

CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
JULY 20, 2009, 7:00 P.M., COUNCIL CHAMBERS
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Councilwoman Laurie Tinnin 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: Mayor C. Smiley; G. Kray, DPW Director; Attorney R. Austin and G. Webster, City Clerk.

Heffner moved and Conley seconded the following motion:

Approve and authorize the minutes of the following meetings: Special Council Meeting on June 29, 2009 at 5:00 p.m. and the Regular Council Meeting on July 6, 2009 at 7:00 p.m.
Motion carried 7-0.

ADMINISTRATIVE REPORT:

Mayor Smiley referred to a memo from the Genesee County Drain Office. He said Detroit has passed on a 9.5% water rate increase to the County and in turn the increase will be passed on to Burton. The new rates go into effect September 2, 2009.

The Mayor indicated that the Center Rd paving project was underway. This will impact the area from Lippincott to Court St. The City is still waiting for funding to begin the Davison Rd project.

The Mayor has been in contact with legislators regarding revenue sharing and Act 51 money. He hoped that funding would not be cut so we could continue to meet the needs of our residents.

The next Regular Council Meeting would be held on Thursday, August 6th due to the election.

COMMITTEE REPORTS:

Mrs. Tinnin said the Planning Commission approved an application for Kelly Good. He plans to open a roofing and contracting company on Center Rd. She was glad to have the business join the community.

Mr. Heffner moved and Mr. Haskins seconded the motion to add as Item 5: A resolution to join the City of Flushing in an action to set aside an August 4, 2009 Election by Genesee County for a millage to provide for health care services at Hurley Medical Center. Motion carried 7-0.

Mr. Heffner said that Hurley Hospital was owned by the City of Flint. He didn't feel Burton residents should be paying taxes for the Flint owned hospital.

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Mrs. Ellenburg said the library at the corner of Center and Atherton Rd was having a book sale July 24-25, 2009.

Mrs. Ellenburg gave a report on the NLC Prescription Cards. Thirty-nine users have saved \$769.69 on brand name medications. The prescription cards are available at City Hall.

Mrs. Tinnin indicated that Mr. Austin was ready to submit the Codified Ordinances for the year. The Police Department requested the addition of an identity theft ordinance. She has reviewed the ordinance and would like it added to the agenda.

Moved by Tinnin, Seconded by Zelenko to: Add to the agenda as Item 1, an Introduction of an Ordinance, Ordinance No. 2009-7-141.17, an ordinance prohibiting the fraudulent use or attempted use, possession and transfer of another person's identity to obtain money other things of value or protected records or information, and providing penalties for the violation thereof. Motion carried 7-0.

AUDIENCE PARTICIPATION:

Mr. Dunlap, 6370 Lapeer Rd., asked Mrs. Tinnin for clarification on the water and sewer rate increase. He said the public has the right to know.

Mike Gardner, 5519 Seymour, Flushing Twp. Trustee, Chairman Committee Against Taxes, supported the resolution opposing the Hurley Millage.

Debra Walton, 1224 Carman, asked Duane Haskins if he got anywhere with the signs. She complained that several skunks were nesting in a nearby home creating a nuisance smell. She would like the skunks removed. In addition, she complained about cars parking on the streets.

Sharon Little, 4155 Keene Dr., said since the DPW removed 12 large trees next to her property, there has been water run off. She indicated that the DPW storage yard was unsightly. She would like the low fence replaced with a higher one. In addition, she would like a gate put up to prevent anyone from using the green space behind her property. She said nothing has been done since November 2008.

Thomas Cuz, 4288 Englewood, complained about trees being removed, the unsightly DPW storage area and water run off in the nearby yards. He would like the City to add a berm and a higher fence along his property. The trees that were removed provided a buffer to his property.

William Eddy, 4128 S. Center Rd., thanked the Council for their help with the noise level at Sharkey's. He wanted to know why the Zoning Board did not require a noise barrier when they approved the volleyball. He would like a privacy fence installed on the property.

Carl Fenner, 1146 Kettering, opposed the Hurley millage. He felt the taxes should not be imposed on Burton when the facility was owned by Flint.

COUNCIL DISCUSSION:

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Mrs. Tinnin planned to give Mr. Dunlap a phone call in reference to the water and sewer rate increase. She did some calculations and not everything she projected was correct. She would like to call him and explain it to him.

Mrs. Conley wanted to know if Burton had a written agreement with the City of Flint to do the Center Road project. At the last Council meeting we voted on the project and the transfer was denied. The project cost \$835,000. The State and Federal share was \$581,000. Our portion was \$179,187.50 and Flint's was \$75,000. She was concerned that we voted on something that Flint has not even addressed.

Mr. Kray indicated that we didn't have a signed agreement with Flint. They were to vote on the project last Monday or Tuesday. Then it will come to us for signatures. The project will move forward regardless of that agreement. The commitment had to be made between Burton and Michigan Department of Transportation long before that point. The Flint agreement does not affect the project, it provides for some reimbursement. Mr. Martinbianco clarified that Burton receives ACT 51 funding for the entire width of Center Rd. Flint's participation is strictly voluntary and is by no means mandatory.

Mrs. Conley wanted know how road projects were determined. Mr. Kray said each road project goes before the Genesee County TAC Committee. They evaluate projects based on road condition, traffic count and funding. The committee provides a recommendation. There is a vote. Then it is funded or not funded.

Mrs. Conley said the Hurley Millage was already on the ballot and should go before a vote of the people. Concerns should have been addressed earlier. She said many Burton residents use Hurley Hospital, even if Flint does own it. She opposed the resolution to join in a lawsuit with the other communities.

Mr. Heffner said Burton residents and the insurance companies were paying for the use of the Hurley facility. Anyone going for free services was still being billed for treatment. If they can't pay their bills, it will ruin their credit. He said the County Commissioners put this on the ballot. They knew it would be an off year election with a low voter turnout. Flint and Burton were the only two municipalities holding an election, other than the Hurley millage. The Commissioners felt they could run this proposal through due to the anticipated low turnout throughout the County. Most communities feel like they are being taxed without representation. Nobody from Burton sets on that board. These are Flint board members. He said 87% of the millage would be generated by the out County. Then it would be directed to Flint. They will only pay 13%.

Mr. Gardner named several communities that have supported the anti millage resolution. The resolution does not take the position for against the hospital. The County Commissioners initiated this millage proposal. Many are questioning the validity and legality of the election. That's when the committee was formed and the lawsuit regarding the Hurley millage commenced. This is City owned property. He hoped to stop the taxing of an entire community.

Mrs. Tinnin wanted to know if we could help the Little's with the drainage, berms and fencing.

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Mr. Kray has spoken with the Cuz and Little families about the fencing and a gate. The DPW is trying to control the dumping at the site. There is a plan to grade the site to alleviate the water run off. There are zoning issues with the berm and fence height. He will make every effort to accommodate the needs of the nearby residents.

The Mayor has had ongoing discussions on how to keep the DPW yard satisfactory for the neighbors. They have discussed berms, fencing and keeping the site as clean as possible. However, there are a lot of issues to consider. Workers are picking up things day and night. There are issues with dirt and soil. We do need a place to put things during the transition. He will try his best to alleviate the residents' problems.

Mr. Martinbianco said the ultimate objective is that we want to be as good of neighbors as anyone else in the City is expected to be, given the industrial use of that property.

Mrs. Tinnin referenced the skunk problems in the Carman area. She suggested the skunks be captured because they are becoming a health and safety issue.

Mr. Martinbianco said to keep in mind if we remove animals in this area we will have to do it in other areas of the City. He was not sure where this would be budgeted.

The Mayor indicated that dead animals are removed. Live animals are not. There are pest control companies that remove nuisance animals for a living. We have not done that in the past.

In reference to our ordinances, Mrs. Tinnin wanted to know who was responsible for mowing the vacant lots in Trail Ridge. Mr. Austin said it was zoned residential. Therefore, it falls under our noxious weed ordinance. We have the authority to mow those lots. She felt City property should be maintained.

The Mayor suggested we use common sense when dealing with residential unapproved properties. The City does own 70 lots in Trail Ridge. He has met with the residents. If they take care of adjacent property, they have permission to use it. This will help the City. There are many issues to consider. We would need heavy equipment to mow those undeveloped lots. We plan to review each case individually to determine the best practical approach. He suggested the ordinance be reviewed to clarify specific mowing aspects, such as width, depth, square footage of adjacent property and undeveloped lots to meet today's needs. This would make it more practical to enforce and administer the ordinance. Mr. Martinbianco suggested the legislative committee review and fine-tune this ordinance.

Mrs. Conley acknowledged the Boy Scouts and thanked them for helping with the Kelly Lake sledding hill. Two of them are here tonight to earn merit badges. Mr. Martinbianco recognized them for their efforts at Kelly Lake Park.

Mrs. Ellenburg visited Sharkey's to discuss the noise level. She asked them to lower the bass to make the noise level more comfortable for the surrounding neighbors. She will keep an eye on the situation.

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Mr. Martinbianco said the privacy fence should have been addressed through the ZBA. Mr. Haskins pointed out that no residents attended the ZBA meeting. There were no complaints and the board was not aware of any noise problems at that time.

Mr. Haskins referred to the proposed Hurley millage. He said this is an off year election for most of the County. Flint does have a planned election and by the sheer numbers would out vote the other communities. As City Council members, he felt it was important to stand up for our residents. If our voters object to the Hurley millage, we will have some recourse.

In reference to the skunk issue, Mrs. Zelenko said mothballs seem to help keep them away.

Mrs. Zelenko opposed the Hurley millage. She understood that the resolution would set aside the election results of the millage until the legalities of whether the out county communities can be taxed for a City of Flint owned facility. She asked Mr. Gardner for clarification on the lawsuit.

Mr. Gardner said the City of Flushing initiated the lawsuit. He was from Flushing Twp. He said this resolution would help us stick our foot in the door so they can't slam it all the way. Basically, it starts the process of the lawsuit before the fact. He was not aware of any specific lawsuit language. It will be in reference to a State statue, which allows for the funding of hospitals. The question is does the County have that right to collect funding from the other municipalities to fund that hospital. The Flushing attorney has not found any legislation allowing this to happen.

Mrs. Zelenko's only concern was the potential cost for the City joining the lawsuit. Mr. Gardner said some communities passed the resolution with a funding cap, while others are joining support without financial funding.

Mrs. Conley said Flushing's press lease contained false information regarding the Hurley millage. She discussed information given to her from County Commissioner Jaime Curtis and she received a letter from Ward Chapman.

Mrs. Zelenko said the out county areas are challenging the opinion of the Commissioners. That is the reason for the resolution.

Mr. Heffner said this was an important issue. Mr. Curtis should have been present or drafted a letter of explanation. He let his constituents down by voting for the City of Flint, without regard to the City of Burton. We got a fax from Archie Bailey and he doesn't even represent Burton. He did not think it was fair to put this issue on the ballot. Voter participation would have been better during an even year election, when all communities have an election. This would have provided a better representation of the whole County.

Mrs. Conley indicated that Mr. Curtis was unable to attend due to the fact that his ailing Father was in town for a visit. She felt Mr. Curtis was very concerned about Burton residents. He keeps the residents informed on many issues. She said it is the voter's fault if they do not vote on the issue.

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Mr. Heffner said everyone knows this is an off year election. The County Commissioners were well aware of the circumstances and took advantage of situation to slide this proposal through, while other communities did not have an election. He expected his Commissioner to do what was best for our residents and represent Burton. Our Commissioner should not ask the City of Burton to pay Flint taxes. Hurley Hospital is not owned by the County or the City of Burton.

Mr. Martinbianco said if the Genesee County Commissioners were so adamant about putting this on the ballot, at that point in time, they should have put out a pro and con message to all citizens in the County making sure everyone was equally informed. They should have included what was good, what was bad, how long residents would be taxed and their responsibility for doing it.

In regards to Item 2, Mrs. Tinnin wanted to know why the bridge issue took so long to be addressed. Mr. Kray said basically there was a dispute between some private engineering firms and the State that caused the delay. This will be paid out of the Major Street Fund. There will be no transfers with this resolution.

In reference to Item 5, Mrs. Zelenko supported the resolution. However, she wanted to make sure there was no funding commitment, if a lawsuit was filed. This could be addressed at a later date.

Mr. Martinbianco would like the City of Flushing and other participating units of government outside the City of Flint to be added to the resolution. He felt we needed commitments from other outside entities so we could assess our exposure.

Mr. Austin was concerned about the wording join with the City of Flushing in an action. This suggests that the City of Burton be designated as a party plaintiff in this litigation. He did not know if this was the collective intent of the Council. If a circuit court were to find the action frivolous, they could impose sanctions against all of the parties to the litigation, which would include the City of Burton. It was unclear if the attorney would take an active part in the litigation. Or is this resolution an expression of support for the Flushing litigation, but not your collective intent to be a party to the litigation or financial commitment. He felt wording should be added to clarify the intent of the Council.

Mr. Heffner said by joining in this action we would eventually be responsible for some legal fees. He suggested we offer a financial commitment of \$350.00 to help our residents.

Mr. Martinbianco said whatever action we take would at least allow us to have our foot in the door. If that is simply support for how our unit of government is expressing our concern for that taxation without proper representation, then I think that is important to note that.

Mr. Haskins suggested adding there would be no monetary value on this resolution, at this point in time, until addressed by this Council.

Mr. Austin recommended additional wording be added to the resolution clarifying whether the City of Burton intends to participate financially or in the litigation. This resolution could be revisited at a later date. Mr. Martinbianco clarified that the City does not want to be a party

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plaintiff at this time. However, we do want to be in support of setting aside the millage election results to the extent that other communities have expressed the same thing. There will be no financial commitment at this time. The maker of the original resolution and the support was withdrawn. Mr. Austin will draft an additional paragraph that would provide clarification to the resolution for Council to consider.

The Regular Council Meeting recessed at 8:30 p.m.

The Regular Council Meeting resumed at 8:40 p.m.

Mr. Martinbianco read the Attorney's addendum to the Hurley millage resolution. The motion passed 6-1 with the additional wording.

Mrs. Tinnin has been very pleased with the knowledge Mr. Curtis has shared with the Burton residents regarding home repairs. We are lucky that he is a resident of our community.

Mr. Heffner agreed with most of those comments regarding the County Commissioner. However, on the Hurley issue, Mr. Heffner felt he let the Third District down.

Mrs. Ellenburg said the clock on S. Saginaw St has been painted. It looks very nice. It will be welcoming during the Back to the Bricks event in August.

Mr. Heffner said on August 14th at 5:00 p.m. Burton Parks & Recreation is sponsoring a 60's Woodstock theme event at Rockies during the Back to The Bricks. He invited Council to come dressed in Woodstock attire.

Mr. Martinbianco reminded everyone that the next Regular Council Meeting is being held Thursday, August 6, 2009 at 7:00 p.m. due to the election.

COUNCIL DISCUSSION ACTION:

Moved by Heffner, Seconded by Haskins to: Add to the agenda as Item 5, a Resolution to join the City of Flushing in an action to set aside an August 4, 2009 Election by Genesee County for a millage to provide for health care services at Hurley Medical Center. Motion carried 7-0.

Moved by Tinnin, Seconded by Zelenko to: Add to the agenda as Item 1, an Introduction of an Ordinance, Ordinance No. 2009-7-141.17, an ordinance prohibiting the fraudulent use or attempted use, possession and transfer of another person's identity to obtain money other things of value or protected records or information, and providing penalties for the violation thereof. Motion carried 7-0.

COUNCIL ACTION:

Haskins moved and Heffner seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from July 1, 2009 through July 15, 2009 in the amount of \$5,138.25.

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Motion carried 7-0.

Haskins moved and Heffner seconded the following motion:

2. Approve and authorize the Mayor and Clerk to enter into a 5 year agreement through 2013 with Rowe Professional Services Company for the purposes of inspecting bridges and filing bridge inspection reports with MDOT, with costs to be paid for out of the Major Street Surface Contractual Services Budget.

Motion carried 7-0.

Haskins moved and Zelenko seconded the following motion:

3. Approve and authorize the appointment of Diane Heidenberger as the Officer Delegate and Mayor Charles Smiley as Officer Alternate to the annual MERS meeting to be held on September 15-17, 2009.

Motion carried 7-0.

Haskins moved and Ellenburg seconded the following motion:

4. Approve and authorize the certification of Amber Frost as the Employee Delegate to the annual MERS meeting.

Motion carried 7-0.

Haskins moved and Heffner seconded the following motion:

5. Approve and authorize the following resolution:

A Resolution to join the City of Flushing in an action to set aside an August 4, 2009 Election by Genesee County for a millage to provide for health care services at Hurley Medical Center.

WHEREAS, the City of Burton joins the City of Flushing in an action concerning the legality of a proposed Genesee County Millage for Health Care Services at Hurley Medical Center, and

WHEREAS, the City of Flushing believes that the .9 millage request on all non- exempt real property owners within the County, to be used for services to be obtained by the County through the County Health Department at Hurley Medical Center, is not authorized by Michigan law, and

WHEREAS, the City of Flushing questions the authority of Genesee County to levy a millage on all taxable property within the County for the purpose of using the proceeds to fund a Flint City owned hospital, and

WHEREAS, the City of Flushing questions the authority of Genesee County to contract with a Flint City owned hospital and use property tax proceeds collected from property owners

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throughout the County, including property owners outside of the City of Flint, which owns the hospital;

NOW, THEREFORE, IT IS RESOLVED that the City of Burton will join the City of Flushing in an action to set aside the election of August 4, 2009, concerning the proposed "Genesee County Millage for Health Care Services at Hurley Medical Center" and to request the Genesee County Circuit Court to reimburse each municipality for costs incurred as a result of this election.

BE IT FURTHER RESOLVED that this resolution is intended to express the City of Burton's support for the efforts of the City of Flushing and the other communities seeking to set aside the election of August 4, 2009, and is not intended to cause the City of Burton to become a party to any litigation, or, to create any financial obligation for the City of Burton towards the funding of such litigation at this time.

Motion carried 6-1, with Conley voting no.

INTRODUCTION OF AN ORDINANCE:

Haskins moved and Zelenko seconded the following motion:

1. Approve and authorize the Introduction of an Ordinance, Ordinance No. 2009-7-141.17, an ordinance prohibiting the fraudulent use or attempted use, possession and transfer of another person's identity to obtain money other things of value or protected records or information, and providing penalties for the violation thereof.

Motion carried 7-0.

Meeting adjourned at 8:55 p.m.

Gayle K. Webster, CMC
City Clerk