CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
SEPTEMBER 18, 2006, 7:00 P.M., COUNCIL CHAMBERS
www.burtonmi.us

Associate Pastor Mark Dennal of Eastgate Baptist Church led the Invocation.
Councilwoman Tina Conley led the Pledge of Allegiance.
The Regular Meeting was called to order by President Charles Cross at 7:05 P.M.

MEMBERS PRESENT: Bement, Conley, Cross, Curtis, Isham, Tinnin and Wells.

MEMBERS ABSENT: None.

OTHERS PRESENT: Mayor C. Smiley; C. Abbey, DPW Director; Attorney R. Austin and G. Webster, City Clerk.

Isham moved and Conley seconded the following motion:

Approve and authorize the minutes of the following meetings: Special Council Meeting on September 1, 2006 at 4:00 p.m., Regular Council Meeting on September 5, 2006 at 7:00 p.m., and the Special Council Meeting on September 12, 2006 at 3:30 p.m. Motion carried 7-0.

ADMINISTRATIVE REPORT:

Mayor Smiley indicated there were duplicate pages in the new ordinance books. Contact Brenda to have these pages removed.

The Mayor spoke in reference to a letter from the Genesee County Water and Waste regarding the proposed Fenton Rd. water main project. Arsenic has been detected in the water at a Fenton Road mobile home park. The people in this area would like to have City water. The Mayor would like some direction on this, as well as other future water projects.

Mr. Abbey spoke regarding potential water projects. He would like to set a Legislative or Finance Committee meeting to discuss these types of issues.

The Mayor said the telephone hold music would be replaced with Public Service announcements.

In reference to Item 2, The Mayor opposed Laurie Tinnin's settlement payment.

Mayor spoke in reference to the MERS meeting that was held on September 5, 2006 with representative Colleen Medley. She indicated that the City was in good shape and moving in a positive direction. She did a great job and the employees were pleased with the results.

In regards to Ordinance 5-3, the Mayor supported a 3% County bid preference, in addition to the 5% Local preference.

Mayor spoke on Items 5 and 6 regarding the paving proposals. Council could approve them as written or consider A-F, which splits the proposals. Splitting the proposals would save approximately $6,000.00.
The Mayor stated a Focus Session Meeting would be held on October 17, 2006 at 5:30 p.m. at the Burton Senior Center. He invited the City Council, the Administration, Atherton, Bendle and

Bentley School Board Members and Superintendents, the Planning Commission, the Zoning Board, Parks and Recreation and the DDA.

Mr. Abbey spoke in reference to the sewer relief system, Phases I and II. He said an easement is needed at the end of Dortch Drive. The owner of that property, Mr. Jackson, requested Council waive certain provisions for his development.

The representatives of Courtland Center would like City officials to participate in their upcoming workshops.

COMMITTEE REPORTS:

Mr. Curtis thanked Mr. Isham for chairing the Legislative Committee Meeting.

AUDIENCE PARTICIPATION:

Maureen Holmes, 2247 E. Bristol Road, thanked City officials for working together to better the community.

Mark Farrand, 5981 Maplewood Meadows, spoke in reference to the power line ordinance. He requested Council remove the words underground and burial from the ordinance and add cannot construct new facilities within 500 feet from residential zoned property.

Jane Nimcheski, 2429 N. Genesee, spoke in reference to the street pavings for Maplewood Meadows, Mallard Ponds, Burton Estates, Pebble Creek and Dortch Drive.

Jim Larivee and Bill Kropf, developers for Oakview Meadows and Maple Creek Condos, requested permission to delay adding their final lift of asphalt until next year.

Pauline Dargel, 6119 Hugh Street, spoke on the following topics: bid openings, an FOIA request regarding the ADA Agreement and Items 3, 8, and 13. She wanted to know if the City had submitted the materials that were due to the Department of Justice and if they were available in the Clerk's Office.

Julie Hodgeson, 2087 E. McLean, said she could not obtain a building permit to build her breezeway. She objected to not receiving a complete refund on her building permit.

Robert Spose, 4090 Maplewood Meadows, wanted to know if a missing drain would be put in before his road was paved.

John Stapish, PO Box 190134, Burton, MI, spoke in reference Julie Hodgeson's problem. He said there is an International Building Code number to call, if you are a member.

Jim Douglas, 4111 Maplewood Meadows, wanted to know what contractor would be paving Maplewood Meadows.

Mr. Cross indicated that ProLine would pave Maplewood Meadows.

Warren Nimcheski, 2429 N. Genesee Road, Burton, MI, spoke in reference to a drainage problem on Genesee Rd.

COUNCIL DISCUSSION:

Mr. Cross removed Item 15 from the agenda because Lisa Warner of the DEQ felt this needed to be reviewed by the County and State prior to Council action.

In reference to Ordinance 5-3 (C), Mr. Cross suggested assigning a Council designee or a resident to attend the bid opening.

Mr. Curtis said the only proposed change that is not included in 5-3(C) is the consideration of a 3% bid preference for the County.

Mr. Isham wanted to know if we have met our obligations with the Department of Justice.

Mr. Austin met with Mr. Abbey regarding the settlement agreement on the American Disabilities Act. He has contacted Tony Panchula from the Department of Justice. He indicated that we are making the necessary physical changes in a timely manner. In addition, Mr. Austin has met with Mark Udell, IT Administrator, regarding ADA website revisions. Mr. Austin felt we were taking the necessary steps to meet our obligations with the Department of Justice.

Mr. Isham responded to several of the audience questions.

Mr. Curtis planned to set a Legislative meeting to discuss future water projects, when Mr. Abbey was ready to do so.

Mr. Curtis spoke regarding the need for a traffic light at Bristol and Camden. He wanted to know if the County was doing engineering work for the City.

Mr. Abbey said private companies were doing our engineer work. We applied for a Federal grant to get the lights timed along Center Road. This has proven to be very beneficial. He would like this same type of traffic study done on Bristol Road before more lights are added.

Mr. Curtis inquired about the performance bond relating to the Oakview Meadows paving.

Mr. Abbey said the bond was about $27,000 and the project would cost approximately $40,000. Discussion continued in reference to this issue.

Mrs. Tinnin had concerns with the cost for paving streets in the subdivisions. She wanted to know if the City had an agreement with the developers to reimburse the City for these projects.

Mr. Abbey stated the City had the ability to recoup this money.

Discussion was held in reference to Item 16 regarding the Dortch Drive easement.

Mr. Isham was not prepared at this time to waive any requirements on paving, curb and gutter. He suggested further discussion on this topic.

Mr. Abbey said Mr. Jackson would grant the Dortch Dr. easement, if the City waived the requirements for paving.

Mr. Wells wanted to know if the proposed ADA changes were Federally mandated.

Mr. Abbey stated that all cities are required to comply with the ADA mandates.

Mr. Cross reviewed information pertaining to the Ordinance Codification process. The Administration will complete the ordinance review by September 29, 2006. The Planning Commission will hold a public hearing November 14, 2006 to review zoning changes and then make a recommendation to the City Council. The Introduction of the Ordinance should be on the Regular Council agenda for November 20, 2006, with a second reading and final adoption scheduled for December 4, 2006.

Mr. Austin stated there were no agreements or side deals made regarding the Laurie Tinnin vs. City of Burton lawsuit. He opposed the award of any attorney's fees to Ms. Tinnin.

Mr. Wells indicated that this lawsuit has been going on for three years. There were three separate documents from the Judge stating the City did not owe this money. He wanted an explanation on why and what happened to change this all of a sudden. He strongly opposed any settlement payment.

Mr. Austin said originally a judgment was entered which awarded no attorney fees. Mr. Kennedy then filed a motion to have attorney fees paid. A brief was prepared detailing why we thought the law was clear, based on the Court of Appeals ruling, that no attorney's fees should be awarded. The motion was argued orally before Judge Neithercut. The Judge agreed to a partial payment. He gave no explanation for his ruling. Mr. Austin did not agree with the Judge's decision. The City's only option was to appeal it, which would have cost even more money.

Mr. Wells stated he would rather spend the $4,400 appealing the case. He believed Council would be setting a dangerous precedent. Other City workers do not get their attorney bills paid.

Mr. Cross stated that sometimes the City's insurance carrier pays the bill and the City doesn't even know about it.

Mrs. Tinnin stated that the City is about to approve legal fees for Mr. Cross' litigation. It would be no different if it were Mr. Wells, or anybody else. That comes along with doing your duty.

Mr. Cross asked that personalities and politics be left out and just look at the Judge's ruling.

Mr. Wells stated he is looking at the overall big picture.

Mr. Cross stated he was too. He also stated that if it wasn't court ordered, he thought the City would have a very good argument, but Judge Neithercut ordered it.

Mr. Bement understood Mr. Wells' concerns. However, there was a court order and it would cost more money to appeal it. He felt they should just move forward.

Mr. Isham was just as sensitive to this matter as Mr. Wells. The Judge's order did not sit well with him. He hoped this case was done.

Mr. Wells wanted written assurance that no more money would be offered on this settlement.

Mr. Austin felt this case was done. Mr. Kennedy was awarded less than 1/3 of the Attorney fees he incurred in the case.

In regards to Item 16, Mr. Austin wanted to know if the waiver applied forever.

Mr. Abbey said more discussion would be held on this matter.

Mr. Isham agreed that more discussion should be held regarding the Dortch Drive issue.

COUNCIL DISCUSSION ACTION:

Moved by Curtis, Seconded Isham to: Approve and authorize Laurie Tinnin to abstain from voting on action item number 2. (Re: Settlement payment, Case No. 03-75820-CZ Laurie Tinnin vs. City of Burton, to Attorney Alan E. Kennedy in the amount of $4,470.54)
Motion carried 6-0, with Tinnin abstaining.

Moved by Isham, Seconded by Bement to: Amend proposed Introduction of an Ordinance, Ordinance 5-3(C), Subsection (c), Section 1 to read: the President of the City Council or his designee or alternate designee November 14, 2006.
Motion carried 7-0.

COUNCIL ACTION:

Curtis moved and Conley seconded the following motion:

Approve and authorize the Regular Council Consent Agenda items 1 and (3-14) for September 18, 2006. Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from August 30, 2006 through September 13, 2006 in the amount of $5,188.00.

Motion carried 7-0.

Isham moved and Curtis seconded the following motion:

2. Approve and authorize settlement payment, Case No. 03-75820-CZ Laurie Tinnin vs. City of Burton, to Attorney Alan E. Kennedy in the amount of $4,470.54, funds to be transferred from Unappropriated Surplus, as ordered by the Court.

Motion carried 5-1, with Wells voting no, Tinnin abstaining.

Curtis moved and Conley seconded the following motion:

3. Approve and authorize the Mayor and City Clerk to execute a construction contract with the Michigan Department of Transportation for the resurfacing of Atherton Road from Center Road to Genesee Road, DPW Job. No. 04-017-P (MDOT Control Section STU 25402, Job No. 74635, Federal Project N. STP 0625 (024), Federal Item No. HH 4743, CFDA No. 20.205, Contract No. 06-5374) at an estimated cost of $566,600.00 (81.85% Federal = $463,800.00 & 18.15% Burton = $102,800.00) contingent upon approval of the City Controller and authorize the City Controller to make the appropriate transfer as necessary from the 2006/2007 Major Street budget.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

4. Approve and authorize the City Controller to transfer $566,600.00 from the 2006/2007 Major Street budget Unappropriated Surplus to DPW Job No. 04-017-P with an estimated actual cost to the City of $102,800.00.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

5. Approve and authorize the acceptance of the low bid of Pro-Line Paving Corp., 11797 29 Mile Rd., Washington Twp., MI 48095, in the amount of $264,466.42 for the project known as: 2006 Fall Paving Program, Divisions B, D, E & F / DPW Job #06-013-P.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

6. Approve and authorize the Mayor and Clerk to enter into a contract with Pro-Line Paving Corp., 11797 29 Mile Rd., Washington Twp., MI 48095, in the construction amount of $264,466.42 for the project known as: 2006 Fall Paving Project, Divisions B, D, E & F / DPW Job #06-013-P, contingent upon the submittal and approval by the City Attorney of the required bonds and insurance documents.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

7. Approve and authorize the acceptance of the low bid of Ace Asphalt & Paving Co., 115 S. Averill Ave., Flint, MI 48506, in the amount of $209,523.50 for the project known as: 2006 Fall Paving Program, Divisions A and C / DPW Job #06-013-P.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

8. Approve and authorize the Mayor and Clerk to enter into a contract with Ace Asphalt & Paving Co., 115 S. Averill Ave., Flint, MI 48506, in the construction amount of $209,523.50 for the project known as: 2006 Fall Paving Project, Divisions A and C / DPW Job #06-013-P, contingent upon the submittal and approval by the City Attorney of the required bonds and insurance documents.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

9. Approve and authorize the City Controller to transfer $160,625.00 from the 2006/07 Local Streets Contingency Budget to DPW Job #06-013-P Division A, Local Streets mill and resurface.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

10. Approve and authorize the City Controller to transfer up to $79,540.00 from the 2006/07 Local Streets Unappropriated Surplus Budget to DPW Job #06-013-P Division D, Hawkshire #1 and #2.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

11. Approve and authorize the City Controller to transfer $65,070.00 from the 2006/07 Local Streets Unappropriated Surplus Budget to DPW Job #06-013-P Division E, Maplewood Meadows #6.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

12. Approve and authorize the City Controller to transfer up to $35,000.00 from the 2006/07 Local Streets Unappropriated Surplus Budget to P-04-02 Mallard Ponds Construction Fund, DPW Job #06-013-P Division F.

Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

13. Approve and authorize the Mayor and City Clerk to enter into a one year contract with

Young's Environmental to provide emergency sanitary sewer and water system repairs.
Motion carried 7-0.

Curtis moved and Conley seconded the following motion:

14. Approve and authorize the setting of a 2nd Public Hearing for Zoning Case #301 on Monday, October 16, 2006 at 6:30 p.m.

Motion carried 7-0.

Removed from the agenda.

15. Approve and authorize resolution adopting Soil Erosion and Sanitary Procedures for the City of Burton.

Curtis moved and Conley seconded the following motion:

16. Approve and authorize the waiver of the paving, curb and gutter and sidewalk requirements for any new streets that Gary and Cheri Jackson may construct that would be attached to Dortch Dr., if Dortch Dr. is not paved, does not have curb and gutter or sidewalks at the time of construction for said new street or streets.

Motion failed 7-0, with all members voting no.

INTRODUCTION OF AN ORDINANCE:

Curtis moved and Conley seconded the following motion:

Main motion as amended.

1. Approve and authorize the Introduction of an Ordinance, Ordinance 5-3C, amending Ordinance 5-2C authorizing expenditure of funds.

Motion carried 7-0.

Meeting adjourned at 9:40 P.M.

Gayle Webster, CMC
City Clerk