CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
SEPTEMBER 6, 2011, 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 Steven Heffner at 7:08 p.m.

MEMBERS PRESENT: Haskins, Heffner, Ellenburg, Martinbianco, O'Keefe, Wells and Smith.
MEMBERS ABSENT: None.
OTHERS PRESENT: Atty. R. Austin, Police Chief J. Benthall and J. Adams, City Clerk.

Haskins moved and O'Keefe seconded the following motion:
Approve and authorize the minutes of the Regular Council Meeting on August 15, 2011 at 7:00 p.m. Motion carried 7-0.

Mr. Heffner stated Councilman Smith is going to speak a few minutes on "Project Heats On". Mr. Smith introduced Curt LaLonde, Greg Monzo and Donna Glann from Goyette Mechanical. He said Mr. LaLonde would give a brief presentation on "Project Heats On".

Curt LaLonde, Lapeer, MI, said he is Vice President and General Manager of Goyette Mechanical. Project Heats On is a name we give our program with our National Trade Association, Mechanical Service Contractors of America. It is a partnership between our labor groups consisting of sheet metal workers, plumbers, pipe fitters and our contractors. The purpose is to give help to people in financial need in a way we can best do that with our skills and our crafts. Our company participated in Flint in years past with Project Heats On. Most recently, we are doing Project Heats On in Big Rapids with Ferris State University. Greg Monzo is a Burton resident and did Project Heats On with me in Big Rapids for a number of years. He said he would like to do something nice for his community. I grew up with Vaughn Smith and he is in the Rotary with him. We talked about how the community and needs have changed with these tough times. Between these two guys, that is how we got the idea of Project Heats On.

Mr. LaLonde said we solicit our technicians as volunteers and we have 24 journeyman technicians that will volunteer their day and another 20 or so helpers that will ride along. We check furnaces and water heaters, repair and replace them as part of Project Heats On. We also install new smoke detectors. Our company volunteers the gas, fuel and vehicles and the technicians volunteer their time. The most incredible, wonderful thing about doing Project Heats On in Burton is you have a wonderful Chamber of Commerce and group of core businesses. Those businesses have supported Project Heats On and buy the parts and smoke detectors. Our partner sponsors are Goodwill Industries, Elga Credit Union, Burton Chamber of Commerce, Bentley Florist, Kiwanis Club, Burton Rotary Club and this year we have B95 as a sponsor.

Mr. LaLonde stated further, these 40 guys go out and we target 40 different families. Donna Glann is our dispatcher. She is also a Burton resident and has been with Goyette for nearly 25 years. She does all the scheduling and coordinating. It is an event we enjoy participating in and all these great sponsors we have makes it a pleasure for these men to participate.

Mr. Smith said the Burton View is also a sponsor and on September 8th and the 22nd they will run the application in their newspaper. Applications are at City Hall, Martins Hardware, Goodwill on Center Rd., Bentley Florist and the Burton Senior Center. Mr. Smith stated further, the challenge of this program is that it is almost too good to believe it is happening and people think they are going to make a sales pitch to them once they are in their home and that is not the case. This is about people helping their fellow neighbors. These people graciously agreed to give up their Saturday. The date is October 22nd with a deadline for application on October 6th. You have to be owner occupied and we want to make sure people in financial duress is getting the help. The Committee consists of Donna Glann, Ellen Ellenburg, Steve Heffner and Cheryl Sclater from Elga, and Renee McMann from Goodwill. They will go through the applications and do a drive-by and make sure it is a type of home we are looking for.

ADMINISTRATIVE REPORT:

Chief John Benthall said Mayor Zelenko sends her best wishes and hopes everyone had a wonderful holiday with their families. The Mayor after having 9 granddaughters, had a grandson born into her family last Saturday. Everyone is doing well. The Mayor has several issues to bring to your attention. The possible sewer back-up at 4417 Fairwood Ln. was investigated by the County and City. It was determined there are no blockage problems related to the City or the County infrastructure. The City and County gave the homeowner suggestions on how to check their own infrastructure to see if there is a problem. The Mayor would be happy to elaborate on this if you would like to contact her. Item #2 on the agenda is in regards to a recent Michigan Court of Appeals Opinion that relates to medical marijuana distribution facilities. I met with City Attorney Rick Austin and Prosecutor Leyton last week about this and at the conclusion of my report, Mr. Austin will update you on what was discussed and what his feelings are on it. Item # 3 is back on your agenda and as of this morning, the City has not received any correspondence from Thomas J. Giachino or Vanessa Enterprises. It is your decision if you want to continue tabling this matter. Item #4 is setting the Public Hearing dates and times of properties for demolition consideration.

Chief Benthall stated further, the Mayor would like a Legislative Meeting regarding amending Ordinance 31.02, Officers Compensation Commission. Mr. Austin will also brief you on this situation. This last Tuesday, K-9 officer Cade was laid to rest under the pine tree in back of the police station. It was a very nice ceremony and there were a number of departments from other agencies with K-9 officers. It was very moving and we look upon the K-9 as one of our own police officers. He will be greatly missed. He was a very productive member of our department and one we loved very much. Last Wednesday, Mayor Zelenko and I attended the grand opening of the Humane Society. They had a ground breaking on the spade and neuter clinic. The purpose of that is to spay and neuter all the animals at the Humane Society before they are adopted which is going to make the process faster and cheaper to adopt an animal. They have beautiful grounds taken care of by master gardeners and everyone should go take a look if you get the chance.

Mr. Austin said the Mayor would like to refer to Section 31.02 of the Codified Ordinances to the Legislative Committee. It is the section titled Officers Compensation Commission. In that section there is an error, Sub-Section B to Section 31.02, which starts off stating the Planning Commission shall exist of the Mayor… … and ends with "all ex-officio members of the Planning Commission shall have full voting rights". That whole section is a cut and paste job on how you fill the Planning Commission, which is the prior Section 31.01. It has no place in 31.02. I have authority to correct small typographical errors on our annual submissions to American Legal, but I don't have the authority to direct them to delete or omit an entire paragraph like this, even though it is quite obviously out of place. It is my recommendation that this entire paragraph be omitted or deleted. My secretary Bonnie, at no cost worked up 2 possible ordinance amendments. One the full blown variety and 2, a short hand variety that would be less expensive to publish. Either one would be suitable for adoption to give to you tonight for reference-sake that would accomplish the objective of taking out this Sub-Section B out of 31.02. It should be done as quickly as possible so the Officers Compensation Commission can do its work without the confusion this Sub-Section B has generated.

Mr. O'Keefe inquired if this is going to be a deletion or a relocation, and belong someplace else?
Mr. Austin replied the Planning Commission ordinance is complete and intact and doesn't need to be addressed at all.

Mr. Martinbianco asked if it was an error on American Legal's part.
Mr. Austin said it should have been caught numerous times during the codification process. He is amazed it didn't because in that paragraph it references MCL 125.33, which is a reference to filling vacancies on the Planning Commission. In American Legal's cross-referencing, that should have stuck out as a red flag and don't know why it didn't.

Mr. Martinbianco asked if they would charge us to make that change.
Mr. Austin said he is going to send it through and ask them that they not charge us.

Mrs. Ellenburg indicated the Legislative Committee could be scheduled on September 19th since there is the Council of the Whole Workshop and the Regular Council Meeting that night.

Mr. Austin said he gave to Council a couple of the proposed ordinances and you wouldn't necessarily need him at that meeting if this is all you would need me for.

Mrs. Ellenburg said basically if it was deleted, that would be the change and the lettering would be different. The Mayor showed it to her this afternoon and she too doesn't know why it wasn't caught.

Mr. Austin said on behalf of me, American Legal and others, he is sorry about this.

Mr. Wells inquired if it is on September 19th, will we need another public hearing to make that change and then it has to go 30 more days after that to become legal.

Mr. Austin said if you put it on for First Reading on the 19th, then the Second Reading will be the first meeting in October and then it would be effective immediately upon publication.

Mr. Martinbianco said Council's Workshop is on September 19th at 6:00 p.m. He suggests the Legislative Committee meet at 5:45 p.m. Mrs. Ellenburg acknowledged agreement.

Mr. Austin addressed the medical marijuana issue. He was on vacation when the Michigan Court of Appeals came out with the McQueen Case, also known as the Compassionate Apothecary LLC case. Amber Frost from DPW called him right away on his cell phone and I read about it in USA Today. I told her I would suggest she not issue any more permits for dispensaries if any applications came in. I told her I would issue a letter to her formalizing that request. You have a copy of that letter in your packet tonight. I didn't want the City to issue any permits and have an individual expend money to go into business for a dispensary and then have law enforcement officials come in using the Court of Appeals Opinion as authority to shut down the business they just opened up under a City issued permit, and hold the City perhaps liable for the issuance of a permit after this Opinion had been issued. I don't have the authority to stop the City from proceeding under lawfully adopted ordinances but I thought under the circumstances, that I should in this instance. My letter to Amber Frost will stop being effective at the close of Council's business tonight. It is Council's decision to do what they want with agenda Item #2. My letter will stop having any effect as of tonight.

Mr. Austin stated further, the Court of Appeals Opinion holds that the sale of marijuana is a public health code violation, it is a public nuisance under the Michigan Public Health Code. I do not prosecute violations of the Michigan Public Health Code. I prosecute ordinance violations under the City of Burton's duly enacted ordinances. The County Prosecutor prosecutes violations of the Michigan Public Health Code. In this case, it started with the Isabella County Prosecuting Attorney starting the action. That is one reason Chief Benthall and I set up a meeting with this County's Prosecuting Attorney. He has gone on public record and gave statements to the local TV media and the press as to his intentions with regards to distribution facilities. I have no authority to speak for Mr. Leyton, but Chief Benthall and I wanted to talk directly to Mr. Leyton to find out exactly what his intentions are and I think I understand his intentions with regards to the operating distribution facilities. In Burton we have 4 currently operating distribution facilities that have permits issued by the City of Burton. Thos 4 facilities have not caused us any problems here in Burton. They have not become areas of drug problems for us, they have operated quietly and as far as we can tell, there have not been disturbances. I have not had any prosecution for disturbing the peace, public drunkenness or anything else coming out of these 4 locations. Mr. Austin indicated further, he has those locations where they are operating. He does not believe personally, based upon conversations with Prosecutor Leyton, that he has any current intention of closing these 4 locations down as public nuisances under the Public Health Code. I didn't know that when I wrote my letter to Amber Frost, but I know that now based upon my meeting with Prosecutor Leyton late last week.

Mr. Austin stated it is important to note that the Michigan Medical Marijuana Act doesn't mention distribution facility, does not legalize or reference the sale of marijuana. What it does is grants immunity from prosecution the use of marijuana. The Court of Appeals Opinion essentially says the sale of marijuana is still illegal under the Public Health Code. Even though the facts in this

particular case are somewhat unique as to what is going on in this particular distribution facility, the Court of Appeals says in their decision, that the sale of marijuana is still a violation of the Michigan Public Health Code. That case has been appealed to the Michigan Supreme Court. I don't know when they will render an opinion. Usually when the Michigan Supreme Court renders an opinion, we get a further amplification as to what the law really means than what the Court of Appeals says. This was a 3 Judge Panel that rendered this opinion. When the Michigan Supreme Court speaks, it speaks with more voices and more amplifications. We learn a little bit more of what the Justices think the law says. There is one current bill pending in the Legislature that would give us more amplification about the Michigan Medical Marijuana Act. The authorities believe once the Michigan Supreme Court speaks on this case, there will be a rash of new Legislature at that time. This is a moving target. It is my recommendation to you that we adopt a moratorium as to the licensing or permitting of any additional distribution facilities. Another option would be to adopt a moratorium with a referral to the Legislative Committee to further define and refine the definition of distribution facility, to try and guess what would be acceptable to the Michigan Judicial System as far as sale or distribution of marijuana under the Michigan Medical Marijuana Act. It is difficult for me to guess what is ultimately going to be either approved by the Judicial System or what the Legislature may come up with. One gentleman did come in and seek to get a permit in our DPW. I told him to come tonight and address Council and speak his mind on it.

Mr. Austin stated further, those are your options and of course, the other option is to do nothing. If you do nothing, my letter stops having any effect what-so-ever at the close of business and if there is no action, or the proposed action Item #2 is not adopted, Amber will issue the permit to anybody who steps up and meets the criteria. This community was out in front in adopting its ordinance. We have 4 active distribution facilities in this community and nobody can say we are anti-marijuana or anti-distribution facilities. If you do adopt a moratorium, it will not affect the 4 businesses that are currently conducting business in Burton. It is not our intention as far as I know, at least based upon their current practices and procedures and their record up to this point, it is not our intention to affect their operation at this time.

Mr. Haskins said the 2nd option is way out of our league. I don't think this Council or Legislative Committee should be trying to guess what the Michigan Supreme Court is going to rule. The State Penal Health Code says it is a violation to sell marijuana but it is not a health violation to smoke it.

Mr. Austin responded that the Public Health Code says it is a violation to possess or sell marijuana, but the Michigan Medical Marijuana Act gives immunity to someone with a card under the Act to possess or use marijuana.

Mr. Haskins inquired regarding the liability on the City. If someone pulls a permit to do their dispensary, wouldn't they be at their own risk if the State comes in and shuts them down?

Mr. Austin said if you do not adopt a moratorium, I think it would be prudent at least for me, to hand out with the permit a caution that you are being issued a permit, proceed at your own risk to open and operate a permit. The sale of marijuana has been determined to be in violation of the Michigan Public Health Code by the Michigan Court of Appeals under State of Michigan versus McQueen. I think that cautionary instruction should go with the issuance of any future permits for

the time being. I think I would do that in the event the Council does not issue or pass a resolution adopting a moratorium.

Mr. Martinbianco said what he wants to stay away from is creating an exclusive monopoly for the 4 groups that are legally here under our ordinance, when maybe somebody else will come on board and be able to comply with the same thing. What we have done in issuing the moratorium or denying those permits all together, you are going to create an unfair monopoly for something we recognize here in the City under our own ordinances, as a accurate business practices under State Law, irrespective of the fact the Court of Appeals in their judgment indicates it was a violation.

Mr. Austin said as I indicated to this Council on a prior occasion, we are right up to the limit on the number of spaces available for any compassion club, distribution facility or grow shop. There may be one or two other spaces available. Land use is always an evolving thing. There could be re-zoning or lot splits. When I say that one or two spaces available in the City, that can always change with re-zoning or lot changes. We are right up against the limit for new sites anyway. Whether it is 4, 5 or 6, we are up to the limit already.

Mr. Martinbianco said given the backdrop of the State's enter-twining with the Liquor Control Commission, this is something that is prohibition era related from the standpoint that while the State is the sole distributor for spirits and liquor, not necessarily beer and wine, why didn't they do the same thing with marijuana when they enacted the Act?

Mr. Austin stated it is way beyond his ability to respond. Michigan Marijuana Act was adopted by the Legislature and passed overwhelmingly by the State. He had nothing to do with the way it was drafted and he can't really comment on why it was drafted in the way that it was.

COMMITTEE REPORTS:

Mr. Wells said the Public Access Committee has an update on our website. Mr. Smith has been working with Mr. Johnson in keeping Tom and I updated. They met with Energy Web Design LLC, Mr. Johnson's new company that is doing this website. The objective of the meeting was to finalize the website site plan and process the information into a legal contract format. Mr. Wells said he thought they had an attorney involved.

Mr. Smith said Mark. Udell will be doing that. Their attorney does their thing and Mark will do his. Since we haven't done this before, Mark Udell has put together a contract format that documents all the features of the website. The reason for that is we want to make sure we involve the other party and the City, we know exactly what we are purchasing for $5,000. This is the first website this company has done for a City. So there are some legalities they have not had to deal with before.

Mr. Smith stated further, once they put together our format, it would go to Mr. Johnson's attorney to be reviewed to make sure their side is protected and make sure they understand fully what their contractual obligations were. Once that is done, we are supposed to get the contract back from their attorney and have you take a look at it. I will talk to Mr. Udell tomorrow to find out where that is at. After we get this contract signed, it will take between 6 to 8 weeks to publish the

website. You will not see it till it is ready to come on-line. We want to make sure the majority of it is ready. We are sure there will be some bugs in it when it first comes on and we will weed those out.

Mr. Wells said he met with Mr. Smith, West Smith, Gary Gould and Amanda Durish from the Burton View to put together the Burton slogan contest. We think it will be a lot of fun. It is coming from the Public Access Committee. The rules will be in the newspaper. We are looking for the best slogan to represent the City. There will be a prize for the winning slogan and a couple of special mentions will also get prizes along with one for the funniest/goofiest slogan. We want to bring some interest to the website and have our city represented with something nice. They will be judged by our service groups: the Rotary, Chamber of Commerce, Kiwanis, Moose and Eagles. We will bring one person from each of those groups in. They do a lot for the City and make our City better. It will be open for everybody. City employees will not be able to win. We are just looking for the best slogan. The winner will be announced November 1st which is about the same time we predict the website will be in full view for everybody. If you have any questions, call us. A special website is going to be setup at the Burton View to take your e-mails. They will take 10 of the best and 10 of the funniest and publish those every week so you have a chance to look at them and refine them. We also want to take it to the schools and get the kids involved.

Mr. Smith said he would like to report on Fire Stations 1 and 3. This is a very emotional issue for a lot of people. A number of residents called to give me their input. Councilman Haskins spent about 4 hours with me the other day going through the issues he feels is very important. I spent 3 to 4 hours with a couple of the firemen to get their input. There are issues. We aren't sure what issues will be taken care of by the contractors and what issues will be left with at the end of the day to negotiate through. What has been said at the Council there is some validity in it. We don't know what truly are the issues we will be dealing with in 90 days. I would like to ask everyone to take a step back. I know we have waited a long time for these fire stations and a lot of firefighters went out and knocked on a lot of doors. I know everyone wants to make sure we get the best value for our dollar. We are going to work through a process and strive for that and hopefully we will attain that. Try to take a step back and put yourself in not only your shoes and your prospective, but look at it from the other parties involved in this effort.

Mr. Smith stated further, as part of trying to take the emotion out of this issue, I used the methodology of first trying to get a feel for the companies that are involved in the process of building these fire stations. I went to THA's website to look at some of their projects they have done. Some of those projects are Lake Fenton High School, Goodrich School auditorium, Goodrich Middle School, Carman-Ainsworth High School, Grand Blanc MRI Center, Rowe Engineering, Court Street Village Senior Housing, St. John Family Center and the Al Serra Summer Dealership.

Mr. Smith indicated further that he also went to Usztan Construction website that showed a list of some buildings they have done. Once I got the buildings and City's, I called the City Managers and asked what their experience had been with Usztan. For Pleasant Ridge they built a Community Center and DPW storage garage. I spoke to Sherry Ball who is the City Manager. She said it was a 2 ½ million dollar project and was on time and under budget. She spoke very highly of Boris Usztan. I spoke to City Manager Peter Auger from Auburn Hills. They did a skate park. He recommended Boris Usztan and said he was on time and on budget. He spoke to

Ted Shorner, Director of Public Works at Shelby Township. They did the Dpt. of Public Works. He told me their project was 11 years ago and from his recollection everything was okay. He spoke to the City of Rochester. They built a City Hall and Police Department. He spoke to City Manager James Latrano. He said all the original City employees were involved with the project. He wasn't aware of any problems. I spoke to Dana Wintery, Asst. City Manager of the City of Farmington Hills. A fire hall was built there. They said it was a great experience and good job. The last one I spoke to was Northville Township. I will say no comment. There is both positives and negatives with this company, although more positives than negatives.

Mr. Smith said after getting a handle on that, what are we looking for in common for both the City and the contractors? They want to build Burton Fire Stations that are proud to show the community. They want to be able to put this on their website. A contractor wants to do a job as most efficiently as possible, pass inspections and get paid. Burton wants the most value for the available dollars that we put into this project. We do have some common ground. We are going to look out for our interest just like the contractor is going to look out for theirs. This is not unique to Burton and to these companies. This is done with every construction project you face those issues. How do you go about solving those issues? There is a process called substantial completion. When the project is viewed in the contractors' eyes that they have done the majority of the work, the building is usable, they want to get a start date because that then kicks in the warranties for their work and for the work of their sub-contractors. When that date is picked, there is 90 days for that contractor to fulfill any issues we have. When we have that date we will go through a punch list. Representatives from the City of Burton will go through with the contractors what they view as issues they want addressed. The contractor has 90 days to address those. If they are not addressed, this contract we sign with Usztan has a 10% hold back cost. This is approximately a $500,000 project. We have the ability to hold back $50,000 to address these issues with the contractor. That is our hammer if we have to use it, which I hope we don't. Until we get to substantial completion process date of September 8th as far as doing a punch list, we will know within 90 days where we are at. We don't really know what issues the contractors will fix of their own accord or what issues we are going to have to say that for you to get that last $50,000, they need to be fixed.

Mr. Smith said he is suggesting to Council to see what happens over the next 90 days to really see where we are at. Then if there is still a disagreement, it will get more serious. I hope it doesn't go in that direction. So those are my findings and we are going to have a much clearer picture in 90 days.

Mr. Heffner asked to clarify the punch list date.

Mr. Smith said the punch list is on September 8th. We want to identify the issues and what we want fixed.

Mr. Heffner asked if on Councils' September 19th Meeting, there would be an updated report on the punch list?

Mr. Smith said we would have identified the issues. The clock will be ticking for the contractors to resolve those issues.

Mrs. Ellenburg clarified that the Legislative Meeting would meet on September 19th at 5:45 p.m. to address the amendment to Sub-Section B of Section 31.02. At 6:00 p.m. we will have the Workshop.

AUDIENCE PARTICIPATION:

John Stapish, PO Box 190134, referenced the article in the newspaper stating there is $129,000 in cost overruns for the Fire Stations. He inquired if this was true. Mr. Stapish commented on the $50,000 amount that could be withheld from the contractors. He also spoke regarding standing water on the concrete at Fire Station #3.

Fabian Boji, 45071 Tipperton, Novi, stated he is here regarding the Liquor License Transfer for Vanessa Enterprises. He received a letter from Mr. Austin that Council needed more information on Vanessa Enterprises and what they intend to do with the property on Dort Hwy.

Rick Fuhst, 1208 S. Genesee, spoke regarding Back-to-the-Bricks, Saginaw St. being opened up for the cruise, paving on Bristol Rd. and the need to do the same paving process for Davison Rd. to save money.

COUNCIL DISCUSSION:

Mr. Smith addressed Mr. Stapish's comments on the Fire Stations. He said Stations 1 and 3 is a $500,000 project for renovations and 10% of that is the $50,000 amount stated.

Mr. Wells said he would like to address an article that came out in the Burton View last week about the water leaks. A remark was attributed to me that I said the DPW workers purposely turned the water pressure up on the south end so they could get more overtime. Anyone at that meeting including this Board knows that I didn't say that. The minutes reflect that I did not say that and the tapes did not reflect I said that, nor would I ever say that. When I asked Amanda Durish why she would print that, she told her Mayor Zelenko called her and told her I said that at a public meeting. I know elections get dirty but that is a slanderous remark.

Mr. Heffner asked Mr. Wells if he would save his remarks when Mrs. Zelenko is here to defend if she said or didn't say something.

Mr. Wells said he was amazed when Amanda told me she said it. To call a newspaper and make a statement like that is ridiculous. I just want to set the record straight at a public meeting that I didn't say that, and I will end it there. You can do whatever you want with it after that.

Mr. Wells said he has been trying to help the people at the Fairwood house. They have been working on it for over 5 months now. The City already sent out Dust Busters twice to clean up the sewer. All of a sudden, why did we decide that we weren't involved in that after spending the money to clean the house twice? It makes me wonder how many other places that we just arbitrarily send Dust Busters out because we have to pay for it to clean sewer spills that aren't really our fault.

Mr. Wells asked Finance Chairman Mr. Martinbianco to get a list of receipts from Dust Busters and see how much we paid them over the last year or so to clean up messes like that, and have we found out later that it isn't our fault or that it is the County's fault. I don't want to be paying for this two or three times and find out after the fact we shouldn't be paying for it. If you come out and do it once you are basically saying it is our fault. I would like to see those numbers and how much we are spending on it.

Mr. Wells asked Chief Benthall about the water problems on Carman. The Chief said Mr. Kray stated the hydrant at the dead end of the watermain has been flushed and the resident need to call and set up a time to have a water sample taken. Wells said she calls and doesn't get called back. She is going to have to do that - I can't do any more than I have already done except calling and calling. The 1221 Carman house is abandoned and now that code enforcement put a notice on the door that it is condemned, people have been coming over there taking the door and pipes, and any kind of metal they can get their hands onto. It needs to be boarded up. She said she called the city several times and has not gotten a response. He asked the Chief to pass along this information and make something happen over there.

Mr. Wells said Mrs. Walton still has mold in her water and all the neighbors down the street have the same problem. She is going to take a sample of her water in and get it checked because she doesn't seem to be getting any action. All I can do is keep calling like she has been doing and hopefully get someone to take a look at it. I have been over there to look at it and she definitely has a problem. There is some kind of mold or fungus growing in their lines.

Mr. Wells said he loves Back-to-the-Brick. It is a huge success but it has a few hiccups. While everybody is up on Saginaw St., our police are up there doing their job and what they are told. People are going down those side streets and most of those people are watching Back-to-the-Bricks and they are getting their doors kicked in, TVs stolen. They have been victimized. I talked to a lady that talked to Matt Bade and he said that happens on both sides of the road. For the rolling cruise down on Woodward they put a blockade up so you can't go down the street, you can only come out and that keeps the traffic from going back into those neighborhoods because they had the same problems years ago when they first started. We have a year from now to take care of it. It is something to think about. I certainly don't want to stop Back-to-the-Bricks, but I think we need to take care of our neighbors that live down those side streets that have to put up with junk being thrown into their yard, gangs walking up and down the street terrorizing people.

Mr. Wells stated further, we don't see it because we are all up on Saginaw Street. Frankly, I didn't think of any of that going on until I started knocking on doors. It wasn't one person or 10 people, it was quite a few on both sides of the road. If we are going to continue this, maybe we should have a coalition of people. I don't know if the Chamber is involved with Back-to-the-Bricks.

Mr. Smith stated it got too big too quick. We got lost.
Mr. Wells said he was down to Woodward a couple of days after and they still have the barricades set up there so I know that is what they do, you can't turn into the neighborhoods, you can only come out. Something we need to think about in the future.

Mr. O'Keefe said this coming Sunday is September 11th. Ten years ago if you are an adult, you will remember the rest of your life where you were at when you were told what happened that day. I was at work in a meeting and I couldn't believe it. I worked for the bank and I had a banking region. We had presence in four Counties and had about 500 employees working for us. We were so concerned that day we shut the banks down, which doesn't ever happen. We sent everyone home because we wanted them to be with their families. Mr. O'Keefe stated further, this is the 10th Anniversary coming up. He heard of a lot of veterans groups having special events, churches, and Sheriff Pickell doing a memorial at the Perani Arena. He received an e-mail from a friend in Florida and they are suggesting and I would also like to suggest, that everyone in the City of Burton think about doing this, and all it is called is "the program". It says that on Sunday September 11, 2011, an American Flag should be displayed outside everyone's homes, apartments, office stores in the total United States. Every individual should have the duty to display the American Flag on the 10th Anniversary of the Country's worst tragedy. We will do this to honor the loss of lives of 911, their families, friends, loved ones and those who continue to endure the pain and those who are today fighting at home and abroad to preserve our cherished freedoms. I think this is something as a City I had to bring up and I would hope people look at this day as to what it stands for, the 10th Anniversary of one of the worst days in this Country. If you don't have an American Flag, go out and get one, put it on your front door, the side of your house, I am going to put one on my car also. I think the City of Burton would be nice if we could show some respect for that day.

Mr. Heffner said to piggyback onto that, if Sunday is good enough to fly an American Flag, why not fly one every day.

Mr. Haskins said Back-to-the-Bricks is good for the community. Mr. Smith mentioned we sat down at the Fire Stations and talked in-depth. All the information I accumulated over the last few months probably isn't enough in 4 hours to go over with Mr. Smith. He made some very valid points. The one thing I would have to say about the take a step back approach is I don't feel that would be the right approach. I don't think he actually meant to step back and stay out of it. I think he meant for us to still be involved. I think what he is trying to get at is see what happens with the punch list in 90 days. I have confidence and hope the contractors will actually do what they are supposed to do. Mr. Wells had some issues with the workmanship but the step back approach on the 90 days to see if they do that to get their other $50,000 that they are holding back, I probably don't have an issue with that. I have an issue with Boris Usztan's comments in the newspaper stating that it is political in nature.

Mr. Haskins stated further, we have residents that voted in for this bond and millage for this to happen. It is our due-diligence to make sure that things that are going on with taxpayers money, and is what it is suppose to be. I think he needs to be a little more cautious with what he says. My issue does not lie at all with workmanship. My issues lie with monies being spent on things that it doesn't appear it should have been. Mistakes are happening that seem to be getting swept under the rug. As an example, Station #1 had 400 amps of service coming to that station for all these years. In the mid-construction phase the electrician showed up to install a transfer switch and had to wait 2 months for a new spec because the power was reduced from 400 amps down to 200 amps. No one had an answer on it. After numerous talks with contractors, the biggest answer was it that it probably was a $12,000 screw up. Because once the panel got hung, they couldn't return it. Whether that would have went to the wayside or not, I am not for sure. The architect reassured

me they are going to correct that problem and get 400 amps back in there. On the backside of this, I want to see if we are being re-charged. These are the things I am looking into to try and protect our taxpayers. There are numerous issues. Till I give the architect a fair shake, I am not going over all the issues that lie there. That is one thing he covered and said he will take care of. It is things like this that is going on within the stations that really need to have due-diligence and stay on top of. I still feel monies should not be paid and I know we are under contractual obligations, I read the newspaper article where the Attorney says we have to pay, but when things like this are going on within the facility, I don't feel that is pure honesty. They were well aware because they had to draw up a new spec that this was no longer a 400-amp service coming into the station and it was reduced down to 200 amps. So they were well aware of it and it is fully hooked up. When were they planning on getting the right 400-amp service back in there? They are doing the fire up generator test this Thursday before they do the final walk through on their punch list. There are numerous items of that nature that concerns firefighters, residents and myself. I want to give the architect a fair shake on all this stuff and do not want to blind-side him and just start attacking him.

Mr. Haskins said in Station #1, the gas line that comes from the gas meter, the generators they put in there runs off natural gas. The gas line instead of being trenched on the outside down, because the generator sits in the front corner of the station by Bristol Rd. on Station #1, the gas meter sits on the back side of the station by Connell Street. Instead of trenching the gas line in the ground and straight from the gas meter straight down to the front of the station, they decided to drill a hole in the station, run the gas line across then up and then all the way to the front of the station, then back down and back out the wall again to the generator. It is close to a 2 to 3 inch gas black pipe with hangers, the whole works. Not to mention the cost of the pipe which isn't that expensive, but the cost of the pipe, labor and all they have to do, when you can get the gas line which is flexible that goes on the line and run it straight out, and the appearance of it is a lot nicer. I asked why the gas line was run the way it was at Station #1. Their response is the gas line was run inside the building so it would not be in the same trench as the electrical line. The reason the gas line goes up and over inside the building is there has to be a minimum 6 ft. above the main power supply panel per the National Electrical Code. In this case our gas line was run to avoid that panel. It still did not give me an answer why it was run inside the fire station. There is not a code that says they couldn't use the same trenching line for the electrical that goes to the generator from the main panel, which is outside under the ground. The first reason they gave me was the power supply to the station runs along that area, along the fire station.

Mr. Haskins continued, after I presented it to him and said that is not accurate because the main power supply comes off the back end of the station. The telephone pole you can see the wires coming right to it. So that is when they gave me this answer. It is frustrating that the contractor wants to go ahead and say it is a political issue because it has nothing to do with politics what so ever. It has to do with our residents, their money and their great trustworthiness to instill that they are going to pay a 20-year millage and bond to get these stations renovated. I don't think Mr. Smith meant to take a step back and just do nothing. I think he meant to stay on top of it but on the night of the punch list, take a step back and give them a chance to correct the issues. All these other little issues is going to take a little bit more detail and work and obviously, financial reports, seeing exactly what is being paid, how it is being paid, and whose responsibility is was at the point in time of being paid. I feel this is once in a lifetime opportunity for the fire department and the

residents to get this going and want to see it is done the best possible way for the best bang for our buck and no one is taking it on the opposite end.

Mr. Martinbianco said one issue that has to be addressed is when you go through the punch list, it needs to constitute those items that were specified by THA. We have very competent State plumbing, mechanical inspectors that will come in and say "that is up to code, everything looks good" but it might not be what was on the spec. So that is one of the bearing issues that is going to have to be addressed and you are going to have to hold THA to that standard.

Mr. Haskins said you are very accurate. That is probably a lot of the issues is the way it was spec'd. Any time you do a job with a contractor your punch list is usually done the very last thing. But at Station #1, they have been continually doing a punch list every contract meeting to see the progress of things that are being made. For the last 3 months, this punch list that was made up of things that have been wrong, 3 pages worth, and some things have been reduced. The biggest issue of why they haven't been taken care of and it has been slow going is because Usztan Construction had big construction obligations/contracts with the schools. Basically, they put our project on hold to take care of the schools because of school starting. Like Councilman Smith said, we will see exactly where the punch list goes and 90 days after that, punch list starts warranty dates and things of that nature. After that, they have 90 days to correct it, therefore according to the architect, if things are not corrected within the 90 days the contractor loses money.

Mr. Heffner asked Mr. Smith what he has heard on Station #3.
Mr. Smith responded that there are some issues. He went and made a visit. They are not the severity as Station #1. There will be a punch list on the same day. We just don't know where we are at. I surmise where we might be in 90 days but I can't say that for sure. We have to see what the contractors are going to do. After the 90 days then it will all be in black and white on our disputes. Hopefully it won't go that way and it all gets fixed. We have to make sure the punch lists are very, very thorough. Mr. Haskins does have a really good handle on it. He spent many hours with me and it has been helpful.

Mr. Heffner thanked both Mr. Haskins and Mr. Smith for bringing this to our attention.

Mr. Heffner announced the Bentley Parade is Friday, October 7th at 5:00 p.m. Linda Metiva, is director of the 2011 Bentley Parade and she has invited Burton area businesses to be a part of this year's parade. Area businesses are invited to ride in cars, build a float or walk in the parade and hand out candy. For information you can contact Linda Metiva at 591-9546 or Bentley High School at 591-9100. Also, there is no charge.

In reference to Item #1, Mr. Haskins inquired regarding Part 1 of 2 non-prosecutorial dated 8/9/11. He asked if it is a civil matter and if we received any information about what is going on with that. Mr. Austin replied that it is not a criminal matter. It is a result of a traffic accident. Mr. Haskins asked for the meaning of ETAL. Mr. Austin said it means there are other parties, additional named parties. Mr. Haskins referenced telephone conference on 8/25/11, regarding Medical Marijuana distribution, and the 2nd one for .25 hours, preparation of e-mail correspondence to the Mayor regarding the City's obligation to continue payments in terms of the fire station contracts.

Mr. Austin replied the MJ was Mr. Joliat. Mr. Haskins asked if anyone got a copy of that correspondence. Council voted 7-0 not to issue payment. Mr. Joliat was sitting here and gave us advice before we all voted that way and the newspaper also said we have to still continue payments. Mr. Austin said he seen it and would be happy to provide that correspondence. Mr. Haskins said he would appreciate it and would like to see all the legalities, terms and why our Council can't regulate payments to a contractor if things aren't sufficient.

In reference to Item #2, Mr. Haskins addressed to Mr. Austin his concerns of liability to the City. He is still unsure what is the best direction to go on this. He asked for his recommendation. Mr. Austin replied that his recommendation is agenda Item #2. That is my best recommendation to you. I have strong and moderate recommendations and this comes under moderately strong recommendation. If you choose not to and if you don't adopt it, and we issue a new permit and then ultimately Mr. Leyton has a change of heart and shuts them all down, I would defend this City under our governmental immunity protections that we don't have any liability. I feel we don't have liability particularly if I issue any new permit along with a disclaimer I would enclose with any new permit. I think our chances of having liability are pretty remote. Mr. Haskins stated on the backside of this, now we are stopping people from doing this, are we protected from that aspect too? This is one of the reasons we created the ordinance, it was to protect our City and regulate them on what they could do because it was already a law and enacted. So we created the ordinance to protect the City and guidelines of where they can and can't be. If you are saying no we are not giving you a permit anymore, now are we opening up that other door of liability on the other end? Mr. Austin replied we could always be sued. But again, we already have 4 operating distribution facilities. No one can claim we are excluding distribution facilities from our City. I am not saying we can't be sued by the 5th person coming in, but there are a lot of other communities in Genesee County who haven't even adopted an ordinance yet and all they have done is stone-walled it and adopted moratorium after moratorium and haven't had their first one yet. I think we are in a lot better shape than those communities. So if someone wants to sue for adopting a moratorium now, let them come after us. I think we are in good shape in that we have allowed 4 to come in and we aren't suggesting we are going to shut any of them down based upon the way things are going at this point.

Mr. Austin stated we also adopted this ordinance to implement the State Law and the rather large mandate given by the voters of the State of Michigan. Mr. Austin said agenda Item #2 is still his recommendation.

Mr. Wells expressed where the ACLU stands on this. Until things get straightened out a little bit, he would put a moratorium on any new ordinances. We really don't have the manpower or the money to enforce the ones we have on the books now. As far as the medical marijuana thing, I think it is completely blown out of proportion. I have been in 5 neighborhoods in the last 3 weeks, invited into people's houses where they say stand right here and watch that house 3 doors down, and there is a parade of cars going in and out, you know it is a drug house. We don't do anything about it. I would be more concerned about what is going on there, we can't get anybody to do anything about it because I have called people, they have called people.

Mr. Austin said drug houses are illegal and they should be reported to the police immediately.

Mr. Wells said they are selling marijuana out of those houses, selling probably anything above and beyond marijuana.

Mr. Austin said it doesn't have anything to do with the Michigan Medical Marijuana.
Mr. Wells said he understands, but when he sees this and our esteemed Attorney General going after this right away when City's can't afford to put police on the streets to protect their own communities, priorities are screwed up. I don't have a problem putting a moratorium on it. This is not a priority to me.

Mr. Austin said this is not a priority to the Genesee County Prosecutor as well.
Mr. Wells asked if we are taxing these businesses?
Mr. Austin said they are in a building that prior to their occupation as dispensaries were vacant and now they are in there and presumably paying their property taxes, and paying personal property taxes and they are viable on-going businesses.

Mr. Wells said there is no question that these people deserve to make money on a transaction as far as I am concerned even though there is a hiccup that says marijuana is legal but you can't sell it.

Mr. Austin said the law does not say you can sell it according to the Court of Appeals. I just read the law again today and no place in that law does it say you can sell it.

Mr. Wells said the people of this State spoke out by vote of 63%, that this is a good idea, and 4 people now telling us we don't care what you said we are going to make the rules and you are going to like it.

Mr. Heffner said he doesn't believe it is going to create a monopoly. We already have 4 businesses doing it. There is going to be fair competition out there.

In reference to Item #3, Mr. Martinbianco addressed having Mr. Bogi come up to the podium. The property location either represents just the bar portion of Southmoor Golf Course or the entire facility. Mr. Martinbianco asked Mr. Bogi if he is going to physically take ownership of the golf course and the bar. Mr. Bogi replied just the bar and everything but the golf course. Mr. Martinbianco asked what kind of entertainment, if he is going to bring in bands, is it going to be a sports bar theme. Mr. Bogi said it would be basically operated the same way it is today. The same person who is operating is going to continue operating it.

Mr. Martinbianco asked for clarification if he is buying it through a receiver from American Food Products. Mr. Bogi acknowledged yes. Mr. Martinbianco asked if he has other licensed facilities under the name of Vanessa Enterprises in Livonia or anywhere else? Mr. Bogi replied no.

Mr. O'Keefe said our City Attorney sent correspondence requesting the information. He asked why he didn't respond.

Mr. Bogi responded that it didn't say what type of information they wanted. He called the City Clerk's office and all they recommended was I show up here today. He called Mr. Austin's office and was told he was out of the office.

Mr. Martinbianco asked Mr. Bogi if he is licensed to sell as a concourse license on the golf course or through the clubhouse.
Mr. Bogi replied the license does approve of that. At this time we are not sure if it is going to happen. It depends on the golf course owner's approval.

Mr. Ellenburg inquired as to the transfer of the license.
Mr. Bogi said it is being transferred to me. Everything will operate the way it is. It was in receivership.

In reference to Item #5, Mr. Wells said he doesn't see anything in the Charter or City's law books that we have to sweep the streets. The $77,911 could go to a better purpose than sweeping the streets as far as I am concerned. He would like to have discussion on it. He said they only get swept once or twice a year. One year they were suppose to sweep 3 times and they only did it once. I am looking to eliminate some things I don't think we need to do, in my opinion.

Mrs. Ellenburg said when she was out door knocking, that was one of the requests as to how many times they sweep the roads. They wanted to know when Center Road was swept. I knew we had three sweepings a year and Saginaw St. was always swept before Back-to-the-Bricks. Mrs. Ellenburg stated further she feels it is important that it be done in the City. It cleans our gutters and keeps our roads clean.

Mr. Heffner said he also agrees. People move to our City and look for a quality of life. It makes our City look good. He will vote yes.

Mr. Haskins inquired about other bids.

Mr. Heffner said he believes they were the only bidders.

Discussion continued regarding stating the number of sweepings in the contract, if there would be a refund if more than one sweeping were in a contract but one wasn't done. Questions raised by Mr. Martinbianco as to why only one bidder and what the spec's were. Mr. Haskins expressed he would be voting no and other Council members agreed to wanting more information. All were in agreement of tabling the motion at this time.

COUNCIL DISCUSSION ACTION:

Moved by Ellenburg, seconded by Smith to: Table Agenda Item #5. Motion carried 7-0

COUNCIL ACTION:

Haskins moved and Ellenburg seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from August 10, 2011 through August 31, 2011, in the amount of $6,321.00.

Motion carried 7-0.

Haskins moved and Ellenburg seconded the following motion:

2. Approve and authorize Council to enact a six (6) month Moratorium on the issuance of permits under the City of Burton Ordinance for medical marijuana distribution facilities pursuant to the recent Michigan Court of Appeals Opinion No. 301951 (State of Michigan vs. Compassionate Apothecary, LLC), wherein it concluded that the joint cooperative cultivation, sale or sharing of marijuana is a public nuisance under the State of Michigan Health Code.

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

Haskins moved and Martinbianco seconded the following motion:

3. Approve and authorize the request to Transfer Ownership of 2011 Class C Licensed Business, located at G-4312 S. Dort, Burton, MI 48529, Genesee County, from American Food Services, Inc.; Thomas J. Giachino, Receiver to Vanessa Enterprises, Inc.

Motion carried 7-0.

Haskins moved and Ellenburg seconded the following motion:

4. Approve and authorize the acceptance of the Report to the Burton City Council on Investigation of Potential Nuisance or Hazardous Condition of Premises on the following properties located in the City of Burton and set a Public Hearing date and time to consider any objections and/or favorable comments relative to the referenced premises. This public hearing can be scheduled at various times below on Monday, October 3, 2011, should the Council find this favorable or any other date and time Council prefers, allowing 20 days notice to property taxpayers for the scheduled hearings.

<u>Monday, October 3, 2011</u>
(1) 1340 Gram at 5:30 p.m.
(2) 2165 Bristol at 5:45 p.m.
(3) 1121 Forest at 6:00 p.m.
(4) 1497 Williamson at 6:15 p.m.
(5) 1098 Judd at 6:30 p.m.

Motion carried 7-0.

Tabled.

5. Approve and authorize the acceptance of the low bid and allow the Mayor and Clerk to enter into a contract, contingent upon approval by the City Attorney of the required bonds and insurance documents, on behalf of the City of Burton with Curbco Sweeping, Inc., for the 2011 Street Sweeping, in the amount of $77,911.44.

Meeting adjourned at 9:10 p.m.

Julie Adams, City Clerk