

CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
APRIL 5, 2010, 7:00 P.M., COUNCIL CHAMBERS
www.burtonmi.us

Councilwoman Paula Zelenko led the Invocation and Pledge of Allegiance.
The Regular Meeting was called to order by President Steven Heffner at 7:00 p.m.

MEMBERS PRESENT: Ellenburg, Haskins, Heffner, Martinbianco, Smith, Wells and Zelenko.

MEMBERS ABSENT: None.

OTHERS PRESENT: Mayor C. Smiley; John Benthall, Police Chief; Attorney R. Austin and G. Webster, City Clerk.

Ellenburg moved and Martinbianco seconded the following motion:

Approve and authorize the minutes of the Regular Council Meeting on March 15, 2010 at 7:00 p.m. Motion carried 6-0. (Mr. Haskins was not available for this vote.)

ADMINISTRATIVE REPORT:

Mayor Smiley indicated that 70% of the Burton residents have responded to the Census. He said it was very important for everyone respond.

Mayor Smiley reviewed aspects of the proposed 2010-2011 Budget. The current General Fund Revenue is less than we received in 1999. We will receive 1.3 million dollars less than last year. He has done everything possible to prevent layoffs. The union membership, with exception of the Teamsters, decided not to take concessions. He has offered incentives to employees who were eligible for retirement. This accomplished two things. We did not have to flow higher seniority employees to lower seniority jobs. Plus by offering the incentive it kept our younger seniority employees working. Eleven employees took the buy out. Some of those positions will not be filled. That wasn't enough. Union employees will receive a 3% pay raise effective in July 2010. We have to honor those contracts. The Administration, Council and the Mayor will take pay freezes. The unions were not willing to wave their raises or vacation payouts. Therefore, there will be two police officers laid off. He will be restructuring all departments in the City. He is committed to keeping the same number of police officers on the road. There will be less ASFCME and Teamsters employees. The only way to save the lay offs is to receive more revenue or for unions to take concessions. He planned to provide the same level of services to our residents.

The \$65,000 cleaning contract was eliminated. We now have one contractual employee being paid \$30,000 a year providing cleaning services. This has been a tremendous savings. We have cut overtime to almost nothing. If certain things happen, we will respond. All departments have been working on cost cutting measures for the last several months. We are preparing our staff and residents for the cuts that are about to take place.

The Mayor has reached a 5-year agreement with Waste Management that calls for no increase in trash collection fees for the first two years, and a minimal increase in the remaining years. Trash recycling and yard waste collection will continue as usual.

All conference and workshops were cut from this budget. Special circumstances will be addressed on an individual basis. There are no new vehicles or equipment. Starting July 1st it

REGULAR COUNCIL MEETING MINUTES

APRIL 5, 2010 / 7:00 P.M.

PAGE 2

will be business as usual with 16 less employees and 1.3 million dollars less revenue. The Mayor did not have the opportunity to meet with the department heads to discuss the budget, as he has in the past. However, we met as a group and all the administrators understand our financial situation. We have to maintain a balanced budget and stay within our means.

COMMITTEE REPORTS:

Mr. Martinbianco moved and Mrs. Zelenko supported the motion to add as Item 7: Approve and authorize setting of a public hearing on the fiscal year 2010-2011 Budget on April 19th at 6:30 p.m. Motion carried 7-0.

AUDIENCE PARTICIPATION:

John Dunlap, 6370 Lapeer, wanted the catwalk modified so children didn't exit onto the highway. He felt it was a safety hazard because of two previous accidents.

Windy Shepard, 19206 Blackberry Creek, spoke regarding the sale of Blackberry Creek. She felt the City should take it over to accommodate the residents.

Diane Walton, 4489 Lippincott, opposed the adoption of registration fees for abandoned structures. She felt this would adversely affect landlords. She felt safety issues should be addressed at the catwalk. She thanked Council members for helping her with a previous water bill.

Tina Conley, 2224 N. Belsay Rd., opposed pay raises and workshops in the budget. She felt Mr. McArdle should take a leave of absence while running campaigns. She said the City should have accepted applications for the cleaning position.

Aaron Dionne, 1256 W. Davison Lake Rd., Oxford, opposed the increase in registration fees for abandoned structures.

Casey Anger, 2008 Kent Drive, Davison, spoke in reference to the safety of the catwalk. His son Evan rode his bike off the ramp into traffic and was killed. He wanted the following modifications to be made to the catwalk area: stop signs erected, a white stripe painted on the road, bushes and trees removed, a children crossing sign erected, speed bumps added to the roadway, enforcement of the 25 mile speed limit and to construct a fence to funnel children down the sidewalk.

Carissa Anger, 2008 Kent Drive, Davison, begged Council to address modifications at the catwalk. Her son was killed when he rode his bike into traffic. She felt that if more safety measures were put into place this tragedy wouldn't have happened.

Marie Dunlap, 6370 Lapeer Rd., said her son was injured at the catwalk. She said safety measures should be put in place so other children don't get injured. She wanted Council to take some type of action tonight to assure modifications are made.

REGULAR COUNCIL MEETING MINUTES

APRIL 5, 2010 / 7:00 P.M.

PAGE 3

Danielle Bowers, 1009 Adams Rd., was at the accident scene when the child was hit by the car and killed. She said a car hit another child last year. Cars often speed in that area. She wanted safety measures put in place so this didn't happen again. She said the community offered to put up the fence and mark the pavement.

James Cowan, 2441 McClellan, Davison Twp, announced his candidacy for State Representative. He voiced his support for the family and asked Council to take action immediately.

Frankie Thompson, 18101 Blackberry Creek, indicated the apartment complex was quiet and nice. He is retired and cannot afford to pay additional rent. He said there were 228 families living there. He wanted Council to help the residents by reconsidering the purchase agreement for Blackberry Creek.

John Martinez, 12201 Blackberry Creek, said there are many seniors, fixed incomes and single parent families that live in the complex. They support business in our community. He felt the residents did not have the opportunity to voice their opinion on this issue. They are very apprehensive with the change in management. Most residents cannot afford higher rent. He asked Council to rescind the vote and enter into the purchase agreement.

Leilonie Cooper, 22104 Blackberry Creek, enjoys the environment, shopping and convenient location of the apartments. She is on a fixed income and cannot afford for her rent to be raised. She asked the Council to reconsider their previous vote.

John Stapish, P.O. 190134, opposed the registration fees on abandoned structures. He felt Items 5 and 6 regarding the weed-cutting contract should be removed from the agenda until more research was done on the company.

Mike Wright, 14102 Blackberry Creek, said the apartment complex was safe, had good neighbors and was in a nice area. The complex has accommodated the needs of his handicap wife. He is on a fixed income and can't afford an increase in rent. He wanted the Council to support the purchase agreement.

Amy Pomeroy, 2043 S. Vassar Rd, Davison, said her son was the best friend of the boy that was killed. She urged Council not to go home and forget about the accident. She wanted modifications made to the catwalk area so children would be safer. She indicated that her son has been very upset and hasn't been able to sleep since the accident.

Laurie Tinnin, 2340 Harmony, gave her condolences to the Anger family. She said the Dunlap's indicated that the area needed to be addressed. She said it was a pedestrian walkway. She felt removing the shrubs and adding fencing would help to make the area safer. Mrs. Tinnin congratulated the Council for making the right decision regarding Blackberry Creek. If the City purchased Blackberry Creek, we would be responsible for the bond. She felt the City was not in a financial position to buy all these bankrupt properties.

REGULAR COUNCIL MEETING MINUTES

APRIL 5, 2010 / 7:00 P.M.

PAGE 4

Rick Fuhst, 1208 S. Genesee Rd., pointed out that the AA Lawncare business was in a residential area. He hoped their insurance and credentials were in order. He offered condolences to the Anger's family. He said there were no issues with the catwalk for many years. He hoped safety issues would be resolved. He said someone from the City demanded the police department discount from ProClean. This person threatened the loss of the contract. There was a complaint filed over this incident. He wanted to know the status of the complaint.

COUNCIL DISCUSSION:

The Regular Council Meeting recessed at 8:10 p.m.

The Regular Council Meeting resumed at 8:28 p.m.

Mr. Smith moved and Mr. Haskins seconded the motion to add as Item 8, Approve and authorize the erection of a fence at the south side of the catwalk along city owned property so as to prevent direct access from the catwalk onto Court Street. Motion carried 7-0.

There was a brief discussion in reference to the price of the fence. Mr. Wells wanted to know if MDOT had been notified. He didn't want to create another safety hazard by putting up a fence. MDOT had been contacted and was out to the site in October 2009. It was Mr. Heffner's understanding that MDOT was not opposed to the City adding a fence.

Mr. Smith moved and Mr. Haskins seconded to: Amend Item 8 to read approve and authorize the erection of a fence at the south side of the catwalk along city owned property so as to prevent direct access from the catwalk onto Court Street, at a cost not to exceed \$5,000. The motion carried 7-0.

Mr. Martinbianco spoke regarding the fees on abandoned structures. He said the fees were adjusted to reflect the actual cost to administer the program. This program helps keep the City clean by requiring abandoned buildings to comply with existing building codes.

Mr. Martinbianco spoke in support of his decision not to purchase the note on Blackberry Creek. He said Mr. Arabbo's corporation was unable to financially maintain the property. The City is unable to purchase this as an investment by state law. If Mr. Arabbo were unable to refinance, we would have to sell the note. Once HUD's responsibility expires, the PILOT attached to that project will no longer exist. The property taxes would probably increase, unless the new owner can work within the HUD provisions. We do not have a problem with that. We did not discriminate against anyone. He said this was a tough decision.

Mr. Smith said the Blackberry Creek agreement was a very difficult decision. There was very little time to address a 6.7 million dollar investment. He felt the residents of Burton should have had an opportunity to voice their opinions on this issue. This agreement was between HUD and the City of Burton, not Mr. Arabbo. We would be responsible for that. If Council agreed to spend the 6.7 million dollars, and Mr. Arabbo's financing fell through, what would we tell our residents? He said we shouldn't invest the taxpayer's money without their input.

Mrs. Ellenburg thanked the Mayor and the administration for working so diligently on the budget. She said under the circumstances, it must have been difficult to prepare the budget. She

REGULAR COUNCIL MEETING MINUTES

APRIL 5, 2010 / 7:00 P.M.

PAGE 5

thanked residents for turning in 70% of the Census forms. She encouraged all residents to do the same. She said her heart went out to the Anger family. Council will definitely make sure this issue is addressed.

Mr. Wells strongly supported the Blackberry Creek agreement. He agreed there wasn't much time to address the issue. He said Congressman Kildee's and Senator Levin's offices, along with HUD were involved. We were trying to give Mr. Arabbo time to come up with financing, so he could buy the complex back. Plante and Moran changed the rules because other states, cities and communities have had the same problems. He referred to other business foreclosures where out of state people took over and turned them into slums. Once HUD sells the note to them, their portion of the contract will not exist. HUD has even lowered the 10% down payment to 2% for us. He said the City of Burton would not be out one penny. He said Mr. Arabbo had a certified check to pay the down payment. He had about ten days to close. If he couldn't come up with the money within ten days, the deal was done. He insisted the City of Burton would not be out any money. He said we would be right back to where we are right now. There is no risk to the City. We were putting a down payment on the note. If we couldn't close, we would call HUD and say sorry it didn't work out. It was a nonrefundable down payment. We need to consider a thousand residents. They are worried about where they are going to live. The good news is that HUD is not going to put that note up for sale until April 24th. Mr. Wells wanted Council to reconsider the agreement.

Mr. Heffner said in that case, Mr. Arabbo should have enough time to secure his own funding. Mr. Wells encouraged Council members to call HUD for more details on the agreement. He asked Council to reconsider this issue. We can't take no for an answer when it comes to our residents.

Mr. Heffner supported the Council's decision. He disagreed with some of Mr. Well's comments. According to our Attorney, if we would have signed the agreement between HUD and the City of Burton and later Mr. Arabbo did not secure financing, we would be held legally responsible for 6.1 million dollars. If we couldn't come up with the money, HUD would sue us for the money. Mr. Harbin, from Plante and Moran said it was illegal to use our funds in that manner, unless it was to control blight. We do not have a blight problem in Blackberry Creek. We couldn't spend 6.3 million dollars to buy a note on a nonperforming loan. He felt the change of ownership would not necessarily have a negative impact on the area. If someone is going to invest millions of dollars in Blackberry Creek, they will probably maintain the property. We don't know if they are going to raise the rent. He felt HUD wanted to dump the nonperforming loan. Mr. Arabbo was 10 payments behind totaling \$1.2 million dollars. If he didn't pay HUD, who says that he will pay us. Mr. Heffner said that he couldn't put the City at risk. Mr. Wells said the City would not be responsible for the 6.3 million dollars. If Mr. Arabbo doesn't come up with the money, we just wouldn't close.

Mr. Heffner said we would end up in court if we didn't follow the agreement. Mr. Wells insisted we would not end up in court. He said HUD would have \$120,000 of a nonrefundable down payment. They would be very happy with that.

REGULAR COUNCIL MEETING MINUTES

APRIL 5, 2010 / 7:00 P.M.

PAGE 6

Mr. Heffner said we still couldn't put our residents on the hook for 6.1 million dollars. Mr. Wells said please please make the call. Talk to this lady. She has the expertise. He was learning a lot about this. Please make that call. He said Mrs. Zelenko should make that call.

Mr. Martinbianco pointed out Burton was a government entity, not a financial institution. We do not have the levity to do that. If we had to pay the 6 million dollars, it would have to come from the sewer fund. Then we would have to justify the sewer rate increases, again, even if this business was not related. The perception would be that we loaned the developer capital to assure that he maintained ownership of the project. At that point, we would be a financial institution. He had a problem with that scenario.

Mr. Wells wanted to know what was being loaned to Mr. Arabbo. Mr. Martinbianco said time is money. If you are loaning him anything, you are securing the note for him. Mr. Martinbianco said the City would insure that the property was well maintained. Mr. Wells wanted Mr. Martinbianco to call the lady at HUD to get more information. She will convince you what I am saying is true. If she doesn't, then we will leave it alone. He didn't want the City to be out one penny.

Mr. Smith understood this was an emotional topic. However, the contract indicated that the purchase price was 6.311 million dollars. On the closing date, upon receipt of purchase price by wire transfer HUD shall assign and transfer and convey to the purchaser, which is the City of Burton, without recourse all HUD rights title and interest in and to the mortgage loan. If Mr. Arabbo defaults on the loan, this would happen. The courts will use this document. The City will be liable. This remains in effect until the maturity date of July 1, 2044. If this agreement is approved our legal Counsel said we would be responsible. HUD is requiring that \$634,000 worth of improvements be made to Blackberry Creek. We don't have the money. What would we tell our next developer that asks for help? We should not increase our debt, when we do not have income to cover it. We cannot spend money we do not have. If Mr. Arabbo secures financing, he will be responsible for all the HUD requirements.

Mrs. Zelenko gave her heart-felt condolences to the Anger family. She was proud of Council for addressing this important issue. We have been in discussion with MDOT. The bushes are on their property. We will have to contact them again to get their permission to cut the bushes. That prevents the City from liability.

Mrs. Zelenko said the Blackberry Creek agreement was a very difficult decision. Mr. Arabbo has made this a fine complex. We are proud of the complex and it is an asset to the City. She voted against this because she understood the City would be liable for the 6.3 million dollars until 2044. She has dealt with HUD contracts in the past. She did not want to put the City at risk. She was not aware the deadline was extended to April 24th. Mr. Arabbo needed 10 days to complete his finances. Now, he should have enough time to purchase the note himself. Mr. Wells said if the City doesn't purchase the complex at the reduced price, it would go back on the market. Mrs. Zelenko said 6.3 million dollars was too much to put the City at risk. She would vote no again.

Mr. Heffner said if Mr. Arabbo came in with a secured check for 6.3 million dollars, he might reconsider his vote. In addition, he would need a \$600,00 check for the repairs that are due.

REGULAR COUNCIL MEETING MINUTES

APRIL 5, 2010 / 7:00 P.M.

PAGE 7

Once again, Mr. Wells encouraged Council members to call HUD. Mr. Heffner repeated this had to be zero risk to the City. Mrs. Zelenko said the current contract presents a risk to the City. A new contract would need to be drafted before she would even consider this issue.

Mr. Haskins said if the City had a housing commission we could have taken over the property and netted \$600,000 a month. If we had a housing commission, this would have been totally legal. That would save all the lay offs. In the second meeting, Plante and Moran did not view this as an investment. It was considered legal. This did not refer to blight issues. He planned to speak to the Mayor in reference to establishing a housing commission. Then we would have another avenue to address these types of issues.

Mr. Smith asked for clarification on abandoned and vacant buildings. Mrs. Zelenko said this ordinance was for abandoned properties. These are properties with no power, overgrown yards, broken windows and other maintenance issues. Basically, no one is taking care of the property. Vacant property generally has power and the property is being maintained. This ordinance mainly focuses on mortgage foreclosures when homes are not being serviced or maintained. This was put in place to prevent blight and lowering property values.

Mr. Haskins clarified that the City was recouping the cost to administer the ordinance. The City was not making any money off the inspections. Mrs. Zelenko said the fees were reviewed after they were put in place for several months. The new fee reflects the actual cost to administer the ordinance.

In reference to Item 3, Mr. Martinbianco asked for clarification on the Maple Rd bridge project.

Mr. Wingblad said the engineering costs for the Atherton Rd bridge were less money because they were based on a rehabilitation project. The higher engineering costs for the Maple Rd bridge were justified because this would be a total reconstruction. The entire bridge will be removed. This is a more extensive project. Maple Road will be closed for a few months during that time.

Mr. Wells asked for clarification on Item 5 regarding the weed-cutting contract. Mr. Wingblad said AA Lawncare did the work last year. They did a good job and seemed to comply with all the City's needs. He said 21 bid packages were taken out on this contract. There were six bids made. They are reflected on the bid sheet.

COUNCIL DISCUSSION ACTION:

Moved by Martinbianco, Seconded by Zelenko to: Add as Item 7, Approve and authorize setting of a public hearing on the fiscal year 2010-2011 budget on April 19th at 6:30 p.m.
Motion carried 7-0.

Moved by Smith, Seconded by Haskins to: Add as Item 8, Approve and authorize the erection of a fence at the south side of the catwalk along city owned property so as to prevent direct access from the catwalk on to Court Street.
Motion carried 7-0.

REGULAR COUNCIL MEETING MINUTES

APRIL 5, 2010 / 7:00 P.M.

PAGE 8

Moved by Smith, Seconded by Haskins to: Amend Item 8 to read: Approve and authorize the erection of a fence at the south side of the catwalk along city owned property so as to prevent direct access from the catwalk on to Court Street, at a cost not to exceed \$5,000.

Motion carried 7-0.

COUNCIL ACTION:

Haskins moved and Smith seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from March 10, 2010 through March 31, 2010, in the amount of \$7,143.50.

Motion carried 7-0.

Haskins moved and Martinbianco seconded the following motion:

2. Approve and authorize the following registration fees: New registration for Abandoned Structures will be \$140.00. (This fee includes a \$90.00 registration fee with a \$50.00 fee for a Certificate of Occupancy for the first occupiable building/structure. There will be an additional

\$50.00 fee for each occupiable building/structure that is encumbered under the same parcel identification number for the Certificate of Occupancy). The renewal registration fee will remain at \$100.00.

Motion carried 7-0.

Wells moved and Haskins seconded the following motion:

3. Approve and authorize the Mayor and Clerk to enter into a contract with Kraft Engineering & Surveying, Inc., 409 W. Seventh Street, Flint, MI 48503, for the purposes of Preliminary Engineering of the Reconstruction of the Maple Avenue Bridge over Thread Creek at a cost not to exceed \$71,000.00 for the project known as: Maple Avenue Bridge over Thread Creek Reconstruction, DPW Job #08-001-P.

Motion carried 7-0.

Wells moved and Zelenko seconded the following motion:

4. Approve and authorize the City Controller to transfer \$71,000.00 from the 2009/10 Major Street Unappropriated Surplus to DPW Job #08-001-P for Preliminary Engineering services.

Motion carried 7-0.

Haskins moved and Martinbianco seconded the following motion:

5. Approve and authorize the low bid of AA Lawncare, 2461 Zimmerman St., Flint, MI 48503. The low bid of \$50.00 per 50 foot x 100 foot lot of brush hog cutting, \$21.75 per 50 foot x 100 foot for hand/riding mower, \$45.00 for removal of one (1) cubic yard of rubbish, and \$0.0025 per square foot for lots larger than 50 foot x 100 foot.

Motion carried 7-0.

REGULAR COUNCIL MEETING MINUTES

APRIL 5, 2010 / 7:00 P.M.

PAGE 9

Haskins moved and Martinbianco seconded the following motion:

6. Approve and authorize the Mayor and Clerk to enter into a contract with AA Lawncare, 2461 Zimmerman St., Flint, MI 48503, the amount as specified on the bid proposal.

Motion carried 7-0.

Zelenko moved and Ellenburg seconded the following motion:

7. Approve and authorize a public hearing on the proposed fiscal year 2010-2011 budget on April 19th at 6:30 p.m.

Motion carried 7-0.

Haskins moved and Zelenko seconded the following motion:

8. Approve and authorize the erection of a fence at the south side of the catwalk along city owned property so as to prevent direct access from the catwalk on to Court Street, at a cost not to exceed \$5,000.

Motion carried 7-0.

SECOND READING OF AN ORDINANCE:

Haskins moved and Smith seconded the following motion:

1. Approve and authorize the Second Reading of an Ordinance, Ordinance No. 2010-1-91.04, an Ordinance amending Chapter 91 of the Code of Ordinances of the City of Burton by requiring that a Certificate of Occupancy be issued prior to the reoccupation of any vacant or abandon building or structure and adopting penalties for the violation thereof.

Motion carried 7-0.

Haskins moved and Smith seconded the following motion:

2. Approve and authorize the Second Reading of an Ordinance, Ordinance No. 2010-2-32.19, an Ordinance amending Chapter 32 of the Code of Ordinances of the City of Burton by the inclusion of a detailed property sales procedure for both real and personal property owned by the City.

Motion carried 7-0.

Meeting adjourned at 9:25 p.m.

Gayle K. Webster, MMC
City Clerk