

**CITY OF WILLOWICK
LAKE COUNTY, OHIO
MINUTES AND PROCEEDINGS OF SPECIAL MEETING OF COUNCIL**

DATE: August 13, 2019
PLACE: City Hall
TIME: 7:30 p.m.

The Special Meeting of Council was called to order by Council President Patton at 7:30 p.m.

Present: Council members Pintar, Turk, Koudela, Vanni, Malta, Reho and Patton.
Also Present: Mayor Regovich, Finance Director Benedict, Law Director Landgraf

Adjourn to Executive Session

Motion by Mr. Vanni, seconded by Mr. Malta to adjourn to Executive Session to discuss pending and imminent litigation.

Discussion: None.

Vote: All ayes. Motion carried.

Mr. Patton invited the city's outside counsel, Attorney Lisa Gatozzi, to join them for the Executive Session.

Return to the Table from Executive Session

Motion by Mr. Reho, seconded by Ms. Turk to return to the table from Executive Session.

Discussion: None.

Vote: All ayes. Motion carried.

Motion by Mr. Vanni, seconded by Mr. Reho to authorize the insurance defense counsel to present a settlement agreement to the court for preliminary approval in the Abramezyk et al vs. Willowick, and Ragazzo et al vs. City of Willowick and authorizing the Mayor to execute any documents associated therewith.

Discussion: None.

Vote: Ayes: Turk, Koudela, Patton. Nays: Pintar, Vanni, Malta, Reho. The motion was denied.

Motion by Mr. Vanni, seconded by Mr. Pintar to authorize special legal counsel for the city to pursue an appeal by the Industrial Commission to the Staff Hearing Officer's decision in the pending Palumbo Bureau of Workers' Compensation claim.

Discussion: Mr. Reho stated that he has a business working relationship with the Palumbos and must recuse himself from the vote due to partiality.

Before the vote, Mr. Patton made the following remarks:

"I said before back in June, and I want to be sure that I quote this correctly, 'Facts are stubborn things, and whatever may be our wishes, our inclinations, or our dictates of passion, they cannot alter the state of facts and evidence.' That is a statement by the second president, John Adams, when he was defending soldiers in the Boston Massacre trials of December 1770.

"I am voting in favor of pursuing this appeal for several reasons. Despite the repeated statements that this has always been a presumption case—I believe at the last meeting, there was a resident that said it is been beyond clear that presumption has always been the case—I would refer anyone who is watching this to the documents that were posted on the Channel 5 website. In particular I would refer

to page 4 of those documents which is a letter from the Plevin and Gallucci firm dated January 18 of this year which is signed by their attorney, Bradley E. Elzeer II, which is captioned, Presumption Application Request. 'Attached please find the C-265 previously filed. Claimant is requesting that the presumption apply under Ohio Revised Code 4123.68(X) for the allowance hearing in both claims 17-142990 and 17-142995. Thank you for your cooperation, I remain Bradley Elzeer.' So this document proves that they are asking that the presumption be reinstated. It is not beyond clear that presumption has always been the case. If that were so, why are they asking for it be reinstated?

"I would also cite those who are paying attention to page 25 of this document. Again, these are all from the Channel 5 website. This is the Bureau of Workers' Compensation position review. I will put it up here for the camera so that you can see it. It will cite you to the bottom and it says, the last four lines, 'On August 31, 2018 an interlocutory order confirmed that Mr. Palumbo's widow had withdrawn the C-265 Presumption of Causation for FireFighter Cancer, as well as "any request to have her C-5 application for Death Benefits allowed as a result of this presumption."' So again, this is in the record, presumption has not always been the case in this matter. In the last hearing that we had, there was a ruling that the presumption applied when it had been previously withdrawn. Those are the facts.

"There have been other misstatements with respect to all the documents that are online. I wonder if that is still being posted in light of the fact that it is clear that not all the documents in the file are in this printout on Channel 5.

"Another example of misinformation would be the question that was posed to Assistant Law Director Michael Lucas on July 2 where he was asked about the certification. There was a posting that said that the City of Willowick admitted that it rejected the Palumbo claim. I am very pleased that Ms. Bontempo had decided to record these proceedings, and I would invite anybody to go back to the July 2 hearing, or Council meeting, and see whether that is what the Law Director said. The Assistant Law Director did not say that. The certification is not a rejection of the claim. A certification, my understanding, would be an agreement to the facts so that it can then go up for review. But the City of Willowick did not reject the claim at this point.

"The other statement is from the last Council meeting that I allegedly made a comment that we are not fighting this. I would like anybody to show me in any recorded meetings or anywhere in the record where I said that. And if you cannot show that to me, then I demand a retraction and an apology. I have no recollection of ever saying that. What I do recall saying is I was repeatedly asked why the city won't drop the appeal. The city was not dropping the appeal at that point because we weren't appealing. Again, plain facts stood on their head. We were defending the appeal. And it is beyond reason why I would say something like, 'We are not fighting this' when we are incurring legal fees. And those are a matter of public record.

"I am voting to go forward on this appeal because we have inconsistent rulings from the Bureau of Workers' Compensation. We have inconsistent rulings with respect to the non-presumptive claims that were resolved and adjudicated by a staff hearing office and district hearing officers. And because of those inconsistent rulings and other things such as ignoring the concept of last injurious exposure even though the last three were with the City of Beachwood, nevertheless the city was found to be responsible at the last hearing. And that is why I am going to vote to proceed with the appeal. Because we have an obligation here to protect the General Fund and to protect all the families in the city so that we can pay the bills. That concludes my remarks."

Mr. Malta stated that he saw the document that day which Mr. Palumbo had completed when he filled out his disability papers in Beachwood. That will be reflected in his vote.

Ms. Turk noted that there were a number of discrepancies in the hearings. Because this is new, she feels that it needs to be cleared up at the Industrial Commission. She also saw the document that Mr. Malta was referencing. There are questions about the origins of the specific cancer Mr. Palumbo had. She feels it is important for these things to be straightened out in the Industrial Commission.

Mr. Vanni stated that his vote would reflect the fact that there are too many inconsistencies and possibly some errors that have been made along the way, based on the facts that we have. It requires a second look. We have to look out for everyone in the city.

Mr. Patton: "Yes, I want to drill down on your previous comments. If you look at this document again, this is from the Channel 5 website, this is the BWC physician's report. I would call anybody who's watching's attention to the conclusion. And under Item #3 and this is attributed to Rohn T. Kennington, 'There is not sufficient evidence to establish that exposure to heat, smoke, toxic gases, chemical fumes, and other toxic substances were the proximate cause of Mr. Palumbo's Glioblastoma Multiforme (referenced above "Discussion" section of report). In fact, there is no evidence in the file to support the conclusion that the documented exposure to these substances caused Mr. Palumbo's condition of Glioblastoma Multiforme to occur.' That's not my opinion, that's not our expert's opinion, that is the opinion from the Bureau of Workers' Compensation physician that echoes the comments of my colleagues here on Council.

"I would also note that one of the other things that's in this record as well, again staying with the News Channel 5, would be the number of runs. I would point out to anybody who's paying attention that there is a large disparity between the number of runs that Mr. Palumbo went on, that Capt. Palumbo went on, for the City of Willowick compared to the City of Beachwood. And I was remiss. I should have said at the beginning of my statements because I was anxious to speak about this, is that his deficit is a tragedy. It is. It is a tragedy for his family, for his widow and for his children. And I don't think anybody up here, if I could speak for all of us, views it any differently. His death is a tragedy, and we thank him for his service and we certainly empathize with his family. But that's not what this is about. This is about attributing loss to the city. It is a different issue. So that is why I am going to vote the way I am going to vote tonight."

Vote: Ayes: Pintar, Turk, Koudela, Vanni, Malta, Patton. Abstain: Reho. The motion carried.

Any other business to come before council, if any

None.

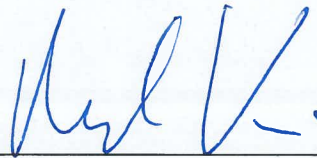
Adjournment

Motion by Mr. Vanni, seconded by Ms. Turk to adjourn the meeting.

Discussion: None.

Vote: All ayes. Motion carried.

The meeting adjourned at 9:43 p.m.



PRESIDENT OF COUNCIL Pro-Tem

ATTEST: Susan K. Worrish
CLERK OF COUNCIL