

City of Willoughby Hills

Regular Council Meeting

Minutes of March 13, 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 7:02 p.m. by President Raymond C. Somich

Pledge of Allegiance

Roll Call of Council

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

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

PRESENTATION OF RESOLUTION AND CERTIFICATE OF ACHIEVEMENT HONORING JOAN MOTUZA FOR HER DEDICATED SERVICE TO THE CITY OF WILLOUGHBY HILLS

President Somich stated that our first order of business is a little different for us on our normal agenda, we have a special presentation and certificate that we would like to present at this time to a woman who has really spent many, many years of her life committed to our beautiful City and we have thanked her once and a while along the way but probably no way near as many times as we should have for all of her hard work and dedication, so at this time we would like to ask Joan Motuza to please step forward and we have a couple of different things that we would like to present to you; first, we'll have our Mayor make a presentation, followed by one from Council.

President Somich called Frank Cihula to come up, a forty-plus year member of the Board of Zoning Appeals and Councilman John Plecnik serving on the Recreation Commission to present a Resolution honoring Joan for her dedicated service to the City of Willoughby Hills.

Disposition of the Journal Regular Council Meeting of January 23, 2014

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilwoman Fellows to approve the Regular Council Meeting Minutes of January 23, 2014 as submitted.

Councilman Fiebig stated that there were a few minor typo's that he would like to go over with the Clerk at a later date.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Somich stated that the Organizational Meeting Minutes of January 23, 2014 have been approved as submitted.

CORRESPONDENCE

WH Community Center Rentals for February 2014 (Emailed: March 3, 2014)

City Engineer's Report dated March 6, 2014 (Emailed: March 6, 2014)

Mayor's Court Monthly Statement to City Council of Fines and Other Monies Received or Collected for the Month Ended February 28, 2014 (Emailed: March 10, 2014)

NOTIFICATIONS

Board of Zoning Appeals Meeting of March 11, 2014 – Cancelled due to no appeals received (Emailed: March 4, 2014)

Civil Service Commission Meeting of March 21, 2014 (Emailed: March 3, 2014)

Finance Committee and Service Committee Meeting of March 10, 2014 (Emailed: March 7, 2014)

Service Committee Meeting of March 10, 2014 – Note Meeting changed to a Finance Committee and Service Committee (Emailed: March 6, 2014)

Planning and Zoning Commission and Architectural Board of Review Meeting of March 3, 2014 (Emailed: March 6, 2014)

Planning and Zoning Committee Meeting of March 13, 2014 (Emailed: March 7, 2014)

Recreation Committee Meeting of March 10, 2014 (Emailed: March 5, 2014)

Rules and Legislation Committee Meeting of March 10, 2014 (Emailed: March 5, 2014)

MINUTES

Finance Committee Meeting of February 24, 2014 (Emailed: February 27, 2014)

Rules and Legislation Committee Meeting of March 10, 2014 (Emailed: March 11, 2014)

Service Committee Meeting of January 28, 2014 (Emailed: March 10, 2014)

ON FILE

The Housing Center/Housing Research & Advocacy Center News Letter, Spring 2014

2013 ANNUAL REPORTS FROM THE FOLLOWING CITY DEPARTMENTS: THE BUILDING, MAYOR'S COURT, POLICE, RECREATION AND SERVICE

MAYOR'S REPORT – Robert M. Weger

Nate, the Road Superintendent requested that the City sign a contract for State Salt Usage Commitment for 2014 and 2015. It will be due, they have a new Program that allows us to buy this Summer and then the Fall. Will be able to purchase 60% in Summer and then up to 110% in the fall but the prices will be different; they are going to out to bid in April, so he is going to request an ordinance for the next meeting and hopes to get it passed so that we can participate in this Program. They wanted to do it earlier this year because of all the shortages and it would behoove us to participate in this.

The Asphalt and Lime Stone are out to bid; the bids are due back the 24th of March and he will request an ordinance to be prepared for the next council meeting so that we can begin to pave our roads

You will notice that there is a Policeman present at our meeting tonight this was a requested by Councilman Plecnik. Mr. Plecnik feels that he was threatened in some manner; the cost of this to our residents is a \$184.50. We are also having a Retreat this Saturday and the same Police Officer has been requested to be there, and the cost for that is \$356.89 and that is a direct cost to our residents. As Safety Director, he is not going to make this a practice unless Council requests it through a Motion.

Events

Pancake Breakfasts – Sunday, March 16th – Please come out and eat pancakes

LAW DIRECTOR'S REPORT – Thomas G. Lobe

At the Regular Council Meeting of February 27, 2014, resident Linda Fulton came forward during Public Portion and asked a question about Section IX of the Charter of the City of Willoughby Hills and the application of the same to various individuals, specifically Frank Germano, a Councilman and his wife, Dee who is on Recreation, Chris Hallum, the newly appointed Council person and his wife Lynn who is also on Recreation and Gloria Majeski, the Mayor's Assistant and her husband Tom Majeski who is on Civil Service. These particular matters were brought forward; he started his review on this thing, because he was out of town and he just started his review and he has not concluded his review. Ironically it is a very interesting and challenging and he is still in the review process and searching for documents. He has been in contact with Ms. Fulton about her inquiry to also see if she has any documents and or minutes from the last time this matter was fully reviewed by the Charter Review Commission and the Charter Review Commission is the Commission that goes through the entire Charter which was back in 2008 and she was a Member and also the Secretary; she does not have the documents and he believes, he is still going to check with Linda, and he has also asked our Clerk, but she is in the process of getting them to

him or they are ready to be bundled up to get to me concerning the minutes from 2008 so that it would give him some back ground, legislative history, and further understanding as to the current situation. That Commission was Chaired by Dale Fellows who did a meticulous job of going Chapter by Chapter and Article by Article and he was present at many of those meetings himself. The analysis really starts with Section 9.1 of the Charter that gives a definition of Officers. There are basically six people who are, six categories that are listed as officers: (1) is the Mayor, (2) is Members of Council, (3) is the Clerk of Council, (4) is a Member of all Council established Committees, and (5) is Charter established Committees, Bureaus Agencies but we don't Bureaus or any Agencies but we have Boards in our Charter and the last one is Director of all Administrative Departments. As for the first one, the Mayor, that is easy. Going back to 1960 that would be Don Campbell, Mel Schaffer, Mayor Zur, O'Ryan, Lorenz and currently Weger. The Members of Council, those would be easily identifiable through the years and that would be including Mayor O'Ryan who served for a long time while Mel Schaffer was Mayor and he was on Council. Clerk of Council and he doesn't know how far back we go, he only has Terri Poppy who was the sister of then Councilman Robert Guarino. Members of Council, established Committees, not even sure what that would be okay, and he is looking into those particular matters and the fifth one is those Charter established Bureaus or Agencies and Commissions. As he has said, the term Board is not in there, yet we do have Charter Commissions as noted in Article V titled Boards and Commissions, the Planning and Zoning Commission and Architectural Board of Review, Board of Building and Zoning Appeals, Mr. Cihula, Recreation Commission, Civil Service Commission and Charter Review Commission. It is interesting to note that at this time, Section 5.7 titled Compensation for the Charter Created Commissions and Boards clearly indicates that all of these members shall serve without compensation unless provided for by ordinance of Council and that has been the case, he believes and he is still doing his research on this roughly from, if not before, 1960, literally for the last 50, 60 plus years and so, it is interesting because when you read Section 9.2 which was raised by Ms. Fulton it talks about being employed but it has some other qualifiers to it. But anyway, continuing on with the analysis the sixth category is the Director of all Administrative Departments and he is not sure if it is Charter Departments or all the other Administrative Departments. But there are, basically four, as least in the Charter created Administrative Departments there is the Department of Public Safety, which is the Mayor, it could be a separate individual but has been continuously except for a short period of time it's the Mayor, the Department of Finance, Department of Law, and the Department of Public Service which is also the Mayor which is consistent with many other municipalities that roll the Mayor into the Public Service and the Public Safety; 9.2 indicates, that no member of the immediate family of any officer and he tried to define officer and he hopes that he is not losing everybody, as he rambles on with his legal analysis here with a large crowd for the first time in a long time shall be employed by the municipality in any non civil service employment. Past practice and interpretation by former Law Directors going back to the Campbell Administration, the Mel Schaffer Administrations in the early 70's through 1991 allowed for this by having the Mayor to be the Safety and Public Service Director; therefore, the Charter is already mildly in conflict with itself and they allowed their wives to be on the Boards very similar to the question raised and posed by Ms. Fulton. It is also interesting to also note that Barry Byron was the Law Director who even wrote the Charter and he attempted to write the Charter in 1964 when we were trying to come out the first time to have a Charter established and the first one was not passed and the second one with the help of Frank Cihula, he is learning the history of the City in a much greater degree, in 1970 Attorney Bryon who was also the Law Director, he thinks for twenty-five to thirty years, if not longer and his Assistant Pat Ryan they covered a span of forty years. They allowed the same practice, in spite of the specific language which is currently utilized similar to what is going on here today and that is why the question raised by Ms. Fulton is quite interesting and yet it is very clumsy for us to attack other than the end result at this time is the past practices even by those who wrote the Charter and those who were administered to by that same Law Director and the former Law Directors until himself and he knows that there was one other Law Director in his stead possibly that have interrupted it in all the same way. Now it is very interesting that there were only those few people there are many others who were also involved if you go back, just not the current snap shot but if you go back to the 70's the 80' and 90's there is a great example, he believes the Horwatts, we not quite sure about that, Tom and there were many other who gave particularly a whole life time service and would also be potentially in violation if this provision was strictly construed in only one way. Another great couple who have given a lot of time to the City is Nancy Fellows who has been a Councilwoman now for twelve years and her husband Dale Fellows who has volunteered and has not been paid but he has been on many Boards and Commissions and ironically he was the Chairperson of the Charter Review Commission which had a big task and quite an arduous task. Dale meticulously, similar to all past Law Directors in Charter Reviews went through the entire Charter, Section One through Ten, including Section Nine and this issue was not at that time reviewed in the same light as being currently raised. Of course Dale Fellows was not paid one cent for his time and his energies on the task and he brought forward a strong base of experience in this regard with many years of

Municipal, County and State experiences. It is interesting that even Ms. Fulton, and he discussed it with her, she too was on that same Committee with the others and he also was there present and these types of issues were not noticed or raised even though it was similar to what is being done and raised today. There are many other people including former Mayor O’Ryan, for example he was a Councilperson in the 70’s and had his wife as you know on the Recreation and other Committees throughout the years. Mayor Schaffer, same type of thing and he is also looking, and that is why he is not complete in his analysis yet and he is still going through and looking at some of the old Journals from the Mayor’s Office and also utilizing Mr. Cihula. In this definition in this Chapter, Section 9.2, he should say, there is the term of “immediate family” and that is a term, immediate family which is prescribed throughout many phases of the law yet it is not defined in our Charter, and it is not codified in the Ordinances of the City of Willoughby Hills. He did a quick and cursory review and not a full and final, a cursory review of Title Seven which is the Ohio Revised Code Section dealing with Municipalities and he only found one definition in Section 715.263 under the Chapter titled “General Powers” which states that immediate family is defined as spouse and children without a distinction of adult or minor or emancipated. There is another definition which 102(d) of the Ohio Revised Code in the Section titled Public Officers Ethics Definition which defines immediate family as spouse and dependent child only and yet in other sections of the Ethics Code, for example immediate family is very, very, broadly defined including particularly everybody, and does include relatives, regardless of where they reside, spouse, children whether dependent or not, siblings, parents, grandparents, grandchildren it also includes all of the other persons related by law so that you can use the term in-law for all the other abovementioned. Other sections of the law have varying definitions of immediate family and he is simply trying to show the difference in some of the definitions. He went so far in his initial research to get some further advice from the Ohio Ethics Commission and specifically was noted that quote “in most situations, the Ohio Ethics Law and related statutes do not prohibit family members from being employed by the same public agency as long as no official has secured a job for the family member. The emphasis centers on the “using of the authority of influence when determining ethical issues clearly those positions, clearly many of the positions that we have talked about here today involve even elected officials Mayor or Council and many of them are not paying; thus, it was primarily agreed upon during my discussion with the Ethics Representatives that this issue is not in contention with an ethics issue but rather it is the City’s Charter and its specific language and the terms employed and other provisions of the Charter and past interpretations and practices which must be construed although the written words are very important there is also practical considerations which he presume came into play by all the past practices many of these Boards and Commission are and continue to be volunteers. Joan Motuza may be a great example of that in many regards and it is basically sweat and blood to fill these positions. He believes that this matter needs more research and he is definitely open to all historical perspective, secondly, he believes that Council, for this case and for all future cases should provide a definition of immediate family and maybe even couple that with a nepotism policy. How far and how strict does the City want to go; that is a policy consideration that he is sure Council may want to get into individually and/or could allow this matter to be deferred to the next Charter Review Commission which has to take place no later than 2016 or this Council could also look into this particular matter and see if it wants to review Section 9.2. At this time, based upon the potential readings of the Section but primarily based upon past practice, and the interpretation by the Law Directors and those Law Directors that even drafted the Charter and specifically 9.2 , he believes that these are not yet full violations, yet he does believe and suggests, lastly, that matter definitely at a minimum go the next Charter Review Commission which must be had no later than 2016. He will continue to do review but he wanted to get some preliminary positions and statements to you subject to a total change in his position as he goes forward. He looks forward to discussing this matter directly with Ms. Fulton which he has already done and he definitely thinks that this is a Charter issue that needs some review, upgrading and clarification.

President Somich asked the Law Director if it was his opinion that all of the existing volunteers right now just stay status quo until you continue your research. The **Law Director** responded that would be correct and he is still research it; it can be read many ways, the language is the language and that is the difficult part with him on this one.

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

No Formal Report was given

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

Reported there was nothing notable; City Engineer Reports are available on the City’s Website and are updated before each Council Meeting

COMMITTEE REPORTS

The following Reports have been listed alphabetically by Committee.

RECREATION – John Plecnik, Chair

Committee Members:

Christopher Biro, Nancy E. Fellows

COMMITTEE MEETING OF MARCH 10, 2014

Members Present: Councilman John Plecnik Chair, Councilwoman Nancy E. Fellows

Also Present: Councilman David M. Fiebig, Councilman Frank A. Germano, Councilman Christopher Hallum, President Raymond C. Somich, Recreation Coordinator Denise Edwards, Law Director Thomas G. Lobe and Mayor Robert M. Weger

Purpose of the Meeting was to discuss **Section 941.07, Section 4(m) – Alcohol Service** and any other business.

Meeting convened at 6:00pm

Order of Business

There were two items on the Agenda: First to discuss Ordinance No. 2014-10 – As Amended, generally and then to discuss alcohol policy. Ms. Edwards gave us a report and essentially made particular request that we delete the prohibition of alcohol at Funeral Services held at the Community Center and we followed that with a general discussion of when Police Officers were necessary at events where alcohol is being served. We had a general consensus that we should adopt the Recreation Coordinator's Report and amend Ordinance No. 2014-10 – As Amended to remove the prohibition of alcohol at Funeral Services. We received one comment President Somich questioning the Recreation Coordinator on the current Alcohol Policy for the new gazebo and she responded that no alcohol is permitted outdoors for private events.

Public Portion

Opened at 6:24pm with one person coming forth, Mr. Robert Kowalsky of 2585 Timberline Drive and he voiced his opinion that the Recreation Department should be able to supplant private events in the Community Center for public events when necessary.

Closed at 6:28pm

Meeting adjourned at 6:28pm

RULES & LEGISLATION – Nancy E. Fellows, Chair

Committee Members:

David M. Fiebig, Raymond C. Somich

COMMITTEE MEETING OF MARCH 10, 2014

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

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 Stom 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 and Finance Director 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

PLANNING & ZONING – David M. Fiebig, Chair

Committee Members: Christopher Hallum, John Plecnik

COMMITTEE MEETING OF MARCH 13, 2014

Members Present: Councilman David M. Fiebig, Chair, Councilman Christopher Hallum, Councilman John Plecnik

Also Present: Councilwoman Nancy E. Fellows, Law Director Thomas G. Lobe and Mayor Robert M. Weger

Purpose of the Meeting was to discuss **Possible Zoning Changes** and any other business.

Meeting convened at 6:30pm

Order of Business

General information discussion concerning:

Cross-Access Connection for placement in 1137 1133.04 Setback Requirements

This would promote safety by stimulating a greater access to restricted parcels. For example, to allow one access point and relieve traffic congestion that would allow for a driveway to be placed along parcels and the traffic would move off of the road into private land that could be developed then for places like the proposed Dunkin’ Donuts right next to the old Sears Building. This has come to our attention because of the plan that Dunkin’ Donuts proposed to us and where the traffic light exists currently across from Bishop Park Apartment there is a traffic light there already. If we had four

different driveways there that could potentially cause some traffic problems and this is why the idea came up now, although they might be grandfathered in they are willingly to consider this and it would be appropriate at this time to have that discussion and perhaps have this placed into our Zoning Code.

1345.01 to 1345.99 Building Code Numbering, Updating of duties and general updating.

Some word changes: Clerk to Commissioner, Dwelling instead of Building.

Discussion of adding electrified fences to the Zoning Code for gardens or agricultures uses.

This is a topic that was revisited and dropped many years ago, but with recent changes and safety precautions that have been added to electrified fences, keeping deer, rabbits and other pests away from people that want to grow gardens or if they have agricultural usages here in our City, we certainly do have parcels of land and people do enjoy gardening and farming, this would allow that where it is currently restricted.

There was more discussion about agricultures uses in the City, for example to allow for chickens if somebody would like to have them; other animals, pigs, horses, cows, there are some parcels in our City that are able to handle that sort of agricultural use and that sort of farm use and this would be a way to encourage development, not restrict it, especially, if someone wanted to have a horse boarding area or riding stables.

Ongoing discussion of agricultural uses in the City; Animal Husbandry or other Agricultural Uses as a conditional use, update with restrictions that would encourage development not restrict.

Ongoing discussion of an Overlay District for the City.

This would have to go to the vote of the people, if we were to do this, but there has been some discussion in the Planning Commission to create a new mix-use Overlay District that we could add to existing parcels to come up with some creative ideas where it makes sense, that is not to change our Zoning Code, we are very near and dear to the one-acre zoning that we have in our residential area but there are certain areas of the City where if we did open it up to other creative ideas for perhaps mix-use or dual zoning that might spark some development in areas, so there was some discussion about that and it would go to the vote of the people.

Suggestions: Appeals to Council or to BZA? (On cross access)

Mailbox numbering on mail receptacle – what about the post, or wood pillar?

Mailbox police? Grandfathering clause

Horse ordinance

Public Portion

Opened at 6:47pm with comments provided by Mr. Cihula and Mr. Kowalsky

Closed at 6:54pm

Meeting adjourned at 6:54pm

SERVICE – Christopher Hallum, Chair

Committee Members:

Frank A. Germano, John Plecnik

FINANCE – Raymond C. Somich, Chair

Committee Members:

Nancy E. Fellows, Frank A. Germano

COMMITTEE MEETING OF MARCH 10, 2014

Members Present: Councilman Christopher Hallum, Chair of Service, President Raymond C. Somich, Chair of Finance, Councilwoman Nancy E. Fellows, Member of Finance, Councilman Frank A. Germano Member of Finance & Service, Councilman John Plecnik, Member of Service,

Also Present: Councilman David M. Fiebig, Finance Director Frank Brichacek, Road Superintendent Nate Catania, Mayor Robert M. Weger

Purpose of the Meeting was to discuss (1) **Richard L. Bowen + Associates, Inc. Contract Modification Agreement** (2) **Quote from Concord Road Equipment Mfg. for a Hot Box** and any other business.

Meeting convened at 7:17pm

Order of Business

The meeting was called to discuss the Bowen & Assoc. contract modification and a request from Street Superintendent Nate Catania to consider the purchase of a new Hot Box.

Engineer Pete DiFranco informed Council during the previous Council meeting that Bowen & Assoc. wishes to remove its request to modify the current contract. The Members of the Service Committee and the Finance Committee discussed the original request and understood why the request was made considering the considerable hours above and beyond the original plan and intent of the contract. **The consensus of both the Services Committee and the Finance Committee was to recommend to Council that they allow the withdrawal of the request to modify the current contract.**

Nate Catania advised us that the current hot box is literally falling apart. The hot box is used to keep the materials used to patch the roads warm so that it can be applied to the road. The purpose of the hot box is as basic as it can be while still providing the necessary functionality to do the job required. Finance Director Frank Brichacek stated that there is money in the Capital Improvements Fund 420 to accommodate the purchase. **The consensus of both the Service & Finance Committees was to recommend that Council request legislation be written with the emergency clause to enable the Mayor to authorize the purchase of the new hot box.**

Public Portion

Open at 7:34pm

Cheryl Ota – Asked about the paving of White Road. She is concerned about the safety of the road due to the multiple cuts in the road. She believes that the previous engineers had White Road. listed as a priority for 2014. She would like to know if it will be paved this year. Councilman Plecnik explained that the difficulty may be with funding of a project of that size given the current road budget of \$100,000.

Robert Kowalski – asked if the people that replaced the sewers were responsible for the paving of White Road. He also suggested that we look at the pay for department personnel because he's concerned that Nate is being underpaid for his job.

Closed at 7:41pm

President Somich wanted to make one clarification, he has checked with the Law Director, the appropriate action that he is recommending for us is consistent with what we have done in the past, since we have had the Three Readings on Ordinance No. 2014-2 the appropriate action tonight would be to postpone that indefinitely; Councilman Fiebig stated Tabled, Tabled Indefinitely. The Law Director concurred.

UTILITIES – Frank A. Germano, Chair

Committee Members:

Christopher L. Biro, Nancy E. Fellows

COMMITTEE MEETING OF MARCH 3, 2014

Members Present: Councilman Frank A. Germano Chair, Councilman Christopher L. Biro, Councilwoman Nancy E. Fellows

Also Present: Councilman David M. Fiebig, City Engineer Pete Di Franco, Finance Director Frank Brichacek, Road Superintendent Nate Cantina

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

Meeting convened at 7:31pm

Order of Business

Road Superintendent Nate Catania: Presented a Summary of the City's Sewers (will be included with the Minutes). Received a quote (State Bid) from Nate for the purchase of a Service Truck for Sewer Maintenance; discussion of purchase of truck at next Utilities Meeting if approved by Mayor to purchase.

City Engineer Pete Di Franco: Fine tune Maintenance Schedule, goal to cut cleaning cycle in half, clean more sewer in a given period – monitor sewer retention.

Finance Director Frank Brichacek: Revenue at this time is up 11% to short of time to predict with certainty, yet it looks good.

Public Portion

At 7:55 pm the following came forth with questions/comments: Linda Fulton questioned why MH's are skipped when cleaning – Nate answered they have enough hose to clean longer sections.

Meeting adjourned at 8:00pm

OTHER COUNCIL REPRESENTATIVE REPORTS

There were no other Council Representative Reports given.

PUBLIC PORTION

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

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

Public Portion was opened at 7:47pm

1. Frank Cihula
Chairman of the Board of Building and Zoning Appeals
Re: Thanked and commended Council Clerk for the preparation of the Resolution honoring Clerk Joan Motuza

2. Leonard Manfredi
730 Pebblebook Drive
Re: Concern for City Policemen as when they pull cars over to give citation, wishes that they would not just pull them over on the side where they stop traffic, and can be dangerous to the Policemen and motorists, there should be a policy directing the violator(s) to pull over to a safe area

3. Linda Fulton
2990 Marcum Boulevard
Re: Clarification from the Mayor if Policeman on duty this evening is being paid on a Shift or Overtime?

4. Jim Vespro
Representing the Service Department
Re: Service Department Contract; Service Area/Responsibilities have grown and the Service Department is now doing a lot more with a lot less; nobody really sees what the Members of the Service Department do within the City. Contract provides for rate increases of 1%, 1% and 2%, ratification bonus of \$500 and a much over do and well desired 15 minute break, a second break in the afternoon. Urges Council to approve Contract.

5. Maggie Zawatski
2840 Loreto Drive/28914 Eddy Road
Re: Questioned if Councilman Plecnik could elaborate on his Plans for the Development of Loehmann's Plaza as mentioned during the Election process would be helpful in the writing of her homework paper for her government class

6. Robert Kowalsky
2585 Timberline Drive
Re: Reference front page headlines in the Lake County News Herald during Summer of 2007 as written by then publisher of the Lake County News Herald, now the current WH Economic Development Director

7. Peter Pike
2903 Cricket Lane
Re: Interpretation of the Charter; look at the pure legislative intent and the sprite of the Charter; the Charter created an opportunity to get more people involved in City Government for the betterment of the community as a whole

8. Joe Zawatski
28914 Eddy Road
Re: Disappointed that a Police Officer was on duty in Council Chamber during Council Meeting, disappointed that his tax dollars are paying for the Police Officer. Would appreciate having the Council Meeting Minutes posted on the City's Website on a more timely basis
9. Peter Pike
2903 Cricket Lane
Re: Grow Up; the bullying and intimidation is garbage and nonsense and it doesn't belong here

Public Portion was closed at 8:05pm

UNFINISHED BUSINESS

Vice President Fellows wanted to correct Mr. Zawalski serving as the Chair of the Rules and Legislation Committee; she did not state that the debate between Councilman Plecnik and Council President Somich should be taken out of the Chambers she had requested that the debate be stopped. **Councilman Fiebig** stated that he understood that there a so-called Council Retreat scheduled for Saturday and he has asked that Clerk if there was a Notice given for that meeting officially yet; there has to be at least a twenty-four hour notice at minimum and we have not received that notification yet, so if there is any information as to the location of the Meeting or the time we would love to hear it. **President Somich** responded that the Council Clerk does have that information and it will go out by legal standards at the appropriate time. The **Mayor** answered the question about the Policemen; there are only three on duty tonight, it is very low in the amount of Policemen we have on the road, and we had to bring in on overtime somebody to do this Meeting.

LEGISLATION

ORDINANCE NO. 2014-2 – THIRD READING

1st Reading: January 23, 2014
2nd Reading: February 13, 2014
3rd Reading: February 27, 2014

AN ORDINANCE AUTHORIZING THE MAYOR TO EXECUTE THE CONTRACT MODIFICATION AGREEMENT BY AND BETWEEN CITY OF WILLOUGHBY HILLS, OHIO AND RICHARD L. BOWEN + ASSOCIATES, INC. AND REPEALING ANY AND ALL CONFLICTING LEGISLATION.

MOTION WAS MADE BY COUNCILMAN FIEBIG, seconded by Councilman Hallum to Table Indefinitely Ordinance No. 2014-2.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-2 has been Tabled Indefinitely.

ORDINANCE NO. 2014-10 – AS AMENDED – THIRD READING

1st Reading: February 13, 2014 - Tabled until Regular Council Meeting of February 27, 2014
2nd Reading: February 27, 2014

AN ORDINANCE AMENDING PART NINE – STREETS, UTILITIES & PUBLIC SERVICES, TITLE FIVE – OTHER PUBLIC SERVICES, CHAPTER 941 – USE OF PUBLIC PROPERTY, SECTION 941.07 – WILLOUGHBY HILLS COMMUNITY CENTER, SUBSECTIONS (f)(3), (g), (h) AND (m) OF THE CODIFIED ORDINANCES OF THE CITY OF WILLOUGHBY HILLS AND REPEALING CONFLICTING LEGISLATION.

MOTION WAS MADE BY COUNCILMAN PLECNİK, seconded by Councilman Biro to adopt Ordinance No. 2014-10-As Amended.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-10-As Amended has been adopted.

ORDINANCE NO. 2014-11 – AS AMENDED – THIRD READING

1st Reading: February 13, 2014 – Amended February 20, 2014

2nd Reading: February 27, 2014

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

MOTION WAS MADE BY COUNCILMAN BIRO, seconded by Councilman Germano to adopt Ordinance No. 2014-11-As Amended.

Vice President Fellows mentioned that we have gone through Three Readings of these appropriations and for her to learn more about them, she spent more time with the Service Director to understand more about the projects, where they were located, the severity of them, when they would be started and had known from our Finance Director how these projects would be appropriated. What she did learn, which she didn't know, is that many of our projects are contracted out, now she knows that big projects, like sewer projects are done by companies that have the manpower and equipment to do that and many of our other projects are done by our Service Department. But some are contracted out and it was shared with her that the reason which she thinks is really good, is that in the long run it costs the City less money and it also frees up our Service individuals to do other projects. The reason that she is bring this forth is, she doesn't know who these contractors are who are doing these projects and now she will inquire about that because she wants to make sure that whoever is doing these contracts are doing them by what is in the Charter in terms of hiring contracts to do our projects.

Councilman Fiebig stated that there was a lot of good discussion here with different points of information being brought up about conflict and doing the right thing and following the Charter and to this end a few months back he had observed Councilman Germano driving in a truck that had the name Landco on the side of it and shortly after a review of the Finance records for the December Finance Meeting, which he was Chair, he saw a Purchase Order for \$4,500 to that company, Landco, so the memory clicked on that. **Councilman Fiebig** stated that he did a little more research and there was a Purchase Order for \$7,500 in November paid to Landco, our reports showed \$4,500 and the PO was \$7,500 and then there were others in the past. So this is a little troubling to Councilman Fiebig, on many fronts; there have been numerous issues in the City and this particular one has come up here tonight because the next group of Ordinances that we are about to pass are specifically for appropriations and appropriations that can be doled out to various contractors. Councilman **Fiebig** stated that he has a little bit of a problem here because he can't discuss this with the City Prosecutor because he is related to the Councilman and he is the son of the owners of that company; he has the Law Director on vacation with the Mayor and he is a little bit uncomfortable with reporting potential fraud when he fears that there is some loss impartiality there. There has been much said about this Three Reading Rule during the last several Council Meetings, and much of this year, well, this is the law and these appropriations on the agenda give the authorization to the Mayor to have contractors and it should give the public and the Members of Council an opportunity to review these thoroughly. For example, why did Councilman Germano give us the statement that 2014-15 was an emergency? We had discussion that if there was a sinkhole that it was suggested that the Road Superintendent would put a steel plate on road, he said that he never actually discussed this with a Councilman, we did pass it under an emergency under those pretenses, the work is still not done. The Road Superintendent didn't even know that had passed the legislation so his question is was that legislation an emergency or was the payment an emergency. Where this Administration has asked for \$110,000 in a loan for a purchase of equipment that we didn't need until next year, we thankfully defeated that because we didn't pass it on an emergency basis. We rushed to pass a Budget by December 31st of this past year. The questions have come up about appointments of relatives and appointment to Commissions and the way that this conflicts with our Charter, if someone is employed in the City, and whether or not they serve as a volunteer if they are steering funds there is a possibility of conflict within that, there is a possibility of influence within that, so whether it has been done in the past, we do need to talk about what are we doing going forward and he does urge the Mayor to look at and to review all of these appointments and try were possible to eliminate conflicts and eliminate the potential appearance of impropriety **Councilman Fiebig** went on to say that in this particular Council he has been very disappointed that three days ago, one our colleagues appeared to call one of our colleagues pathetic and disgusting and threatened to take it outside. This is very distressful to him, he has always been a part of what he thought was very professional Council that was working in the same direction and working for the good of the City. He has been perplexed at why we have gone down this road needlessly and incurring these types of stressor that are not necessary. As a Council we are elected to serve the public interest, asking questions of the Administration is the duty and the responsibility of Council people. The Administration fires employees because the supported a particular candidate then all employees and officers should be discouraged from campaigning and

politicking specifically on City property and specifically should not be allowed to identify themselves as a City employee if they are out there campaigning because it is hard for people to make the difference between what is City Hall and what is this private individual. In this City there is this private corporation called Corn Fest it is run by an individual who controls that, who works out of City Hall, works in the Mayor's Office; there is another private corporation called Color Run who shut down the City's business, **President Somich** interrupted by stating that he may continue this under New Business if he choose to but at this time this is supposed to be discussion relevant to the Ordinances that we are about to pass, so if you would like to come back with that later you are welcomed to, Councilman Fiebig asked to be aloud one more moment, this is in regards to this particular Ordinance in this group of Ordinances that are coming up. The Ordinance begs the question what's are steak so he asks through the Chair, Mr. Germano, does he have a direct or an indirect financial interest with Landco, **Councilman Germano** asked if he could answer now and stated no. **President Somich** stated that the **Law Director** said that Councilman Germano does not need to answer that at this time. **Councilman Plecnik** stated that before he votes on this Ordinance he has to express his concerns as well which he shares with Councilwoman Nancy Fellows, the longest serving elected official in Willoughby Hills and Councilman David Fiebig, he thinks that on an issue this emotional it is important that we restrict ourselves only to the facts and the law, so he would like to share with Council a very small packet of information and he asks Linda Fulton, who is President of the North Coast Lions to also distribute preferable first to the News Reports this same packet so that everyone has access to the information in front of them. The very first item is the Purchase Order to which both Mr. Fiebig and Ms. Fellows referred to for \$7,500 and Councilman Plecnik actually requested this in a Public Record's Request for he was trying to get up to speed on Council and he was very distributed to find that this Purchase Order conflicts with the Purchase Order Report that Council receives on a monthly basis. If you look at the second page of the Purchase Order Report which is the only thing that Council receives regularly you will see that RG038741 a Purchase Order dated November 4, 2014 and the same Purchase Order in the packet refers to Landco in a \$4,500 amount as we can see the Purchase Order itself for \$7,500 and so there is a discrepancy there and he is first troubled that Council wasn't given the accurate number of the PO and he wonders how many other PO's might be misstated in our past reports which is the only document that Council normally receives. To Councilman Frank Germano point, he says that he has no financial interest in Landco, although Councilman Plecnik referred the Members to the page, in Frank Germano's own hand, where he lists Landco as his employer in the document he submitted to City Council when he signed on to Rules and Councilman Plecnik would like to submit, two pages, starting with the first colored page in the packet which shows that Landco was incorporated by Michael J. Germano and Martha L. Germano and if he is not mistaken those are Councilman Germano's parents. The page following it is excerpted from the last Articles of Incorporation of Landco where the amended their Articles and they changed the name in this amendment to Landco/Germano Construction, Inc. which is the current name of the company. And Councilman Plecnik is very troubled as well that not only our Purchase Order Listing, but he PO itself misstates Landco as Landco Developers the old name which they amended to Landco/Germano Construction, the new name. So he is also disturbed to show the Members two pages which refer to the Minutes of Council Meeting September 12, 2013, the first page shows the Council people who were present, all were present save our current Council President Ray Somich, including Councilman German and if you flip to the next page you will see that a motion was made by Kevin Malecek our former Councilman to adopt 2013-40 which was an appropriation for several projects including the project on Gatsby Lane which was paid for by this Purchase Order. Since it was a six vote, unanimous vote, this demonstrates that Councilman Germano voted on an appropriation that was ultimately paid to Landco and he would like to say that he (Councilman Plecnik) would like to understand how Councilman Frank Germano says that he has no financial interest in Landco when he both listed it as his employer and his parents, apparently according to the Secretary of State's Office own the company. So Councilman Plecnik would like to understand how he has no financial interest in the company. President Somich stated that we have a motion made, it has been seconded; it was made by Councilman Biro, seconded by Councilman Germano to adopt Ordinance No. 2014-11-As Amended, is there any other discussion on the motion. Councilman Plecnik requested if he could add one more point, the last two pages of the packet list Article IX of our Charter, and this gets first to the definition of "officer" that the Law Director read to us earlier, but for our purposes, Section 9.1 which defines officers of the City, he would like to just focus on Mayor and Members of Council which are definitely officers under the Charter, they are listed explicitly, if you look down at Section 9.2, General Qualifications it states explicitly that no officer or employee shall have any financial interest either directly or indirectly, in any contract to which the Municipality is a party, and Councilman Plecnik reminded Council that under Ohio Revised Code Section 2921.42 purchase orders are explicitly included, purchases and orders as contracts so there is no question that a PO is a contract to which the Municipality is a party. As such, to the extent that Frank Germano, Councilman Frank Germano, does not deny that his parents own this company and that he works for this company, it would appear that he has a direct, or at least an indirect interest through his parents or through his employer in that company, although Ohio Law often defines employee/employer interests actually direct in nature he would then look to Section 9.3 and this is a very difficult section for all of us to read, which states under Section 9.32, entitled "Removal by Council" that the Council and he quotes "shall remove immediately",

“shall remove immediately” any such Councilman for violation of the requirements of Section 9.2 which prohibits director or indirect interest in City contracts and he cannot bring himself to vote for any of this road legislation unless it is answered to us in a way that rebukes the Secretary of State’s papers and refutes what appears to be Frank Germano’s own hand writing stating Landco as his employer, he couldn’t vote for any of these contracts in good conscience as it might even be a conflict of interest for himself and he can say as a Law Professor at Cleveland State University he has given this an enormous amount of time and soul searching as an Officer of the Court, someone who has practiced law himself, this is something that he has to take very, very seriously and he has spoken to many attorneys, including prosecutors and they have all said the same thing, they told him that he had an obligation to come to this meeting and disclose this conflict prior to voting on any legislation or he could be opened to either censure or criminal violation himself, so it is with great regret that he shares this information with Council and he knows that Councilwoman Fellows and Councilman Dave Fiebig do the same, but he is afraid that we have nothing but a legal duty here, not even a decision here, but a duty and that is if Councilman Germano denies both that Landco/Germano Construction is his employer and denies that his parents own Landco/Germano Construction and can prove as such, we certainly cannot vote these pieces of road legislation through knowing that they might be assigned to him and we also are struck with a very serious duty of removing Councilman Germano. Now, Councilman Kevin Malecek, one of our favorite members who has given almost a decade to this Council was forced to step down from Council last year because he moved out of his ward and our Charter provides that if you leave your ward or if you leave the City you are no longer eligible to serve as a Councilman. No one wanted to see Kevin Malecek leave, we all miss him dearly and Councilman Plecnik wishes he was sitting at this Council now, this is not personal, this is not emotional, he feels that this is the only thing that he can legally say; we have a duty, unless if Councilman Germano can explain why the State of State is wrong, and why his own paper is wrong, we have a duty to remove him, not a decision to make, and we don’t even have the luxury of time, the Charter explicitly says “shall remove immediately”.

Councilman Plecnik made a motion to remove Councilman Frank Germano, Councilwoman Fellows seconded the motion.

The Law Director stated that we already have a motion on the Table; we have a current Motion pending, can’t make a motion inside that motion. The Law Director stated that he thought we were ready with the motion to adopt, we were in discussion to adopt, Council Clerk stated that the President of Council did not acknowledge the Motion to remove Councilman Frank Germano. President Somich replied that we read the Caption for Ordinance No. 2014-11-As Amended, we had a Motion to adopt, we had a lengthy discussion and he has not yet called for the vote.

The Law Director stated that he doesn’t know if it is appropriate at this time, he understands that there are a lot of issues here, that you are making some ethical violations, he understands it, he thinks in fairness to Mr. Germano, that if you want to Table this matter, he understands that, but he doesn’t think that you can go immediately to that at this time. He thinks that it would only be proper to allow him (Councilman Germano), at least, the opportunity to review that and get back with you, in interest of fairness and due process. He understands that your issues are serious, but he doesn’t think that you can do it at this time, should not do it at this time, but they need to be addressed. Councilwoman Fellows retracted her second. President Somich stated, okay we do have a motion from Councilman Plecnik that motion fails for a lack of a second.

President Somich stated that we will go back to the earlier issue, Ordinance No. 2014-11-As Amended; a motion for adoption has been made by Councilman Biro, seconded by Councilman Germano, we have had lengthy discussion.

**Roll Call: Hallum-yes, Plecnik-no, Somich-yes, Biro-yes, Fellows-yes, Fiebig-no, Germano-yes
MOTION PASSES: 5-AYES/2-NAYS**

President Somich declared that Ordinance No. 2014-11-AS AMENDED has been adopted.

Councilman Fiebig, Point of Order, at this time, would entertaining a motion be appropriate. Law Lobe replied, in fairness, he wishes someone would have addressed this earlier with him; he apologized, we have never had anything like this pop up before and there have been some statements as to propositions of law which may be accurate, maybe partially accurate, they may be totally accurate. They are even other provisions that he has read for the interruption of 9.2 because you are talking about a potential ethics violation and it is just ironic because he did talk with, and he wasn’t addressing this particular issue, but there is also some law specifically that says in most situations, the Ohio Ethics Law and related statutes do not prohibit family members from being employed by the same public agencies as long as they are not, the job

is not secured by them or induced by them to get to job. He is only asking to look at those particular matters and if there is an ethical violation, he thinks that it needs to be looked at; he understands that, he absolutely gets that and understands that. But right now, he would like to have it brought up at a later time, he not telling you not to do it, but he thinks that we are in the middle of this legislation and he thinks that it would be more appropriate if it were and it may be done in New Business, it needs to be addressed and you are addressing it and he understands it. **Councilman Fiebig** stated that the problem at this time is that we are voting, perhaps putting ourselves in jeopardy here as Council Members, as fiduciary responsible people of the City if we do not address this issue at this time, we could be held liable and that is a grave concern he would at least want the Chair to at least recognize a motion made at this time, now that we are not in the middle of legislation, we are not in discussion for a piece of legislation. The **Law Director** replied it would be better to Table it then, Table these issue until a later date. The **Law Director** stated that we are in the middle of legislation, you are making a motion, and he doesn't want to get into too much Parliamentary Rule for the issue is serious, we are in the middle of legislation and you could raise this particular issue and if you want to raise and preserve this then you should make a motion to Table everything for tonight so that all these matters could be weeded out. He doesn't know and he is not about to say if the ethical issues that Councilman Fiebig is that severe or not, so he would ask that these matters be Tabled as opposed to voting on them.

Councilman Plecnik stated that his concern is that our Charter tells us "shall remove immediately" and unlike State Statutes which have their own definitions and their own exceptions, we have no such exceptions. We also just don't prohibit direct interests, we also prohibit indirect interests and he cannot imagine anyone saying that it isn't at least an indirect interest for a Councilperson to have monies that he voted to approve to appropriate go to his parent's company that he also works for by his own documents, its indirect both through his employer, maybe even direct through his employer and through his family members and he finds that incredibly concerning and our Charter doesn't really give us the discretion and he understands that we would like to move forward and have a little bit of time to consider these issues because it is very serious but unless if Councilman Germano can refute the Secretary of State's Office and say these documents are flawed and that my parents do not own Landco/Germano Construction or he can say that he lied on his form to Council and he doesn't work for Landco or he can say that the Purchase Order is fraudulent and our Finance Director made it up and it was never paid to his company unless if he can make one of those propositions and the floor is open for him to do so, we have a duty to remove him immediately and our Charter sets a higher standard for us than State Law, State Law does provide for some limited exceptions, but our Charter simply says no direct interest, no indirect interest, "shall remove immediately" he doesn't see how we have any indiscretion and he doesn't think that we have a decision to make only a duty to follow and we had to the same indirectly through Kevin Malecek, if he had refused to if he had refused to step-down, if he said that he wanted to stay on Council, even thorough he moved out of his ward , we would have been forced to do the same. This document use the word "shall" that is a mandatory term, **Councilman Plecnik views it as his duty to take this on at this point and we can certainly discuss it in the context of the motion but he would move again to remove Councilman Frank Germano.** **Councilman Fiebig** seconded the motion.

President Somich stated that we do have a motion at this time to remove Councilman Germano from his seat, it was made by Councilman Plecnik and seconded by Councilman Fiebig; is there any discussion on this motion. **Councilman Hallum** stated that if we are going to go to a vote on this, he personally feels the need to abstain because he doesn't know if he knows all the information that he needs to know to make such a dramatic vote. **Councilman Biro** stated that he also feels that just being given these documents without consideration he is not sure, he thinks that we need more discussion on this with our Law Director and any other persons that may be able to help us make an informed decision on this so he himself is at a quandary on how to vote or whether not to vote. **Councilman Plecnik** stated in closing regarding this motion, everyone of us took an Oath to uphold the City Charter of Willoughby Hills and as long as he is a Councilman in Willoughby Hills he will up hold the Charter and the Charter requires us to remove Councilman Germano, immediately, unless if he can refute these documents and he is free to do so at any time so while we haven't had a lot of time to review them, Councilman Germano must be familiar with them and he can tell us what is wrong, if anything is wrong. The **Law Director** stated that in the interest of fairness, he has the ability to get us additional facts, supportive facts in the matter of due process, and he has tried a lot of cases, the one thing that you don't try is a case immediately, Mr. Plecnik, what you do is that you give everybody equal opportunity for everybody to try and get the facts; you have done certain facts and you have done a marvelous job in trying to represent certain facts and those facts may be true and they be partially true and they may be not true and he doesn't make any judgment as to any of them but there are also additional facts that Mr. Germano may want to bring that he is not prepared to bring tonight because of the nature in which this was brought forward. The **Law Director** also stated that in fairness to the other Council people before they take any vote, just like anybody else, should have the opportunity to invest and investigate and diverge into the facts that are necessary, he is not saying not to proceed, not at all, but he understands Councilman Plecnik's position but he doesn't think in the interest of

fairness as any judicial body would allow a hearing to go forward this fast without the ability to at least defend yourself and to get all of the relevant facts before the trial or the tribunal that is going to make the determination, that is just his opinion and he thinks that it is standard due process of law that we have all followed in all courts of law. **President Somich** passed the gavel to allow him to give a personal opinion, one that basically mimics that of the Law Director. President Somich stated that these are very serious allegations, if in fact, they are true, if in fact, there is a violation then of course we will take whatever legal action, whatever City action that is required and we will do it efficiently and properly. **President Somich** further stated that at the same time, to have all of these acquisitions made this evening and within a matter of a few minutes, to make this type of a dramatic decision without even looking at everything, reading everything, digesting everything, verifying and validating everything that we have been given, he thinks is just moving at lightning speed and it is a little bit ironic because these ordinances that we are talking about here we have large pools of water and major problems that people are experiencing and we have asked these people to wait for six weeks and we have done that, **Councilman Fiebig** stated that was not true, now we are making, **President Somich** replied that it is true. We have waited six weeks for the process of allowing the Three Readings and now we are suggesting even to make them wait longer and yet we are not willing to give this issue with all of the importance and significance to this entire community, to the entire City, to this Council, to Mr. Germano, personally to be able to jump on that spontaneously and make a decision and without know all the details and all the facts and really studying them and listening and reading, researching deliberately he thinks is inappropriate. He thinks that it needs to be done, and he thinks that the research needs to be done, and he thinks that this is an important issue, and again, he stated that Mr. Plecnik did a very thorough job but we don't know if this is everything and he thinks that we need to delay. **Councilman Plecnik** replied that the reason for the treatment of these bills or these ordinances versus this motion is once again the Charter, the Charter gives us a Three Reading Rule for most legislation but in this case, this serious violation the founding fathers and mothers of Willoughby Hills thought "shall remove immediately" was appropriate. So while your opinion might be as the Law Director, or a Member of Council, that more time might be beneficial that is not how our Charter reads and we are bound by our Oath to follow the Charter and not what we personally think is fair and to extant that you believe that this Charter provision is inappropriate then it is in the provenance of Council, in a future time, to recommend an amendment to the Charter that the people can vote on but until then, we only have the commend not the option, the Charter often says, Council may, but here it says "Council shall", we have the commend "shall remove immediately" and frankly this is the best opportunity for a Councilperson rebuke these types of claims, it is public, who could be more familiar with the company then someone who is either owns it or doesn't. He is open to hear from Councilman Germano that he has nothing to do with this company and hat these documents are incorrect, that our Finance Director has commend a fraud and published POs that are not accurate that the Secretary of State is conspiring against him and that he even made it up that he was working for Landco on his own employment forms these are pretty wild things to show, it is possible, he supposes, but he hasn't heard one word from Councilman Germano all Mr. Plecnik has is the Charter which says "shall remove immediately" and maybe we should consider changing that but for the time being our Oath requires us to act on this motion today. President Somich stated that we have had discussion on the motion, but he looks for clarification and asked the Law Director, we had a couple of Council members that suggested that they may abstain for lack of knowledge, what would happen with that scenario, how many votes we need for something like this. The Law Director responded by saying that he would assume that you would need at least a minimum of four affirmative votes, either way, for we never had this happen before and this is quite usual, the general proposition would be that you need at least four affirmative votes. He has read Section 9.2 but he has not read Section 9.33 and sometime. **Councilman Fiebig** stated that another option would be for Councilman Germano to submit his resignation. The **Law Director** replied that he understands that but he doesn't think that you are giving him a chance, again, Council will act how it wants, he doesn't want to get into the policy of what he should do or shouldn't do; he just doesn't think and he doesn't care who it is, he shouldn't have to make a determination at this immediate moment. The Law Director knows that it says immediately, but immediately can also mean and it has and especially in a lot of court cases, that it shall go forth promptly or immediately and with all deliberate speed doesn't mean in the next ten seconds, and he thinks that basic due process would require that, that is his position and that is his understanding of that and that is how he practices his law and he understands that there is some urgency to get thing out and in fairness he wishes that this would have been brought up earlier so that we could have discussed it., this is the first time that he is hearing tonight. Again the **Law Director** stated that this is his position and he doesn't want to get into the policy and he doesn't make the votes. **President Somich** asked because this is such an important issue, are you comfortable with the four affirmative votes at this point or is that itself a reason why we really shouldn't take a vote this evening. The **Law Director** replied all that he could tell you is that if you take the vote, he will review it thereafter, no is all that he is going to say he has always learned not to make an opinion and just like any good judge, he hears the thing and takes everything under advisement you are asking him for an advisory opinion before hand on something that he hasn't reviewed or seen before and he assumes that it has got to be four, it might five, he doesn't even know that particular point at this time, so he just wants the time and opportunity to review it he wishes he had had that opportunity and would

have been a little bit more prepared and again this is probably an issue that for all he knows is the first time that it has ever come up in the City of Willoughby Hills. **President Somich** asked if there was any further discussion we do have a motion on the Table unless it is withdrawn we will take a vote on this matter and as we have just heard from the Law Director we are not exactly sure that we will still have a determination this evening, no matter how the vote comes out because he needs to research it completely whether it is four affirmative votes or five affirmative votes or some other number and President Somich stated that he feels that it is fair to our Law Director since this was unexpected by him and he did not research it and he thinks that it is fair that he doesn't have the exact answer tonight, he can't have the entire code memorized, so if there is no further discussion on this, **Councilman Hallum** wanted to state one more thing, his perspective, because he is not a lawyer, he has never been to law school, but one thing that he has seen with regard to lawyer speech if you will, is that different words do mean different things and can be, not precisely what a layperson might think that it means so that is why he is uncomfortable, that he know everything, that immediate really means right this second or whether it means as quickly as possible given the due process.

Roll Call: Hallum-abstain, Plecnik-yes, Somich-no, Biro-no, Fellows-yes, Fiebig-yes, Germano-no
Clerk not sure if Councilman Germano should be included in the Roll Call; the Law Director stated that is are the difficulties in what we are trying to do here tonight. It is really unfair to everybody at the Table, it is unfair to the movement, it is unfair to the individuals on the other side of the Table; he just finds this highly unfair, he knows that the issue is serious, he absolutely gets that, he thinks that the issue is very serious but he finds it highly unusual that nobody even knows how to vote whether they should abstain or things of that nature. He thinks that Council is making a mistake by rushing into the matter it can be done at the appropriate time and he thinks that everyone's vote would mean a lot more again this is the second time that he has said it do as you want, but you are in the middle of a roll call so really you shouldn't even have stopped for you are in the middle of a roll call he wants to be procedurally correct. Mr. Germano, we are in the middle of a roll call and the he apologizes for interrupting. For the Record, Germano said no.

3-AYES/3-NAYS/Abstention from Councilman Hallum

The **Law Director** stated that presumably the vote did not pass but he will review it. The **Clerk** stated that the vote was 3-Ayes, 3-Nays and one Abstention. **President Somich** declared that we have 3Ayes, 3-Nays and one Abstention. **Councilwomen Fellows** questioned if Councilman Germano could even vote. **President Somich** stated that again as we have tried to explain many times over this has not been researched we don't know and he said that before we took the vote, we didn't know if we would have the answer this evening, we do not have the answer this evening, the vote does stand at 3-yes, 3-nos and 1-absention and we will turn it over to the Law Director to research it further. **President Somich further stated that because these issues have been raised and they are serious issues this will be immediately addressed by the Administration and with the overview of the Council to investigate this fully and to give us further direction on the action that we would be taking in the future.** The **Law Director** stated that just because whether it passed or it was defeated tonight that it cannot be raised again in fairness to the total issue on both sides he thinks that it could also be a distinct possibility because he has to look at whether it is affirmative votes, how many votes, be it four or five and if they have to be affirmative and due abstentions go with the majority and in this case we didn't get a majority because it was 3 to 3 so those are the types of issues, he thinks that it ended up where he wanted it anyway, so it is going to be a vote on another date so that everybody can get it and proceed accordingly.

President Somich stated that we will return to the Agenda at this time and we will refer to the remaining ordinances. President Somich stated that he was going to pass the gavel; however, in the interest of being proper and trying to do the right thing will do it later.

Councilman Fiebig reminded the Chair that passing the gavel should be done rarely serving in the role the role of Council President should be to facilitate the meeting and allow for the body to debate topics so he could please do that rarely it would be appreciated. **Councilman Fiebig** further stated that when Mr. Lobe wants to interject something, he should be recognized, knowing how conversations flow, but we do need to manage debate and the flow of the debate. In the interest of the look of impropriety what he would like to see since that it is likely that the motion has failed to follow the Charter with the clear evidence that has been presented here and with the clear reading of and reasonable person perspective that if anyone would read the Charter as we need to make sure that these next pieces of legislation are not given to a company where there is a direct relationship so if he can at this time to make a motion asking that none of these projects that we are voting on tonight be given out Landco Developers/Germano Construction, Inc., **Councilman Fiebig would like to make that motion. Councilwoman Fellows seconded the motion. President Somich stated that we have a motion on the floor made by Councilman Fiebig and seconded by Councilwoman Fellows that for Ordinances 2014-12, 13, 16 and 17 which are the remaining pieces of legislation that relate to the Stormwater**

Management Funding of various service projects in the City, that no work be assigned to a particular company, Landco as part of the work being done under the funding of those projects. Councilman Fiebig also asked if the motion could be amended to include number eleven. The Law Director added that is what he wanted him to do. Councilman Fiebig wanted to include the other recently passed SOM Center Project, number 14. The Law Director replied that for simplicity sake, he is trying to amend all the Ordinances so that we can proceed to exclude any thing that involves Landco. The Law Director stated that it is a motion to amend that is currently on the floor that now if there is any further debate, and if not, he is not saying that you should debate it further, that is the President of Council's job, you will need four votes to amend that to all of those and which numbers specifically so that the record is clear as to what we are talking about. Vice President Fellows stated that it would be 11, 12, 13, 14, 16, 17, the Law Director replied okay, that is the motion, Mr. Fiebig; Mr. Fiebig replied yes, that would be acceptable. President Somich asked for clarification, can we go back and amend an ordinance that we have already adopted, the Law Director replies, for it hasn't been adopted yet. President Somich stated, no we adopted 11 and 14. Councilman Fiebig stated that is the spirit of the motion, he would ask and hope that the Administration would understand what Council's feeling is on this and would not allow such a thing to happen. President Somich stated that he understands the spirit of it; he wanted to know legally if we are allowed to do it. The Law Director stated technically no, it has been passed and adopted and it is only for those that are not yet adopted. Vice President Fellows stated that it would then be for 12, 13, 16, and 17. The Law Director asked if anyone understood and they replied yes.

President Somich stated that a motion was made by Councilman Fiebig and seconded by Councilwoman Fellows to amend the upcoming Ordinances 2014-12,-13,-16, and-17 so as no funds would go to Landco as part of the legislation, is that acceptable verbiage okay. Vice President Fellows stated that many an hour ago, what she had shared with everybody that she learned when she went to speak with the Road Superintendent about all of these projects that is when she had the realization that these were contracted out to other companies, she didn't know that and as she had began to understand more about this issue, her concern for her safety too, was that if she was going to be voting on something that could potentially could go to this company knowing the information that she had that is why she wouldn't have wanted to vote on them but with this amendment she is comfortable doing that. The Law Director stated that we have a motion on the Table on those Ordinances as enumerated by Councilwoman Nancy Fellows and a second. President Somich stated that was correct.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-11-AS AMENDED and as specifically amended this evening has been adopted.

ORDINANCE NO. 2014-12 – AS AMENDED – THIRD READING

1st Reading: February 13, 2014 – Amended February 20, 2014

2nd Reading: February 27, 2014

AN ORDINANCE AMENDING SECTION 1 OF ORDINANCE NO. 2013-43 TO COMPLY WITH STATE BUDGETARY LAWS REQUIRING MUNICIPALITIES TO MAINTAIN POSITIVE ACCOUNT BALANCES THROUGHOUT THE YEAR BY PROVIDING FOR 2014 OPERATING BUDGET REVISIONS SPECIFICALLY FOR THE ROCKEFELLER/WHITE STORM WATER CROSSOVER REPLACEMENT PROJECT AND REPEALING CONFLICTING LEGISLATION.

MOTION MADE BY COUNCILMAN FIEBIG, seconded by Councilman Plecnik to adopt Ordinance No. 2014-12-AS AMENDED and as specifically amended this evening.

President Somich passed the gavel in order to respond to Councilman Fiebig, President Somich simply wanted to say that he was going to suggest ultimately what we just voted on, that he did not want to suggest that we hold up approving all of this legislation this evening for these projects when they are needed in the community because of that particular technical issue, so he was going to suggest that we pass these with the understanding and Councilman Fiebig made such a motion and that was exactly where he (President Somich) was coming from as well. Councilman Fiebig stated that President Somich stated that the projects were held up, they were not held up, the work could not be done until the weather broke and until we had our service guys back on days; we did check to make sure that this was simply a financial, budgetary movement, they could not start the work, in fact SOM Center which we did pass in an emergency fashion has not been started. Councilman Plecnik stated that in the ordinances we have adopted Robert's Rules to govern all of our proceedings, Councilman Fiebig was referring to Robert's Rules which states that the Chair should very rarely pass the gavel and like Councilman Fiebig, Councilman Plecnik appreciates that sacrifices by serving as Council President, does lose many of the opportunities for the individual to participate in debate for purposes of facilitating it, he just wanted to

explain to everyone in the audience why passing the gavel multiple times is typically inappropriate but he thinks that this Council Meeting might be an exception given the serious nature of the issues that we are discussing tonight.

Roll Call: 7 AYES – unanimous

MOTION PASSES

President Somich declared that Ordinance No. 2014-12-AS AMENDED and as specifically amended this evening has been adopted.

ORDINANCE NO. 2014-13 – AS AMENDED – THIRD READING

1st Reading: February 13, 2014 – Amended February 20, 2014

2nd Reading: February 27, 2014

AN ORDINANCE AMENDING SECTION 1 OF ORDINANCE NO. 2013-43 TO COMPLY WITH STATE BUDGETARY LAWS REQUIRING MUNICIPALITIES TO MAINTAIN POSITIVE ACCOUNT BALANCES THROUGHOUT THE YEAR BY PROVIDING FOR 2014 OPERATING BUDGET REVISIONS SPECIFICALLY FOR THE KNECHT/O'BRIEN CULVERT STREAM RESTORATION PROJECT AND REPEALING CONFLICTING LEGISLATION.

MOTION MADE BY COUNCILMAN BIRO, seconded by Councilman Plecnik to adopt Ordinance No. 2014-13-AS AMENDED and as specifically amended this evening.

Roll Call: 7 AYES – unanimous

MOTION PASSES

Somich declared that Ordinance No. 2014-13-AS AMENDED and as specifically amended this evening has been adopted.

ORDINANCE NO. 2014-16 – AS AMENDED – THIRD READING

1st Reading: February 13, 2014 – Amended February 20, 2014

2nd Reading: February 27, 2014

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

MOTION MADE BY COUNCILMAN FIEBIG, seconded by Councilman Hallum to adopt Ordinance No. 2014-16-AS AMENDED and as specifically amended this evening.

Roll Call: 7 AYES – unanimous

MOTION PASSES

Somich declared that Ordinance No. 2014-16-AS AMENDED and as specifically amended this evening has been adopted.

ORDINANCE NO. 2014-17 – AS AMENDED – THIRD READING

1st Reading: February 13, 2014 – Amended February 20, 2014

2nd Reading: February 27, 2014

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

MOTION MADE BY COUNCILMAN BIRO, seconded by Councilman Germano to adopt Ordinance No. 2014-17-AS AMENDED and as specifically amended this evening.

Roll Call: 7 AYES – unanimous

MOTION PASSES

Somich declared that Ordinance No. 2014-17-AS AMENDED and as specifically amended this evening has been adopted.

ORDINANCE NO. 2014-20 – SECOND READING

1st Reading: February 27, 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.

Councilwoman Fellows stated that while the Rules and Legislation Committee had recommended leaving this on Second Reading and since this is a Court Order, she would move that we suspend the Three Readings.

MOTION MADE BY COUNCILWOMAN FELLOWS, seconded by Councilman Biro to suspend the Three Reading Rule for Ordinance No. 2014-20.

Councilman Plecnik stated that although we realistically are not going to change a Court Judgment he still believes that it is beneficial to the public to hear all Three Readings of this Ordinance and he feels strongly that unless we have a true emergency we should not waive the Three Reading Rule and he will have to vote on the motion to waive the Three Reading Rule.

Roll Call: Hallum-no, Plecnik-no, Somich-yes, Biro-yes, Fellows-yes, Fiebig-no, Germano-yes

MOTION FAILS: 4-AYES/3-NAYS

President Somich declared that Ordinance No. 2014-20 would remain on Second Reading.

ORDINANCE NO. 2014-21

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.

Councilwoman Fellows stated that while the Rules and Legislation Committee did recommend to Council that this Ordinance should remain on First Reading, she did some research on this and would like to make the motion to suspend the Three Reading Rule.

MOTION MADE BY COUNCILWOMAN FELLOWS, seconded by Councilman Biro to suspend the Three Reading Rule for Ordinance No. 2014-21.

The Law Director wanted to stated that is Ordinance was brought forward by the Administration and it is still in the form that he hopes Council does not adopt this evening, he said it last time when it was first introduced, the Economic Development Director wants us to review, this but we are not really ready to adopt it, and he appreciates the waive this time, but he doesn't want the Three Reading to be suspended for it needs a lot of financial consideration and there are a lot of issues that still need to come from Planning, that is still in limbo too.

With that discussion, **Councilman Biro withdrew his second**. Upon the discussion and advice from the Law Director, **Councilwoman Fellows removed her motion**.

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

ORDINANCE NO. 2014-22

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 declared that Ordinance No. 2014-22 would remain on First Reading and will be turned over to the Finance Committee for further review.

President Somich stated that a Finance Committee will be scheduled to review Ordinance No. 2014-22 and will also review Ordinance No. 2014-21 the Community Reinvestment Act Agreement.

NEW BUSINESS

There was no new business brought forth for consideration by Member of Council.

