

**CITY OF WIXOM  
49045 PONTIAC TRAIL  
REGULAR CITY COUNCIL MEETING MINUTES  
TUESDAY, AUGUST 14, 2018**

The meeting was called to order at 7:00 p.m. at which time the Pledge of Allegiance was recited.

**Present:**

**Mayor:** R. Ziegler  
**Deputy Mayor:** P. Beagle  
**Councilmembers:** K. Gottschall  
N. Kennedy  
B. Leder  
T. Rzeznik  
R. Smiley

**AGENDA CHANGES:**

Mr. Brown noted that the dollar amount in New Business #2 regarding the parking lots should be \$83,250 and not \$83,750.

Councilmember Rzeznik requested that Correspondence #3, Email from Renee Samp regarding the Wixom Community Foundation Wilfred Scholarship, be moved to New Business #8.

**PRESENTATIONS:**

**1.) Appreciation of the Wixom Christian School's Participation in the Adopt-A-Road Program**

Mayor Ziegler read a proclamation of thanks for the Wixom Christian School's participation in Wixom's Adopt-A-Road Program. He then presented it to Brad Bowman.

**MINUTES:**

**CM-08-121-18:** Moved and seconded by Councilmember Kennedy and Deputy Mayor Beagle to approve the Joint City Council and Planning Commission meeting minutes of July 16, 2018.

**Vote:**

**Motion Carried**

**CM-08-122-18:** Moved and seconded by Councilmembers Rzeznik and Smiley to approve the Regular City Council meeting minutes of July 24, 2018.

**Vote:**

**Motion Carried**

**CORRESPONDENCE:**

- 1.) Michigan Municipal League Letter Regarding Road Funding**
- 2.) Ralph C. Wilson Jr., Foundation Letter Regarding \$2.2 Million Grant for the Michigan Airline Trail**

**CALL TO THE PUBLIC:**

Kevin Hinkley, 3250 Johanna Ware, said he was here on behalf of the residents of the community, the Wixom taxpayers, and contributors to the Wixom Community Foundation. He wondered if Councilmember Smiley, as a board member of the WCF, had thoroughly read their bylaws. He wondered the same about Councilmember Kennedy. He said that the Wixom Community Foundation's mission statement is to enhance the quality of life and strengthen the spirit of the community through leadership and stewardship and endowment of funds and donations. The WCF has been active since 2009. In order to get the 501c3 application approved by the IRS, the WCF needed to adopt a conflict of interest policy. Article I of this policy states, "The purpose of the policy is to protect the Wixom Community Foundation's interest when it is contemplating entering into a transaction or arrangement that might benefit the private interest of an officer or a director of the Foundation or might result in a policy excess benefit transaction. The policy was intended to supplement but not replace any applicable state and federal laws governing conflict of interest applicable to non-profit and charitable organizations."

At the October 15, 2009 WCF board meeting, which Mr. Hinkley was in attendance, the founding board members discussed adopting this policy. Mr. Kennedy made a motion to adopt the conflict of interest policy and the motion was carried. All members had to sign and acknowledge the form stating that they had received a copy of the policy, have read and understood the policy, and agreed to comply with the policy. In addition to adopting a conflict of interest policy, the WCF board of directors referenced conflicts of interest throughout the document. Mr. Hinkley stated that as a founding member and the chairperson of the WCF, one would think it was Mr. Kennedy's duty to see that all of the board members comply with this conflict of interest policy that is supposed to be signed annually by each director, principle officer and members of the committee with governing board delegated powers.

The minutes of the April 26, 2018 Wixom Community Foundation Scholarship Committee Report state, "WCF board member Mr. Smiley has set up all the scholarships on line where the applicants can apply on line as well as setting up a Facebook scholarship blast. He stated that we have received a few submittals and anticipate more in the next three weeks." One would think by reading these minutes that Mr. Smiley was involved in the scholarship process and may have been on the scholarship committee. This year the WCF received several student applications for the Wilfred Scholarship, which represents a \$2,500 award. The winners of the 2018 scholarships were posted on the Wixom Community Foundation website on July 5<sup>th</sup>. The winners of the scholarship were presented at a City of Wixom event on July 19<sup>th</sup>. One of the applications was from the son of the Foundation board member Mr. Smiley. Mr. Smiley's son may have been very deserving, but the application should have been rejected due to a clear conflict of interest – a board member's son. Foundation Chairman Nick Kennedy presented the Wilfred scholarship to board member Smiley's son at the July 19<sup>th</sup> ceremony. Mr. Hinkley wondered how Mr. Kennedy could not recognize that this was a conflict when several people in the crowd had said things like "something smells here." However, this is not illegal to do this. It is extremely unethical. It is a clear conflict of interest. They are putting the WCF federal tax exempt status in jeopardy by

doing this. The WCF is operated entirely on the back of the City of Wixom taxpayers. The original intent ten years ago was for the City to assist the Foundation for a few years until the Foundation could get financially stable on its feet. By reading through the WCF minutes for the last couple years, it doesn't appear that there was much of an effort to break away from the City and go off on its own. Mr. Hinkley believed it was time to separate the City of Wixom and the Wixom Community Foundation. They may have betrayed the community and the public trust and the donor-based trust by these actions. In addition, they are supposed to be good leaders and stewards per the WCF mission statement. He reminded them that the purpose of the WCF was to give back to the community, not take. As one tends to be concerned based on the actions of the board members of the WCF, these actions translate on how they make decisions as City of Wixom Councilmembers. He recommended that the Wixom City Council divest the City's support administratively from the Wixom Community Foundation and Councilmembers Kennedy and Smiley should have to refrain from voting due to a conflict of interest.

### **CITY MANAGER REPORTS:**

#### **1.) Fire Report - June 2018**

Mayor Ziegler commented that Camp 911 was a huge success again. The community thanks the Fire Department and the Department of Public Safety for putting that on for our youngsters.

#### **2.) Police Report – June 2018**

Councilmember Rzeznik thanked Director Moore for breaking out the TSI initiative. The period from June 25 through July 19 indicated there were 124 stops in the TSI area. Personally, to and from work, he has not been on Loon Lake, Maple or Charms yet where he has not seen an officer have someone pulled over, either issuing the warning or citation. He felt it has been effective. He has noticed a change in behavior, particularly at the 7:30 a.m. timeframe. Director Moore said he was looking forward to seeing how effective it has been. The traffic study that he requested on Potter Road has been completed and he will be requesting another one just before the start of the new school year to see if there has been an improvement in the speeds.

### **CONSENT AGENDA:**

**CM-08-123-18:** Motion and seconded made by Councilmember Smiley and Deputy Mayor Beagle to approve the Consent Agenda as presented which included:

- 1.) Approval to receive and file:
  - a. Library Board Minutes of June 25, 2018
  - b. Senior Citizen Commission Minutes of May 8, 2018
- 2.) Recommendation to Accept a Water Main Easement and a Sanitary Sewer Easement in the Total Amount of \$1.00 Granted by Wixom North, LLC, of Wixom, Michigan
- 3.) Recommendation to Approve the Designation of Catherine Buck and Sharon Butsavich as the 2018 MERS Officer Delegate and Alternate and that a Delegate Certification Form Listing Their Names, as well as the Names of the

Employee Delegate and Alternate (Susan Comben and Jodi Gallo), be Forwarded to MERS for the 2018 Annual Meeting

**Vote:**

**Motion Carried**

**UNFINISHED BUSINESS:** (None)

**NEW BUSINESS:**

**1.) Consideration of the Mayoral Appointment of Roy Thorsell as the Alternate to the Zoning Board of Appeals with a Term to Expire June 30, 2021**

**CM-08-124-18:** Moved and seconded by Councilmembers Kennedy and Smiley to confirm the Mayor's Appointment of Roy Thorsell as the Alternate to the Zoning Board of Appeals with a term to expire June 30, 2021.

Mayor Ziegler invited Roy Thorsell to the podium to introduce himself to the Council. Mr. Thorsell said he volunteered for this Board to get more involved. Originally, he was interested in the proposed apartment complex behind Wixom Elementary. He planned to raise his family here and wanted to stay involved in the community. Mr. Thorsell has a master's degree in mechanical engineering and he does a lot of automotive part design. As a hobby, he does art work and illustration. He would be happy to help in any way he can. The Mayor and Council thanked him.

**Vote:**

**Motion Carried**

**2.) Recommendation to Accept Hubbell, Roth & Clark's Proposal for Engineering Design Services for the Fire Station and Gibson House Parking Areas and Construction Engineering for the Fire Station, Gibson House, and Wainstock Parking Areas for a Price Not to Exceed \$83,750**

Mr. Brown explained that the table in the center of the report shows parking lot projects for three different areas – the Fire Department, the Gibson House and the Wainstock parking lot. There was a small cost associated with the design engineering on the Wainstock parking lot of \$500 which we are striking and reducing to zero. That leaves the cost in the recommendation to be reduced by \$500, for a total of \$83,250 (instead of \$83,750).

**CM-08-125-18:** Moved and seconded by Councilmembers Kennedy and Rzeznik to accept Hubbell, Roth & Clark's proposal for engineering design services for the Fire Station and Gibson House parking areas and construction engineering for the Fire Station, Gibson House, and Wainstock parking areas for a price not to exceed \$83,250.

Mr. Sikma stated that the Gibson House parking was part of the CDBG funding source. We are asking HRC to provide the engineering services. In order to get an economy of scale for all three of these projects, we asked them to add the Wainstock parking lot. Mr. Sikma noted that the engineering for that parking lot was being donated by Diffin-Umlor of Wixom and we are very grateful for that. We

have been working with them to get the rest of the specifications for the request for bids that will be going out for the Gibson House and Fire Department parking lots.

Mr. Brown mentioned that the reason there was no engineering cost for the Wainstock parking lot was because we had an offer from an engineering firm based in Wixom, Diffin-Umlor, to provide engineering at a zero cost. He estimated it to be about a \$500,000 expense, which was a substantial contribution by virtue of foregoing any fees we have saved (minimum of \$50,000 up to \$100,000).

Mayor Ziegler thanked Diffin-Umlor.

Councilmember Gottschall asked if the Gibson House project would be coming from CDBG funding. Mr. Sikma thought we could use that fund for engineering costs. The issue is that it is part of the Davis Bacon Act, so we have to have prevailing wages and other items tracked throughout the process. HRC helps us with that. He thought the funds will come from the City and then a portion will be returned from the CDBG funding.

Councilmember Rzeznik noted that the Wainstock parking lot was 2,800 square feet. He asked how many vehicles that would hold. Mr. Sikma answered that there would be three or four spaces on the property next to the garage. This is more of a driveway than a parking lot.

**Vote:**

**Motion Carried**

**3.) Recommendation to Accept Suez Proposal for Dewatering and Cleaning the Equalization Basins as Part of the Stormwater, Asset Management and Wastewater (SAW) Grant for a Total Cost not to Exceed \$150,000**

**CM-08-126-18:** Moved and seconded by Councilmembers Rzeznik and Kennedy to accept Suez proposal for dewatering and cleaning the equalization basins as part of the Stormwater, Asset Management and Wastewater (SAW) Grant for a total cost not to exceed \$150,000.

Mr. Sikma said the SAW grant will be ending in November. With all the projects we have had, we have extra funds for this. There will be a 75% reimbursement of the \$150,000 from the State in November. We are grateful Suez is able to clean it. Suez and HRC will look at the infrastructure underneath and determine what needs to be repaired in the future.

Councilmember Rzeznik asked what the age was of the equalization tanks. Mr. Sikma explained that they were built along with the major part of the plant in 1993. Councilmember Rzeznik wondered if it would be likely they would find cracks in the interior walls when they empty the liquids and solids and they do the visual inspection. Mr. Sikma said that there may be some cracks. When they looked at the oxidation ditches, they were under the water surface and it was fairly good. There is a barrier between the north and the south EQ basins that we are a little concerned with. For the most part, the cleaning will be the most beneficial piece. Councilmember Rzeznik asked if any defects found would have to be immediately

repaired. Mr. Sikma said that any cracks found would be repaired with hydraulic cement. Those repairs are not super expensive.

**Vote:**

**Motion Carried**

**4.) Recommendation to Accept the Drainage Improvement Agreement with Landrow Development Company, of Wixom, Michigan, Including Reimbursements for Costs up to \$30,000 and Accept D'Angelo Brothers Construction of Farmington, Michigan's Bid Proposal for the Installation of a Drainage Culvert and Improvements to the Drainage for a Reimbursable Cost not to Exceed \$25,327.70**

**CM-08-127-18:** Moved and seconded by Deputy Mayor Beagle and Councilmember Kennedy to accept the Drainage Improvement Agreement with Landrow Development Company of Wixom, Michigan, including reimbursements for costs up to \$30,000 and accept D'Angelo Brothers Construction of Farmington, Michigan's bid proposal for the installation of a drainage culvert and improvements to the drainage for a reimbursable cost not to exceed \$25,327.70.

Mr. Sikma informed the Council that representatives from Landrow Development Company were present at this meeting. During some research of the property, we found that there were issues with the storm water that drains to the north of that property. A culvert went underneath the DNR trail and it was higher than both the discharge and the receiving area. It was an eight to ten inch gap where it holds water on the Landrow's property side. With potential development, we'd like to straighten that out. There is a ditch line to the north that also needs to be cleared to meet grade going to the receiving culvert. We requested a bid from our underground contractor. With help from our legal team, we are requesting reimbursement from Landrow Development.

**Vote:**

**Motion Carried**

**5.) Request for Authorization to Participate in the Group Purchase "Tag On" Bid Option with the City of Novi, MI to Purchase a Replacement Heavy Rescue with Jaws of Life® from the Sutphen Corporation, of Amlin, OH through Apollo Fire Apparatus of Romeo, MI in the Amount of \$602,813.75 and Approval of the Associated Budget Amendment**

**CM-08-128-18:** Moved and seconded by Councilmember Gottschall and Deputy Mayor Beagle to authorize participation in the group purchase "tag on" bid option with the City of Novi, MI to purchase a replacement heavy rescue with Jaws of Life® from the Sutphen Corporation, of Amlin, OH through Apollo Fire Apparatus of Romeo, MI in the amount of \$602,813.75 and approve the associated budget amendment.

Councilmember Smiley asked what we saved by working with Novi on this bid. Chief Roberts stated that they don't tell the exact numbers. He knew we got customer loyalty points because our last two apparatuses were purchased from the same company. He thought it was typically about 15%.

Councilmember Rzeznik stated that we received 19 years of life out of the existing unit. He wondered if this one was expected to last 20 years. Chief Roberts stated that 20 years is the roundabout number for that type of apparatus and the use that it sees in our community. Councilmember Rzeznik asked if we got regular use of the Jaws of Life® and Chief Roberts replied yes.

**Vote:**

**Motion Carried**

**6.) Recommendation to Certify the Transportation Alternatives Program Grant from the Michigan Department of Transportation, Authorize the MI Air Line Trail Development & Safety Improvements Project and Adopt the Authorizing Resolution**

**CM-08-129-18:** Moved and seconded by Councilmembers Kennedy and Rzeznik to certify the Transportation Alternatives Program grant from the Michigan Department of Transportation, authorize the Michigan Air Line Trail Development & Safety Improvements Project and adopt the following authorizing resolution:

**RESOLUTION 2018-44 IN SUPPORT OF TAP PROJECT IMPLEMENTATION FOR THE MI AIR LINE TRAIL DEVELOPMENT & SAFETY IMPROVEMENTS PROJECT FUNDED BY APPROVED TAP GRANT# 2017-075—TAP JN132014A**

- WHEREAS,** the Transportation Alternatives Program (TAP) is a federally funded program administered in Michigan by the Michigan Department of Transportation (MDOT) to promote such projects as non-motorized paths, streetscapes and historic preservation of transportation facilities that enhance Michigan's multimodal transportation system and improve the quality of life of Michigan citizens; and
- WHEREAS,** the City of Wixom in partnership with the Commerce, Walled Lake and Wixom Trailway Management Council ("CW2 Council") was awarded a conditional commitment for TAP funding for the development of 5.3 miles of the Michigan Air Line Trail between Wixom Rd and Haggerty Rd; and
- WHEREAS,** the CW2 Council has worked with the engineering firm of Stantec by way of the Mike Levine Family Foundation to design and provide cost estimates for the project that includes shared use path, trail/road intersection improvements and signage; and
- WHEREAS,** the cost for the MI Air Line Trail Development & Safety Improvements Project has been estimated to be \$4,476,836.50; and
- WHEREAS,** the City of Wixom will enter into a local cost participation agreement with the Charter Township of Commerce for \$423,000 and the City of Walled Lake for \$259,000 in required local match for the project; and
- WHEREAS,** the City of Wixom accepts the TAP awarded grant amount of \$2,150,000 (50.05%) and agrees to commit the required 49.95% match of \$2,146,000 to the project; and
- WHEREAS,** the City of Wixom certifies that the financing is secured, available and committed for use in constructing the project; and
- WHEREAS,** the City of Wixom will apply for the necessary construction permits, serve as lead Act 51 agency, grant applicant and liaison to MDOT; and

**WHEREAS,** the construction engineering is considered a non-participating cost in the TAP grant and construction engineering is estimated to be \$500,000 to be paid by the three communities Commerce \$263,000, Walled Lake \$161,000, and Wixom \$113,000; and

**WHEREAS,** the CW2 Council has committed to owning and operating the Michigan Air Line Trail over the design life of the facility in compliance with the CW2 Council's Interlocal Agreement; and

**WHEREAS,** the Charter Township of Commerce, City of Walled Lake and City of Wixom have committed to maintaining their respective portion of the Michigan Air Line Trail over the design life of the facility; and

**NOW, THEREFORE, BE IT RESOLVED THAT,** the City authorizes City Manager Steven Brown or his designee to request Transportation Alternatives Program funding and act as the applicant's agent during the project construction.

**BE IT FURTHER RESOLVED THAT,** the City attests to the existence of, and commits to, the funds necessary to carry out the project, including engineering for construction, permit fees, administration costs, cost overruns, and the required matching funds for the overall project cost.

**BE IT FURTHER RESOLVED THAT,** the City of Wixom in partnership with the CW2 Council will work to construct MI Air Line Trail Development & Safety Improvements project in accordance with all Michigan Department of Transportation guidelines and standards.

Councilmember Gottschall believed in a recent meeting the Council voted on a cost participation agreement that was going to Walled Lake and Commerce. This agreement provided those two communities with 30 days to reimburse the City of Wixom. He asked if both communities had approved that agreement. Mr. Brown replied yes. We should be receiving the final signed agreement for our files soon.

**Vote:**

**Motion Carried**

**7.) Recommendation to Approve the Contribution of \$5,000 to the City of Escanaba for the Menards Tax Tribunal Appeal Hearing to Determine Actual/Appropriate Valuation of Retail/Big Box Stores in the State of Michigan**

**CM-08-130-18:** Moved and seconded by Councilmembers Smiley and Rzeknik to approve the contribution of \$5,000 to the City of Escanaba for the Menards Tax Tribunal Appeal Hearing to Determine Actual/Appropriate Valuation of Retail/Big Box Stores in the State of Michigan.

Mayor Ziegler noted that this came before us in a letter from Escanaba a few months ago and the Council talked about it then a little bit. He explained that they are fighting Menards. If they lose this case, it ends up affecting all of the communities that have those big box types of entities in their jurisdictions. Previously, several Councilmembers thought it was a good idea to chip in and hoped they'd win the litigation. He said we talked about the possibility of doing an amicus brief as well, although this might take the place of that. He thought this was needed by Escanaba in order to fight the battle.

Councilmember Rzeznik asked if any of our local communities with big box stores, like Novi, Lyon Township and Commerce, had contributed to Escanaba. Mr. Brown replied that Novi contributed \$5,000 and Commerce contributed \$2,000. He had not heard from Lyon Township. There are many other communities who have made contributions to it but he wasn't able to get good details in terms of names and amounts. Some things have changed since some of the communities have made contributions. The potential impact is getting bigger because of additional information that has come to light. There are other retail types of establishments, like auto parts stores and fast food restaurants, that are also looking with a keen eye toward adopting that kind of approach to getting their own valuations lowered and the corresponding revenues to the cities reduced. He thought it was worth recommending that we do the \$5,000 contribution toward the cost. Escanaba incurred about \$190,000 in costs on their initial court case, which came out favorable for them when they appealed it to the Court of Appeals. It was upheld by the Supreme Court but it was referred to the Tax Tribunal for them to review. That could cause the approach to change again. Escanaba is a much smaller community in terms of their financial resources. They have already absorbed \$190,000 worth of costs and the cost of the last leg of this are projected to be over \$200,000. He indicated that he had checked out a couple different things, like making a contribution to a legal defense fund, but we are on solid legal ground to make direct contributions to Escanaba. He recommended making a direct contribution to Escanaba of \$5,000.

Mayor Ziegler fully supported that recommendation.

Councilmember Kennedy asked if the attorneys had mentioned the odds. Mr. Brown said that they lost initially and won at the Court of Appeals. Then the Supreme Court upheld that. The Court of Appeals referred it back to a new Tax Tribunal Hearing that could change things, which is where we are now. They could change the valuation process again. This contribution will allow them to have expert witnesses and other information to make a strong case for why the stores are more appropriately valued in a different way than this dark store theory. Councilmember Kennedy asked if our City Attorney thought this could be carried over to restaurants or any other kind of business. Mr. Brown said that comment has been coming from the Michigan Municipal League and other sources. The Attorney's office reviewed all of this information and made their recommendation to us indicating it would be worthwhile to make a contribution to see this appeal go in a way that would help the City in the long run financially. Councilmember Kennedy thought we could help them out.

Councilmember Leder asked if the Michigan Municipal League had a lobby. He thought a more prudent approach would be to contribute to the lobby to close the dark store loophole with the legislature as opposed to having a panel of three judges try to decide. Mr. Brown thought that may be true. This was a Menards case that was initiated by Menards against Escanaba that was initially successful on Menards part. Escanaba responded with an appeal at the Court of Appeals and it has proceeded through the legal process up to this Tax Tribunal phase because of that. He didn't think it was anybody's decision to go that way. Councilmember Leder said he was talking about moving forward now. He didn't read the case, but it sounded like they were looking for additional evidence of valuation because the

Court of Appeals had incomplete information. They are looking back to determine what the actual dark store math valuation is and how that affects the community to balance the public interest scenario. It will be a continuous loop because once the Tribunal does that, it will go up on appeal. The issue comes down to none of the stores having the right to go back and reevaluate. Moving forward, they will be able to reevaluate and try to take the dark store approach. If the dark store approach goes away, then retroactively they can't go back and the only windfall at the end of the day will be either for Menards or the City of Escanaba for whatever taxes have been withheld between the start of this case and the end-all resolution. He asked if there was a lobbying group that was going back to try to change the tax code or if they were just waiting for the resolution of the case. Mr. Brown said he could not speak to that directly in terms of seeing anything in writing anywhere. The information that has been reviewed by him and the people associated with the case (like the MML, Michigan Townships Association, etc.), the outcome is expected to be an approach to valuation that should carry the day from there forward. It will not be an isolated case. It will be difficult for either side to come up with something different once that was established. That was the reason he felt it made sense to make that contribution. The MML does have an active lobbying staff. They are very adept and regular practitioners of lobbying the legislature on these issues. They are not advocating taking that approach.

Councilmember Gottschall noticed that they bolded and underlined a sentence on the second page of their letter indicating that if they settle, they will refund everyone's contributions. While he supported sending them money, it seemed like an odd kind of out because the point of the letter is "let's all fight this together." Then they say if they bail on this and decide to settle, everyone will fend for themselves and they will send the money back. He wondered if there was a stipulation that the settlement was public. If they do decide to settle, even though they are sending us \$5,000 back, we will probably face some challenges down the road of our own. Councilmember Gottschall said he did some research earlier today about Meijer in Wixom. They pay a little under \$300,000 a year in taxes. He asked if we had any idea how that would affect our property tax revenue if they followed the same theory. Mr. Brown said there was a little bit of an art to the way it gets applied. We would have to see what their brushstrokes looked like when they were trying to make the case to the Tribunal. If the agreement was reached between Escanaba and Menards and they didn't pursue it through the end of this process, someone would have to be selected after that for the next case and we would start this whole process all over again. He hoped Escanaba would not take that approach. He didn't think that would happen. Councilmember Gottschall wondered if we had ever looked to see what we have our big retailers paying now and what the hit would be if something like this were to happen. Mr. Brown thought we could come up with some idea of what it might be. He stated that in addition to the auto parts stores and fast food restaurants, this also would apply to corporate headquarters of which Wixom is home to many. The impact on Wixom would be pretty big. This was why he thought it was appropriate to make an investment into seeing that not become the case in the future.

**Vote:**

**Motion Carried**

## 8.) Email from Renee Samp regarding the Wixom Community Foundation Wilfred Scholarship

Councilmember Smiley asked to be recused as he was part of the Wixom Community Foundation Board. He felt that this directly related to him.

Councilmember Kennedy also asked to be recused because he was part of the Wixom Community Foundation Board.

**CM-08-131-18:** Moved and seconded by Councilmember Rzeznik and Deputy Mayor Beagle to approve the recusal of Councilmember Smiley and Councilmember Kennedy from this discussion as they both reside on the Wixom Community Foundation Board.

Councilmember Leder asked if those members needed to be recused before the discussion or if they needed to be recused just for the vote.

Councilmember Gottschall said that when Councilmember Rzeznik has asked to be recused, he usually did so ahead of the discussion because the conversation was of a potential financial gain to him. He questioned if this was different because the financials had already been completed by the Wixom Community Foundation.

Mayor Ziegler thought before any recusal took place, we should hear what Councilmember Rzeznik had to say about this. A recusal may not be necessary.

Deputy Mayor Beagle withdrew his motion.

Mayor Ziegler said this letter was addressed to him and he felt it was his obligation to place it on the agenda under Correspondence. He then read the following letter into the record:

*Dear Mr. Ziegler:*

*The great work that our city officials do and the support from places like the Wixom Community Foundation are what makes living in Wixom such an enjoyable place to live and raise a family. However, I would like to share an experience that I'm not sure shows Wixom in the best light.*

*This past spring my son, Zachary Samp, applied for the Wilfred Scholarship. We were excited to learn of this scholarship because surprisingly enough, it is hard to find scholarships for young white males whose parents both work and they do not suffer from a hardship. The Wilfred Scholarship criteria clearly states that applicants must be pursuing a career in the STEM fields (Science, Technology, Engineering, Math and Environmental), which Zachary will be pursuing. Looking at both of the past winners from 2017, who were both pursuing Engineering careers, my husband and I felt that Zach had a good chance and we encouraged him to apply.*

*We had hoped he would make it to Phase 2 and be invited back for an interview and make a presentation to the Board, as stated in the application process, but he never heard back. In early July, I called the Wixom Community Foundation to check the status of the scholarship*

*awards. When I called, I was informed that they did not conduct interviews this year and the scholarship recipients for all of the Wixom Community Foundation scholarships had been selected, and that John Smiley was the recipient of the Wilfred Scholarship.*

*I asked for any feedback that I could provide to my son on where he fell short for future reference. I was told that Zachary had come in 2nd place for the Wilfred Scholarship, however, they were only awarding one this year. We were disappointed, but pleased to know he was the 2nd place selection.*

*Later, we learned that the recipient, John Smiley, is related to Robert Smiley, Wixom Community Foundation Board Member, and member of the Wixom City Council.*

*I am certainly not questioning John's qualifications in any way, however, to be honest, this is very disheartening and makes one wonder if they even have a chance at winning the scholarship if they don't "know" someone who is connected to the Board in some way. Furthermore, it sends a message to future candidates that the scholarship is unattainable if you don't know someone on the Board or City Council and thus diminishes the original intent of the scholarship.*

*Apparently, due to the low number of applicants this year (which the applicants are not aware of, nor can control) the Board decided to only award one scholarship this year. Since, the recipient John Smiley is pursuing a Welding certificate at Schoolcraft College (which is a one year program) and the scholarship is renewable for four years, I am wondering if the Board will re-consider their decision to only award one scholarship, and award a second scholarship this year, like in past years.*

*I tried calling the Wixom Community Foundation, but was unable to speak with either of the directors. I'm hoping that maybe you will be able to reach them.*

*I encourage you to review the application that Zachary submitted for the scholarship and his ratings from the Board. Zachary is pursuing a Mechanical Engineering degree at Michigan State University, graduated Summa Cum Laude from Walled Lake Western and would be happy to make a presentation to the Board.*

*Your consideration in this matter is greatly appreciated.*

*Thank you,  
Renee Samp*

Councilmember Rzeznik said as one of the original founding committee members of the Wixom Community Foundation (WCF) and one of the current major donors, he shared similar concerns as Mrs. Samp. He also was concerned about the Wixom Community Foundation's Board makeup as it currently stood. Councilmember Rzeznik indicated that when the WCF was established, they sought out input from other communities that had successful Foundations and got their advice. He added that the WCF was started with an initiative from the City's Administration, committees and City Council. He recalled how they were advised to separate the Foundation from the City. They were instructed to seek members from the private sector and attract community leaders who did not hold public office or position and were not direct employees of the City of Wixom. To his knowledge, since the

Foundation was established in 2009, this has yet to be achieved as they had two sitting Councilmembers on the Foundation. He said the day before this year's scholarship awards were given, he emailed the Grant Committee Chairperson, Joshua Springer, indicating he had some concerns and asked for the names and email addresses of the Grant's Committee members but never received a reply. He said that he still had concerns so he filed a Freedom of Information request for meeting minutes of the Board and review of the latest 990 form as it had not been filed with the IRS yet. He mentioned that he spoke to the Director, Mr. Rene Saenz at length voicing his concerns but never received any of the documents he requested via his FOIA. He explained that after the scholarship award presentations were held on July 19, 2018, he was approached by residents saying statements like, "It must be nice to be a Councilmember's son," or "I guess you need to know someone on the Board to get these scholarships," or "how does that happen?" He noted that when he was elected to City Council he voluntarily resigned from his position on the Foundation and as Chairman of the Parks and Recreation Commission as he believed it was the right thing to do in order to avoid conflicts of interest. He also mentioned that he informed his children and nephews that they would not be eligible for any scholarships by the WCF and they should look at the Walled Lake Schools Foundation for Excellence as an alternative. He indicated how concerned he was that he never received a response from Mr. Springer, the Grant Committee Chairman, and Mrs. Samp never received a response from the Foundation. He felt elected officials should be reminded that the best way to avoid potential conflicts of interest or questions about ethics was to avoid those situations altogether. Newly elected officials are offered classes by the MML. He recalled that some of them attended the class that focused on ethics where examples of situations were given where residents and constituents might raise a suspicious eye. There is an old ancient Greek proverb that states "A fish rots from the head down," meaning that when an organization or a state fails, it is the leadership that is the root cause. He thought they should be cognizant of residents who had the impression that something smelled rotten and take it seriously as elected officials and look at the situation through their eyes. It was in his opinion as one of the founding committee members of the Wixom Community Foundation, one of the largest donors annually and an elected official, they should work with the Foundation to figure out a way to get this separated as it's been ten years. He thought maybe they would need to make changes to their bylaws making sure there were safeguards in place to be sure this did not happen in the future.

Mayor Ziegler was very concerned about this situation. He wanted to express how badly he felt for the Samp family because there was an expectation that real consideration was going to be given to their son's application. He indicated that he did not have much to do with the WCF but always believed that it should be separated from the City. He thanked Mrs. Samp for bringing this issue to his attention, and allowing the opportunity to have an open and transparent discussion of the WCF as it related to the City of Wixom and the City Council. He expressed his concerns as they had two members on City Council serving as fiduciary board members of the WCF. Additionally, he was concerned that they were utilizing City

employees and City resources to further the interest of the WCF. He was concerned that the public perceived the WCF as a branch of the City, which it was not.

Mayor Ziegler wanted to ask Councilmember Smiley a few rhetorical questions regarding the scholarship. First, he asked if Councilmember Smiley read the bylaws of the WCF. The second question was if it ever occurred to Councilmember Smiley that having a family member apply and be awarded a scholarship from the WCF, on which one sits as a fiduciary board member, may be perceived as a conflict of interest or a breach of the inurement prohibition set forth in the Bylaws of the Foundation, particularly one that also sits on the Wixom City Council. He also asked Councilmember Smiley if any of the people that he confided or consulted with suggested that awarding or even applying for a scholarship of a family member may be perceived as a conflict of interest. He pointed out that Councilmember Kennedy was a founding member of the WCF, and a person that he thought Councilmember Smiley looked to for leadership. He felt that Councilmember Kennedy should have advised him of the obvious conflict of interest.

Mayor Ziegler expressed his deep concern about the aforementioned public perception that the City of Wixom and the Wixom Community Foundation were related and that the reputation of the City Council had been sullied. He thought for that reason they should address this relationship. He felt that once he made the motion and if there was a second, that would be the appropriate time for Councilmember Smiley and Kennedy to recuse themselves.

**CM-08-131-18:** Moved and seconded by Deputy Mayor Beagle and Councilmember Rzeznik to approve the recusal of Councilmember Smiley and Councilmember Kennedy from this discussion as they both reside on the Wixom Community Foundation Board.

**Vote:**

**Motion Carried**

**CM-08-132-18:** Moved and seconded by Mayor Ziegler and Councilmember Rzeznik that the City Council adopt a policy, effective September 1, 2018, that City employees would not spend City time, resources, or allow for meeting space, book keeping, note taking or any other services to the Wixom Community Foundation.

At this time, Councilmember Smiley and Councilmember Kennedy left the Council Chambers.

Councilmember Gottschall was even less aware at the amount of funding or resources that came from the City of Wixom to the WCF. He asked how much time, effort and money Wixom actually contributed to the Foundation.

Deputy Mayor Beagle stated for any transparency issues that he was the Co-Chairperson of Wixom T.E.A.M. and they had been associated with the Wixom Community Foundation for several issues. However, due to various issues they had when they were involved with them, they had since pulled their money and aligned themselves with another organization. He clarified that he was not involved in any decision-making of the Board.

Mayor Ziegler did not feel there was any conflict with the Deputy Mayor because he was not part of any decisions the WCF made.

Mayor Ziegler explained that the person's telephone number that was on the WCF contacts was City employee, Deanna Magee, as she took their meeting minutes, maintains their records, etc. He was unaware of the exact amount of time but because it was City time spent, that was the issue.

Councilmember Gottschall agreed. He was not aware that City employees were offering resources to the WCF. He recalled roughly where Mr. Hinkley thought City funds going into the WCF but he could not be sure. He did not notice an account of the Wixom Community Foundation within the City's budget.

Councilmember Leder wondered if the Finance Director was the WCF Treasurer and asked if the money was held in a City of Wixom account.

Mr. Brown said the cost and time spent were minimal so it became more of a question if the City should continue to be involved. He added that this was constructed before his employment with the City, but he believed that the City's involvement was only supposed to be temporary. He thought the WCF had their own separate account but the City's Finance Director wrote the checks.

Deputy Mayor Beagle recalled whenever Wixom T.E.A.M received a check from the Foundation it would be a City check.

Mr. Hinkley indicated that when he sat on the Foundation, the checks would come from the City. After reviewing the information that he received from the FOIA, he had to disagree with Mr. Brown because he felt that the City employees did spend some time with the WCF completing various tasks like issuing checks, banking, recordkeeping, and they used the City's plotter to make signs. He recalled that there was a Budget Line Item for the Wixom Community Foundation back in 2015 but was unsure if there was still one. He added that Ms. Magee was like their secretary because the Foundation did not return phone calls.

Councilmember Leder asked how Ms. Stamper became the Treasurer of the WCF. Mr. Hinkley said that it fell into her lap because the former City Treasurer was doing the work until he retired.

Councilmember Gottschall asked if the City ever gave any physical money to the Wixom Community Foundation. Mr. Hinkley could not recall the exact amount or year but did recall where approximately \$3,000 was put into the Wixom Community Foundation Line Item during the Budget Sessions. It was never meant to give them any of it, so to his recollection there was never any physical money given. It was just time and resources given. Mr. Hinkley indicated that he started a Mayor's Fund within the WCF and that fund was meant for the Mayor to go out into the community to secure donations for contributions to various different families during the holidays. That particular fund was always charged a certain amount of money by the Foundation.

Councilmember Gottschall said for the sake of discussion, that \$3,000 was for wage and salaries to spend on writing checks, record minutes, etc. Mr. Hinkley believed that was correct.

Councilmember Rzeznik indicated that the 501C3 rules say the last three years of 990's must be posted on the Foundation's website. To his knowledge, they have never been posted. He mentioned this to the Executive Director. When they first started the Grants Committee, they had teachers and educators determining and reviewing the applications. He thought maybe they should go back to that.

Mayor Ziegler noted that it was his understanding that Councilmember Smiley also served as the person handling the website for the WCF.

Councilmember Leder clarified that the City Council had no authority over the WCF and the Council had no control of drafting or amending the Bylaws so we are only lending resources. Mayor Ziegler thought those statements were accurate.

**Vote:**

**Motion Carried**

**CM-08-133-18:** Moved and seconded by Mayor Ziegler and Councilmember Rzeznik to have an independent third party look into the appropriateness of a member of the Wixom City Council simultaneously serving on the Wixom Community Foundation, and to review the City Charter, Oaths of Office by each of us, the Bylaws of the Wixom Community Foundation, the Wixom Community Foundation's meeting minutes, communication, any other relevant documents and materials, and issue a report to City Council determining whether or not there was any adverse impact on the veracity, credibility, or integrity of the Wixom City Council or members thereof.

Councilmember Rzeznik asked who would pay for the costs of getting a third party involved.

Councilmember Gottschall wondered how they would determine who the third party would be and what the timeframe would be.

Mayor Ziegler explained the City's Attorney knew of people that did that sort of investigative reporting. The third party would not be an employee of Johnson, Rosati, Schultz and Joppich, P.C. He expressed that he wanted a cap on the amount of money we would spend on this investigation and the time limit. He stated that his goal was to clear the reputation of the City of Wixom and the City Council as he felt this situation made our reputation sullied.

Councilmember Rzeznik knew of the MNPA and wondered if they could offer assistance as a third party.

Councilmember Leder thought this would be an investigation of the conduct of the Councilmembers, not the Foundation itself. He questioned how the City could look into this when they did not have any authority over the Foundation. Maybe if they were looking into the conduct of the specific members of Council as it related to the

involvement with the Foundation. He wanted to make sure they were not looking to endanger the existence of the WCF.

Mayor Ziegler indicated that this motion was made in hopes that we would find out if anything happened in the past that would show any adverse impacts on the Council's reputation and credibility.

Councilmember Leder said the investigation would bring out the things that they were not aware of because he believed they were aware that this situation was an obvious problem and wrong. Additionally, he felt that this was a clear conflict of interest and assumed it went against the Bylaws of the Foundation. The question he had was once we received the result of said investigation, what could we do.

Councilmember Gottschall said when he read the letter of Correspondence, his first thought was how it looked. He did think about what controls were within the Foundation and he was not sure how they arrived at their decision because he never attended a meeting of the WCF. He was in favor of the investigation to learn a bit more but he was trying to wrangle with how we chose who performed the investigation and how much money would the cap be.

Councilmember Leder said he was worried they would be sticking their hands where they were not supposed to be. He wondered if the WCF should order an investigation into itself to make sure nothing was going on.

Councilmember Gottschall thought this was kind of an oddity. He thought they could get a third party involved to look into the actions of our own members of Council but they cannot look into the actions of the other members of the Foundation. He hoped we would not be hiring someone to FOIA the same things that have already been requested.

Mayor Ziegler said that he did not feel the motion that he made suggested anybody else other than those two members of Council. Whoever investigated this may be able to get the information. He was aware that Councilmember Rzeznik was unable to get information from the WCF but Mr. Hinkley received information from the City of Wixom. He was aware that they did not have any say as to what the WCF does and he didn't want that. If he were in that situation, he would say "Let's award the second scholarship and maybe a third scholarship because we sort of look bad." Then hopefully going forward they could amend their Bylaws to reflect a clearer version of what a conflict of interest was.

Mr. Brown was aware of some organizations that had relationships with non-profits that could perform oversight responsibility and maybe they could make an inquiry through that channel as opposed to a legal channel.

Mayor Ziegler appreciated the feedback from Mr. Brown but felt that he did not want the Administration involved.

Councilmember Leder did not have a problem with an attorney or a forensic investigator performing the work but he thought they should narrow the scope as to the individuals.

Deputy Mayor Beagle would like to see a dollar figure on what they were willing to spend on this investigation before moving forward. He thought maybe a dollar amount of \$4,000 - \$5,000 would be a good cap.

Councilmember Leder worried if that amount was enough depending on if interviews took place and the time. He felt that \$10,000 would be scratching the surface. He would take a referral from the City Attorney. He didn't think it had to be an attorney.

Mayor Ziegler wondered if they should talk to Ms. Rosati to let her know of the Council's concerns but she seemed confident with the individual she had in mind.

Deputy Mayor Beagle suggested putting the cap on the cost of the investigation to not exceed \$5,000.

**CM-08-134-18:** Moved and seconded by Councilmember Rzeznik and Deputy Mayor Beagle to amend the motion to add a spending cap of \$5,000.

**Vote:**

**Motion Carried**

**CM-08-135-18:** Moved and seconded by Mayor Ziegler and Councilmember Rzeznik to have an independent third party look into the appropriateness of a member of the Wixom City Council simultaneously serving on the Wixom Community Foundation, and to review the City Charter, Oaths of Office by each of us, the bylaws of the Wixom Community Foundation, the Wixom Community Foundation's meeting minutes, communication, any other relevant documents and materials, and issue a report to City Council determining whether or not there was any adverse impact on the veracity, credibility, or integrity of the Wixom City Council or members thereof, with a spending cap for this investigation of \$5,000.

**Vote:**

**Motion Carried**

At this time, Councilmember Smiley and Councilmember Kennedy returned to the Council Chambers.

**CALL TO THE PUBLIC:**

Kevin Hinkley, 3250 Johanna Ware, applauded the Council for the discussions/ actions that they had taken. He said that Councilmembers Kennedy and Smiley have the opportunity as Board members of the Wixom Community Foundation to make right of this poor decision. He suggested that they give back the scholarship check that was awarded to Councilmember Smiley's son and award the other applicants that he felt were cheated. He knew they had the money to do that because he figured they had \$50,000 in their account. Also, he thought they should get the Foundation's business in order. He said that many people worked hard to create and develop in this organization. He thought that over the years the Board had been degraded and nothing was being done. He mentioned that they only had seven board members when the Bylaws required nine. He hoped they would keep the Foundation moving forward so they can give back to the

community. He asked that these members of the Foundation not take from the Foundation but give to the Foundation.

**CITY MANAGER COMMENTS:**

Mr. Brown mentioned that the 2020 US Census representative visited the City and talked to them about forming a Complete Count Committee. He said they should stay tuned for further discussions regarding the 2020 Census. He congratulated the employees that were celebrating work anniversaries this month. He appreciated their commitment to the City and residents of Wixom. Lastly, the Block Party was scheduled for September 8<sup>th</sup>.

**COUNCIL COMMENTS:**

**Councilmember Gottschall** thanked the City Clerk, her office and the poll workers for completing a smooth election compared to what he was hearing from other cities. He was thrilled to see the high turnout for this election. He noticed the campaigning inside the pond and asked the Clerk to look into that. He thanked Mr. Thorsell for volunteering on the ZBA.

**Councilmember Smiley** thought that Ms. Buck made the election look smooth but he did not think it was a smooth election. He was aware of struggles with ballots but he thanked the Clerk for doing a great job in making sure everyone that wanted to vote that day was able to.

**Councilmember Rzeznik** offered his condolences to Jeff Roberts and his family on the loss of his father. He thanked Ralph C. Wilson Jr. Foundation and the Levine Family for securing this grant for the engineering firm for the Airline Trail. He thanked Cathy Buck, the City Clerk, for a successful election. He thought a lot of people did not understand what was going on during that election. He said pretty much all of the precincts throughout southeast Michigan were running out of ballots. The Clerk's office realized that they would be short and made use of card stock, test ballots and unused absentee ballots so nobody had to wait for hours to vote. A lot of other communities had lines of people waiting to vote until the County arrived with more ballots. He thanked Roy Thorsell for volunteering his time on the ZBA. He mentioned that the traffic on Wixom Road was back to 50-70% of its normal volume. He said that when they closed the bridge at the Huron River, that was the outcome. He thought that went to show that some of the alternative road tax methods that were being taxed under the use-per-road segment that goes to the property taxing entity was not a bad idea.

**Councilmember Leder** thanked the Clerk's office for conducting a smooth election. He didn't feel that all the stuff going on with the Foundation was done with malice or poor intent. We had to make sure to clear up any appearance of impropriety to allow confidence in the Council and the City. He hoped they could find a solution and move forward in a positive light.

**Councilmember Kennedy** offered his condolences to Chief Roberts on the loss of his father. He thanked Mr. Thorsell for volunteering on the ZBA. He thanked the City Clerk on her hard work during the election as it was a zoo. He congratulated those people who ran and won.

**Deputy Mayor Beagle** congratulated the City Clerk on another successful election. He offered condolences to Jeff Roberts on the loss of his father. He congratulated the Fire Department on a successful Camp 911 and he appreciated being a part of it. He thanked Mr. Thorsell for stepping up and volunteering. He thought the Movie in the Park was well attended. He mentioned that Deputy Clerk Opalko was celebrating 5 years of service, Firefighter Smith was celebrating 11 years, the Library Director was celebrating 16 years and the Economic Development Director was celebrating 19 years. He thanked them all for their service to the City.

**Mayor Ziegler** thanked Mr. Thorsell for volunteering. He offered his condolences to Chief Roberts and his family. He thought the election was smooth as he was there a lot of the day. He was pleased the way things ran, especially when he was hearing about problems that were happening all over the County. He explained how he went to a gathering after the election took place and found it interesting to see the City of Wixom's results were the first set of results to come in. He thanked Cathy Buck and the volunteers for their hard work. He appreciated their efforts. He agreed with Councilmember Leder as he did not feel there was any ill intent or sneakiness going on regarding the WCF but he did feel that it was all about perception. The complaints that came before him, including the one that he read out loud at tonight's meeting, were not solicited. These were people that were concerned, which concerned him. The motions made tonight were just trying to set things straight and get things on the right track for the City and the WCF. He would not agree with Mr. Hinkley in that any money should be given back but he felt the simple way to resolve this would be to find a way to award the person that came in second place. To him that made sense and it would be a good first step to resolve any bad appearance.

**ADJOURNMENT:**

The meeting was adjourned at 8:51 p.m.

Catherine Buck  
City Clerk

Approved 8-28-2018
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