

CITY OF BURTON
SPECIAL COUNCIL MEETING MINUTES
MARCH 26, 2010, 11:50 A.M., COUNCIL CHAMBERS
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The Special Meeting is called to order by President Steve Heffner at 11:50 a.m.

MEMBERS PRESENT: Heffner, Zelenko, Martinbiano, Ellenburg, Wells and Haskins.

MEMBERS ABSENT: Smith.

OTHERS PRESENT: J. Adams, Deputy City Clerk.

PURPOSE OF THE MEETING: Discussion and possible action on Resolution Authorizing Loan Sale Agreement with HUD for the Pilot Ordinance for Blackberry Creek.

PRESENTATION:

Sam Arabbo said he would like to highlight some items from the Special Council Meeting that was held yesterday, March 25th. He thanks the Council for making their selves available yesterday as well as today. This is a crucial matter that deals with preserving 228 housing units, about 1,000 families, and a great investment in the City. We updated the residents this morning on the progress. There is no financial obligation to the City and preserving this asset should be a priority to all of us. In working with your legal counsel, we offered to provide you with many additional legal safeguards such as indemnifications and other documents that are necessary. The required 2% deposit was present and a copy of that was circulated. Representatives from Plante & Moran are present again today to confirm this is a viable project. You have within your power to modify, adjust, or do whatever you need to in terms of the Pilot Ordinance. Council has all these tools available to exercise preserving this housing unit. We have talked to members in the Burton community as well as friends that are willing to step up if for whatever reason Chase delays their commitment, to raise the capital needs to close this transaction. This is a true indication that we all should make the right decision today to vote favorably and move on. He trusts the right decision will be made to honor the wishes of the residents residing there as well as renewing our commitment to the community.

Tadd Harburn, partner from Plante & Moran, stated they have more detail and up-to-date information since yesterday's meeting. Joe Heffernan from their firm is a recognized expert in the governmental accounting aspect as well. He said governments can purchase and own property for governmental purposes either to control land use or prevent blight. He feels in this situation, the owning of this note if the underlining intent and purpose is for governmental purpose as opposed to an investment, and for profit motive. If the City considers it more of an investment, then it falls under Public Act 20 as amended, the Surplus Funds Act that is prohibited. If you are purchasing property or entering into a transaction for public purposes, he felt owning of that note would be for the public purpose. Mr. Harburn stated further, that kind of takes the legal issue out of it unless there is other information the attorneys can bring forth about that. From our perspective, we feel if it is done in a public purpose manner, it doesn't fall under the investment loss limiting that type of transaction.

Mr. Heffner inquired regarding the public purpose.

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Mr. Harburn responded it would be to prevent a property from becoming blighted, or so the property would not possibly become other than what its purpose and intended right now to be a residential property.

Linda Yudasz, partner from Plante & Moran, also responded it is basically for your overall governmental purpose which is to provide services for residential folks within the community and also to have some control of that land. Joe Heffernan believes that it fell well within the means of governmental purposes versus investment. It is your decision how much you want to control that land.

AUDIENCE PARTICIPATION: None.

COUNCIL DISCUSSION:

Mr. Martinbianco asked if a note is considered property, or are we talking about real property, or personal property. The whole essence of which they say we can't use it for an investment, I would never think about entering into a deal like this where we weren't going to be benefited. It is suppose to be risk and reward. We have accepted all the risk, but if all we are going to get is market interest, that is not fair on our part. If I ask for a premium over and above that, what you are suggesting then is we would be tuning this and it may fall under Public Act 20, which would preclude us from doing it.

Mr. Harburn said he is under the interpretation as to what is the underlying intent of this transaction. Is it for an investment purpose for the City, or is it more of you have a piece of property owned or make sure the property is used for a governmental purposes, residential housing for the community. It really falls under what is the underlining intent of the City. It is more to invest dollars for a profit or secure your assets; it is probably more of investment. Intent is to purchase the property or make sure it does not fall into the hands to alter the use.

Mr. Martinbianco said there is the distinguishment. We are purchasing the note, not necessarily the property. It is just the underlying security that is collateralized by the mortgage.

Ms. Yudasz said it is the underlying intention to purchase the property. You can purchase that land for the betterment of the community You can't lend the dollars to a developer.

Mrs. Zelenko said she has the utmost respect for Mr. Arabbo. He has been an integral part of this community. He provided a housing development that was sorely needed and this upscale property is beautiful. She is grateful and appreciative to his commitment to our community and residents. It is unfortunate the situation we are in with the distressed and declining economy. She can't in good conscious, vote to allow us to be on the hook at any time for the note on this property. We are elected to act in the best interest in the community as a whole. Maybe purchasing this note would be in the best interest of that small community, but I think the community as a whole, we just can't take that kind of risk. She will be voting in the negative.

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Mr. Wells thanked Council, Plante & Moran and Mr. Joliat for their input and hard work. Anytime someone comes into our community and spends over \$10 million dollars, they deserve a special meeting if they ask for one. Mr. Arabbo approached HUD for the last 2 years telling them he cannot make the note on this bill and he needs help. They refused to do it and now in the 11th hour, they are taking the note out of his hands and giving someone who invested zero, an opportunity to buy that note. Mr. Arabbo has proved himself over and over the last 6 years, and has done what he says he is going to do. This is just the first of many of these situations we are going to face. The government has done this man wrong, and we have the chance to help him out. If you don't do that, I understand there are other considerations. Mr. Joliat says he disagrees with the opinion of Plante & Moran. He asked Mr. Joliat to expound on his opinion.

Mr. Joliat said he spoke in last night's meeting to the auditors and again this morning. He spoke to Rick Austin and researched Act 20 in 1943, which regulates the investment. It requires the city to have an investment policy. I reviewed the City of Burton investment policy. I have a more conservative approach and opinion than the auditors do. I am not the expert in this area, but by the terms of the Statute and investment policy, I think the City of Burton buying a mortgage note is an investment. It is covered by your investment policy and not listed as one of the permissible investments in your investment policy or under the State Law. I know the interpretation from the explanation Plante & Moran makes sense that you are really securing the property and buying a piece of property rather than investing. When I looked at the investment policy and statute, I don't see that there is a public interest exception. So if you are using money for a public project and it is the interest of the City that you can do it, as opposed to an investment of City funds to generate cash until you need those surplus funds, I don't see that distinction.

Mr. Joliat stated further, it appears to me a good argument could be made that this is an investment, and to authorize it, would be violative of State Law and your investment policy. When he was on the phone with Tadd Harburn, he was still talking to one of their experts because it is such a tight issue. When the proposal started, to my understanding it didn't involve the use of any City money. It wasn't anticipated the City would actually have to go into its funds and fund this mortgage. It was intended the City would show interest, the developer or sponsor of the project would come in, secure the funding, and they would pay the money and the city would never be in an investment situation. Because of the passage of time, or the delay in obtaining financing, this transaction changed from what it was initially presented to the Mayor and to me, as to what it is today. I understand HUD will not extend the deadline. It appears this transaction would require an expenditure of City funds. If you accept my conservative interpretation that it is an investment, I don't think the City has the authority to do it.

Mr. Wells expressed a lot of positive energy has been exerted into this from Congressman Kildee's Office to Senator Levin's Office. They are all working on our behalf in helping Mr. Arabbo out. His biggest concern is what will happen to that property with the next person coming in. My concern is also for the residents there, the businesses on Center Rd., and the tax base. He will support this.

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Mr. Martinbianco said in talking about the condition of the property and how the residents are going to be treated, we have a building code in affect and we could put further restrictions in that ordinance especially as it applies to multi-family. If Mr. Arabbo is successful at securing funding for the note and it is retired from HUD, or an outside firm comes in and buys the note from HUD, it goes out of the ordinance that controls the pilot, is extinguished and goes back on the tax rolls at significant savings to the City.

Mr. Haskins stated we have the auditors and City Attorney's opinion. It is a big decision. I think of a lot of different circumstances goes on within the community and what we as elected officials have to deal with it. I have consideration of those 1,000 residents that live within that community. I am not looking to put the City on the hook for any financial obligation what so ever. We have talked about the 2% chances and the financing. I understand that as well. I have confidence in Plante & Moran and Ms. Yudasz's statements about the financing and the property withstanding a loan for \$11 million, when they are really going for over \$6 million. I have confidence in the fact that the closing in 3 weeks will take place with Mr. Arabbo and the financial institution he is working with. I look at the investment purposes and the blight issue. We have a responsibility to the residents that live there as well. To my understanding, Congressman Kildee's office understands the situation and supports this. Mr. Haskins stated further, he would support the issue as well.

Mr. Martinbianco asked Mr. Joliat if this has been presented to the Land Bank and they are involved in this as well.

Mr. Joliat said he does not know if the Land Bank was approached.

Mr. Arabbo responded funds available through Land Bank don't come into affect until the property has been foreclosed on. We don't meet that criteria nor ever want to. That is why we are here. He feels the City Attorney's opinion is slightly off base. We spoke to the Nixon Peabody, LLP attorneys in Washington and they clearly indicated it is within your official ability to buy the note to stop blight from happening. It is not considered an investment and therefore, further confirmed by Plante & Moran. I want to clarify that at no given time is this to be a financial burden to the residents and citizens of this City. That has always been the case. The City Attorney says it changed. It hasn't changed. The initial deposit that came about in the 11th hour that HUD had imposed, we are providing that. The finance to close the deal is being coordinated with the lender to close with no dollars coming out of the City. I believe the same building and safety ordinance was in place when Kings Lane was around and we know what shape that ended up. I believe this Council is more aware today than what happened years ago, and you could have some other safeguards. Regarding the Pilot, I understand that and respect Mr. Martinbianco's input. The pilot ordinance is nothing that we cannot revisit and generate the maximum amount of revenue for the City, whether it is under our circumstances by you being conduit to buy the note, or whoever will buy it down the road. That is not a closed chapter. It is a chapter we could collectively work on and address at a later date, if you so chose to. This is a new experience for all

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of us on an economic level. The other shoe hasn't dropped yet as far as commercial lending. A lot of major problems are coming down the pipeline and this is just a starting point.

In summary, Mr. Arabbo stated that Council has the tools today to make this work and make a win-win situation. He hopes with the information that has been provided and with their compassion to everyone that has been involved, we will have a favorable vote so we can move to the next step.

Mr. Heffner said he is not sold on this blight thing. It has been said here that none of us can see the future. I am not convinced there is going to be blight problem there. I am not convinced there is not a risk. Some of the numbers I heard was 98% chance you will secure funding, and there is a slight 2% you cannot. For me that risk is too great to take for this City. That is the reason I will be voting no on this. Mr. Arabbo is a great man and has done great things for this community. I wish we could do something. I just can't see that we can.

Mr. Wells said he recognizes we have some of our great employees in the audience that are very interested in this. The Assessor and Controller are tied in knots. Karen Foster said the budget is going to be pretty ugly. He understands their concerns and hopes they appreciate his opinion on why we are doing this. I think it will come out all right. It is nothing personal and I took your opinions under consideration.

Mrs. Ellenburg thanked everyone for their input and Mr. Arabbo. She stated she feels very bad for his situation, but she represents the residents that put her in this spot.

COUNCIL ACTION:

Wells moved and Haskins seconded the following motion:

1. Approve and authorize Resolution Authorizing Loan Sale Agreement with HUD for the Pilot Ordinance for Blackberry Creek.

Motion failed, 4-2, with Heffner, Zelenko, Martinbianco, Ellenburg voting no.

Meeting adjourned at 12:25 p.m.

jra