsored: Sunday, March 15
- **Willoughby Hills Day at Lake County Captains Stadium** scheduled for Flag Day, June 14th

LAW DIRECTOR'S REPORT – Todd Cipolo attending for Law Director Thomas G. Lobe, L.L.P.

- No formal report was given; open to any comments or questions.

FINANCE DIRECTOR'S REPORT – Joseph G. Mirtel

- Distributed the Financial Reports consisting of Cash Reconciliation, Purchase Orders and Fund Balance, for the month ending January 2009

CITY ENGINEER'S REPORT – Richard J. Iafelice, P.E., P.S.

- Referenced Monthly Status Report
- Shared/Use Bike Path along SR-91 in Willoughby and Willoughby Hills – Co-Application: Project information and resident commentary available on the NOACA Website: www.noaca.org/shareuse.html
- Euclid Creek Tributary – checked work done by FirstEnergy which had caused some flooding problems between 271 and Lamplight Lane
- Economic Stimulus – Wish List

COMMITTEE REPORTS

FINANCE – Raymond C. Somich, Chair

Committee Members:

Nancy E. Fellows, David A. Reichelt

The Finance Committee has not met; therefore no formal report was given.

PLANNING & ZONING – David A. Reichelt, Chair

Committee Members:

David M. Fiebig, Frank A. Germano

The Planning & Zoning Committee has not met; therefore no formal report was given.

- **Announced that a Planning & Zoning Committee Meeting will be scheduled for Monday, February 16, 2009**

RECREATION – David M. Fiebig, Chair

Committee Members:

Christopher L. Biro, David A. Reichelt

The Recreation Committee has not met; therefore no formal report was given.

RULES & LEGISLATION – Kevin D. Malecek, Chair

Committee Members:

Frank A. Germano, David A. Reichelt

COMMITTEE MEETING OF FEBRUARY 9, 2009

Members Present: President Kevin D. Malecek, Councilman Frank A. Germano, Councilman David A. Reichelt

Also Present: Councilwoman Nancy E. Fellows, Councilman David M. Fiebig, Councilman Raymond C. Somich, Mayor Robert M. Weger, Law Director Thomas G. Lobe

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

Meeting convened at 6:43 p.m.

Order of Business

Ordinance 2009-5: Placing ballot measure for initiative petition

Law Director Lobe - Initiative Petition to be brought forward – Ohio State Statutes and our Charter regarding statutory provisions for placing this on the ballot. We are required to attempt to harmonize – we are not permitted to change the text, reasons why – we are the mechanism – municipality on zoning to the electorate. Circulators for the petition were paid by Royce Properties, Inc for \$7,000 – paid to National Petition Management Company – local company paying a California company for the petitions to get signed. Royce Properties is an older company – corporation formed in 1986 – headquarters corporation for profit – Tyler Boulevard mailing address – led back to Osborne Company. Ken Fisher – Law Director in University Heights – no communication or phone calls for this – supposition there was a rezoning issue. No statement or commentary made. Been identified who has done this and why. Did review the signatures – number satisfied to registered voters. Must get them to there before thirty and sixty days. Called the Secretary of State's Office – used prescribed form – but modified it – technically put down for a primary election on a date certain. Lake County Board of Elections and Secretary of State's Office both consulted. To Board of Elections for election on May 5, 2009 – potential arguments and debate to knock this out – harmoniously to putting it on the ballot. Other provisions of the Charter – will be by a Special Election which we have to pay for - \$1,000-\$1,200 per district – about \$10-12,000 for the City. Willoughby-Eastlake School Board is also planning on having an issue on the ballot.

Germano – are typos – can be changed in there – **change 22,8605 to 22.8605.**

Reichelt – if approved, we are condoning this change – changing the map – changing the use of the property in the zoning map – can't see us voting for this – can we make an ordinance that says move it onto the ballot.

Lobe – first problem is that the Constitution says you should – follow it verbatim – Initiative Petition pre-empts to put it

on – rules and regulations – how you want to do it? Did not follow Section 5.15 of the Charter – Constitution always gave you that right.

Reichelt – can we vote to prohibit the Mayor to spend that money?

Lobe – inviting litigation – financial considerations being what they are – can't get into the interpretation of the law.

Took general form – struck out general and put primary and struck out November and put May. Knew there was an election on May 5, 2009.

Fellows – petitions have already been signed – I would like to have the names and addresses and make some phone calls.

Lobe – did they meet the criteria of voters – needed 362 – 80% to 90% of the signatures were from Bishop Park and Pine Ridge.

Fellows – is there no provision to have them pay instead of the City? Our community already – Lobe - Royce Properties bought this in May of 2006 from the nursery group – property was originally nursery property. Checked Royce Properties, Inc – they are the owner of that property – Royce Properties was older – this piece of property and another piece of property.

Germano – if council does not pass the ordinance, whose liability is involved? If it does not pass, sued as Councilman and sued in individual capacities. If we get sued, kicks back to the City – sue for damages and file a mandamus action.

Fiebig – are we mandated to declare an emergency on legislation?

Lobe – Charter provision that says we need to get this to the Board of Elections – sixty days to this – don't make it an emergency – late in the game – other provisions in the Charter – still take it to the Board of Elections.

Fiebig – have an obligation to watch taxpayers' money – can we delay this until November at a next regularly scheduled election?

Lobe – people that signed this initiative petition – signed it with the intention that the election would be on May 5, 2009. Are no primary elections in odd years. If read it in the case law, its got defects, but not substantial defects.

Fiebig – council should not place itself in an emergency to spent \$10-12,000. Lobe – they can do another initiative petition to do it on another date. Law still allows to prescribes. Did a sufficient number of registered voters – did it meet those requirements?

Reichelt – can the initiative retract the petition? Can we go to them and negotiate and see if they would like to go to November?

Lobe – can't force them to tell you when do it – special election when there is a low turnout – they picked this one.

Somich – is there a chance that – would it get held up beyond our City? Lobe – have taken initiative petitions and found them to be invalid. Somich – if it gets through here, it's on the ballot. Lobe – you are inviting litigation.

Lobe – substantial defect on Heritage petition – legal description was wrong – legal was wrong – two different parts – could never even rezone this thing. Ohio Constitutional requirements.

Fellows – if we don't approve this, they will sue us? Lobe – if we say no, go into litigation to sue us – will never make it.

Lobe – if the initiative petition is illegal – it still has to go on the ballot. Weger – signed to let the electorate vote on it – the electorate will vote no on this. Can the ordinance be tweaked?

Lobe – a Whereas clause – get our vision and purpose out – must forward this onto the electorate.

Reichelt – petition requests this – change the zoning map – need suggestions to make this more comfortable.

Lobe – on 2nd whereas “the Ohio Constitution

Position clear – we have been mandated, directed, advised to do this by the Ohio Constitution.

Somich – corresponding resolution passed at the same meeting

Fiebig – why can't we also state facts in here? Enter all the facts?

Weger – this is not a campaign piece – right of those 670 people – chance to be heard – no matter how they got the signatures – may not have been told the whole truth. If you change Section 1 to Section 4 – strongly advised by Lobe to put on the ballot.

Somich – the developer is trying to choose this date for poor electorate performance – do you think there is any way in the world and say, will you pay for this? Weger – they have a law firm and have knowledge about Charters – following the law. Weger – goes to ballot and gets rejected – let the people decide.

Will work on amendments to the legislation to help and a resolution by the Council -

Public Portion

Public Portion was opened at 7:24 p.m.

Frank Cihula – legislation be as neutral as possible – put anything in there that is negative – not the place for you to object to it.

Joyce Grady – respect the initiative petition process

Linda Fulton – does Ackerman own the property – is he a part? Royce Properties – owns the property. Fulton – if he had sewers get by with half-acre lots – is Ackerman just a builder? We don't really know.

Robert Kowalsky – History, history, history. This group – does it have a treasurer? Somebody picked up the petition – I

would like to know – this organization – incorporated – does it have the information – statutory agent – Dave Richards in 1986 – Lobe got all of the public information possible. Did a thing with Ackerman – Osborne was sitting here. How many of you were around when Osborne passed the Wickliffe thing? Mr. O’Ryan and Mr. Lorenz were on the flyers – they were for it – got their flyer in the mail – there they were – Initiative Petition at that time – Willoughby Hills citizen – treasurer changed to lady in Mentor – he knows he is going to spend \$70,000 – unanimously passes – come to you – wasn’t very orderly – have to do it – would our Charter take over – Council turned them down – election board 5% more – they couldn’t do that with this petition? Council would turn it down that the Board of Election – rule has to be five percent – is it that way – there is a provision in the Charter – other thing you want to consider – no one has ever talked – go to GIS – overlay the border – cleared out on that church – made it square – church on property clear down the property. Still a building on the property. When they cleared out the land – it’s the Western border. Lobe – gave a legal description – take line right out – cleared out church’s land – the deal is – no one word how you are going to protect us and how they did the initiative petition – looking at that property and it’s not being developed – no time limit – this guy is not building this – why don’t we have an ordinance Thursday to build within a certain time.

Public Portion was closed at 7:26 p.m.

Meeting adjourned at 7:26 p.m.

COMMITTEE MEETING OF FEBRUARY 12, 2009

Members Present: President Kevin D. Malecek, Councilman Frank A. Germano, Councilman David A. Reichelt
Also Present: Councilman Christopher L. Biro, Councilwoman Nancy E. Fellows, Councilman David M. Fiebig, Councilman Raymond C. Somich, Mayor Robert M. Weger

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

Meeting convened at 6:30 p.m.

Order of Business

Reviewed submitted changes to Ordinance No. 2009-5

Committee reviewed the legislation as amended. It was the recommendation of the Committee to waive the Two Day Notification Rule and to adopt Ordinance No. 2009-5 at the Regular Council Meeting to be held this evening.

Reviewed submitted changes to Resolution No. 2009-1

Committee reviewed the legislation as amended. It was the recommendation of the Committee to waive the Two Day Notification Rule and to adopt Resolution No. 2009-1 at the Regular Council Meeting to be held this evening.

Public Portion

Joyce Grady and Robert Kowalsky brought forth questions.

Meeting adjourned at 6:50 p.m.

SAFETY – David A. Reichelt, Chair

Committee Members: Christopher L. Biro, David M. Fiebig

The Safety Committee has not met; therefore, no formal report was given.

SERVICE – Nancy E. Fellows, Chair

Committee Members: Christopher L. Biro, Frank A. Germano

The Service Committee has not met; therefore no formal report was given.

UTILITIES – Frank A. Germano, Chair

Committee Members: Nancy E. Fellows, Raymond C. Somich

COMMITTEE MEETING OF FEBRUARY 2, 2009

Members Present: Chair Frank A. Germano, Councilman Raymond C. Somich

Also Present: Councilman Christopher L. Biro, Councilman David M. Fiebig, Mayor Robert M. Weger, City Engineer Richard Iafelice

Purpose of the Meeting was to discuss Sanitary Sewer Project – Assessment Area C and any other business.

Meeting convened at 7:20 p.m.

Order of Business

Area Assessment C

Assessment Methodology on various properties is a working document. Discussed Zigman, Swagelok properties about assessment. Bishop Road, South of Evergreen might receive State Funding. Briefly discussed Eddy Road

Pump Station odor control
<i>Public Portion</i>
<u>Public Portion was opened at 8:05 p.m.</u> <u>Frank Cihula</u> – assessment use .85 for large lots, multiply by acreage <u>Linda Fulton</u> – Asked if Zigman property was sold <u>Joyce Grady</u> – Bishop Pilla property <u>Tom Saracene</u> – asked about adjustment to cost of connection <u>Bob Kowalsky</u> – how to assess large properties <u>Public Portion was closed at 8: 17 p.m.</u>
Meeting adjourned at 8:17 p.m.

Announced that a Utilities Committee will be called for 7:00 p.m. on Monday, February 16, 2009 to further discuss the Sanitary Sewer Project – Assessment Area C.

PERSONNEL RELATIONS – Christopher L. Biro, Chair

Committee Members: Raymond C. Somich, Mayor Robert M. Weger

The Personnel Relations Committee has not met; therefore, no formal report was given.

- Announced that a Personnel Relations Committee Meeting may be called sometime in the future to review City contracts.

WORKING COMMITTEE OF COUNCIL – Kevin D. Malecek, President of Council

The Working Committee of Council has not met; therefore is no formal report was given.

- Announced that due to conflicts in scheduling, the next Meeting of Council has been cancelled. A Special Meeting of Council will be scheduled for Monday, February 23, 2009.

OTHER COUNCIL REPRESENTATIVE REPORTS

- Councilman Biro stated that in light of today's current event pertaining to the Cuyahoga County Airport, and as information becomes available, a Town Hall Meeting may be scheduled to discuss the disposition of expansion.

PUBLIC PORTION

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

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

Public Portion was opened at 7:35 p.m.

1. **Joyce Grady**
3020 Marcum Boulevard
Re: Thanked Council and Administration for their awareness and attentiveness with respect to the Cuyahoga County Airport. Wanted to obtain more information about the proposed Bike Path.
2. **John Smicklas**
2905 Bishop Road
Re: Sanitary Sewer Project – Assessment Area C – timing of project during the recession
3. **Robert Kowalsky**
2585 Timberline Drive
Re: Funds 251 and 291 – lack of legal action to establish funds; Audit of 2005

Public Portion was closed at 7:40 p.m.

UNFINISHED BUSINESS

- Councilman Reichelt commented on the submission of the Master Plan Review to the FAA; City will be aggressive and will continue to represent residents' concerns and issues with respect to property values and quality of life.
- President Malecek also provided commentary with respect to the submission of the Master Plan Review to the FAA.
- Councilman Fiebig strongly supported bringing forth litigation against the Cuyahoga County Commissioners.
- Councilman Somich stated that the City of Willoughby Hills is not panicking with the respect to the action taken today by the Cuyahoga County Commissioners to submit the Master Plan for the Cuyahoga County Airport to the FAA. The City of Richmond Heights and the City of Highland Heights are both supporting Willoughby Hills in opposition of any expansion as called for in the Master Plan.

LEGISLATION

ORDINANCE NO. 2009-5

AN ORDINANCE PROVIDING FOR THE SUBMISSION, TO THE ELECTORS OF THE CITY OF WILLOUGHBY HILLS, AN AMENDMENT TO THE ZONING CODE AND ZONING MAP OF THE CITY OF WILLOUGHBY HILLS BY CHANGING THE ZONING OF A CERTAIN PARCEL OF LAND CONTAINING APPROXIMATELY 22.8605 ACRES FROM THE CLASSIFICATION OF R-1 (TRADITIONAL SINGLE FAMILY), TO SCR (SENIOR CITIZEN RESIDENTIAL DISTRICT); SAID PROPERTY IS LOCATED AT 36470 MAPLE GROVE ROAD, WEST OF RIVER ROAD AND EAST OF S.R. 91; REPEALING CERTAIN ORDINANCES AND DECLARING AN EMERGENCY.

MOTION WAS MADE BY COUNCILMAN GERMANO, seconded by Councilman Reichelt to suspend the Two Day Notification Rule for Ordinance No. 2009-5.

Roll Call: 7 AYES

MOTION PASSES

President Malecek declared that the Two Day Notification Rule for Ordinance No. 2009-5 has been suspended.

MOTION WAS MADE BY COUNCILMAN REICHELT, seconded by Councilman Fiebig to suspend the Three Reading Rule for Ordinance No. 2009-5.

Roll Call: 7 AYES

MOTION PASSES

President Malecek declared that the Three Reading Rule for Ordinance No. 2009-5 has been suspended.

MOTION WAS MADE BY COUNCILMAN REICHELT, seconded by Councilman Germano to adopt Ordinance No. 2009-5.

Roll Call: 7 AYES

MOTION PASSES

President Malecek declared that Ordinance No. 2009-5 has been adopted.

RESOLUTION NO. 2009-1

A RESOLUTION IN OPPOSITION TO THE PROPOSED CHANGES OF THE ZONING CODE AND ZONING MAP OF THE CITY OF WILLOUGHBY HILLS, AS BEING BROUGHT FORTH TO THE CITY'S ELECTORS BY INITIATIVE PETITION (ORDINANCE NO. 2009-5), FOR SAID PROPOSED CHANGES ARE NOT CONSISTENT WITH THE ESTABLISHED PLANNING AND ZONING CODE AND ARE NOT IN ACCORDANCE WITH THE OBJECTIVES OF THE CITY'S MASTER PLAN.

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Reichelt to suspend the Two Day Notification Rule for Resolution No. 2009-1.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Malecek declared that the Two Day Notification Rule for Resolution No. 2009-1 has been suspended.

MOTION WAS MADE BY COUNCILMAN GERMANO, seconded by Councilwoman Fellows to suspend the Three Reading Rule for Resolution No. 2009-1.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Malecek declared that the Three Reading Rule for Ordinance No. 2009-1 has been suspended.

MOTION WAS MADE BY COUNCILMAN REICHELT, seconded by Councilman Biro to adopt Resolution No. 2009-1.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Malecek declared that Resolution No. 2009-1 has been adopted.

NEW BUSINESS

MOTION WAS MADE BY COUNCILMAN GERMANO, seconded by Councilman Reichelt to declare as surplus property a 2000 Chevy Pickup, VIN#1GCGK24J7YR156633, Mileage of 114,485 with a value of less than \$1,000.00.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Malecek declared that a 2000 Chevy Pickup (VIN#1GCGK24J7YR15663) with a value of less than \$1,000 has been declared as surplus.

FOR THE GOOD OF THE ORDER

- Councilman Somich announced that the annual Legislative Breakfast, sponsored by the Lake County Economic Development Council, will be held at the LaMalfa Party Center on Monday Morning February 23rd at 7:30 a.m.
- Councilman Reichelt announced that City Music Cleveland will be performing at the Willoughby United Methodist Church on Saturday, February 21st at 8:00 p.m.
- President Malecek announced that next Meeting of Council will be held on Monday, February 23, 2009.

ADJOURNMENT

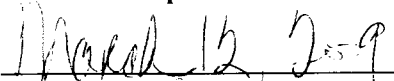
MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Biro to adjourn until the next Regular Council Meeting.

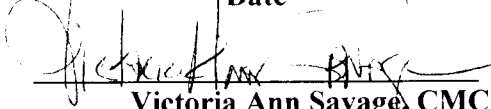
Roll Call: 7 AYES - unanimous

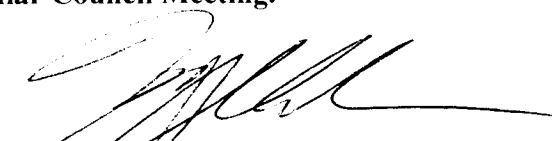
MOTION PASSES

President Malecek declared that Council is adjourned until the next Regular Council Meeting.

Meeting adjourned at 7:56 p.m.

APPROVED: 
Date

ATTEST: 
Victoria Ann Savage, CMC
Clerk of Council


Kevin D. Malecek
President of Council