

CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
NOVEMBER 4, 2010, 7:00 P.M., COUNCIL CHAMBERS
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Councilman Steve Heffner led the Invocation and Boy Scout Troop #160 led the Pledge of Allegiance.

The Regular Meeting was called to order at 7:00 p.m.

MEMBERS PRESENT: Ellenburg, Heffner, Martinbianco, Smith, Wells and Zelenko.

MEMBERS ABSENT: Haskins.

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

Martinbianco moved and Smith seconded the following motion:

Approve and authorize the minutes of the Special Council Meeting on October 18, 2010 at 6:45 p.m. and the Regular Council Meeting on October 18, 2010 at 7:00 p.m. Motion carried 5-0. (Mr. Wells was not present for this vote.)

ADMINISTRATIVE REPORT:

Mayor Smiley will resign his position as Mayor effective December 31, 2010 at midnight. He planned to submit his resignation in writing the first of December. He will be in Lansing Sunday through Wednesday for orientation. He hoped the Council would work together to help provide for a smooth transition of the new Mayor. He would like a new Mayor appointed by the first of December. This will give him a couple weeks to work with the new incoming Mayor. City Hall will be closed after December 22nd through January 3rd. He contacted the Attorney in reference to this timeline and he will research this issue and make a determination. The Mayor said it has been a great pleasure working with the Council. He said this was the best Council the City has ever had.

Mr. Heffner congratulated the Mayor on a great victory. He felt that Mr. Smiley would do a good job representing the City in Lansing.

COMMITTEE REPORTS:

Mrs. Ellenburg said there has been good progress made on the library renovations and it should be opened on November 15th.

Mrs. Zelenko scheduled a Legislative Meeting for November 15, 2010 at 6:00 p.m. for the purpose of discussion and review of the Michigan Medical Marijuana Act due. She said there has been interest by some of the compassion clubs. We need to determine if there needs to be an ordinance on the books. She requested some information from Attorney Austin. He has sent some material regarding a local government's point of view. She will provide the information to the committee members.

Mr. Austin said Flint Twp. reviewed this issue and then scrapped what they were doing. There are a lot of municipalities doing a lot of different things with this issue. I have provided Mrs. Zelenko with a white paper prepared for municipal governments. There is a lot of information to review and discuss.

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Mr. Heffner asked for the Public Access Committee to meet to discuss problems with the phone system.

Mayor Smiley said the next Administration needed to look into the purchase of a new phone system. Mark Udell is collecting information on a new system. However, we have not gone out to bids. The current system is old and we do not have voice mail. It would cost \$20,000 just to fix the voice mail portion. The Mayor was unwilling to spend that amount of money, not knowing if it would be compatible with the new phone system. We did not budget for that expenditure. He felt we could hold off on this matter. He checked with his administration and there haven't been any problems. He said voice mail was nice a feature, but we really haven't had any issues. Mr. Heffner said voice mail would be beneficial when residents needed to leave a message for department heads.

Mr. Wells said the Public Access Committee wants to install a state of the art communication system. This would cover the phones, voice mail and expanding availability on the website. He still felt they needed a new web page. He suggested looking at the whole bundle. Through this transition period, he didn't see the availability to move the funds. He would like to talk to Mr. Heffner more about this issue.

Mr. Heffner announced that the Burton Parks and Recreation would sponsor "Christmas at Courtland" on December 3, 2010 from 4:00 p.m. to 8:00 p.m. Activities for the event include: pictures with Santa, the Kearsley band, the Master Singers, Christmas stories, hay rides, ornament making, stocking making, cookie decorating, face painting, games, inflatable activities, cotton candy, hot dogs, drinks and a coloring book give away. There will be a collection for "Toys For Tots". Toys can be dropped off at City Hall or Courtland Center. Anyone that donates a toy will receive a raffle ticket. Two bikes will be raffled off at the event. He would like Council members to be present at this holiday event.

AUDIENCE PARTICIPATION:

Sandona Myers, President of the Friends of the Burton Memorial Library, was proud of the renovations that have been made at the library. She said the library would be beautiful and fantastic. Librarian Sarah Feallah planned to showcase books in new displays. Renovations included paint and new carpeting. The Friends have put a lot of time into cleaning and preparation for the grand reopening of the library. She thanked the City for all their help. Everyone is invited to a work party planned for Saturday, November 6th at 10:00 a.m.

Pamela Stebbins, 3431 Griffith Court, heard the post office was going to quit delivering mail on Griffith Ct. due to the poor condition of the road. She asked for clarification on it being a private road. She said the road was in terrible condition and she wanted it repaired.

Rick Fuhst, 1208 Center Rd., spoke regarding the need to cap off sewer lines during demolitions. He wanted to know how much ground water was going through our sewer system to be processed on our sewer bills.

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John Stapish, P.O. Box 190134, requested an accounting on rental fees for the Police Department facility. He wanted to know if the City was providing free utilities for these meetings.

Jan Bolen, 1169 Howe Rd., spoke regarding Kelly Lake Park maintenance. She wanted to know why it took the Boys Scout to fix up the park. She wanted to know where the maintenance funds were to fix up the park. She felt it was the City's job to maintain the park.

COUNCIL DISCUSSION:

Mr. Martinbianco said it was with great pleasure that we send our Mayor to the State Legislature. He wished him great success in that regard. Mr. Martinbianco was concerned with the transition of power with the new Mayor. He was concerned with the Mayor's obsession to resign on December 31st. He was aware that Mayor Smiley would take his new office as of January 1, 2011. The Mayor has spoken to the Attorney regarding his resignation, as well, as somebody being appointed prior to that point in time. The Mayor may have unused personal and vacation days. He felt the December 31st date might be a moot issue. He felt the date might be closer to December 12th. He said City Hall was closed between Christmas and New Years.

The Mayor plans to resign December 31, 2010. He does plan to use personal or sick days in December. The Mayor said he would be on the job until the December 31st.

Mr. Austin said if the Mayor submits a written resignation, pursuant to 3.11 of the Charter, and Council accepts it, the resignation would be effective on December 31, 2010. The Mayor would like to have his successor appointed in advance of that date, so he could work with his successor and provide a smooth transition. Conceptually, this is a great idea. However, 4.6 of the Charter speaks in terms of when the vacancy occurs in office. Technically, there will not be a vacancy until December 31st. The Attorney planned to look at the law to determine if it was appropriate to appoint a successor in anticipation of that vacancy.

Under the provisions of the Charter, Mr. Martinbianco felt the Council couldn't appoint anyone until the vacancy has occurred. He would be opposed to voting on anything outside the scope of the Charter, unless State law supersedes. You can't appoint someone to a position that is filled.

In response to Mrs. Stebbins comments, Mr. Martinbianco said there are several private drives within Burton where a consortium of neighbors actually pay the City to take care of the areas and roads. He suggested Mrs. Stebbins contact Mr. Kray in DPW. This will require a neighborhood effort.

In reference to Mr. Fuhst's comments, Mr. Martinbianco said inspections of demolitions fall under the supervision of DPW. In addition, they deal with illegal sump pump hook ups and ground water. He felt they do a good job on these issues.

Mr. Martinbianco applauded Mr. Heffner for being involved with the "Christmas at Courtland" event. Mr. Heffner hoped that Council members would attend the event.

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In regards to Mrs. Bolen's comments, Mr. Martinbianco said the City was fortunate to receive charitable contributions to help with the maintenance of Kelly Lake Park. We had a great "Trick or Treat Trail" this year. The Boys Scouts provided a valuable service. That was a pretty good deal.

Mr. Heffner said Lowe's had about 30 volunteers that cleaned and did maintenance on the park. Mayor Smiley said Lowe's took part in what they called "Heroes Days". They spend a weekend making a lot of improvements to Kelly Lake. He said the park looks so nice. Work was done on the signs and the pavilion. Many volunteer groups have participated in park projects, including Girl Scouts, Boy Scouts, Cub Scouts and Eagle Scouts. They have work extremely hard and take pride in the park. There is less vandalism. Lights, power and water have been added to the park. There are funds in place to maintain the park. A resident gave the City permission to move the park sign to their property. Mr. Heffner said this made a positive difference. Mayor Smiley said Kelly Lake has become a beautiful recreational opportunity for the City of Burton.

Mr. Wells said we owed it to our citizens and the employees to have a seamless transition as Mayor Smiley leaves. He has been in that position for 19 years. It will take his successor awhile to come up to speed. He thought the Mayor was making a fair offer to help with the transition. He said the Charter says a lot of things, such as the Council should be paid \$300.00 a month. So if we want to go by the Charter by everything we need to look at that too. If Mr. Austin did his homework and the Council agreed on a procedure for transition, he thought it would be very helpful for Mayor Smiley to lead the next Mayor into the interim year.

Mayor Smiley said if he submitted his resignation on December 6th and Council accepted it to take effect on December 31st, there really is a vacancy. He understood that only one person could be on the payroll until January 1st, which would be a Saturday. The Clerk and Council could come to together to swear in the new Mayor. Basically, the appointee would be like the Mayor elect during the transition time. They could be like a Mayor's appointee during this time period. After the Council accepts his resignation on December 6th, he would not change his mind. That would be a vacancy. The appointment could be done by Council action or a gentlemen's agreement by City Council. The Clerk could officially swear that Mayor in on January 1st.

Mr. Heffner had the Attorney research this issue a couple months ago. It was his understanding that the process began either when Mayor Smiley was sworn in to a new position or he resigned, what ever comes first.

Attorney Austin said the Mayor has suggested that vacancy occurs at the time the resignation is accepted, even if the resignation indicates a date later in the future when it should take place. Mr. Austin would need to consider when the vacancy was created. He will research this issue and make a determination if it is permissible for this Council to select a successor to the Mayor prior to the time that vacancy has been created by his resignation. Ultimately, it is up to the Council how they want to select the successor to the Mayor.

Mr. Martinbianco wanted to follow the Charter and the State Law on this issue. He felt the vacancy did not exist until he is disqualified from the Mayor's responsibilities.

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Mrs. Zelenko said if it was possible to presume who the next Mayor will be due to a later vacancy and that person comes from the Council, she questioned the balance of power. This person would be shadowing the Mayor and fulfilling their responsibility on the Council. She wanted to know if the Council member would have to resign immediately due to a conflict of interest between the legislative and executive branch.

The Attorney said that she raised two valid points. If Council appointed a successor, that would leave a vacancy on the Council. That is covered by 3.10 in the Charter. If a Council member carried a designation of successor Mayor, it would not fit any of the categories listed. He was not ready to say if it would be a conflict of interest. It is certainly something to be considered.

Mayor Smiley referenced when he was elected Mayor in 1991, he served on the Council for two weeks until he was sworn in by the Clerk as Mayor as the Charter requires. During that two-week transition time, it gave him time to meet with the former Mayor and staff to help with the transition. After the new Mayor is sworn in on January 1st, the Charter addresses how to fill the Council vacancy. He said the residents deserve to have a Mayor ready to go on January 1st. He felt Council could make this happen.

Mr. Smith respected Martinbianco's comments, however in the private sector standard procedure is to give two weeks notice so you can give the company and people time to make the transition as seamless as possible. In the best interest of City, he would like the successor to work with the Mayor. He would whole heartily support that, if we could do that legally.

Mr. Martinbianco said we are not above the law. He believed our founding fathers set a procedure in place for a succession in government. He will support the Charter. He spoke regarding the administrative staff being unionized. He felt the next Mayor should have had the ability to select their own staff members.

Mr. Wells felt times have changed since the Charter was written. He referred to the number of interim Council members over the years. He didn't think these types of situations were taken into consideration. Mr. Austin said things are more fluid now than when the Charter was written in 1972.

Mr. Wells said if the Council could come to some sort of agreement on this issue, it would be good enough for him. He would not go back on his word. He thinks a successor Mayor makes sense for a smooth transition.

Mr. Austin cautioned Council members not to begin a process of round robbing to select the Mayor behind the scenes. The selection of the Mayor should take place at an open meeting and not through telephone calls. He planned to make a determination on when a successor could be appointed.

Mr. Heffner said the Boys Scouts were here to lead the Pledge of Allegiance. They are working on their service badge.

COUNCIL ACTION:

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Wells moved and Ellenburg seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from October 13, 2010 through October 27, 2010, in the amount of \$4,767.50.

Motion carried 6-0.

Zelenko moved and Smith seconded the following motion:

2. Approve and authorize the Attorney Billing (Keller Thoma) 440 East Congress, 5th Floor, Detroit, MI 48226, for the month of September in the amount of \$174.77.

Motion carried 6-0.

Meeting adjourned at 7:55 p.m.

Gayle K. Webster, MMC
City Clerk