

Record of Proceedings

Regular Council Meeting

September 25, 2014

Presiding Officer, Mayor Donald Kuchta called the September 25 meeting of Macedonia City Council to order at 7:30pm.

Present: Council members' Rita Darrow, David Engle, Sylvia Hanneken, Nicholas Molnar and Janet Tulley; Council Clerk Josephine Arceci and Assistant Law Director Thomas M. Hanculak and Associate Law Director Mark V. Guidetti.

Absent: Directors Angela Gmerek and Scott Svab

PLEDGE OF ALLEGIANCE was led by Council President Dave Engle

INVOCATION was led by Councilor Jan Tulley.

MINUTES Mr. Molnar moved, Mr. Engle seconded, to approve the minutes of the regular meeting of August 28th as submitted by the clerk.

Roll call: Ayes: Darrow, Engle, Hanneken and Molnar
Nays: None
Abstentions: Tulley
The motion carried

PUBLIC COMMENTS

Robert Kominek, 892 Eileen Drive resident expressed concern regarding the delay in repairing the ditch on his property. Run-off from the street during heavy rains has deteriorated the width of his drive at the street. The original width of Mr. Kominek's driveway was 10 foot. It has washed down to seven. His neighbor's property is effected as well he added. Mr. Kominek stated about five years ago the City attempted to repair the situation but matters were made worse because the weight of the City truck bent the driveway culvert. Mr. Kominek was assured the damage would be fixed. The current project is meant to resolve the problem, or at least that is Mr. Kominek's hope. Mr. Kominek said 40 feet of pipe was to be installed but he has since learned it will be only 20. The change will not improve the problem. The driveway base will still remain narrow. The driveway is still going to be treacherous during the winter because the ditches along Eileen are two-three feet deep Mr. Kominek explained.

Councilor Molnar interjected that he inspected Eileen and agrees that the deepest ditches should be filled. There will be however costs incurred that have yet to be budgeted. Mr. Molnar doesn't anticipate that the additional cost will be denied. Mr. Molnar explained the project will include pipes and fill; vaults will be dropped to bypass water mains and fire hydrants. Mr. Molnar assured Mr. Kominek the will work be done and when it is Mr. Molnar is confident Eileen Drive residents will no longer have any problems in this regard.

Councilor Hanneken added that she too inspected Eileen Drive and spoke with several residents as well. In speaking with Service Director DeGaetano he suggested adjusting the original plan which will be more costly but necessary.

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Shirley Koth, 902 Eileen resident and Mr. Kominek's neighbor thanked city official for visiting their street and developing a plan of action. As a result of the conversation and communication many of the residents' concerns about the water and drainage issues are now being put to rest Ms. Koth added. Regarding the senior citizen snow removal program Ms. Koth expressed her opinion that there isn't enough financial difference in the proposals to warrant contracting with a vendor whom the City has had no previous experience. The vendor who bailed out Macedonia during the worst part of last winter and who subsequently provided reliable service should be the vendor with whom the City contracts with this year she stated

INTRODUCTION, READINGS & ADOPTION OF LEGISLATION

ORD. NO. 90-2014

AN ORDINANCE AUTHORIZING THE MAYOR TO ENGAGE THE STATE AUDITOR TO CREATE A TAILORED PERFORMANCE AUDIT OF THE CITY OF MACEDONIA DEPARTMENTS AND SERVICES was **offered** by Mr. Engle for its **third reading by title only**. Second not required.

Mr. Engle moved, Ms. Hanneken seconded to **amend ORD. NO. 90-2014 as follows**:

Section 1: That the Mayor is authorized and directed to ~~engage~~ enter into discussion with the Ohio State Auditor's Office for a Performance Audit regarding scope and services detailed to the needs of the City of Macedonia with the aim of evaluating services, enhancing efficiency, and identifying cost-saving mechanisms all for the benefit of the ultimate customer: the City's taxpayers.

Section 2. ***

~~Section 3. That the payment for this Performance Audit is hereby and herein further approved to be taken from the appropriate fund of the City, and the Director of Finance is directed to do so.~~

Section ~~3~~ 4. ***

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None
The motion carried

Mr. Engle moved, Mr. Molnar seconded **to adopt ORD. NO. 90-2014, as amended** and post same according to law.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None
The motion carried. **ORD.NO. 90-2014 declared adopted as amended**

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Relative to ORD. NO. 90-2014, Mayor Kuchta stated that Jim Pyers, senior performance project manager had explained to Council during work session that the type of audit his department performs determines the efficiency, the effectiveness and the economy of function of the governmental office being audited. Performance audits are unlike annual state audits in that the latter tests for the accuracy of financial procedures and financial data.

ORD. NO. 92-2014

AN ORDINANCE AUTHORIZING AND DIRECTING THE MAYOR TO ENTER INTO A REVISED AGREEMENT WITH SUMMIT COUNTY AND OTHER PARTICIPATING MUNICIPALITIES WITH REGARDS TO THE INTERGOVERNMENTAL MEMORANDUM OF UNDERSTANDING FOR JOB CREATION AND RETENTION AND TAX REVENUE SHARING WITH THE TERM BEGINNNING OCTOBER 1, 2014 THROUGH JUNE 30, 2015 was **offered** by Mr. Molnar for its **third by title only**. Second not required.

Mr. Molnar moved, Ms. Tulley seconded **to adopt ORD. NO. 92-2014** and post same according to law.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None
The motion carried. **ORD. NO. 92-2014 declared adopted**

ORD. NO. 93-2014

AN ORDINANCE PROVIDING FOR A SENIOR SNOW REMOVAL PROGRAM FOR THE 2014-2015 WINTER SEASON was **offered by** Ms. Darrow for its **second reading by title only**. Second not required.

ORD. NO. 95-2014

AN ORDINANCE CONFIRMING THE APPOINTMENT OF JAYSON MCRITCHIE TO THE POSITION OF FULL-TIME MAINTENANCE WORKER IN THE SERVICE DEPARTMENT OF THE CITY OF MACEDONIA TO FILL THE VACANCY CREATED BY A RECENT RETIREMENT was **offered** by Mr. Engle and moved Council waive the requirement that it be read by title on three different days, instructing the Clerk to read it by **title only for all three readings**. Second by Ms. Tulley.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None
The motion carried

Mr. Engle moved, Ms. Tulley seconded **to adopt ORD. NO. 95-2014** and post same according to law.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None
The motion carried. **ORD. NO. 95-2014 declared adopted.**

Relative to ORD. NO. 95-2014, Service Director DeGaetano explained that about 10 years ago Mr. McRitchie worked part-time for the service department. Since then Mr. McRitchie has honed his skills in the building industry, all of which will be an asset to the city.

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ORD. NO. 96-2014

AN ORDINANCE AMENDING THE 2014 ANNUAL APPROPRIATIONS ORDINANCE NO. 26-2014 REGARDING SERVICE DEPARTMENT TRUCK REPAIRS was **offered** by Ms. Hanneken for its **first reading by title only**. Second not required.

ORD. NO. 97-2014

AN ORDINANCE AUTHORIZING THE APPROPRIATION OF FUNDS FROM THE UNAPPROPRIATED FUND BALANCE TO PROVIDE FOR CURRENT EXPENSES OF THE SERVICE DEPARTMENT OF THE CITY OF MACDONIA (REMOVAL OF TREES AT SUGARBUSH AND LONGWOOD PARKS) was **offered** by Ms. Hanneken for its **first reading by title only**. Second not required.

RES. NO. 98-2014

A RESOLUTION AUTHORIZING THE ADVANCE OF LOCAL TAXES BY SUMMIT COUNTY FISCAL OFFICE FOR 2014 TAX YEAR PAYABLE IN 2015 RETIREMENT was **offered** by Ms. Tulley and moved Council waive the requirement that it be read by title on three different days, instructing the Clerk to read it by **title only for all three readings**. Second by Ms. Hanneken.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None
The motion carried

Ms. Tulley moved, Ms. Hanneken seconded **to adopt RES. NO. 98-2014** and post same according to law.

Roll call: Ayes: Darrow, Engle, Hanneken, Molnar and Tulley
Nays: None
The motion carried. **RES. NO. 98-2014 declared adopted.**

MOTIONS OR OTHER LEGISLATIVE ACTIONS

~ Mr. Engle moved, Ms. Darrow seconded, **to reconsider vetoed and move for adoption ORD. NO. 82-2014: AN EMERGENCY ORDINANCE AMENDING CODIFIED ORDINANCE SECTION 1171.15(b) TO ALLOW STORAGE BARN AS A NON-RESIDENTIAL USE IN A RESIDENTIAL DISTRICT**

Roll call: Ayes: Darrow, Engle, Hanneken and Molnar
Nays: Tulley.
The motion carried.
Mayor's veto overridden. ORD. NO. 82-2014 adopted

~Mr. Engle moved, Ms. Hanneken seconded to affirm Mayor Kuchta's termination of Finance Director Scott Svab.

[Prior to roll call there was a brief discussion on the intent of Mr. Engle's motion. Councilor Darrow expressed uncertainty about what she was to vote on. Mr. Engle

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explained voting aye (yes) supports the termination of Mr. Svab. Voting nay (no) does not and Mr. Svab would return to his position]

Roll call: Ayes: Molnar [For purpose of explanation stated that there were 200 pages of accusations against the finance director. A few undisputable, factual items should be mentioned. One related to an ODNR grant and extra fishing poles purchased though the grant that found their way to Canal Fulton where Mr. Svab resides and is a councilman. Canal Fulton receiving the extras fishing poles was unethical and a conflict of interest, a refund of the poles would have been the appropriate action. Another was Mr. Svab hired four contractors from Canal Fulton, a questionable situation from the public's perspective. Another included signed witness statements of Mr. Svab telling the Mayor there is nothing the Mayor could do to Mr. Svab. Some members of council wanted the witnesses' to Mr. Svab's comment to take a polygraph. Questioning the credibility of the other employees? There have been a least eight accusations about the finance director and yet the focus is on others and not Mr. Svab?. Another was Service Director DeGaetano wanted to hire a painter for \$2600. An email from Mr. DeGaetano dated December 2, 2013 stated "Scott didn't like the price so I asked if he wanted to get more quotes and he said he would get someone." Mr. Svab got someone from Canal Fulton, who was not registered with Macedonia and who had an extensive criminal record including having a meth lab in his home, all of which very serious issues. This Canal Fulton painter was paid \$2500, another unethical issue which should have been reviewed carefully before allowing Mr. Svab to return. The public should be aware of all that has been done and what continues to go on. Council should be making good decisions. The things that have been done but are being supported are wrong for which Mr. Molnar is truly ashamed

Tulley: [For purpose of explanation stated there points to be considered one of which is the falsification of documents. Mr. Svab stated an employee of ODNR told Mr. Svab how to handle the grant issue yet the ODNR employee said he never spoke with Mr. Svab. That in fact how Mr. Svab handled the matter is not a viable

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option under ODNR processes. Another was ignoring legislation requirements relative to the purchase of time clocks. The ordinance required bids be brought back to Council for approval which Mr. Svab ignored. Ms. Tulley was not a member of Council during this period, but one of the first questions Ms. Tulley asked when elected was, "Where were the bids, why are the clocks already installed, how can they already be in use?" Why would Council ignore any of this when it holds other departments to other higher standards? The recent discussion about the cost for the snow removal program is an example of getting a fair price for Macedonia residents and excluding cronyism, the use of friends for services like what Mr. Svab has done using the Canal Fulton painter and insurance contracts. The Canal Fulton painter who also painted Mr. Svab's home was paid \$100 less than the quote Mr. DeGaetano received. Are favors being given for favors received? Members of Council questioned Ms. Molnar's appointment to the Parks & Recreation because it was seen as favoritism. The suggestion that polygraph tests be given to the employees who witnessed Mr. Svab comments to the Mayor says to these employees, "We do don't believe you, we believe this other person." Another disturbing issue is ageism. Comments that have been made about age is a form of harassment which is a fireable offense. Why in city government this type of behavior is ignored compared to the public sector baffles Ms. Tulley. Also substantiated is the threat of withholding purchase orders by Mr. Svab.

Nays: Darrow, Engle and Hanneken
The motion failed.

Mr. Svab, who was in the audience asked to speak to which Mayor Kuchta answered the portion of the meeting allowing the public comments is over.

Councilor Hanneken interjected, "Wait a minute now, we just heard information."

Councilor Molnar stated, "This is a Council meeting. This is not a meeting for him."

Councilor Tulley added, "This is the Mayor's meeting."

Councilor Hanneken responded, "No, this is our meeting, number one, Ms. Tulley. The other thing is he has a right to say something because you folks have said things right here."

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Councilor Tulley stated, "I reiterated what was said in his testimonial"

Councilor Hanneken stated back, "You have interpreted. He has rebutted much of this."

Councilor Tulley answered, "I refer this to the law department."

Councilor Hanneken said, "I say we give him 30 sections to say something."

Assistant Law Director Hanculak stated there is no longer an issue to address. The motion is no longer on the floor and the agenda allowed for public comments at the beginning of the meeting.

Councilor Hanneken commented, "This is like the rest of this that has gone on here. We have heard about two or three years of investigation and I have reviewed every bill from you folks for the last three years and when this investigation started was when there was an issue between Mr. Diemert and the finance director concerning the payment of your fees. He was following Ohio Revised Code. You folks started an investigation, according to the Mayor at the behest of him. There was no investigation last year. There was no investigation the previous year because I have all the bills, sir. I'm just telling you sir"

Mr. Hanculak responded, "What was that date that the investigation began?"

Councilor Hanneken, "I'm saying in April."

Mr. Hanculak asked, "What year?"

Councilor Hanneken responded, "This year."

Mr. Hanculak questioned, "Were you aware of the fact that the investigation was occurring in 2013 but was under the retainer?"

Councilor Hanneken answered, "Yes, I looked at everything. You, sir, I'm just telling you the way that your bills are patterned, it is very clear. You sometimes have it under prosecution; you sometimes have it under retainer. There is no evidence before April of this year that you did anything at the behest of anybody. So, let me just say this."

Mayor Kuchta interjected, "You are making accusations."

Councilor Hanneken responded back, "I am telling you what I have observed, sir that is all. Now with regards to this whole issue of how this all came about, I think we have had a pretty clear picture of the allegations and the rebuttals. Why the Council wants to move forward is because he is a good finance director and the majority on Council did not find that the investigation was persuasive of any wrong doing, number one. Number two, I was the one who asked for polygraphs and the reason I did, not for everything, just for the accusations of criminal conduct. That is the normal practice if you people are accusing other people of criminal conduct. That's normal to polygraph everyone involved. There were

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three people involved. That is all I asked for. That is not an insult for our employees. What I am saying is when you do that, when you make that accusation, you should be able to back it up. And I believe that everybody should be asked and if they don't want to volunteer they don't have to but I am not saying Mr. Svab shouldn't be polygraphed, he should be. And that should resolve the biggest issue from the standpoint that I have. But there is no evidence at this point that would require a termination. We need to move ahead and we have voted to retain him in his position."

Councilor Molnar stated, "How does this problem completely revert back to the legal department every time? I know and am very aware and it's public now that you have a real big problem with the legal department which you have masked by saying that their bills are ambiguous. The finger pointing keeps occurring and I said at the beginning of the year when you came on Sylvia that if there was something that you found within the legal department that was not right I would have been the first person to stand behind you. To this date you have given me nothing. It always comes back to Joe Diemert's office, Joe Diemert's office, Joe Diemert's office and now the attack is on them and GPD. It just keeps going in circles. You are not providing me with anything to substantiate your allegations. Now we have something else on the table and you just brought the man back when there is some serious stuff. You wanted to have a polygraph test but you brought him back before you even decided to do that.

Councilor Hanneken responded, "The Mayor rejected that, if you recall. The Mayor already rejected that option. So, I'm just saying I am that I am the one because somebody said, I think it was Jan who brought it up and I just clarified who it was"

Mayor Kuchta stated, "I did not reject it."

Councilor Hanneken's response, "You did sir. I have the email from Sunday."

Mayor Kuchta answered, "There was an instance in there saying I don't feel that it is necessary to doubt what was said when multiple people heard the statement."

Councilor Hanneken stated back, "They said they were outraged and insulted that anybody you said, you spoke with them and they were outraged and insulted."

Mayor Kuchta said, "They were outraged and insulted. So now you are bringing somebody back into a situation where we have employees that our outraged and insulted. You are not believing them but you believe the other one."

Councilor Hanneken responded, "I did not say, I simply said you rejected the concept of everybody."

Mayor Kuchta answered back, "So what. It was what was said that is important and we have witnesses, we have people who have testified, employees, non-employees, people that are vendors, people from ODNR and all of it is in writing from them."

Councilor Hanneken interjected, "It was not under oath. I got it, I got it. I am willing to cease this at this point"

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Councilor Molnar stated, "So you are willing to ignore these allegations. These mean nothing. So, you as the public take a long hard look at who you elected to be here because to ignore this is a travesty. This is embarrassing. You are not focusing on the issue. And before you start to rip me up on this let me explain myself. There is a lot of stuff here. We could have talked about it the work session. Maybe we could have gone down a different path. Are we doing our due diligence to make sure we are doing the right thing? There was none of that you just came out here the three of you. I'm a little concerned. To not to have at least addressed some of the things that are on there but instead everything is, that's a lie, that's a lie. There are eight to ten people, not one or two that made statements that you are completely ignoring."

Councilor Hanneken responded, "No we are not, sir, and the thing you need to understand is this, and the public needs to understand is this it was all handled in an executive session. There was tremendous preparation by all parties and you know it. I can't go into it in public as you know but we went through this in great detail. It's not like we said, oh, what the heck we don't care. That is just unfair. It's the kind of thing that you say when you are trying to cover your tracks, that's it, that's it."

Councilor Molnar stated, "Don't point at me, please put your finger down, don't point at me."

Councilor Tulley interjected, "This was executive session. It was private. The Mayor did that because he wanted to avoid this kind of situation."

Councilor Darrow interjected, "He publicized it to the news."

Councilor Tulley answered back, "Excuse me, I am not done. What happened after that is there was an email by one of the council members who made it public even though it was still considered executive session. There are two reasons you go into executive session, litigation and personnel. And, Scott, you're back there with a smile on your face because you have three people here who say this is all malarkey. You know what? If I."

Mr. Svab interjected, "If you let me speak?"

Councilor Tulley stated, "In all the accusations that were made if just once in any of these documents you said, you know what I did screw up this one time and I'll fix it, I may have had a little more consideration for it. But I had to look at the other people who were talking about what the issues were. They didn't blame anybody else. And in every document in here you blame someone else."

Mr. Svab asked, "Can I have thirty seconds?"

Councilor Darrow interjected, "I would like to say that we have a, wait a second Sylvia I want to say something. You know we just voted tonight to have an in-house audit on all departments Because we do want to fix the problems that may occur. And a lot of stuff that you're talking about in that documentation that you have are not even his job duties. I will provide you with the job duties of every

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department in the City for you Nick because I did ask for the job duties of everybody in the departments when I got elected. And I took the time to read all those job duties and I'll provide them to you as well."

Councilor Molnar responded, "Do you ever spin your wheels in mud?"

Councilor Tulley stated, "He over stepped his bounds if was performing other people's jobs."

Councilor Darrow said, "I never said if he's guilty or not guilty and you didn't either, Jan"

Councilor Molnar stated, "You brought him back without knowing?"

Councilor Engle interjected, "We agreed that we needed more information and then the Mayor fired him so what are we supposed to do?"

Councilor Molnar answered, "He's the administrator. How many times have I said this?"

Councilor Darrow added, "And we have a Charter that protects employees and the administration."

Councilor Molnar responded, "It is one thing if you don't like the Mayor or if you don't like GPD or the legal department and it's another thing not to try and make it work. Its spinning wheels in mud, its smoking mirrors, it's pointing this way and that. It's never coming back here."

CORRESPONDENCE: None

MAYOR'S REPORT: "I met with Doctor Scarborough, the president of Akron University, earlier this week and will be following up with his office to generate interest in establishing a university satellite in Macedonia. I also met with Congressman Dave Joyce this week to ask his help in establishing funding for the proposed new Transportation Bill"

COMMITTEE REPORTS

Planning Commission Councilor Darrow reported on September 15th Planning reviewed alterations of the cell tower at 12417 Highland Road; a zombie stunt jump for Fun & Stuff, 661 Highland; a patio and seating area relative to Lake Forrest HOA and revisions to Nordonia Hills schools master plan.

Finance Committee Ms. Hanneken announced the previously scheduled finance meeting relative to the 2015 budget will be restructured. Notice will be provided as soon as possible.

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Charter Review Commission Mr. Engle announced that the Charter Review Commission was sent a letter on September 22 requesting information so a meeting schedule can be developed that is convenient to everyone. The review process will begin as soon as a schedule has been determined.

Parks & Recreation Commission Ms. Tulley announced that the next meeting of the P&RC is Wednesday, September 29 at 7pm on the second floor of the Recreation Center. The Commission is reviewing future park improvements as well as improvements to the Recreation Center.

DEPARTMENT REPORTS

Service Department Director DeGaetano apologized to Mr. Kominek who spoke earlier about his ditch and driveway. Mr. DeGaetano explained that his intent to enclose pipes in the ditches in the area of Eileen where water run-off is a problem. The installation however is complicated by the fact that the main water line runs in the middle of the ditch line. Also funding the project has yet to be established. Mr. DeGaetano announced a public meeting has been scheduled for Tuesday, October 7 at 6pm in Council Chambers for residents to learn about the new rubbish collection recycling program. Republic Waste officials will be providing information about how the new containers will be distributed to the residents and how the automation process, the newest trend is rubbish collection works Mr. DeGaetano added. Mr. DeGaetano announced pavement markings begin Friday evening. Work will be performed during night time hours. The City Center parking lot will be topped, sealed and marked on Saturday he added.

Building Commissioner Mr. Hlad reported that to date there have been 89 new commercial building starts, 56 occupancies and 28 commercial alternations. Regarding residential growth there have been 36 new home starts, 63 homes are currently under construction. There are 14 additions and 22 alternations to residential homes. There have been 302 point of sale inspections and there are 97 contractors registered with Macedonia.

Engineer Mr. Fini had no report.

Finance Department

Fire Department Chief Black had no report.

Police Department Lt. Yakopovich who was present in Chief Golden absence had no report.

Law Department Mr. Hanculak reported that almost 20 years ago Macedonia counter-claimed on a foreclosure filed by Gregg Bros against the Zingale Development Corporation. The claim pertained to the last remaining unsold parcel of the Highland Pointe industrial subdivision. The City counter sued for back taxes and assessment costs the City had incurred. There was a court ordered judgment that resulted in a settlement and the parcel was deeded to Macedonia in trust for the purpose of carrying out a formula the court ordered. The court devised formula was long and complicated. The court believed at the time the sale of the property would be expedient. The only immediate sale was small portion of the parcel sold to

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an adjacent property 10 days after the court order. That larger sale however never came to fruition. In the early years of the trust there was some interest generated. Several real estate brokers were aggressive in marketing the property. Subsequent brokers wanted large retainer fees so the City marketed the property on its own. The sale was listed on the City's website many years. Finally an offer is being entertained Mr. Hanculak stated as a direct result of the Mayor's efforts. The sale has to be approved by both parties, the Gregg's and the City. The sale includes some complicated matters, one of which Mr. Hanculak stated is that all the back taxes, about \$140,000 be paid. The assessments costs must be reimbursed too. The reimbursement has yet to be calculated however.. Mr. Hanculak explained there is a deadline relative to the sale and as soon as all the details are resolved it will be presented for approval.

Associate Mark Guidetti, who was also present, had no report.

Unfinished business None.

New business None.

There being no further business, the meeting adjourned at 8:25pm.