

CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
MARCH 3, 2008, 7:00 P.M., COUNCIL CHAMBERS
www.burtonmi.us

Councilman Danny Wells led the Invocation and Pledge of Allegiance.

The Regular Meeting was called to order by Council President Tom Martinbianco at 7:25 p.m.

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

MEMBERS ABSENT: None.

OTHERS PRESENT: G. Kray, DPW Director; Attorney Michael Joliat and G. Webster, City Clerk.

Haskins moved and Conley seconded the following motion:

Approve and authorize the minutes of the following meeting: Regular Council Meeting on February 18, 2008 at 7:00 p.m. Motion carried 7-0.

ADMINISTRATIVE REPORT: None.

COMMITTEE REPORTS:

Mrs. Tinnin reported on the Legislative Meeting that was held at 6:30 p.m. The discussion focused on the sidewalk snow removal ordinance and how to administer enforcement. Violation of the ordinance will become a municipal civil infraction.

Mr. Heffner said the Gus Macker would be held at the Showcase Cinema. They are in the process of securing electricity, insurance, advertisement and sponsors. The Shriners, Boy Scouts and UAW Region 1-C will be participating in the event. The next meeting is scheduled for Tuesday, March 4, 2008 at 5:00 p.m. The tournament will be part of the Memorial Weekend Activities.

AUDIENCE PARTICIPATION:

Keith Cox, 4349 Chicory, spoke on Pebble Creek and other special assessment districts. He opposed the \$11.5 million bond proposal. He questioned the need for water, sewer and fire department improvements in these poor economic times. He wanted to rescind the bond resolution or put it to a vote of the people. He has referendum petitions ready and available for signing.

Bud LaGrande, 2105 E. Buder, opposed the \$11.5 million bond proposal. He spoke on vacant rental homes, loss of tax revenues and reduced property values. He wanted to know how the City was going to pay for the bond projects.

Geraldine Renick, 5460 Aspen Circle, spoke in opposition to the \$11.5 million bond proposal. She said taxes were too high. She wanted to know if these were general obligation or revenue bonds. She wanted to know if this would raise her taxes. She wanted to know if there was a revenue facility to pay back bonds.

REGULAR COUNCIL MEETING MINUTES

MARCH 3, 2008 / 7:00 P.M.

PAGE 2

Mr. Wells felt it was premature to discuss the bond projects. Bond attorneys are advising the Council on related issues. Then the Council will decide whether to go forward with specific projects.

Mr. Martinbianco indicated that sewer and police facility bonds would soon be paid off. Some of this money would be earmarked for additional capital improvements, such as fire station improvements. These bonds would be sold at favorable interest rates.

John Stapish, P.O. Box 190134, spoke regarding the Belsay Road sewer line. He asked for clarification on the Cernet Consent Judgment.

Mr. Martinbianco indicated that sewer lines were being constructed near Belsay Rd to meet obligations with the Genesee County Drain Commission.

Mr. Joliat provided a brief outline on the proposed Cernet Consent Judgment. He said this would settle the litigation and require ZiMar to meet compliance with previous site plans. The agreement addresses the height of the berms, the addition of trees, the placement of storage areas, additional buffers, a portion of Red Arrow Road would be vacated, additional fencing, and a time frame for completion. Enforcement and compliance of violations would be addressed in Court.

Kathy Foutch, 3347 Cheyenne, spoke in opposition to the Cernet Judgment. She said the City has not enforced the noise and dust at the facility. The denial of the zoning case was handled properly. The residents worked hard for a year to stop this. She hoped the City would take action and protect the residents.

Tom Bundschuh, 3331 Menominee, spoke in opposition to the Cernet Judgment. He has been a resident for 38 years. He said that his windows vibrate. He didn't believe the fences would stop the unbearable noise. Double bottom dump trucks work on the cement piles all day. Their large tailgates bang constantly as they empty materials. He said the residents were in place before the company encroached on their lives.

Jennifer Morquecho, 2246 Red Arrow Road, filed a complaint that the sidewalks at 4303 S. Center Rd were not cleaned off. She said homes in the Red Arrow area directly see, hear and feel every single noise of Zito Construction. Residents have a true perspective of the impact on the environment. Council members can't fully relate to this situation by a quick visit to the site. She strongly opposed the expansion of the M-1, light industrial designation. This agreement allows the company to convey and dump material on the north side of Red Arrow, bringing the extreme noise, vibrations and pollutants closer to the homes. She said the times of operation do not correspond with the noise ordinance. This would disturb their peace and quality of life. The dumping, the pouring and the beeping all day long bring her to tears. A lot of neighbors agree with her. This case was heard in front of the Planning, Zoning and Council. The Consent Judgment would wipe out all those decisions and their hard work. This would take away their rights. She filed a motion to intervene with Judge Yuille. She begged the Council not to approve the agreement.

Jaime Boggs, 3344 Cheyenne Ave., indicated that her home was close to the site. The company put up a metal fence, a berm and took down trees. They tore out the remaining sound barrier.

REGULAR COUNCIL MEETING MINUTES

MARCH 3, 2008 / 7:00 P.M.

PAGE 3

That's why it's even louder and rattling Mr. Bundschuh's home. She didn't think a new berm would help the noise and vibration. She felt her comments didn't matter and was defeated before she came. The Burton Banner took the Mayor's viewpoint, indicating this was a sure thing.

Bill Maloney, 1160 Arrowhead Dr., was disappointed that the Parks Commission did not listen to his concerns regarding a neighborhood park on Arrowhead. They intended to have the park. He opposed the sidewalk ordinance. He didn't think elderly or disabled people should have to clean their sidewalks. He wanted Council members to provide more information on the \$11.5 million bond proposal. He felt this should go to a vote of the people.

Mrs. Tinnin said the sidewalk ordinance would become a municipal civil infraction. She felt letters should be sent out uniformly rather than selectively. Civil infractions should not be issued, unless it's done throughout the entire City.

Jane Nimcheski, 2429 Genesee Rd., opposed the \$11.5 million bonds. She felt projects should have been designated in advance. She understood the Fire Station would be funded through expiring bond money. She felt the bonds would raise water rates. She said mutual agreements needed to be signed with other communities before going forward. She asked for clarification on the Pebble Creek assessment debt.

Mr. Martinbianco said the Council had discussed these projects at length. The Fire Station improvements would be the first component of the project. He felt we should take advantage of low interest rates and favorable construction bids. With the guidance of the bond attorneys, the Council would choose the proper projects, in a conservative fashion.

Eleanor Carpenter, 2224 Red Arrow Rd., spoke in opposition to the Cernet agreement. She has lived in the area for 42 years. Council was not taking the residents into consideration. A past member visited the site and said it was dirty, dusty, noisy and a health hazard.

Candice Sandborn, 2128 Connel, spoke in opposition to the Cernet Consent Judgment. She said this impacted the health of the Red Arrow residents. The Council should support them.

Rick Furst, 1208 S. Genesee Rd., spoke in opposition to the \$11.5 million proposal. He said projects were not specified. He expected the Council to represent the citizens' best interest.

COUNCIL DISCUSSION:

Mrs. Ellenburg wanted to meet with DPW officials to discuss water and sewer projects relating to the \$11.5 million bond. She felt the community needed more information. Mr. Martinbianco asked for the November 26, 2007 meeting minutes to be available at the meeting. This topic was discussed at length on that date. He said the Council does have some objectives and necessities to address, which will be done in a fiscally responsible manner.

Mrs. Tinnin said the bond project costs were not identified at the November meeting. She opposed the \$11.5 million bond proposal. She wanted the people to file petitions by April 2, 2008, so this would go to a vote of the people. She said the expansion of the water and sewer system was of no benefit to the current user. They should not have to pay for it.

REGULAR COUNCIL MEETING MINUTES

MARCH 3, 2008 / 7:00 P.M.

PAGE 4

Moved by Ellenburg, Seconded by Tinnin to: Approve and authorize Council to set a Council of the Whole Meeting for March 19, 2008 at 5:30 p.m. for the purpose of discussion with DPW staff relating to the \$11.5 bond proposal. Motion carried 7-0.

The Regular Council Meeting recessed at 9:00 p.m.

The Regular Council Meeting resumed at 9:10 p.m.

Mrs. Tinnin said the complete resolution initiating the \$11.5 million bond proposal should be rescinded. Moved by Conley, Seconded by Tinnin to add as item 7 to: Rescind the complete resolution from February 4, 2008 relating to the \$11.5 million dollar bond proposal. Motion failed 4-3, with Wells, Martinbianco, Ellenburg and Haskins voting no.

If anyone wants to go to the MML Capital Conference April 1st and 2nd please let Mr. Martinbianco know so plans can be finalized.

Mr. Haskins wanted Mr. Austin to provide more information on the 2-20-08 billing entry. The billing was reduced by \$25.00. Mrs. Tinnin did not have a problem with the Attorney speaking with a resident. Moved by Haskins, Seconded by Heffner to: Amend Item 1 to read, Approve and authorize the Attorney Billing (Richard Austin) from February 13, 2008 through February 27, 2008 in the amount of \$3,850.10. Motion carried 6-1, with Tinnin voting no.

Moved by Wells, Seconded by Ellenburg to: Amend Item 4 to read, Approve and authorize Rowe, Inc. 4400 S. Saginaw St., STE 1200, Flint, MI 48507, PO Box 3748, Flint, MI 48502, to inspect the following bridges as required by MDOT: Maple Road over the Thread Creek, Bristol Road over the Thread Creek, Atherton Road over the Thread Creek and Atherton Road over the Gilkey Creek. These inspections will be performed at \$350.00 per bridge, with costs to be paid for out of the 2007/08 Major Street Surface Contractual Services Budget. Motion carried 7-0.

Mrs. Tinnin said when the Council turns down a rezoning request, the applicant would normally appeal. Cernet went to Circuit Ct. She did not remember anyone coming back for a consent judgment. She thought this took away the citizen's right to petition. This company has not complied with their site plan for six years. She said anyone that lived in the area would not want to be subject to that noise, dust and disturbance. You wouldn't want your property values to go down.

Mr. Joliat indicated that this is a standard practice in all lawsuits. Many civil lawsuits are resolved without going to court. Frequently, zoning cases are resolved this way. The citizen could not petition. This is a consent judgment of a lawsuit. The terms and conditions detailed in the judgment would apply. The circuit judge would have enforcement power over the consent judgment.

Mr. Martinbianco received a Motion to Intervene filed by Mrs. Morquecho. They do have appellate rights. He read two comments into to the record. Mr. Bertram wanted the Council to know that he still opposed the Cernet rezoning. He did not want the company to expand or alter the use of the current facility. In addition, Michele Mullin and Kevin Pilon, 2228 Red Arrow Rd., opposed the Cernet Consent Judgment. They spoke in reference to the lack of notification,

REGULAR COUNCIL MEETING MINUTES

MARCH 3, 2008 / 7:00 P.M.

PAGE 5

declining property values, no one listening to the resident's concerns and the importance of the environment.

Mr. Wells said the residents would have more of the same, if they did nothing. By approving the agreement, we have control over the situation. This should make the residents' lives better. He appreciated their passion on this issue. If we vote no, we will end up back in court on this issue. He has visited the site and it looked better than ever. Mrs. Tinnin pointed out that Zito was not seeking any monetary value. They were just suing the City Council until they got their way.

Mrs. Ellenburg had a lot of compassion for these people. She listened to everyone. It was a very difficult decision. She put herself in their place. She would be voting no on this issue. Mrs. Conley supported the people on this issue. She felt very strongly that they should not have to be here again. We already voted on this issue.

Mr. Martinbianco said everyone had a chance to revisit the site. He felt the biggest issue would be to address the drainage problem in that area.

Mrs. Tinnin said the average tap in fee around the county was \$1,700. She wanted to know how the City was going to recoup the costs for water and sewer projects. She said the costs would be put on the backs of ratepayers. She expected Mr. Kray to bring in agreements from people that are willing to pay for their water. Mr. Kray was supportive of water and sewer projects that would bring more customers on board.

COUNCIL DISCUSSION ACTION:

Moved by Haskins, Seconded by Tinnin to: Approve and authorize Council to set a Council of the Whole Meeting for March 19, 2008 at 5:30 p.m. for the purpose of discussion relating to the \$11.5 bond proposal. Motion carried 7-0.

Moved by Conley, Seconded by Tinnin to add as item 7 to: Rescind the action taken by resolution on February 4, 2008. Approve and authorize a resolution for and the publishing of the Notice of Intent by the City Clerk to issue and sell general obligation capital improvement bonds, pursuant to Act 34, Public Acts of Michigan, 2001, as amended, in one or more series in an aggregate amount not to exceed Eleven Million Five Hundred Thousand Dollars (\$11,500,000) for the purpose of paying part of the cost of acquiring and constructing certain capital improvement items in the City consisting of (a) acquiring land, constructing, furnishing and equipping a new fire station and renovating existing fire stations, (b) acquiring, constructing, furnishing and equipping additions, extensions and improvements to the City's Water Supply and Sewage Disposal System, together with all necessary interests in land, rights of any and all appurtenances and attachments thereto, and (c) acquiring and constructing an addition to the Department of Public Works facilities collectively, the "Project"). Motion failed 4-3, with Wells, Martinbianco, Ellenburg and Haskins voting no.

Moved by Haskins, Seconded by Heffner to: Amend Item 1 to read, Approve and authorize the Attorney Billing (Richard Austin) from February 13, 2008 through February 27, 2008 in the amount of \$3,850.10. Motion carried 6-1, with Tinnin voting no.

REGULAR COUNCIL MEETING MINUTES

MARCH 3, 2008 / 7:00 P.M.

PAGE 6

Moved by Wells, Seconded by Ellenburg to: Amend Item 4 to read, Approve and authorize Rowe, Inc. 4400 S. Saginaw St., STE 1200, Flint, MI 48507, PO Box 3748, Flint, MI 48502, to inspect the following bridges as required by MDOT: Maple Road over the Thread Creek, Bristol Road over the Thread Creek, Atherton Road over the Thread Creek and Atherton Road over the Gilkey Creek. These inspections will be performed at \$350.00 per bridge, with costs to be paid for out of the 2007/08 Major Street Surface Contractual Services Budget. Motion carried 7-0.

COUNCIL ACTION:

Ellenburg moved and Conley seconded the following main motion as amended:

1. Approve and authorize the Attorney Billing (Richard Austin) from February 13, 2008 through February 27, 2008 in the amount of \$3,850.10.

Motion carried 6-1, with Tinnin voting no.

Ellenburg moved and Wells seconded the following motion:

2. Approve and authorize the Attorney Billing of Keller Thoma, 440 East Congress, 5th Floor, Detroit, MI 48226 for February 2008 in the amount of \$124.20.

Motion carried 7-0.

Wells moved and Heffner seconded the following motion:

3. Approve and authorize the request from L & F, Inc., to transfer all stock in 2007 Class licensed business with dance-entertainment permit, located at G-3384-3386 S. Saginaw, Burton, MI 48529, Genesee County, Wherein Robert T. Lindsay transfers 10,000 shares to new stockholder, Michael L. Dunklee.

Motion carried 7-0.

Haskins moved and Conley seconded the following main motion as amended:

4. Approve and authorize Rowe, Inc. 4400 S. Saginaw St., STE 1200, Flint, MI 48507, PO Box 3748, Flint, MI 48502, to inspect the following bridges as required by MDOT: Maple Road over the Thread Creek, Bristol Road over the Thread Creek, Atherton Road over the Thread Creek and Atherton Road over the Gilkey Creek. These inspections will be performed at \$350.00 per bridge, with costs to be paid for out of the 2007/08 Major Street Surface Contractual Services Budget.

Motion carried 7-0.

Wells moved and Conley seconded the following motion:

5. Approve and authorize the acceptance of an application for Webcor Packaging Corporation, 1220 N. Center Rd., Burton, MI 48519, for establishing an Industrial Development District and setting the date of April 7, 2008 at 6:30 p.m., for a public hearing to consider the application.

Motion carried 7-0.

REGULAR COUNCIL MEETING MINUTES
MARCH 3, 2008 / 7:00 P.M.
PAGE 7

Wells moved and Haskins seconded the following motion:

6. Approve and authorize the City Attorney to execute the Consent Judgment resolving the matter of Cernet, LLC and Zi-Mar, LLC vs. The City of Burton, Case No. 07-87652-NZ upon the terms and conditions as set forth in the Consent Judgment.
- Motion carried 4-3, with Conley, Ellenburg and Tinnin voting no.

SECOND READING OF AN ORDINANCE:

Haskins moved and Wells seconded the following motion:

1. Approve and authorize an Ordinance 101C-1, to Repeal Ordinance 101C regarding the Establishment of a Collective Bargaining Authority.
- Motion carried 7-0.

Haskins moved and Wells seconded the following motion:

2. Approve and authorize an Ordinance 103C-1, to Repeal Ordinance 103C regarding the Use of Tobacco Products in City Buildings and Vehicles and Upon City Owned Land.
- Motion carried 6-1, with Tinnin voting no.

Wells moved and Ellenburg seconded the following motion:

3. Approve and authorize Ordinance 6C-R, amending Ordinance 6C, Section 1B-1, to read the connection charge shall be \$1,000 per unit for the first 50 units, and \$750 per unit thereafter.
- Motion carried 5-2, with Conley and Tinnin voting no.

Meeting adjourned at 9:50 p.m.

Gayle Webster, CMC
City Clerk