CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
APRIL 2, 2007, 7:00 P.M., COUNCIL CHAMBERS
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Vice President Jeff Major led the Invocation and Pledge of Allegiance.
The Regular Meeting was called to order by Vice President Jeff Major at 7:17 P.M.

MEMBERS PRESENT: LaDuke, Major, Tinnin and Wells.
MEMBERS ABSENT: Conley, Cross and Isham.
OTHERS PRESENT: Mayor C. Smiley; G. Kray, Deputy DPW Director; M. Udell, IT Dept.; Attorney R. Austin and G. Webster, City Clerk.

Tinnin moved and LaDuke seconded the following motion:

Approve and authorize the minutes of the Special Council Meeting on March 26, 2007 at 5:00 p.m., and the Regular Council Meeting on March 19, 2007 at 7:00 p.m. Motion carried 4-0.

ADMINISTRATIVE REPORT:

Mayor Smiley presented the proposed 2007-2008 budget. The highlights included information regarding a balanced budget with surplus funds. There will be more employees hired, primarily in the Police Department. The Senior Center will be receiving $152,000 from the County millage. The sewer debt has been lowered to .4 mills. This will be paid off in 2008. The IT Department will be hiring some support help for our web site. The decrease in residential building permits since January 2006 will have a negative impact on the budget. The Water and Sewer operations are in deficit. However, because the interest rate is so high, we still have a surplus.

COMMITTEE REPORTS:
None.

AUDIENCE PARTICIPATION:

Bud LeGrande, 2105 E. Buder, spoke in support of Charles Abbey. He felt the City was going in a positive direction.

Steve LaLonde, 3155 E. Hemphill, submitted a bill to the City for structural engineering that was done on his home.

Ron Moore, Holly, Director of Jamas Community Center, wanted the Council to wave the current sidewalk ordinance for his property. They do not have enough money to comply with the site plans requiring sidewalks and paving improvements.

Robert Gazo, 2257 Savoy, announced the first Child Abuse Awareness Event would be held April 14, 2007 from 2:00-5:00 p.m. at Burton City Hall.

Jane Nimcheski, 2429 N. Genesee, wanted all Burton seniors to receive a newsletter so they would know what services were available. She said the $324,000 Rizzo payment should be paid back to the City of Burton.

Jennifer Morquecho, 2246 Red Arrow Rd., spoke regarding an ordinance complaint filed against the Zi-Mar Concrete Plant. She said there are huge piles of cement and the company lacked the proper permits. They were not in compliance with previous site plans and the loud noise was unbearable.

Jan Bolen, 1169 Howe Rd., wanted to know the effective date of Mr. Abbey's resignation. She said he did not pay for his property and two people should resign. She spoke regarding signage, swimming and water quality issues at Kelly Lake.

Pauline Dargel, 6119 Hugh St., suggested the City play public announcements, instead of music, while people are on hold.

Liz Moss, 1382 Ready Ave., said the City held its 4th Annual Easter Egg Hunt last Saturday. It was a great success.

Gary Card, 2098 Delaney, spoke on the health hazards of power lines and his increasing assessment. He felt the City was not adhering to a state law, by writing of delinquent water bills.

Nancy Card, 2098 Delaney, referred to bankruptcy laws under Chapter 7. She felt delinquent water or sewer bills could not be written off by the homeowner. Instead, those dollars should be added as a lean on their property taxes.

The Mayor indicated that the Treasurer was complying with state laws. She would be willing to discuss this issue with Mr. or Mrs. Card.

Mr. Major suggested that the Finance Committee look into this issue with the Treasurer.

Jaime Boggs, 3344 Cheyenne Ave., spoke regarding the Zi-Mar Group on Red Arrow Rd. She reviewed details of the site plan and indicated the company was not in compliance. She provided a packet of information listing several of her concerns with Zi-Mar.

Mr. Major asked Mrs. Boggs to contact Mr. Kray regarding issues dealing with Zi-Mar.

Joyce Centilli, 4479 Lawnwood Ln., asked for clarification on the absent council members.

Mr. Major said the absent members should have contacted the Clerk's Office in advance. He had called to announce his absence. However, when there wasn't a quorum, he was requested to attend.

COUNCIL DISCUSSION:

Mr. Austin spoke on behalf of Mrs. Conley. At the request of the Council, Mrs. Conley contacted Mr. Spender. She recommended the Council hire him to respond to an Unfair Labor Practice and negotiate with Teamsters Local 214. His hourly rate of pay is $225.00.

Mr. Steven Spender said his practice involves civil litigation and labor and employment law. He appreciated the interest in his firm and was happy to under take this endeavor.

Mr. Wells asked for clarification on why the council was hiring a labor attorney.

Mr. Major indicated that he would be providing services in regard to the proposed contract and the UFL charges that were filed against the City. He felt this was a very unique set of circumstances.

Mr. LaDuke said the Council needed to address the UFL charges immediately. This is not Mr. Austin's area of expertise. We felt we needed a labor attorney to address these charges, which we feel are unfounded. In the opinion of our attorney, we reserve the right to be involved with the negotiation process. We are moving forward to help resolve contract issues dealing with Teamsters Local 214.

Mrs. Tinnin said we took action by initially rejecting the contract. The labor attorney will represent the Council's legal interest, as we move forward.

Mr. Spender will conduct an investigation and report back to Council at the next meeting with a recommendation on how to proceed.

Mr. Wells opposed hiring a labor attorney to deal with Teamsters Local 214 contract issues. He wanted to do this at a reasonable cost to the taxpayers. He would like to move the contract forward.

Mr. Spender indicated that Ms. Weier's hourly rate is $175.00 an hour to do research relating to this issue.

A vote was taken on Item 5, to hire the firm of Spender & Robb, at rate of $175.00 per hour, to represent the City with regards to the Unfair Labor Practice charge filed by the Teamsters Local 214 and/or to assist in the negotiations of the contract with this union. (Mr. Spender's hourly rate of pay is $225.00 and Ms. Weier's hourly rate of pay is $175.00.) The motion carried 3-1, with Mr. Wells voting no.

Discussion was held in reference to the Zi-Mar company on Red Arrow Road. The Mayor will research the complaints regarding Zi-Mar. Then he planned to work with the residents, the company and DPW to help resolve this issue. The requirements of a birm and trees are easily addressed. However, the noise and ground shaking are problems that will be difficult to resolve. Mr. Major indicated that there have been ongoing discussions regarding Zi-Mar. He hoped the City could work something out before this case reaches the Zoning Board of Appeals, especially with the conditions that were placed on that site by the Planning Commission. Mr. Kray will research the issue and report back to Council. In addition, Mr. Wells said he would follow up on the situation.

In response to Mr. Moore, Mr. Wells indicated that representatives from the Planning Commission, Zoning Board, Legislative Committee and residents met to discuss the sidewalk ordinance. There were some slight modifications proposed for the sidewalk ordinance that wouldn't effect Mr. Moore's situation. Basically, their goal is to make Burton a pedestrian friendly community. They planned to support and abide by the current sidewalk ordinance.

Mr. Moore said that he could not afford to comply with the site plan. He would no longer pursue the Jamas Community Center.

Mr. Major said the Council did not have the authority to do anything about this issue.

Mr. Austin did advise Council that an amendment to the sidewalk ordinance would be coming to them in the near future. This does not effect Mr. Moore's situation.

Mr. Wells felt the City should try to recoup the $300,000 payment to Mr. Rizzo. He asked the Attorney for direction on this issue.

Mr. Austin emphasized he had nothing to do with the authorization of that payment. He was willing to research the issue and report back to Council.

Mr. LaDuke said the City was advised that this was a legal payment.

Mr. Major and Mr. LaDuke indicated that they were not involved with issuing the Rizzo payment. Mr. Major said the $325,000 was not a line item within the cost estimates for Pebble Creek. There is a report that reflects how much money was spent on construction costs. He said Mr. Hamilton gave Mr. Rizzo the idea to do a buy back special assessment. There is nothing illegal about a purchase back special assessment. This is within the realm of the law.

Mrs. Tinnin did not want Mr. Austin to be involved with this investigation due to the conflict of interest with Mr. Hamilton. She spoke regarding concerns with the special assessment pay back method.

Mr. Austin said the buy back was a viable option for special assessments projects. He did not know anything more regarding this issue.

Mrs. Tinnin moved and Mr. Wells seconded the motion to add to the agenda as Item 6: That we instruct our City Attorney to draft a letter to the State Department of Treasury to request that a forensic audit be done on the Pebble Creek special assessment project that was approved in 2003. The motion carried 4-0.
Warren Nimcheski, 2429 N. Genesee Rd., was concerned that there were no bids taken between the first and second public hearing, with the one signature petition, for Pebble Creek. They sold the bonds for whatever somebody said it would cost.

A discussion was held in reference to signage, swimming and water testing at Kelly Lake.

Mr. Austin felt a sign would be helpful. However, if the no swimming rule was not enforced, it probably wouldn't accomplish much regarding liability issues.

The question of more signage for Kelly Lake will be referred to the Parks Commission.

Mr. Wells said elected officials should not run for another office in the middle of their current term. He said these people are not focused on their commitment to the taxpayers. He suggested an ordinance that prohibited people running for another office in the middle of their term. He planned to contact MML to pursue this issue.

Mr. Austin felt we did not have the authority to legislate this issue. This is being done everywhere at every level of government. If a person qualifies for an office, the Courts would be reluctant to disqualify that person due the fact that they are currently holding an office.

Mr. LaDuke said we should encourage our colleagues to move forward and fulfill their commitments. He felt the attorney should not spend any time or money researching this issue.

A discussion was held in reference to Zi-Mar. Mr. LaDuke said it should be determined if they are in violation or not. If they are in violation, we should pursue and resolve the issue. If they haven't completed their site plan review, they should be sited. Mrs. Tinnin requested background information on this case and a written report be sent to Council. She would like the minutes of when this went to Planning and Council.

Mr. LaDuke looked forward to working with the administration on the upcoming budget. He felt everyone should approach the process with an open mind. He said using the surplus to run a department should stop. If we can't afford the service we're providing, than we should get out of the business or generate enough revenue to support it.

Mr. LaDuke felt the sidewalk ordinance should be modified. He didn't think sidewalks should go nowhere.

Mrs. Tinnin wanted the attorney to provide information regarding delinquent water bills and bankruptcy laws. Mr. Kray said he would be glad to look into this situation, if the Mayor approves. Mrs. Card should give him a phone call.

Mrs. Tinnin felt that everyone over 55 should be sent a copy of the senior newsletter, so they would know what services are offered.

Mrs. Tinnin referenced the CD allocations. She said some of that money was designated for the Fern St. watermain. The low bid came in at $484,000.00 for the job. She felt all the CD dollars should be spent on one project. She didn't think Unappropriated Surplus money should be used to pick up the difference on the project. She didn't know how the City would finance this project. She wanted to know if people had ever paid a water assessment for Fern Street.

Mr. Major felt the Fern Street Watermain issue needed to go to the Finance Committee. He said this area did pay a special assessment. There was a bond issue during the township days. Our policy is once you pay a special assessment, we don't reassess to remove or replace it.

Discussion was held in reference to Item 4. Basically, this type of licensing is necessary if the City plans to play any music, in any capacity, throughout the City. There was a brief discussion in reference to possibly adding public announcements while phones are on hold. This is not feasible, due to the type of equipment that is required. In addition, this would not resolve the whole issue. The licensing relates to all music. Mr. Udell felt the license was necessary to be in compliance with ASCAP regulations.

Mrs. Tinnin wanted to know Mr. Abbey's effective date of resignation.

Mayor Smiley did not want to discuss personnel issues at the meeting. He said anyone was welcome to come to his office to discuss these matters.

Mrs. Tinnin thought Mr. Abbey had resigned. She said the Mayor had already announced that he had resigned.

A discussion was held in reference to the purchase of Mr. Abbey's lot. The Mayor explained that Mr. Abbey paid the back taxes, interest, penalties and assessment on the lot. He didn't have a deed to show that he actually paid for the lot. However, he did have a quitclaim deed. The Mayor was not sure of all the details.

COUNCIL DISCUSSION ACTION:

Moved by Tinnin, Seconded by Wells, to add to the agenda as Item 6: That we instruct our City Attorney to draft a letter to the State Department of Treasury to request that a forensic audit be done on the Pebble Creek special assessment project that was approved in 2003. The motion carried 4-0.

COUNCIL ACTION:

Wells moved and Tinnin seconded the following motion:

Approve and authorize the Regular Council Consent Agenda items 1, 2, 3 and 6 for April 2, 2007.
Motion carried 4-0.

Wells moved and Tinnin seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from March 14, 2007 through March 28, 2007 in the amount of $5,928.78.

Motion carried 4-0.

Wells moved and Tinnin seconded the following motion:

2. Approve and authorize Scott Walker to purchase one (1) year and one (1) month of MERS pension generic service time. The total cost of $20,565 will be at the employee's expense.

Motion carried 4-0.

Wells moved and Tinnin seconded the following motion:

3. Approve and authorize Item 3 to be added to the easement agreement as partial compensation for Gary and Cheri Jackson, 5244 Dortch Dr. Burton, MI 48519 parcel #59-23-100-033, for granting of a permanent easement across parcel #59-23-100-033 as part of DPW project

#04-004-SS, the Belsay Road Coates Drain Sanitary Sewer Project.
Motion carried 4-0.

LaDuke moved and Wells seconded the following motion:

4. Approve and authorize the Mayor and City Clerk to enter into a one year license agreement between the City of Burton and the American Society of Composers, Authors and Publishers (ASCAP), said agreement to be effective retroactive from January 1, 2007 thru December 31, 2007, in the amount of Two-Hundred Eighty-Four Dollars ($284.00) renewable annually until terminated, plus one per-cent of the gross revenue of any "Special Event" as defined in said agreement that generates ticket sales or contributions in excess of Twenty-Five Thousand Dollars ($25,000.00).

Motion carried 4-0.

LaDuke moved and Tinnin seconded the following motion:

5. Approve and authorize hiring the firm of Spender and Robb, at a rate of $175.00 an hour, to represent the City with regards to the Unfair Labor Practice charge filed by the Teamsters Local 214 and/or to assist in the negotiations of the contract with this union. (Mr. Spender's hourly rate of pay is $225.00 and Ms. Weier's hourly rate of pay is $175.00.)

Motion carried 3-1, with Wells voting no.

Tinnin moved and Wells seconded the following motion:

6. That we instruct our City Attorney to draft a letter to the State Department of Treasury to request that a forensic audit be done on the Pebble Creek special assessment project that was approved in 2003. The motion carried 4-0.

Motion carried 4-0.

Meeting adjourned at 9:30 P.M.

Gayle Webster, CMC
City Clerk