CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
DECEMBER 3, 2012, 7:00 P.M., COUNCIL CHAMBERS
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D R A F T

Councilman Vaughn Smith led the Invocation and Pledge of Allegiance.
The Regular Meeting was called to order by President Tom Martinbianco at 7:11 p.m.

MEMBERS PRESENT: Martinbianco, Heffner, Smith, Wells, Ellenburg, O'Keefe and Haskins.
MEMBERS ABSENT: None.
OTHERS PRESENT: Mayor P. Zelenko, Atty. R. Austin, G. Kray, DPW Director and J. Adams, City Clerk.

Haskins moved and Ellenburg seconded the following motion:
Approve and authorize the minutes of the Regular Council Meeting on November 19, 2012 at 7:00 p.m. Motion carried 7-0.

ADMINISTRATIVE REPORT:

Mayor Zelenko stated Controller Ginger Burke-Miller would not be in attendance tonight due to an urgent family matter. Ginger extends her apology and if Council has questions for her she would be happy to address them via e-mail or telephone call tomorrow. Ms. Warren will not be here tonight. We will probably need an Executive Session at the next Council Meeting on December 17th for updates on contract negotiations and litigations. The S2 Grant Application was approved and we will be moving forward on that. Our DPW Director is here for questions on agenda Item #2. Mayor Zelenko expressed further that the Michigan House of Representatives is holding hearings tomorrow and Wednesday in the House Office Building, Room 521, regarding the personal property tax repeal. She will be going for a short time on Wednesday. There are requirements for testifying and we would need written documentation of our testimony, so please inform her if anyone would like to also attend.

COMMITTEE REPORTS:

Mr. Smith said the Finance Committee met earlier this evening at 6:00 p.m. to discuss the health insurance for the City of Burton employees. Council should have received a couple of studies. One is the Hard Cap versus 80/20. There is also discussion about the pension liability. After a difficult hour long discussion, it was the Finance Committee's recommendation that due to the fiscal health of the City of Burton, the City go with the 80/20. It is Council's pleasure to put this on the agenda as Item #9.

Mr. Smith moved and Mrs. Ellenburg seconded to add as agenda Item #9 to approve and authorize under Provisions of Public Act 152, the Health Care Payment Opt Plan for the City of Burton for the Calendar Year January 1, 2013 through December 31, 2013, the City of Burton going to the 80/20 plan. Mr. Wells asked that this motion be Tabled to the next Regular Council Meeting on December 17, 2012 at 7:00 p.m., so City of Burton employees could have the chance to come and speak about it.

Mr. Martinbianco mentioned that the fee structure was removed from the Finance Committee's agenda.

Mr. Smith said due to the length of discussion on the City's health care, the fee structure was removed.

Mr. Heffner said Parks & Recreation had Christmas at Courtland. It was very successful with 400 to 500 children present. Santa came in a helicopter. He thanks Councilwoman Ellen Ellenburg and Councilman Dennis O'Keefe for being there to show support. On December 15th at 1:00 p.m. the Christmas Parade will be on Saginaw St. next to Rocky's at Natalie Dr. The parade will go down Saginaw Street south to Morrish Avenue. The Back-to-the-Bricks Committee is doing the Festival of Lights and they will be judging the businesses for their lights. It would be great to see all Councilmembers there.

Mr. Smith stressed to Council the importance of making their decision on the City's health care, which needs to be done at their next Regular Council Meeting on December 17th.

AUDIENCE PARTICIPATION:

John Stapish, PO Box 190134, inquired regarding agenda Items #3, 4 and 5, the ZBA reappointments.

COUNCIL DISCUSSION ACTION:

Moved by Wells and seconded by Haskins to: Table to the next Regular Council Meeting on December 17, 2012 at 7:00 p.m., to approve and authorize under provisions of Public Act 152, the Health Care Payment Opt Plan for the City of Burton for the Calendar Year January 1, 2013 through December 31, 2013, the City of Burton going to the 80/20 plan. Motion carried 4-3, with Smith, Ellenburg and Heffner voting no.

COUNCIL DISCUSSION:

Mr. O'Keefe said the Rotary Club has been a service club in Burton since 1979. Auldin Nelson was one of the members that started the club. He is deceased. His accomplishments were many. He was an Eagle Scout, went to the first Boy Scout Jamboree in 1937, officer in World War II and came back as a war hero. He graduated from the University of Michigan and played several sports. He became an architect and designed the new addition to Burton City Hall as well as many other buildings. His dream was for the City of Burton to have an aquatic center. None of our high schools have a swimming pool nor swimming teams and the community had no place to go. He convinced the Burton Rotary to help him in his effort. We wanted to have an aquatic study because this project would be a couple of million dollars. Years ago the Burton Rotary donated $1,163, which has been sitting on the books for a long time. Auldin passed away and at that time the economy did a downturn. Having a $2 million aquatic center was out of the question. The Burton Rotary sent a letter and would like the money re-donated to the Parks & Recreation for the project of the boardwalk. There is also a $500.00 donation from the Burton Rotary as well.

Mr. O'Keefe said the Rotary is very involved in the community and has for many years supported the Whaley Home. There is a Rotary house that is a resident house for older children. Six older children live there. The Rotary Clubs around the County support and underwrite this project. It is very touching going to their Christmas. Their older children will probably have no chances of being adopted at all and it is sometime bittersweet leaving the Christmas party. They had a good time but you know it was just for the moment. For several years, Mrs. Ellenburg has made and donated bedspreads for them and she has their name embroidered on them. When you live in an orphanage and share a bedroom, that is a big thing. He thanks Mrs. Ellenburg; that is the real meaning of Christmas.

Mr. O'Keefe said he gave Mr. Heffner information on a fundraiser that Grand Blanc Parks & Recreation are doing. It shows different ideas. We have quite a bit of money to pull together to pay off the Kelly Lake project. It is a public event and a few months ago we had the Policemen's' Ball and the community came out and supported it. I think we would be very surprised the number of people that would come out to support the Kelly Lake project.

Mr. Martinbianco thanked Mr. O'Keefe for all his hard work. Mr. Martinbianco read aloud a letter from the Burton Rotary Club addressed to the City of Burton Parks & Recreation, attention of Mrs. Bigsby, in regards to the $1,163.00 donation in support of the Kelly Lake project in memory of Auldin Nelson, and in addition, a check for $500.00 to help support the renovations at Kelly Lake Park.

Mr. O'Keefe presented to Mayor Zelenko the Burton Rotary Club donation checks.
Mayor Zelenko and City Council were very appreciative of the generous donations by the Burton Rotary.

Mr. Heffner also acknowledged and thanked Mr. O'Keefe for all his hard work.
Mr. Heffner said he believes on Wednesday we will find out if we are going to get the grant.

Mayor Zelenko said there is a hearing in Lansing that Mrs. Bigsby is going to attend.
Mr. Heffner stated the City is in 12th place in the State and has a good shot at receiving the grant.

Mr. Wells said Zoning Chairman Steve Welch is present in the audience. There are 3 ZBA reappointments on Council's agenda. He asked Mr. Martinbianco if he could go through him to ask Mr. Welch how the Zoning Board is doing and if he has any requests from Council.

Zoning Board Chairman Steve Welch said the Zoning Board is doing fine. His only request was that the reappointments be put on Council's agenda for tonight because their terms expire in December. If you don't have a full Board, you have to offer the applicant to wait till the next regular scheduled zoning meeting. So it is important to have a full Board.

Mr. Haskins asked if the alternates have been attending if needed.
Mr. Welch replied yes the alternates have.

Mr. Wells thanked Mr. Smith and the Finance Committee for their hard work. In all fairness to the employees he did the tabling motion. No one has worked harder than Mr. Smith to get to the facts.

Mr. Martinbianco said sometimes it involves issues that have to do with contracts. We already have some settled and you are going to listen to the rest of the crowd that might be saying I don't think it is fair. They maybe don't understand the full economic impact of what could ultimately come out of either decision, whether it is the Hard Cap or 80/20 in times to come.

Mr. Wells said he understands that fully and welcomes that discussion.

Mr. Haskins said he believes the numbers are still confidential and the Mayor does not want them discussed.

Mayor Zelenko acknowledged Council should keep the information confidential at this point and wait till Council's next meeting.

Mr. Haskins said his stand a year ago was the Opt Out clause and his stand today is still the Opt Out clause. He had seen some of the numbers and what employees will be paying. I am living their pain and understand it. I understand the wages some of the employees are making. I understand the burden of the City as well. I think there is other mixes that could play into the factor. I know I won't carry the support on that, but where I stand on it has not changed. I believe it is a negotiating factor that should stand firm.

Mr. Martinbianco in response said they would anxiously await his solution with his mixes at the next meeting.

Mr. Haskins said he is not going to go there and get into a big drawn out fight. He stated his opinion on it and he is going to leave it at that. For me to get into direct details and start bashing different people and things I feel should be different, is not going to behoove anyone up here or Administration.

Mr. Martinbianco said you stated your opinion, not facts.
Mr. Haskins replied there are facts behind it.

Mr. Haskins said a member of the DDA approached him on the street lighting and with their finances, he was asked to extend a thank you and that they appreciate the Administration for stepping up to the plate. Mr. Haskins asked if the DDA had another vote on it.

Mayor Zelenko said it might be a thank you for bringing them together so we can move forward. We had some new DDA appointments. We have had discussions on where the DDA wants to go and try to get them more involved in economic development and not just South Saginaw St. where DDA is responsible for, but to also get their opinions because they are business owners here in the City of Burton. We want to get their opinions on how we can boost economic development throughout the City and not just the South Saginaw corridor.

Mr. Haskins stated Greg Fenner said he seen the streetlights on and they voted they couldn't afford to turn them on. He asked him to thank you.

Mayor Zelenko expressed that is a different subject.

Mr. Haskins thanked Mr. O'Keefe for his presentation. He believes in the Burton Rotary and all they have done and it is a tremendous amount for the City. He appreciates Mr. O'Keefe's continued involvement.

Mr. O'Keefe said he had 2 questions asked by residents regarding the tapings of our meetings. He asked what time they are shown on television.

Mr. Wells replied the meetings are shown at 9:00 p.m. on Friday night on Comcast and also on Sundays at noon. It would be a good idea to have the newspaper put it in there again.

Mr. Haskins said it is also on the Women's' League of Voters website.

In reference to Item #2, Mr. Wells said last Thursday he had a meeting with the Mayor and Mr. Kray. We talked about this contract. Mr. Kray explained how he came up with some of these numbers and what his thoughts were. Mr. Wells said he took that information and made a few calls to some local municipalities. Very few local municipalities have an emergency sewer maintenance plan because it doesn't come up very often. Over the last 5 years it has cost us about $30,000. I asked them what they do. Almost all of them have a list of local contractors. They get their hourly rates, cost of equipment and required supplies. They have a checklist and keep everyone competitive. As needed they like to rotate the contractors, which in turn keeps them all very competitive. One gentleman, a DPW Director, said how can you quote something out because if it is actually an emergency, there is probably nothing on the spreadsheet that is really going to help you out as far as figuring the price. If they have an emergency, they get a specific bid for that occurrence and go from there. If they don't like that bid they go get another one. They also said the County Drain Commissioner is always on hand in case of an emergency. He asked what we consider an emergency and I told him I don't know. I assume the DPW Director makes the call if it is an emergency. In talking to the Mayor, she has an emergency purchase order. I like the idea of keeping everyone honest by keeping them all in the loops and spreading the wealth, along with praying we never have to use them.

Mr. Wells said he appreciates all of Mr. Kray's work. There were 50 pages of specifications he put together and you could see all the prices. Mr. Kray didn't know we didn't receive the sanitary sewer emergency repair document. One of the comments he made was this was to protect the City. If we were to have an emergency repair, we are not bound by anybody that we have on this contract. Mr. Wells said he feels this is puzzling. If I did all the work and you gave me a contract and something happened and you didn't call me, I am going to call my attorney. I don't know how we can get around that. He thinks things have been working well for the past year and a half and he doesn't want to alienate any of our good suppliers. He will be voting no on Item #2.

Mr. Wells suggested if anyone has any questions to talk to the Mayor, she is very open. Have her bring Mr. Kray in and also talk to other people out there in the communities and see what they do. Mr. Wells said Item #2 doesn't make sense to him at this time. The bottom line price of $300,000 and $523,000 shouldn't have been on those lists. The quarter of a million dollar discrepancy in pricing is still a red flag for me.

Mr. Heffner said he would like to know who the DPW Director was that Mr. Wells spoke to, and who were some of the municipalities.

Mr. Wells told Mr. Heffner he will give him that information and he could make some calls.

Mr. Kray said both he and the Mayor met with Mr. Wells. He thanked Mr. Wells for taking the time to come in and meet with them. We had a lot of discussions about different contract types and how to address the emergencies the City runs into. Over the last 3 years, we have not had that many emergencies. Two were in this past year and one of those was an absolute emergency we had to get to immediately. One could have taken a few extra days; it wasn't a 24-hour respond situation. The best way to protect the City's fiscal interest is to have a competitive bid. Rotating contracts through a list of local contractors based on prices they give you for equipment and labor is fine. The one unknown is who is going to show up with how much equipment and labor.

Mr. Kray explained further, what we did with this contract is the same that we have always done. Everyone has copies of the bid sheet for the pavement marking contract, high weed cutting contract and bid tabulation for Davison Rd. The way those contracts were done and the way MDOT does it, they come up with a list of pay items you need to accomplish out on the job. We came up with a cross section throughout our sewer system of different pipe sizes at different depths, covering the entire range of pipe sizes the City has in their sewer system, and covering the entire rage of depths. We asked the contractors to give a unit price per foot of repair. Then I had my staff come up with what we anticipated we could see in a given year, number of feet of a certain pipe size. We are not going to see the entire different pipe sizes needing repairs. But to keep everything on an even footing, you come up with a pay item and a quantity and you have the contractors bid on each of those quantities, then you total those quantities. You total those prices to come up with an aggregate bid that is the least. You go for the lowest bid I was quite pleased to see how much below the other contractor our low bidder came. I thought it was a phenomenal stroke of luck in getting a good low bid.

Mr. Kray said if we award this contract, the City is not held to anything in this contract. On page 2, it talks about increasing or decreasing pay items. I can increase and give those pay items to any amount I want or decrease them down to zero. I do not have to award any work to a contractor if I see there is something wrong. We also have a clause in there that if something comes up we didn't account for we do the work under time and materials. Before we proceed with time and materials, we sit down and we agree on the equipment being brought to the job and the labor force brought to the job. The City is protected there. The contractor can't bring out whatever they want and just bill us; it is in the contract.

Mr. Kray explained further that on page 6, each pay item is complete in place. If we say you are going to repair a 12-inch sewer 25 ft. down, that is complete. It includes excavating it, placing the pipe, backfilling it and bringing it all the way up to original grade. Then there are items of restoring including grass and concrete pavement and/or asphalt. We have gone to a lot of work to protect the City's interest and put our contract much more in line with mainstream contracting instead of just asking the contractor to come out and fix it and then you are at their mercy, as we have in the past with how much equipment and labor they bring to the job. In summary, Mr. Kray stated he likes the contract but it is up to Council to make the choice.

Mr. Heffner said if we have 3 contractors we use and they are all on a big job and we have an emergency, we are going to pay out the nose to get them to pull their equipment off that job and come and fix our emergency. With this contract, they have to pull off the job and take care of us. He will vote yes on Item #2.

Mr. Wells said he understands what Mr. Heffner is saying but the problem is there is not enough work out there to go around right now. We could run into a situation like that in which case the Drain Commissioner is always on hand. In each case you have this quote, but there is going to be another quote to fix that specific problem so we haven't really saved ourselves any time. We still have to send a guy out, they have to send a guy out, look at the situation and they are going to say this is what we need. We are going to need this piece of equipment, this many people and this many hours. Mr. Wells said other than having their hourly rates, costs of equipment and required supplies, their specific bid for each job, I don't want to lock ourselves into one contractor. Let's say they do have a huge job, they have everyone working and we have a breakdown, they are locked into these prices. Do you think they are going to take their guys off this job to run over and fix our break down?

Both Mr. Heffner and Mrs. Ellenburg expressed we have a contract.
Mr. Wells said it says we don't have to use them if we don't want to. It does not make sense to me. Mr. Wells inquired to Mr. Austin.

Mr. Austin stated it is fairly common in contracts we have entered into with our suppliers in the DPW.

Mr. Wells said they go through all the work getting prices; this is a couple of days work in figuring their equipment and everything else into it. Then we ask for a $30,000 performance bond on top of it, for which they might get in 5 years, $30,000 worth of work. If something comes up and we say we are going a different way, I don't understand that.

Mr. Austin said it is fairly standard language that we don't have to use their services. The intention is that we will, but the language that we don't have to is fairly common.

Mr. Wells said he would vote no on it. I don't think this is necessary and we are doing well without it. I think we keep everyone in the loop and not alienate any contractors we may need in the future.

Mr. Kray explained this is a unit price contract. If they work on and replace 10 feet of a 6-inch pipe, they are paid 10 feet at the unit price. If they replace 100, they are paid 100, so on and so on.

Mr. Haskins stated that Mr. Wells made the comment if there is an emergency and they have to be called out, they have to send their guys out and submit a bid for the job.

Mr. Kray replied no, if they dig down and they have to replace 12 feet of 24-inch pipe, it is 25 ft. deep, here is the price they get per foot. They go through a lot of calculations in coming up with this bid. What kind of work force am I going to have to put in this job, if it is this deep, how much foot am I going to have to immobilize? What labor am I going to have to put in, how much is the materials going to be. They have to go through a lot to get to each one of these unit prices at those given depths. You have already got your competitive bid and your price total. It is just like the pavement marking, if we are going to put down a 6 inch line, 1,000 feet and a school crossing logo, we have prices we know how much to pay per foot and how much the school crossing is going to be. For street sweeping, it is per linear foot of curb. We know exactly how much it is going to cost. This is exactly the same as the format we have used for every other contract we have done since I have been here, and all the MDOT contracts are the same format.

Mr. Haskins said Mr. Heffner's comments about being on a big job and pulling off they would be more than willing to do so with this contract. The contract does allow the company leeway and how fast they have to show up, how much time they get to do the job under time of completion. It says the contract will be expected to mobilize within 24 hours and work diligently until services are restored. It says there is no specified completion date or specified time to complete the work. So the contractors do get leeway in that aspect.

Mr. Haskins stated further, Mr. Wells brings up some valid points, but he doesn't know if he sees the harm in the contract. I think it is nice to have a company ready and available with a signed contract if we get into an emergency situation. I understand rotating contractors. Just the one thing with this contract is we know what we are going to be paying. Mr. Haskins asked if there are any hidden costs.

Mr. Kray responded there is a time and material clause that if something does comes up that is unforeseen we can sit down around a table and we will set up an emergency meeting and we will agree on the equipment and labor that is going to be mobilized and move forward. You set up equipment, labor and the rates which are on page 6.

Mr. Haskins asked if there have been any problems in the past with getting a contractor out if they were called in an emergency situation.

Mr. Kray said no because we did have it contracted, it was an emergency response contract with Young's Environmental.

Mr. Haskins questioned if Young's put a bid on it this time, and if they were asked to.

Mr. Kray responded they did not put a bid on it. They were asked. He had a meeting with one of the officer's of the company about some items in the contract. There were some clarifications made and some wonderful ideas. We made the changes that were recommended but they did not bid.

Mr. Haskins asked about Steve's Plumbing.
Mr. Kray said he doesn't think Steve's Plumbing or Waldorf's have the equipment to go to that depth. We can go up to 15 foot.

Mr. Haskins reiterated Mr. Wells had some valid concerns and points but he doesn't see the harm with going with a contract with guaranteed pricing, especially if our contract allows us to say we are not going to use you.

Mr. Wells said I can't argue with that, there is no harm. If we don't have to use you why do we need a contract?

Mr. Haskins said this contract doesn't cost us any out of pocket expense.

Mr. Smith said the differential on the 2 bids is so substantial can Zito make any money at these rates?

Mr. Kray said I don't think they would have bid that if they couldn't. A lot of times your company has enough work for the upcoming season, I have seen contractors throw really high numbers out there and their thought process is we don't need it. If we get it at these numbers, fantastic. That could have happened with the other bidder. I have discussed it with Zito and they are fine with it.

Mr. Martinbianco wanted clarified that the City's inspection force will be the inspecting crew under any circumstance including the contractual agreements that might come forth here.

Mr. Kray confirmed yes, it is a safe assumption.

In reference to Item #6, Mr. Wells asked for clarification. Mayor Zelenko stated we have to show the County we are going to be good for that bond payment. There was a rumor that Flint Township may want to pay it off early. We haven't been able to confirm that rumor one way or the other. I prefer we go ahead with the bond payment as scheduled and if there is that type of item that comes to fruition, we will bring it to Council as soon as possible.

COUNCIL ACTION:

Haskins moved and Ellenburg seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from November 14, 2012 through November 28, 2012, in the amount of $4,336.75.

Motion carried 7-0.

Haskins moved and Heffner seconded the following motion:

2. Approve and authorize the acceptance of the low bid and allow the Mayor and Clerk to enter into a contract, contingent upon the submittal and approval by the City Attorney of the required bonds and insurance documents, on behalf of the City of Burton with Zito Construction Co., 8033 Fenton Rd., Grand Blanc, MI 48506 to provide Sanitary Sewer Emergency Repairs, for a period of one year, through December 2013.

Motion carried 6-1, with Wells voting no.

Haskins moved and Heffner seconded the following motion:

3. Approve and authorize Council's reappointment of Tracy Parker, 1131 Davenport Ct., Burton, MI 48529, to the Zoning Board of Appeals. Term expires December 2015.

Motion carried 7-0.

Haskins moved and Wells seconded the following motion:

4. Approve and authorize Council's reappointment of Tim Rapacz, 1478 Schafer, Burton, MI 48509, as the Zoning Board of Appeals Alternate. Term expires December 2015.

Motion carried 7-0.

Haskins moved and Heffner seconded the following motion:

5. Approve and authorize Council's reappointment of Robert Olsen, 3300 Coin St., Burton, MI 48519, as the Zoning Board of Appeals Alternate. Term expires December 2015.

Motion carried 7-0.

Haskins moved and Heffner seconded the following motion:

6. Approve and authorize the 2013 calendar year bond payment for City of Burton portion of the Fenton Road Watermain Project, not to exceed $30,978.16.

Motion carried 7-0.

Haskins moved and Heffner seconded the following motion:

7. Approve and authorize Martin Coe to purchase one (1) year and nine (9) months of MERS pension generic service time. The total cost of $42,483.00 will be at the employee's expense.

Motion carried 7-0.

Heffner moved and Haskins seconded the following motion:

8. Approve and authorize the Burton City Council Regular Meeting Schedule for 2013.

Motion carried 7-0.

SECOND READING OF AN ORDINANCE:

Haskins moved and Heffner seconded the following motion:

1. Approve and authorize the Second Reading of an Ordinance, Ordinance No. 2012-___-113.01, An Ordinance Amending Chapter 113 of the Code of Ordinances of the City of Burton By the Addition of Text Changes, Permitting Administrative Approvals for Outdoor Recreational Events That Meet Specified Regulations, and Providing Penalties For The Violation Thereof.

Motion carried 7-0.

Meeting adjourned at 8:10 p.m.

Julie Adams, City Clerk