

**CITY OF INDEPENDENCE  
SPECIAL COUNCIL MEETING MINUTES  
NOVEMBER 18, 2008 FOLLOWING  
THE SAFETY COMMITTEE MEETING.  
COUNCIL CONFERENCE ROOM**

Vice Mayor Jim Riley called the meeting to order at 5:40 p.m. Present were Mayor Gregory Kurtz and Council Members Jim Crooks, Dave Grendel, George Klepacz, Tom Narduzzi, Jim Piteo, Jim Riley and Anthony Togliatti. Also present were Finance Director John M. Veres, Service Director Dave Snyderburn, Law Director Greg O'Brien, Economic Development Director Ron White, Human Resources Director Heather Glaze, Engineer/Public Service Coordinator Don Ramm, Marie Pinizzotto, Service Department.

Also present were Mary Fabish, Russ Varga, Roger Lesh, and Lauren Guell.

Vice Mayor Jim Riley stated I would like a motion to amend the agenda where it is says second reading on Resolution 2008-140, I would like to amend that to say first reading since we pulled it off of our agenda at Tuesday's Regular Council meeting last week.

**Moved by Riley, seconded by Grendel, to amend the Special Council meeting agenda. Council polled: 7 yes/0 no; motion carried.**

Vice Mayor Riley continued, Resolution 2008-140, I guess before we have this read by title only about a month ago, council had talked with our Law Director and Council gave the instruction that we were not going to allow any City employees to plow for the seniors or the disabled in our community because there could be some conflict there. Since that time, I am sure all of you have received a memo from Mary Fabish on her interpretation of the Revised Code. I know that there have been calls from one of the other contractors who is also here, Russ Varga.

I asked if the Service Director, Marie from the Service Department, Bob Williams and Heather Glaze could all be here today, because they played a role in this whole decision process where we are now eliminating any City employees from doing these contracts.

I want to bring to Council's attention, before we vote on this is, we have some contractor that will have over 200 hundred driveways to plow. I asked Marie and Dave Snyderburn to be here because they will handle the calls from these seniors who do not get their driveways plowed. I think that we can also ask Marie about recommendations. She has dealt with this program for the past fifteen years and can elaborate on what it entails. I think making this decision as Council, we need to have all of this information before we sit and say give it to this guy or don't give it to this guy. Let's make sure that we have all the information.

We have our Law Director here; we have our Human Resources Director here to give their perspective..

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Dave Snyderburn called me a few times. We can't delay this. A decision has to be made tonight, because if it snows, he has no one to call to do these driveways. I just want to make sure that everyone in this room when you make this decision you have all of the information available.

Mayor Kurtz responded, just for the record Administration had just followed the recommendation of Council.

Vice Mayor Riley replied, correct. What we have before us is not allowing any of the City employees to do this plowing. I don't know if Dave or Greg O'Brien, who wants to go first.

Mayor Kurtz states, I have one question first. You said some of them have over two hundred (200). There shouldn't be anybody that should have a contract, each vehicle probably going to provide for about 80 drives. So if someone has 200, they have to have three vehicles.

Vice Mayor Riley replied I agree. I don't know exactly what was in the specs or not.

Service Director David Snyderburn responds, we checked with every contractor that we called and they feel given the amounts that they were getting, that they can handle it with ease. We went over this with Marie, Heather, Bob and myself. We conferred came up with a list. Marie and I also had a conversation afterwards which...Marie and Carol take most of the calls and they probably know more than I, what contractors are better than others. Marie came up, I do have another list here, she came up with a revision, not a big revision of what you have here. She felt her revisions to the list were in the best interest of the City. This does not include City employee driveways.

Councilman Narduzzi asked who received the most driveways?

Director Snyderburn replied, this does not include City employees. The most is Buyansky with 275 driveways. I personally called Jason Buyansky. Marie called him personally. He told me that he has five vehicles; he said that it is no problem. We have used Jason in the past. I will tell you the truth, when you have twenty inches of snow like we did last year, you are going to have some problems and everybody did. Everyone had problems. Jason assured us that he has enough vehicles to handle it and he would like that many. He feels that he wants to do this. Marie came up with what she felt was pretty fair with everyone excluding City employees and this is the most recent list.

Vice Mayor Riley replied, before you hand those out, I have met with you and Marie on a couple of occasions over this matter, and I know that when these bids went out, Buyansky originally stated to Marie he wouldn't like anymore than 150 driveways. Now, after the fact, when there is a chance for him to get over 200, a contractor can say I can do all of these and then if they don't do them, I want everyone to be aware that they call Marie or Dave, City vehicles go and do them. Then I found out from our meetings we still pay that contractor even though he didn't do that driveway. I want everyone to be aware of this. So giving someone a couple hundred driveways, I just want to caution, so everyone knows all of the facts. Marie has the list of which contractors she receives complaints on. I think that is important to know because if I was bidding this, I bid and hope to get a hundred and you ask, hey, Jim can you do five hundred? Why not? Times are

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slow. I'll take on as many as I can. Now, will I get to them in 16 hours? Like I said earlier, the numbers don't add up doing that many driveways unless you have more than one vehicle.

Councilman Piteo asked, does the bid state that you have to have a truck for so many routes?

Vice Mayor Riley responds, that is why I wanted Bob Williams here because he participated in drawing up this bid. I just want everyone to be aware of all of this information.

Director Snyderburn comments, the bid does not say that you have to. Let me just say this, Buyansky wants to be contacted. As far as the original statement that he made, he did lose some other work. He thought he had other work, he doesn't have it. I don't know who it was with, I don't know anything about it. He said that he would love to take on other driveways. He has performed well in the past. This does not include any employee drivers.

Councilman Grendel responded, J&J, all along were getting one route and all of sudden I saw the last one that came out and they had no route, I don't know.

Marie Pinizzotto replied they were a little higher than anyone else. Last year he may have had two.

Vice Mayor Riley stated, so we have these issues. You can see Allega 168, Buyansky 275, Marek 112, New Heights 2, TMZ (?) 66, Wise 86 and Zoloty 112. This is the new list that we would have to vote on. There are two City employees here, actually a City employee and a spouse.

Law Director O'Brien replies, you have to mark this so it is clear on what you all are voting on.

Vice Mayor Riley replied, we can mark the list we just got, 11/18/08. Greg O'Brien you have had a chance to see Mary Fabish's letter to all of Council, her interpretation of the Revised Code. Do you want to address that?

Law Director O'Brien replied, I just read it briefly. She said that employees not used in 2921.42, what Ms. Fabish failed to do was look at the definition section of that criminal code section and under public officials it clearly uses the word employee. I showed two Council people today because they were concerned with the contents of Ms. Fabish's letter. I can assure you employee is within the definition of public official. I can also assure you, that a public official, which includes an employee shall not have a public contract with the City. Like I said, it is section 29, which is the criminal code section, unless one of the exceptions apply within that code section. I can also assure you to look at the Attorney General opinion 1980-001 where a public official includes family members which includes a spouse, in addition to other items. It is clear that that code section – if you look at the genesis of the code section including family members, spouses – think about it, someone could avoid that code section by having their spouse set up a company and then entering into a contract with the city for not valid reasons. All I am saying as Law Director is it is within the confines, the situation that I have informed Council about, and it is Council's prerogative to whether to apply it to the exception. It is also within the applicant or Ms. Fabish's viewpoint to consider that exception and to make sure that exception applies

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because we are not the final determiner of whether or not that code section applies. It would be the county prosecutor and the Ohio Ethics opinion. I can just provide you advice whether or not someone wants to investigate and pursue it. As far as the other issues, I don't know how long Mrs. and Mr. Fabish were plowing. I have no reason to dispute that. I do know that this whole program has changed over the years where it was not bid when I first came on the scene until I insisted that it be bid.

Councilman Crooks responded, as you mentioned we talked about this probably going into last month, and I know that I have gone on the record at last Council meeting as saying that it challenged me to support the City employees getting the contract because it does hint at impropriety. It is clear to me. I had a chance to read Ms. Fabish's letter and the point in there about whether or not an employee was a city official and I was one of the Councilmen that Greg O'Brien makes reference to in terms of how does the Revised Code define who a city official is. Even in my conversation with Ms. Fabish. . .

Ms. Fabish replies, I am over here.

Councilman Crooks continued, okay, I never met you before, we talked on the phone though. In our conversation that is what our conversation centered around, whether or not we believed your husband to be city official.

Ms. Fabish replied, he is not. You are, he is not.

Councilman Crooks replies, our conversation centered around a dialogue as to whether or not your husband is a city official by definition of the code and I know that I have discussed it with other Councilmen here and it was my direct question to Greg O'Brien tonight. How is a city official defined? Does that include employees? The code becomes very clear when he points to that section of how city officials are defined, and yes employees are included in that. I have taken a couple phone calls from other residents in this community because the discussion has already been put to the public record. They are concerned that this hints of favoritism and I think you mentioned this that – what the code is set up to protect against, correct?

Law Director O'Brien replied, correct.

Ms. Fabish stated, after 33 years? What happened between now and the year 2000?

Law Director O'Brien responded, Ms. Fabish I eluded to that before. First of all, it was an unbid contract in and of itself. It was riddled with problems. In 2000 I think I investigated some other issues of how people were billing the City 24 hours and they only had one plower. I don't see how anyone works a straight 24 hours.

Ms. Fabish replies, not us.

Law Director O'Brien stated, Ms. Fabish it is a matter of public record, so...

Ms. Fabish replied, it wasn't us, so don't even go there.

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Law Director O'Brien responds, okay, Ms. Fabish, I have the files still. That is why when the whole issue came up.

Ms. Fabish responds, good for you.

Law Director O'Brien continued, all those issues are really not before the council here, how the contract was bid. Before, if Council asked, Greg, are we violating any Ohio law regarding an employee entering into a contract with the City? I would respectfully submit to you that public officials are broadly defined to include employees. It is clear, it is right there, it is spelled out, I showed...

Ms. Fabish replied, can you show me here? I printed everything out.

Law Director O'Brien states, it is in the definition section. I will get the code for you in a second and show that to you. It is clear what that code section is designed to prevent against, and then if council wants to apply the exception, all of those four or five items would have to apply and I always recommend in the last couple of years that an affidavit is supplied by an employee driver just to protect the City, not to protect anyone else. By the way, by providing that affidavit, it does not preclude how the Ethics opinion or the county prosecutor can come in and say no. This is a sham; this code section has been violated. I would say, and still submit to you, that it is good governess. I think it is good prudence to erase the appearance of impropriety, to erase any type of tarnishment on this program and you have equally or lower bidders and certainly can fall within best bidders, because we not only go with the lowest bidder but we go with the best bidder. I would submit to you that the best bidder in this case applies to all non employees.

Councilman Crooks replied, it is this concept, the topic that we are talking about whether it hints impropriety and also another big one that the Vice Mayor has surfaced in this meeting and I think it becomes a question that we have asked through the Mayor to the Service Director an issue of administration. Is there going to be a problem? Without you saying it, Vice Mayor, please correct me if I am wrong, it sounds like you are concerned about giving nearly 300 driveways to one contractor.

Vice Mayor Riley responded, Marie, you and Carol handle most of the calls. Dave you handle the headaches. You're comfortable with the list that you provided? You are comfortable with saying Council vote for this, go forward with this. We will be able to handle it?

Marie Pinizzotto responded, I spoke with Jason Buyansky yesterday and today. He assured me that Independence will be his number one priority. He has enough workers and trucks.

Vice Mayor Riley stated, since I talked with Dave and Marie last that wasn't the case. Russ Varga is who is also here is a City employee, do you want to...

Ms. Fabish stated, that I am not done yet. I would like you to give it to me in writing why we are not allowed to snowplow. That is all I ask.

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Mayor Kurtz replied, it is okay to ask, but if Council wants to allow that.

Ms. Fabish asked, I can't get it in writing why your law director won't let us plow?

Law Director O'Brien replied, Mayor, I totally set out the reason why. If you look at Section 2921.01(A) which was not included, it is the definition section of that chapter. It clearly includes the word employee and what city official is. It does.

Ms. Fabish stated, when you were doing all this talking, you said Ohio Revised Code 2921.42. You didn't say anything about an 01.

Law Director O'Brien replied, every chapter of the Revised Code has a definition section, otherwise you wouldn't know what the defined terms mean. That is why I suggested you may want to contact an attorney to provide that to you. I can't do that unless Council or Mayor authorizes me to do it. It is physically impossible to do for everyone in the City.

Ms. Fabish asked, what is that code again, please?

Law Director O'Brien replied I will show it to you.

Councilman Grendel responded, Dave, this new list that you have here, is it true then that it's much less than what you had previously?

Service Director Snyderburn replied, yes.

Ms. Fabish stated, Mr. Vice Mayor, I guess you know that...2921.01

Law Director O'Brien replied, public official means any elected or appointed officer or employee or agent of the state or any political subdivision which is a city.

Ms. Fabish replied, I just want you to know that this place used to be a nice town to raise our children in and to feel safe. We chose to live here. My husband grew up here and he has worked for the city for 14 years. He loves serving for the City and he took pride in serving for the City and none of you ever got a complaint about him. He had always done a good job. So if things aren't broken, why try to fix it? I can honestly say now the morale in this City has gone down from 100% to less than 30% throughout this whole City. People try to work hard. They bring up their families. They try to keep to themselves. People just try to ruin their lives for them. That is all I have to say.

Vice Mayor Riley replies, okay, Russell.

Russ Vargas stated, I just want an explanation on what this, by saying an employee of the City can't be an independent contractor, what would happen if you let...what is the outcome? What are your fears?

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Law Director O'Brien replied, my fear, and please this is not personal, I have spoken with Ms. Fabish, I like Ms. Fabish personally.

Ms. Fabish replied, the first thing you said to me was, am I recording your conversation.

Law Director O'Brien responded, well, you said hold on and then I heard a click. It was kind of a quick comment.

Ms. Fabish replied, that was quite rude of you.

Law Director O'Brien replied, Mary, we usually got along very well. Let me respond. My fear is that the City knowingly participates in a criminal act. It has nothing to do with the employee, although I am concerned about them too, but I represent the City and I am just trying to keep the City out of any type of arguments that are violating any ethics statute, and in this case it is a criminal statute, which by the way, if you violate it, is a felony.

Ms. Fabish replied, because of what you are doing you are going to have a lot of complaints because my husband knew those routes with his eyes closed, without markers on the driveways.

Law Director O'Brien replied, no dispute. He did a very good job.

Ms. Fabish stated, we are going to have the last laugh because you guys are going to be paying extra money for fixing grass, for fixing damage, all because of what you want, Greg.

Vice Mayor Riley responded, are there any other comments from Council?

Councilman Klepacz replied, I am a little confused by this, this list here. I am looking at the bids here, Jerry, I don't see, were you low on any of these bids?

Vice Mayor Riley replied, that is what I mean, Mary, you lost one route, one driveway. I am going by the bid and it says you are lowest bidder on area 18, estimated quantity one.

Ms. Fabish replied, that must be the presidential route.

Vice Mayor Riley replied, what is that? One house!

Ms. Fabish replied, one house, wow, we are going to get rich off that.

Vice Mayor replied, that is what I am saying. You weren't low bidder. You are only low bidder on that one item.

Ms. Fabish replied, but we were tied on the senior route.

Vice Mayor Riley responded, but we go by low bidder.

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Law Director O'Brien replied, under the statute, for the statute exception to apply, you have to be low bidder, you can't be tied. So even for the statute...

Ms. Fabish asked, then why is Buyansky getting the senior route then? He tied with us, answer me that?

Law Director O'Brien replied, he is not an employee, is he?

Ms. Fabish replied, that is not what you just said.

Law Director O'Brien responded, it is for the exception under the criminal statute that I just cited and advised Council on. For an employee to enter into a contract with the city four or four exceptions, all of them must apply. One of them is that the city is unable to obtain that service for equal amount of money. In this case, it clearly shows that the City can obtain it for an equal amount because there is another bidder who is of equal amount.

Ms. Fabish asked, so if next year we bid \$8.00 across the board, you are going to give us the plowing?

Law Director O'Brien replied, it is not up to me. You keep pointing to me. I am not making a decision here, I am just advising the City.

Ms. Fabish asked, if we bid \$8.00 across the board, are you going to give them to us?

Law Director O'Brien replied, the City can take that into consideration, just like it is this year.

Ms. Fabish replied, Heather made the comment that we are getting something for nothing. No, we only go out plowing when Dave Snyderburn or a director calls us to go out. Who is getting something for nothing? I will tell you, Greg O'Brien, the employees. They get their driveways plowed for free. We are not doing nothing for free. We get nothing for free. Heather, are you listening? She had no right to say that. I don't know if Mr. Mayor knew about that, but I doubt it. But we don't do nothing for nothing. We don't go out until Dave Snyderburn or another director calls us out. I thank you Dave for all of the hard work that you did.

Russ Varga stated, I didn't get my question answered though. What are your fears as leaders of the City, or what happens, what can happen to the City, what are the fears that you have if an employee works for the City and is an independent contractor?

Law Director O'Brien asked, that has a contract with the City?

Russ Varga replied yes. What are your fears?

Law Director O'Brien replied if the County Prosecutor and Ohio Ethics Commission comes in and says, this exception does not apply, we don't believe it applies under these circumstances; the affidavit that you provided us is a sham, the Ohio Ethics Commission can go against the City as a whole, the County Prosecutor can come in – and like I said before, it is a criminal statute. It

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is a felony to violate it and so, therefore, individual officials and/or the City as a whole, and I haven't researched this issue, would they attack the individual Council Members? Probably, because they are the ones voting on the contract.

Russ Varga responded, so the state in essence, can come against the City for allowing...

Law Director O'Brien replied, you asked me what the risk was or what my fear was.

Ms. Fabish asked, why were not we told before I took Workers' Comp out on my husband and I took out the million dollar truck insurance on him? Now, are you going to reimburse us for all of that?

Law Director O'Brien replied, first of all, your Workers' Comp is renewed every August I believe, August 31<sup>st</sup>.

Ms. Fabish replied no. I just renewed it (inaudible).

Law Director O'Brien replied I know that it is a yearly and it comes up every August.

Ms. Fabish replied, my comes up every 6 months. So why weren't we told?

Law Director O'Brien replies, I don't know Ms. Fabish. The answer is I don't know.

Ms. Fabish replied, if you knew this was happening, why did we spend the extra money?

Law Director O'Brien replied, I was asked a question by Council and I answered the question.

Councilman Grendel stated, my regret on this is that we didn't come to this conclusion or got the legal advice prior to this going out to bid. That is the mistake that we made, is that this went out to bid and we didn't have this clear, so we wouldn't have this misunderstanding. The dilemma I am in is that people relied on the bid specs. They made their bids and I like the fact that we are going to go, but it is my dilemma that people relied on – similar to when we had the tree cutting a few years ago. Remember, we went out to bid, we had the lowest bid and then we talked about it again because Collins hadn't gotten the bid. When you go to bid, people are relying on this and it looks bad when you change all of a sudden, especially if it has gone on for years the way we have been doing it.

Ms. Fabish replied, 33 years he's been doing it, to be exact.

Councilman Grendel continues, that is the dilemma I have. We asked these people to make a bid and then we say, oh by the way, now we got the bids in, we are going to take it away from some of the other people that worked.

Russ Varga replies, I didn't realize this, but what I have been told is Independence could be written up in the paper by somebody not about upholding the law. But my thoughts are, is that how can you stop people misappropriating funds or double dipping, which I don't believe that

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they are doing, by singling out employees that they can't work for the City. I believe that if you have – I just got a job, part-time and it is not going to be sufficient enough for my family. I rely on that. That is my income from the City snowplowing. The City snowplowing helps pay my bills over the wintertime for those few months. It just seems like you are saying employees, I believe employees of the City, by have a variety of bidding, the more you get bid companies in to do this, smaller companies/smaller business can offer better pricing, which can also save the City. I don't feel that you could per se stop people writing letters, mud slinging by singling out employees that they can't work for the City. That is just how I feel. Fear of that is not going to keep that from happening. You can have other fears of other contractors, people working in the City getting contracts. One time I talked to Dave and Dave explained to me. These people do a good job. They have equipment. So why is that, that an employee – as City officials if people are – like working in the police department go out for a hamburger and I plow somebody's driveway and I get caught I should be terminated immediately. It is upholding the law that I feel that you guys have to do as City officials, instead of being afraid that someone is going to write a letter in the paper against you guys because that is not going to stop.

Vice Mayor Riley responded, according to what our Law Director, and I am speaking for myself, who I turn to as a Council representative for the City, he is telling me by allowing City employees to plow, I am violating the law.

Law Director O' Brien replied, no, you may be.

Vice Mayor Riley responded, I may be. Do I want to risk that?

Russ Varga replied, no.

Vice Mayor continued, not with what is going on in Cuyahoga County. Jim Riley doesn't. You have seven people here that vote, okay. That is my opinion. I know Jerry does a good job. I know that you have done a good job. I am not looking at that right now. I am looking at the county prosecutor coming through the door at my house. I guess, I will stick my neck out for myself or my business, but I can't do it for your business. That is my personal opinion.

Russ Varga replied, that is the thing, I really don't understand how they want to prosecute that. I would see if a City employee was doing something wrong, but to say that they can't work and have both positions just as long as they are able to do their job.

Law Director O'Brien responded, without the exception, I just want to make sure that you are clear. Without that exception, those five items, and all of them have to apply, you would be doing something wrong by being a City official and having a separate contract with the City. That is the whole purpose of that statute. Now, an independent contractor, small or large as you intimated before, there is nothing precluding that person from coming into the City who doesn't have a relationship with the City and entering into a contract to do a good job. I didn't write this statute and it doesn't make me feel well to advise or provide this to Council. But I would be not doing my job not to present this to Council.

Vice Mayor asked, are there anymore comments from Council?

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Councilman Narduzzi replied, it is bad timing and it looks bad because the bids did go out. Some people may have spent money that they otherwise wouldn't have. But to back up our Law Director, I am glad that he has my back to make sure that we are doing the right thing, because there are a lot of people in this room that really didn't understand what all this meant before this meeting, including Ms. Fabish and including myself before I asked you about it when I walked in this afternoon. As long as Dave Snyderburn, and this is his department, is comfortable, because you are going to be the one who has to take these calls. As long as you and Marie are comfortable I would never step on a department heads' toes, and say I don't agree with this. Dave has to live and die by this, so I am comfortable with I believe we are going to vote on tonight.

Ms. Fabish replies, so what if Dave – what if a couple snowplowers screw up and Dave says I (several people speaking at once) than what?

Councilman Narduzzi replies, that is Dave's responsibility.

Ms. Fabish responded it is not Dave's responsibility. It is you guys' because you are the ones who is saying my husband can't plow. You didn't hear me out. What if Dave says, these guys are really screwing up. They don't know these driveways and he says I want to get Jerry back on. What do you do?

Councilman Narduzzi replied, when the Mayor gives Dave his review next year that comes up at the top of his list. As far as doing it for 33 years, if you speed for 33 years and you don't get caught, great for you, but it is still against the law.

Ms. Fabish replied, when did you find that out, Mr. Narduzzi?

Councilman Klepacz commented, I am just looking at this list, it almost seems like, I don't see you low on anything, you are tied on the one. Varga, I don't see you low on anything.

Vice Mayor Riley replied, he is low on one, he is low on 17.

Councilman Klepacz continued, he is low on 17? That's right. I have to agree with Dave Grendel. I have a real concern with changing the rules in the middle of the game, and that is what we are doing here. I understand what you are saying, Law Director, and I don't want to take a chance either. My concern was that the fact that these bids went out and all of the sudden we are changing the rules saying you can't bid.

Ms. Fabish replied, what I am gathering from you, Mr. Klepacz, is some of you want to vote the way things have been, but you are afraid because of what Greg O'Brien is saying?

Councilman Klepacz replied, no, that is not what I am saying. I am saying that I am concerned about changing the rules. I am not saying I am voting for this.

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Ms. Fabish replied, well you aren't saying that you are not. You are saying that you are concerned.

Councilman Piteo stated, I think this particular bid does shed a light on the bidding process and I think I, for one, am going to try to get involved a little closer to see if we can fix some of those problems. But I have to go on my Law Director's advice. I can't afford to take on another legal fees – it could be somewhere down the line this could be deemed inappropriate.

Councilman Togliatti responded, you have to value the Law Director's input, the laws and the statutes. But I feel that I have to agree with Dave Grendel and George Klepacz that these stipulations should have been made prior to the bidding process. If we knew this went on for 33 years and we knew we were going to change the rules this year, I think we should have at least notified these individuals and let them know prior to the investment they outlied. I do have two questions about this updated sheet. Did Allega ask to have some driveways taken away from them?

Service Director Synderburn replies, yes.

Marie Pinizzotto indicated he has 168.

Director Snyderburn asked and how many did he have last year?

Marie Pinizzotto replied he probably had about (inaudible).

Director Snyderburn stated so he really didn't have any driveways taken away from last year's. He has x amount of drivers. The Vice Mayor brought up how many driveways can you do in an hour, how many hours do you have to do them and how many drivers do each guy have? We know what Frank has. We know what is on his list. He might be able to get more drivers. We know what Buyansky had on his list.

Marie Pinizzotto stated and there were more complaints on Allega.

Director Snyderburn stated Marie took the calls and after going over with Marie, I have to – the gals that take the calls – I can't sit on the phone everyday. I get the worst of the calls if Marie or Carol can't get through to them, then I have to take them. I do my best to handle those calls, but I have to go on what Marie and Carol tell me. I will tell you what, you sit there and you see it in their faces, sometimes it is absolutely – it is tough. You got 850 driveways and everyone wants their driveway done first.

Councilman Togliatti responded, right. I just asked that because he was low bidder on some of them and he didn't get it. The second question I have is on this route number 18. Buyansky didn't bid any price in his initial bid proposal, but yet on this sheet he is down for \$10.00.

Ms. Fabish replied, that is because we bid the same thing, Anthony, and they decided to give it to him.

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Marie Pinizzotto responded, I can't say for Bob, but I think he said that he had made some mistakes on the sheet originally. I don't know, I have no idea.

Vice Mayor Riley asked, Bob Williams?

Service Director Snyderburn replied, which route was that?

Councilman Togliatti replied, 18, Buyansky didn't bid a price at all if you look at his bid proposal.

Ms. Fabish responded but we did.

Councilman Togliatti commented, it just makes me wonder.

Law Director O'Brien replied that's important. If he has a bid proposal for 18, and he didn't give anything for number 18, you can't give him the route.

Service Director Snyderburn, we won't. It was the presidential route. It was that one person. We can certainly take that out and give it to somebody else.

Law Director O'Brien stated, not somebody else, Dave. You got to give it to the lowest and best bidder.

Service Director Snyderburn replied well that is Zoloty. If it is Mary Fabish and Zoloty, I think he bid \$9 to \$10, am I correct? I am wrong, J&J.

Vice Mayor Riley stated, Anthony brings up a point here. How do you guys come to us with a sheet that we are thinking is a bid and you guys change the numbers on it? If Buyansky didn't bid, that is one of the reasons why I wanted Bob here, this is a joke. I know we have only bidding this for a few years. You are asking me now to vote on something that is completely...

Service Director Snyderburn replied, let me see. I have the bids. If it was an oversight, maybe it was, I don't know that, I did not do the bid tabulations.

Several people speaking at once.

Vice Mayor Riley stated, we have an issue that was just pointed out. Where Buyansky is on area 18, on the original sheet that was presented, he didn't even bid that and now he is getting an awarded. I have a serious issue...

Several people speaking at once.

Councilman Narduzzi asked where is Bob?

Vice Mayor Riley replied, I requested that he be here and he is not.

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Service Director Snyderburn replied, maybe he made a mistake on one driveway.

Mayor Kurtz stated, Dave just gave me the bid.

Service Director Snyderburn replied, that is the bid tabulation. Let me look at Buyansky's bid.

Vice Mayor Riley responds, Anthony has it right there.

Mayor Kurtz stated, it is blank.

Vice Mayor Riley stated, on the sheet that we were presented, it is showing that he is bidding at \$10.00.

Mayor Kurtz replies, it looks to me like – there is eleven (11) in there, obviously there is an error in the bid.

Service Director Snyderburn stated, there is one error with one driveway. I understand what you are saying and maybe I should have looked at it. I went on the bid tabulations.

Mayor Kurtz replied, I understand that, we all did.

Service Director Snyderburn stated, there is nothing in impropriety here.

Mayor Kurtz replies, no, no, no.

Service Director Snyderburn continued, the next guy excluding – it would be J&J – excluding Mary Fabish.

Councilman Grendel stated, the integrity of the whole process is in question. The numbers are changed.

Councilman Crooks stated, what happens on a night like this, like last night when we got all this snow? What happens?

Finance Director Veres stated, there wasn't enough snow.

Councilman Crooks replied, so nothing had to be plowed?

Several people speaking at once.

Vice Mayor Riley stated, originally when we met on this, and the issue was brought up as far as City employees, I looked we have both residents that have plowed for us and have been plowing and because of something that came up after the bid, we are keeping them from plowing. We requested the Law Director at that time prepare legislation to not allow that. Now I am looking at a list where I have contractor who didn't bid that and getting awarded a driveway. If I were to vote on this and if we were to vote on that tonight, I think we all legally could have been trouble.

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Mayor Kurtz stated, your actions supersede the bid. So that is not true, you wouldn't be in trouble.

Vice Mayor Riley replied, I didn't know this was put in here without...

Law Director O'Brien stated, the successful bidder who can challenge the awarding of that one drive.

Vice Mayor Riley continued, it was talked about that we would consider telling these bidders that our City employees, maybe this is the last year we do this just so they know.

Mayor Kurtz replied, originally that was my understanding.

Several people speaking at once.

Vice Mayor Riley replied, I am sitting here now saying that we should go back to the original list. On the record, I will state next year City employees will not be allowed to bid the contract. I am really struggling here to make a decision.

Councilman Klepacz stated right.

Mayor Kurtz stated, Fabish picks up one route if I am reading this correctly, maybe not.

Ms. Fabish responded it's a senior route.

Several people speaking at once.

Law Director O'Brien stated, I can tell you emphatically it can't be tie. You've got to be low bidder.

Mayor Kurtz replied, Mary, you have to be low.

Ms. Fabish replied, we were tied with the same guy –we both bid \$10.00.

Several people speaking at once.

Councilman Klepacz stated I would give Fabish 1 and 18 because they were low on that or tied.

Law Director O'Brien replied they can't be tied. I can tell you emphatically it can't be tied. You have to be low bidder.

Mary Fabish stated we were tied with (inaudible) on that. We both bid \$10 on that driveway.

Mayor Kurtz replied, Mary, for the exception to apply, you have to be low, you are not low, you are tied.

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Several people speaking at once.

Ms. Fabish asked who is lower than us on Routes 1, 18 and 19?

Mayor Kurtz responded, you are held to a higher standard. You are an employee and if Council wants to follow the exception, you have to be low bidder, not tied.

Ms. Fabish replies, you didn't answer my question Greg. Who is low on route 1, 18 and 19? That is all I am asking. Who is the low bidder?

Law Director O'Brien stated for the exception to apply, 2921.42.

Vice Mayor Riley responds, on 19, Wise was. On 18, you were. 1 is you and Buyansky were tied.

Ms. Fabish replies, right, then why can't we get that then?

Law Director O'Brien replies, because you can't be tied.

Mayor Kurtz stated for the exception to apply you have to be low. You are not low. You are tied.

Ms. Fabish asked so who is getting 1, 18 and 19?

Mayor Kurtz replied you are held to a higher standard because you are an employee and if Council wants to follow the exception, it's a higher standard as an employee. You have to be low bidder, not tied.

Ms. Fabish replied you haven't answered my question. Who is low on Routes 1, 18 and 19? That's all that I'm asking.

Vice Mayor Riley replied on 19 Wise was.

Finance Director Veres stated on 18, Buyansky.

Ms. Fabish asked or were we tied?

Vice Mayor Riley stated you were \$10, which is what I said.

Ms. Fabish asked what about the other ones – Routes 1, 18 and 19?

Vice Mayor Riley replied on 1 you and Buyansky were tied.

Ms. Fabish replied right. So why can't we get that then?

Finance Director Veres replied you can't be tied.

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Mayor Kurtz added, it says low.

Ms. Fabish responds, you are saying you can't be tied and you are saying you can't be low.

Vice Mayor Riley responded, it is like Vegas, ties you lose.

Ms. Fabish replied, after 33 years.

Mayor Kurtz responds, it is not us, it is the law.

Councilman Togliatti replied, but is it lowest and best and if Buyansky has 275 and their constraint is 250?

Law Director O'Brien states, no you are right, but you could give it to someone that is not an employee of the City. The statute – for the section to apply, you can't not obtain the service at the same or lower price. For example, if we didn't bid, someone could provide that affidavit and say that I am providing it for a dollar less than anybody else. Technically, we met the confines or comports with the statute exceptions provided that the other four subsections apply. Here, you have a bid that is identical to the employees' bid. You can obtain it for the same. You can, you have a bidder that is the same, if you bid lower...

Russ Varga asked, what happens if the bid is equal? Don't you guys award it anyway?

Law Director O'Brien replied, a non employee, then the City will decide what is the best.

Russ Varga replied, I thought I read in there that you guys can even determine, am I wrong, you can determine to give it to a higher bidder.

Law Director O'Brien replied, if it is the best, but you are not putting in the equation that it is an employee.

Ms. Fabish asked, why didn't you review this 33 years ago?

Law Director O'Brien replied, I wasn't here 33 years ago.

Ms. Fabish asks, why didn't you do it 10 years ago?

Law Director O'Brien replied, Mary, I wasn't asked to look at this 10 years ago. I have been properly advising Council on this from the inception of me being asked to look at other aspects of this program.

Mayor Kurtz stated, is there a problem if I would make a motion to authorize the extension of the existing contract until we have a chance to talk to the purchasing coordinator and he can give us the facts?

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Law Director O'Brien replied, I think those contracts expired in April. But Dave Snyderburn certainly could contact them in an emergency situation and Council could approve it.

Mayor Kurtz replies, anything over \$7,500 we need Council to authorize that emergency expenditure if in fact the existing people have the contracts until we entered into a new contract. Is there a problem with that with anybody?

Vice Mayor Riley replied, no. I think with this list we were presented today, not everyone was comfortable with the whole bidding process. Now I see a number put in for a contractor who did not bid, I am really uncomfortable.

Mayor Kurtz responded, this was put together by the purchasing coordinator, I believe.

Vice Mayor Riley replied, that is what I am saying but we were going to vote on this tonight.

Service Director Snyderburn replied, can you vote on all of them but that number 18?

Several people speaking at once.

Mayor Kurtz replies, how many of these are we not certain? How many of them?

Vice Mayor Riley replies, one driveway.

Councilman Klepacz replied I'm not.

Several people speaking at once.

Law Director O'Brien stated if you're low bidder and all the other four sections apply, which you have an affidavit prepared, you can arguably.

Mayor Kurtz asked, why don't we vote on the ones that are without question and then we can deal with the issues – get answers to these questions on the routes that we are not sure of and that would be number 18 and. If it snows, can we vote on the rest of them and then...

Several people speaking at once.

Councilman Klepacz replied, the thing is, that Fabish's can't get those because it is a tie then that is definitive.

Law Director O'Brien states, that is not my rule.

Councilman Klepacz replied I understand that.

Mayor Kurtz replied, if I understand correctly, 17 and 18 are the controversial/uncertain routes, correct?

Vice Mayor Riley replied, 17 is only because Varga is at \$8.45.

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Mayor Kurtz responded, we are not certain 17 and 18, correct?

Vice Mayor Riley replied correct.

Mayor Kurtz asked, any others? Here is what I am going to ask you to do. I am just going to ask you to approve all the rest of them and then we will sort out these for next week or whenever. But meanwhile, the service will be provided and we are covered. Is there a problem with that? Do you have any others that you guys are concerned about?

Councilman Crooks replied, I wouldn't have a problem waiting to do the whole thing again.

Mayor Kurtz replied, I know, but right now if it snows this week, I need the support, I can't wait.

Councilman Crooks replied, I understand, but is there an alternative?

Mayor Kurtz replied, not really. It is not going to change on the other ones. It is not going to change on the other ones, correct?

Councilman Grendel replied, in my opinion, I support on what we had originally on last month, have the affidavit and explain to them that this is the last year for it.

Mayor Kurtz replied, for the ones that are low? How many routes were those Dave?

Councilman Narduzzi replied, we're right back to the same ones if we do it that way. It affects 17 and 18 again.

Councilman Grendel replied Varga had, on this one we had here, he had four routes.

Vice Mayor Riley replied, but he is not low that was just what they assigned them.

Councilman Grendel replied, he was low on all four of them.

Everyone speaking at once.

Councilman Grendel stated I'm looking at the precedent we're setting (inaudible).

Everyone speaking at once.

Mayor Kurtz stated, 22 is \$9.93.

Councilman Grendel replies, I am going by the legislation we had in our packet before the November meeting. We had it right here, every one of them had the low bidder on there.

Director Snyderburn responded, if it was based on how many you can handle.

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Councilman Grendel responded the same thing. That was the one that was done properly like we did in the past. Now all of a sudden we are changing this way, to me it is like getting back to the tree cutting thing, we wanted to change the rules after we accepted the bids.

Finance Director Veres replied, Dave I don't see any in that column that he bid low other than the \$8.45.

Councilman Grendel replied, John this one here – this was the recommendation given to us.

Mayor Kurtz states, we are going to accept the ones that aren't questionable then we can move on to the rest of them.

Councilman Grendel replied, Greg you are thinking at that point it is the same that these people had relied on the bid specs.

Mayor Kurtz replied yes.

Vice Mayor Riley stated, what Dave Grendel is pointing out, if you go back to what we originally were presented, Varga was low on Routes 2, 3...

Russ Varga replied, there is an exemption in my contract that I can only handle so many.

Service Director Snyderburn replied, he can only handle so many.

Finance Director Veres replies, he wasn't low on route 2 there is a \$9.00.

Service Director Snyderburn replied, the reason we gave him that one at that time is because he can only handle so many driveways.

Everyone speaking at once.

Mayor Kurtz asked, 17 and 18 are the two that we are not certain right. Anybody else?

Councilman Klepacz replied, look at Route 2. How come Wise got it. He has \$9.90 and Zoloty is \$9.00.

Councilman Grendel replied, he was limited.

Several people talking at once.

Mayor Kurtz replied, once you got all you can handle, you put it to the next guy. So we are just going to exempt if Council has no problem, I would like to exempt Russ 17 and Mary 18. Okay. Exempt 17 and 18 from the list. We will have service employees and then we will have to deal with those two. Is there any problem with that? Then we will figure out 17 and 18 and we will get back to Council on that because – first we will get the correctness, so we make sure we are

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apples and apples. So we are going to accept as recommended all the areas but 17 and 18, correct?

Vice Mayor Riley replied, however, in our piece of legislation we need to amend it to include this sheet we have 11/18/08 and eliminating Exhibit B and the page following which says 11/13/08 proposal.

Mayor Kurtz responded, so we have amendment, we have a motion to amend.

**Moved by Riley, seconded by Grendel to amend Resolution 2008-140 to eliminate Exhibit B, replace it with the spreadsheet dated November 18, 2008 and exempt Routes 17 and 18. Council polled: 7 yes/0 no; motion carried.**

Mayor Kurtz states, we have exempted 17 and 18. 17 and 18 are not being accepted tonight. All the other areas are being accepted this evening per item 11-18-08.

**RESOLUTION NO. 2008-140**      A RESOLUTION ACCEPTING THE BIDS FOR SNOW PLOWING SERVICES FOR MUNICIPAL LOTS AND SENIOR CITIZENS/DISABLED PERSONS/ACTIVE MILITARY RESIDENTS FOR THE 2008/2009 SNOW SEASON AND DECLARING AN EMERGENCY

**Moved by Riley, seconded by Grendel, to read by title only. Council polled: 7 yes/0 no; motion carried.**

**Moved by Riley, seconded by Grendel, to suspend the rules. Council polled: 7 yes/0 no; motion carried.**

**Moved by Riley, second by Grendel, motion to adopt.**

Discussion: Mayor Kurtz stated, it should be noted that this was amended and the exempted Areas 17 and 18 from the bid.

**Council polled: 3 yes/4 no (Crooks, Klepacz, Piteo, Togliatti); motion failed.**

Councilman Narduzzi commented, so we leave here with no contract. If it snows tonight, nobody gets nothing.

Ms. Fabish replied, call us we will do it.

Vice Mayor Riley stated, I understand the concern on voting no. But I think that you guys had hung Mayor and the City out to dry on this because we are going to get calls.

Councilman Crooks replied, we are sitting here though and everyone is confused and that is why I voted no. If we redo this tonight, and we call a meeting tomorrow, I will be here.

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**RESOLUTION NO. 2008-145**      A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A LEASE BY AND BETWEEN THE CITY OF INDEPENDENCE AND BASS ENERGY INCORPORATED

**Moved by Riley, seconded by Grendel, to read by title only. Council polled: 7 yes/0 no; motion carried.**

**Moved by Riley, seconded by Grendel, to suspend the rules. Council polled: 7 yes/0 no; motion carried.**

**Moved by Riley, second by Grendel, motion to adopt.**

Discussion: Mayor Kurtz asked, is this the same that we had in the past, correct? This for Bass Energy?

Councilman Grendel replied, he just used the old lease as an example.

Law Director O'Brien responded, that we have not negotiated, but it would be similar to the old lease.

Vice Mayor Riley stated, Mayor, you have mentioned in our, I think last week about looking into the possibility if we want to invest into this.

Mayor Kurtz responded, I have spoken with the Finance Director, we decided to take our royalties at this time and leave it at that. We just accept the terms and accept our 1/8 royalty for the acreage that is titled to the City of Independence being.

**Council polled: 7 yes/0 no; motion carried.**

**RESOLUTION NO. 2008-146**      A RESOLUTION AUTHORIZING THE MAYOR TO ENTER INTO A GRANT AGREEMENT WITH THE COUNTY OF CUYAHOGA BOARD OF COUNTY COMMISSIONERS FOR A SECTION 205 FLOOD STUDY AND DECLARING AN EMERGENCY

**Moved by Grendel, seconded by Riley, to read by title only. Council polled: 7 yes/0 no; motion carried.**

**Moved by Riley, seconded by Grendel, to suspend the rules. Council polled: 7 yes/0 no; motion carried.**

**Moved by Grendel, second by Riley, motion to adopt.**

Discussion: Economic Development Director White stated, this part of the U.S. Army Corp. Section 205 Study of the Old Rockside and Commerce Park Oval. This is what the county has

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committed to assist us in providing some grant money, nothing to be repaid, not a loan, money going toward the total fee. It was not provided in this legislation but there is a list I can send it around to you that showed that it was provided this before and in the past how the \$800,000 fee was going to be shared and how it is going to be parceled out in legislation that we passed earlier in the year. We set our maximum exposure for the City was \$216,000, if we received in kind services. If we received all of the in kind services that we anticipated of about \$156,000.00, then our minimum exposure was about \$63,000. This is going towards helping us defray that overall cost. It is a great gesture.

Councilman Grendel asked about what Valley View was receiving.

Director White replied whatever they are getting, I don't know what they are getting. They are getting something similar. So I think it is a very generous offer on the part of the county and certainly I am in favor of receiving that.

Councilman Crooks asked, this actually reduces what our cost has been?

Director Ron White replied, absolutely.

**Council polled: 7 yes/0 no; motion carried.**

**OTHER MATTERS:**

Engineering Coordinator Don Ramm asked about the situation with the road failing on Route 21 in front of City Hall.

Mayor Kurtz stated, we have deemed an emergency on the road. If anyone has been on Route 21 in front of City Hall, if you are going northbound, passenger lane, you noticed by that manhole it is dipping considerably. It is getting progressively worse over the last six months. Don Ramm has reviewed it. We are at looking in calling in one of our one maintenance contractors to give us a price. We don't know what it is until we get into. We know it is undermined. We know that it is a manhole that is sinking. We don't know the extent of –

Councilman Piteo stated you can actually see it dropping from the surface of the road.

Mayor Kurtz continued, we would like to know if there is any objection to Council to using one of our maintenance contractors to go in there to make the emergency repairs. We won't know the exact cost until we dig it out and see what we are dealing with, but he wanted to get it done before mother nature – any objection?

Councilmen Grendel and Riley indicate no.

Mayor Kurtz stated, if there is no objection, Don Ramm, like he always does, will detail it and we will try to have something for the packet for Friday. If it gets more extensive than what we think, we think we are going to dig it out, the whole area, we think we are going to go in and stabilize what is underneath, raise the manhole and resurface. If in fact it becomes more

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extensive, I will immediately notify Council that we have a larger issue. I don't anticipate that being the case, but we won't know until we dig it up. Whichever maintenance contractor Don Ramm feels that can get in there, get done and get out fast enough – as soon as we get in there and if it is a bigger problem than anticipated we will contact Council immediately. If it is something that we can do with line items and a bid, just get them fixed up and get them repaired. Thank you, Don for reminding me. Soon as we have answers we will notify Council. I apologize for the confusion.

**EXECUTIVE SESSION:**

**Moved by Crooks, seconded by Riley, to recess the Special Council meeting for an Executive Session to discuss legal matters. Council polled: 7 yes/0 no; motion carried.**

The Executive Session was convened at 6:30 p.m. Present were Mayor Gregory Kurtz, Council Members Crooks, Grendel, Klepacz, Narduzzi, Piteo, Riley and Togliatti. Also present was Law Director Greg O'Brien.

**Moved by Riley, seconded by Narduzzi, to adjourn the Executive Session and reconvene the Special Council meeting. Council polled: 7 yes/0 no; motion carried.**

The Executive Session was adjourned at 7:10 p.m.

The Special Council meeting reconvened at 7:11 p.m.

Vice Mayor Riley stated, I make a motion that we consider this list removing City employees to give the Mayor and Service Director direction to use this list. We will call a Special Council meeting next Tuesday to vote on this list and that you have the direction.

Law Director O'Brien responded, just modify it. You are going to use list if it snows and then next week they will award it pursuant this list.

Finance Director Veres replied, if it snows between then and now

Vice Mayor Riley replied, we have done it with road repairs when we said go ahead and we will vote on it.

Mayor Kurtz responds, if everyone is willing to support that.

Vice Mayor Riley replied, list 11/18/08 that was presented today. It says number 18, Buyansky \$10.00, cross that off, we are not awarding that route. We are awarding this list as it states right here. No City employees will be getting any contracts. However, anything worked out with the contractors if there is a problem, we have our snowplowers.

Councilman Klepacz replied, so we are passing an ordinance then?

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Vice Mayor Riley replied, right. We are just giving them direction that we will pass this next Tuesday.

Councilman Klepacz asked, we are just passing a resolution?

Mayor Kurtz replies, no. Basically what you are telling the administration is get these all prepared and if you have a snow event you can use these.

Several people speaking at once.

Vice Mayor Riley replied, anyone have any issues with that?

Councilman Klepacz stated, I am going to vote no on that, not that I am against it, to me it is improper when...

Law Director O'Brien replied, you don't do anything

Vice Mayor Riley replies, we are not doing the resolution we are going to do it next Tuesday.

Councilman Klepacz replied, oh okay, I thought we were doing that tonight.

Vice Mayor Riley replied, no. What we are saying, we are agreeing that if it snows tonight they can use the list and next Tuesday we are going to vote on it.

Councilman Klepacz replied, you are authorizing to call those people out on a temporary basis.

Several people speaking at once.

Mayor Kurtz responded, is there any objection to that? Does everyone support that?

There were no objections noted.

Vice Mayor Riley stated that is good, that is a good compromise.

**Moved by Crooks, seconded by Riley, to adjourn the Special Council Meeting. Council polled: 7 yes/0 no; motion carried.**

There being no further business to discuss, the Special Council Meeting was adjourned at 7:13 p.m.

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Gayle Rudary, Pro Tem Clerk of Council

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