

CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
JANUARY 5, 2009, 7:00 P.M., COUNCIL CHAMBERS
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Councilman Duane Haskins led the Invocation and Pledge of Allegiance.

The Regular Meeting was called to order by President Tom Martinbianco at 7:00 P.M.

MEMBERS PRESENT: Conley, Ellenburg, Haskins, Heffner, Martinbianco, Tinnin and Zelenko.

MEMBERS ABSENT: None.

OTHERS PRESENT: J. Benthall, Police Chief; G. Kray, DPW Director; Attorney R. Austin and G. Webster, City Clerk.

Haskins moved and Tinnin seconded the following motion:

Approve and authorize the minutes of the following meetings: Special Council Meeting on December 10, 2008 at 6:00 p.m., and the Regular Council Meeting on December 15, 2008 at 7:00 p.m. Motion carried 7-0.

ADMINISTRATIVE REPORT:

Chief Benthall wished everyone and the City a wonderful and prosperous New Year.

Mr. Martinbianco thanked Chief Benthall for his leadership over the past year. He acknowledged that Mr. Benthall came back under some very difficult conditions. He appreciated his efforts.

COMMITTEE REPORTS:

None.

AUDIENCE PARTICIPATION:

John Stapish, P.O. Box 190134, opposed the Palace Garden demolition. He felt the building was basically stable. Other factors such as the set back of the building, unpaid taxes and exterior damage have nothing to do with the structural integrity of the building. He said the woodshed on the Walker Farm property was in disrepair and needs to be addressed.

Elmeretta Fischer, 851 Lakeshore Dr., Columbiaville, opposed the Palace Garden demolition. She said that paper, garbage and a couch were cleaned up. The Police Department resolved the prostitute problem. She wanted the opportunity to discuss the demolition later in the meeting.

COUNCIL DISCUSSION:

Mr. Haskins acknowledged that Stan Defreeze had retired from the Fire Department after 50 years of service. He thanked Mr. Defreeze for his service to the community.

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Mrs. Tinnin said the DPW was doing a good job with snow removal on the main roads. However, she was concerned with the icy subdivision roads. She hoped DPW could address those roads as soon as possible. In addition, she would like DPW to address the Chemco building. A resident has made several complaints. No permits were issued for the Halloween store and a hearse is parked in front of the building. This property should be cleaned up and put back in its respective order. Mr. Kray said the building has been there since Halloween 2007. Mr. Butzke has contacted Chemco to remove the building. Mr. Kray hoped to resolve this issue in the near future.

Mr. Martinbianco thanked the DPW director for the great job of snow removal during the holiday season. However, there are still icy road conditions in the subdivisions. He would like this issue addressed as soon as possible. In addition, he thanked the Police Department for their efforts in dealing with traffic situations during the holiday season.

In reference to Item 2 concerning Palace Gardens, a motion was made for immediate demolition. Mr. Martinbianco reviewed the Council's instructions from the December 15, 2008 meeting. The motion read: Postpone any further action until January 5, 2009, based on the following circumstances: Mrs. Fischer needs to have her Attorney present at the next meeting, provide a detailed plan with a timeline for completion of the work and begin remediation of the northeast corner of the building immediately.

Mrs. Fischer contacted her attorney. He could not provide any more information. Besides, she could not afford to pay the attorney to attend the meeting. She is still waiting for the insurance to clear. She does not want the building torn down. She said the building was structurally sound. She said the fire burned through the roof. It was patched. Later, there was another leak and it was patched. Fire debris has been removed. If DPW wanted to inspect the inside of the building, she would let them. She said animals were not in the building. She does not have any architectural drawings. She briefly spoke on the layout of the building. She did not feel the vacant building was a nuisance to the community.

The following issues were discussed regarding the Palace Garden site: the building was known as a landmark, the intent to repair the building, the status of taxes, the site becoming a productive business in the community, a time frame for completion of the work, assurance that the building is structurally sound, assurance that a plan is in place to rehab the building, the need for architectural plans, the project can't be delayed indefinitely, the nuisance of the property to surrounding neighbors, vacant buildings attracting crime, debris and other undesirable activities, the option to demolish or allow time to rehab the property, the need for plumbing, electrical and mechanical permits, ADA compliance issues, meeting ZBA procedures, inactivity of the project, the unsightly appearance of the building and the option to go to circuit court.

Mr. Martinbianco pointed out that the City has been gracious and tolerant when dealing with this issue. Nothing has been done with the project. He acknowledged that Mrs. Fischer was still anticipating an insurance settlement. However, the City has been dealing with this matter for several years. There were expectations that some plans would be provided. They were not provided. He felt the insurance deal was long gone, the liquor license was still in escrow and the taxes were still in arrears.

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Mrs. Ellenburg supported the option to rehab the building. She suggested grant money might be available due to the historical value of the property.

Mrs. Conley said that Jennifer Morquecho supports the demolition. Mrs. Conley wanted to know if Mrs. Fischer didn't have money for the architectural drawings, how was she going to have enough money to open a business. Mrs. Fischer thought the insurance money would cover the costs and her son would help with repairs. Mrs. Conley asked if insurance settlements generally take this long.

Mr. Austin said it has been very difficult to determine what was going on with the insurance claim. He did not know. Typically, it does not take this long for a settlement. Mrs. Fischer indicated this has been going on since December of 2005.

There was a brief discussion on Mrs. Fischer's attorneys. Mr. Zeemer was hired originally as the insurance adjuster. Later, Michael Fabian was hired to deal with the fire insurance issue. Mrs. Tinnin said Mr. Fabian should have been present to provide more specific details. Mrs. Fischer said she could not afford to pay her lawyer to come to the meeting. Mrs. Tinnin said no more information has been provided. No specific dates were provided for resolving this issue. She felt Council needed to represent area residents. She thinks the building is an eyesore, there is structural damage and permits need to be obtained. She would like to see it remain on the tax roll. She would like to give Mrs. Fischer more time, but she did not come forth with any concrete plans. The building should not remain in such disrepair.

Mrs. Zelenko felt the City needed some concrete documentation and architectural drawings to determine on how this project would move forward. The Council can only render a decision based on the fact that the building is not structurally fit. That is why it is on the demolition list. This cannot go on indefinitely. It is not fair government or to the citizens in the area.

Mr. Martinbianco referred to Special Council Meeting Minutes from February 4, 2008. He reviewed timelines and several postponements of the project. After the December 15th postponement, the Council expected a plan of action.

Mrs. Zelenko said perhaps the action of immediate demolition would motivate Mrs. Fischer, the insurance company or her attorneys to do something.

In reference to the Second Reading of Ordinance, Mr. Haskins wanted to change a portion of the ordinance to indicate the Mayor or his designee instead of the DPW Director. He said the DPW Director was a union position, as of right now. That could change at any point in time.

Mr. Austin indicated that would not be a substantial change to the ordinance. If the Council wished to make the adjustment, they could continue with the second reading of the ordinance.

Mr. Haskins moved and Mr. Heffner seconded an amendment to Ordinance 156.24, Section I (b), (2) to read the Mayor or his designee.

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Mrs. Tinnin said the intent of the ordinance was to give the DPW the legal latitude to advise the Mayor's Office, if there were insufficiencies with the bonds that were attached to the project. The DPW Director would contact the Mayor, which would ultimately end up in the Council's hand. This would have final approval by City Council. She didn't feel it would infringe on the Mayor.

Mr. Martinbianco wanted to know if there were any legal issues with Section 4.8 of the Charter and the way the original draft of the ordinance was written.

Mr. Austin felt that this ordinance did not violate Section 4.8 of the Charter. He said the Mayor disagreed with his opinion. Mr. Austin pointed out that many ordinances give directives to employees of the City.

Mrs. Tinnin said this indicates that the DPW Director shall have authority to recommend. He doesn't have the authority to approve. The authority to recommend comes back to Council for approval. We should be made aware of the deficiencies of these projects. She didn't feel this tied anyone hands. She said ultimately the Mayor has the final authority for everything in the City.

Mr. Haskins said it would be more efficient to include the Mayor or his designee to the ordinance. He said the Council could not give a directive to employees. Mrs. Tinnin said the Council has the ability to amend an ordinance at any point in time. She said either wording was fine with her. She just wanted some protection for the City, other than paying for shortages out of the General Fund.

A vote was taken on the amendment to change the wording in the ordinance to the Mayor or his/her designee. The motion failed 2-5, with Conley, Ellenburg, Martinbianco, Tinnin and Zelenko voting no. The wording remained the same. A vote was taken on the proposed ordinance, as written. The second reading of the ordinance passed 5-2.

COUNCIL DISCUSSION ACTION:

Moved by Haskins, Seconded by Heffner to amend Ordinance 156.24, Section I (b), (2) to read the Mayor or his designee. Motion failed 2-5, with Conley, Ellenburg, Martinbianco, Tinnin and Zelenko voting no.

COUNCIL ACTION:

Zelenko moved and Haskins seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from December 10, 2008 through December 18, 2008 in the amount of \$5,170.00.

Motion carried 7-0.

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Haskins moved and Tinnin seconded the following motion:

2. Approve and authorize the Standard Resolution for Step V of the Burton City Demolition Procedure, determining said premises at **3266 S. Dort Highway** to be a public nuisance or hazard and to further require the owner(s) or occupant(s) to:
 1. Immediate Demolition, with DPW given authorization to request sealed bids and the Structure to be razed within the thirty (30) days of Burton City Council's acceptance of the low bid and the City Attorney's approval of the contract documents for execution of a contract with the Mayor and Clerk.

Motion carried 6-1, with Ellenburg voting no.

SECOND READING OF AN ORDINANCE:

Tinnin moved and Conley seconded the following motion:

1. Approve and authorize the Introduction of an Ordinance, being Ordinance 156.24 (D) (3) (b), Establishing assurances for the City to assure the completion of unfinished public improvements, and to provide penalties for the violation thereof.

Motion carried 5-2, with Haskins and Heffner voting no.

Meeting adjourned at 8:00 p.m.

Gayle K. Webster, CMC
City Clerk