CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
DECEMBER 15, 2008, 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; K. McArdle, Personnel Director; G. Kray, DPW Director; D. Heidenberger, Assessor; Attorney R. Austin and G. Webster, City Clerk.

Haskins moved and Zelenko seconded the following motion:

Approve and authorize the minutes of the following meeting: Regular Council Meeting on December 1, 2008 at 7:00 p.m. Motion carried 7-0.

ADMINISTRATIVE REPORT:

Mayor Smiley wished everyone a Merry Christmas and Happy New Year. He noted the City's accomplishments for the year, including the Gus Macker and the Halloween Trick or Treat Trail. He hoped the City would be able to implement payments by credit cards or on line in 2009.

The Mayor disagreed with a Forbes article that suggested Burton was one of the fastest dying communities. He spoke regarding the new residential and commercial growth in the City. He said the City was alive and well. This is reflected in our strong budget, improvements and services. There are no layoffs.

The Mayor referenced the sale of property in Trail Ridge. Residents in the area have shown an interest in purchasing some of the property. He hoped that Trail Ridge would become another outstanding subdivision. The subdivision sign will be changed and a ribbon cutting will be held in the near future. Mr. Austin will be filing papers with the Court this week to change the name of the subdivision to Trail Ridge. All future correspondence will refer to the subdivision as Trail Ridge.

The Mayor requested an Executive Session for the purpose of discussion regarding the ratification of the POAM and ASCFME contracts.

The Assessor was available to discuss any agenda items relating to her department.

In reference to Item 7, Mr. Kray indicated that the owners of Palace Garden were present to answer questions regarding the building. DPW wanted to know what the owner's plans were before making a recommendation.

COMMITTEE REPORTS:

None.

AUDIENCE PARTICIPATION:

Jennifer Morquecho, 2246 Red Arrow Rd., spoke in support of the Palace Garden demolition. She said the residents were concerned with the unsightly property. The building has been in need of repairs for a long time. She felt a new business at that location would be more productive to the community. She opposed portable business signs. They are not in compliance with our ordinances.

COUNCIL DISCUSSION:

Mr. Haskins was proud of the Council's accomplishments this year. He wished everyone holiday greetings. He acknowledged the Fire Department with thanks and gratitude for helping needy families at Christmas time.

The Regular Council Meeting recessed to go into Executive Session at 7:20 p.m.

The Regular Council Meeting resumed after Executive Session at 8:05 p.m.

In reference to Item 2, Mr. McArdle indicated that the Thoma billing reflected meditation hearings.

In regards to Item 6, Mr. Austin said we did not want this parcel because it had been combined with the main property owner.

In reference to Item 7, Mr. Haskins moved and Mrs. Tinnin seconded the motion for immediate demolition of the premises at 3266 S. Dort Hwy. Mrs. Ellenburg wanted to know what the owner's plans were for the building.

Elmeretta Fischer, 851 Lakeshore Dr., Columbiaville, owner of Palace Gardens, indicated that the building was structurally sound. There was an interior fire and she hoped to reopen the business. She is waiting for an insurance settlement to begin remodeling the building. She said the building was secured and the weeds were cut. If the settlement is not satisfactory, she will give the building back to the original owner. No court date has been set for the settlement. She purchased the property on land contract from Donald and Mary Daniels. The property will be paid off in the next couple of years. The liquor license is in escrow at this time.

Mr. Haskins said the Council should have been kept informed of what was going on with the property. Mrs. Ellenburg wanted to know if something could be done with the torn awnings and the damaged brick wall. This will show some positive effort. Mrs. Fisher said the awnings could be taken down.

Mr. Kray said they would need a permit to replace the brick exterior of the building. He asked the Attorney if this would lock us into a course of action.

Mr. Haskins requested that Mrs. Fischer's attorney attend the January 5, 2009 meeting to provide more information on this property.

Mr. Heffner made reference to the taxes. Supposedly, the taxes on this property have not been paid in several years.

Mr. Kray read the inspection report from October 31, 2007, which included the following: paint falling off, roof appears to be leaking, curbing at roof deteriorating, holes in building, block and brick falling off and cracked and fire in kitchen area. No repairs have been approved or inspected. There was structural damage caused by an automobile hitting the building. No repairs or permits have been issued. The trim along roof falling off. The awning is ripped and falling off. The parking lot and sidewalk is in bad shape. There was no access to the interior at that time.

Mr. Martinbianco indicated that the property has been in disrepair for a considerable amount of time. No effort has been made to remediate the situation. It is the Council's responsibility to make sure buildings are not in disrepair.

Mr. Austin suggested the damage to the corner of the building had nothing to do with the fire loss. He asked Mrs. Fischer if she was waiting to get the insurance settlement before attempting any repairs. Mrs. Fischer said she would repair the corner of the building.

The motion for immediate demolition was withdrawn.

Mrs. Tinnin moved and Mrs. Zelenko seconded the motion for Step 4. Postpone any further action until January 5, 2009, based on the following circumstances: Mrs. Fischer needs to have her Attorney present at the next meeting, provide a detailed plan with a timeline for completion of the work and begin remediation on the north east corner of the building immediately.

Mrs. Conley wanted to know when the taxes would be paid. Mrs. Fischer said she was waiting to hear on the insurance. Mrs. Conley wanted to know when the fire took place. Mrs. Fischer said the fire was January 1, 2005. Mr. Martinbianco felt a bond should be required to make sure the work would be done in a timely fashion. If demolish takes place, the cost would be assessed against the taxes.

Mr. Martinbianco did not want to support the element of having the northeast corner of the building being repaired. Mr. Austin said the remediation to the corner could be added to the motion. He did not find anything offensive about leaving that component in the motion.

In reference to Item 11, Mrs. Conley indicated that Burton Estates and Mallard Pond are paying their bond payments, but taxes are not being paid. She wanted to know if we would pursue the same action as we did with Trail Ridge.

If there were a problem with these subdivisions, the Mayor would meet with everyone involved, discuss it with Council and make a decision.

Mrs. Heidenberger has spot-checked the tax rolls in Burton Estates. Those taxes were paid in 2006. She planned to research this issue further.

In reference to the first ordinance, Mrs. Tinnin felt this would make it easier for the City to collect and equate costs for the completion of projects. Because projects take so long to complete, it is difficult to predict the total costs. If we are going to aid development in this fashion, we need a means to collect the additional money to complete those projects.

Mr. Kray explained that in the past we have secured a bond from our developers to ensure that they put on the top lift of paving. The price of asphalt went up dramatically. The developers didn't want to pay the extra cost, so they gave up the bonds. The bonds were deficient in covering the cost of the work. The result was that we had to pursue a lot of developers through personal property or other means to collect the extra money. The intent of this ordinance was to evaluate the bonds on an annual basis and if the cost of paving has gone up, it would give us the authority to make the developer increase and adjust the value of their bond to meet current market prices. If we execute the bond before the subdivision is fully developed, we might have the potential problem of extra repairs with the roads.

Mrs. Zelenko was concerned the City would incur costs for additional paving work. She wanted the ordinance to remain the same to give the City more leverage on these projects.

Mrs. Tinnin clarified that this would allow the DPW Director to have more control on how we are going to collect the final money to complete these projects. Many times it takes several years to complete the subdivisions to a certain percentage level. This simply gives the DPW more latitude to go back to the developer and indicate we need to adjust the value of the bond. The original estimate will not be enough to secure the completion of the work. This will put a legal procedure in place, which will guarantee the developer covers the cost to complete the work, so these additional costs will not come back on the taxpayers of Burton.

Due to escalating costs of asphalt, Mr. Kray said the original bonds are not sufficient to cover the costs to complete projects. This will require the developers to increase the bonds. The attorney will not have to get involved. We won't have to attach personal property and try to sell the lots.

Mr. Austin said under the current ordinance the Council does demand assurances that these projects be paid. The ordinance does not address the review of the bonds. This proposal allows the DPW Director to come before Council and inform them that the bond will no longer cover the completion of the work.

Mrs. Zelenko said essentially this will give the DPW Director the flexibility to come before us if there is an increase in asphalt prices and we need more dollars to cover the completion of paving costs. The existing ordinance does not give us that leverage.

In reference to the second ordinance, Mrs. Tinnin said the reason this is being brought to Council was due to the risks involved with special assessments. She said it would take a super majority vote. She said it did not make sense to approve a special assessment project with four votes and it takes five votes for approval of the general obligation bond. There are risks of losing money if the property does not sell or goes bankrupt. She gave examples of subdivisions that weren't completed. The taxpayers have lost money on these types of projects. She felt the City should not give developers money up front to add infrastructure. This should be the developer's responsibility.

Mrs. Ellenburg didn't believe working with the developers to promote growth was a bad idea. She didn't want to tie the hands of Council when addressing future development. She said the Council still has a vote to determine what to do with these developments.

There was a discussion about the County paying three years of unpaid taxes and special assessments through the revolving fund. The City is now getting charged back for it.

Mrs. Zelenko said prior to 1991 there hadn't been hardly any new development in the City. Something needed to be done to entice development. If something had not been done, we would have faced lost of services, cut backs and layoffs. We were progressive and took a chance. It was very successful. Twenty-four new subdivisions were added to the tax rolls. This generated $4,790,881 in taxes for the City. If it were still vacant land, it would have generated $13,556. The benefits from the development far out weigh the problems. She felt the defunct subdivision had more to due with the bad economy and the housing market, rather than the developer. She said many individual homeowners have lost their homes to foreclosure, as well. Promoting growth has proven to be very beneficial to Burton. She would like this to continue. This ordinance would not help the marketability of the community, nor does it prevent the failure of a development. She agreed with Mrs. Ellenburg. She did not want to tie the hands of the Council in the future when dealing with potential development in good faith. We have no layoffs and the City is financial sound. For the most part, we have been totally blessed with the way we did this development. She would be voting no on this.

Mr. Haskins said there are over 400 foreclosures in the City. These are individual homes, not just a subdivision. Over the last ten years, the developers have improved our City. He said we went from $13,000 vacant land revenue to over $4 million. He felt we should not try to hinder, slow or discourage the process with this ordinance. He asked Mrs. Tinnin for clarification on how defunct special assessment subdivisions related to passing on cost increases to water and sewer customers.

Mrs. Tinnin said the enterprise funds are where water and sewer payments are generated. The infrastructure that was put in will be charged back to this fund. When the money that we have collected has been totally exhausted to pay for the bond payments, something will have to be done. A $3 million bond needs to be paid back on one project and more is due. That risk will wash out the $4 million gains in time. Mr. Kray pointed out that the tax revenues for the subdivisions are $4 million a year versus the one time $3 million cost.

Mr. Haskins felt the special assessment infrastructure enhanced our City so residences would move here. When residents do hook up to the water we will recoup money. It is a short-term investment, like running a business. The ordinance will handcuff what has improved the City over the last ten years.

Mrs. Conley named several unfinished subdivisions. She said many developers have not completed their jobs. She feels bad for residents that have built in these unfinished subdivisions. She said we should finish a phase before going to another.

Mrs. Zelenko named a long list of subdivisions that have been completed. The good numbers far out weigh the bad. Because we took advantage of the good times is why the City is still in the good shape we are in today.

Mr. Martinbianco acknowledged the bad economic conditions in the County. Eventually, he hoped it would get better. The important thing is that we take advantage at the point in time when the economy turns around. Then we will be ready.

Mr. Haskins pointed out that the bad economy and foreclosures are reflected through the County, State and nationwide it is not just the City of Burton. We were flourishing and everything was going great. After this slump, we will rebound.

Mrs. Tinnin felt it was important to have the opportunity for Council to vote on this. She didn't see other communities going to tax sales, buying back properties, and taking them off tax rolls to avoid paying taxes on foreclosed properties. Cities are not in the business of land acquisition, development and sales. She said we are in the business of taking people's tax dollars and using that money to service the people. She questioned if we were going to open a City real-estate office. She said other communities are not doing special assessments to entice developers, so that they get their infrastructure paid for by the taxpayers.

Mr. Martinbianco indicated that we are not going to be in the real estate business. We have agreed to do everything we can to market the properties we have discussed. If that proves not to be fruitful, then we will seek outside counsel to help with that direction.

Mrs. Zelenko said there are other communities that are dealing with tax reverted properties. They started taking control of the properties to protect the residents.

Mr. Martinbianco thanked Mrs. Tinnin for her leadership on this topic.

COUNCIL DISCUSSION ACTION:

Moved by Zelenko, seconded by Haskins to: Approve and authorize Council to go into Executive Session for the purpose of discussion relating to pending contractual negotiations for POAM and AFSCME, under Section 8, (c) of the Open Meetings Act, session to commence after Council Discussion and prior to Council Action. Motion carried 7-0.

Moved by Tinnin, Seconded by Zelenko to: Call the question on Item 7. Motion carried 7-0.

COUNCIL ACTION:

Haskins moved and Heffner seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from November 21, 2008 through December 10, 2008 in the amount of $5,459.00.

Motion carried 7-0.

Haskins moved and Heffner seconded the following motion:

2. Approve and authorize the Attorney Billing of Keller Thoma, 440 East Congress, 5th Floor,

Detroit, MI 48226, for November 2008, in the amount of $2,880.00.
Motion carried 7-0.

Ellenburg moved and Conley seconded the following motion:

3. Approve and authorize that the City of Burton Board of Review will be in session from March 9
through March 11, and on March 17, 2009. Meeting times will be from 9:00 a.m. to 12:00 p.m. and 2:00 p.m. to 5:00 p.m., with the exception of March 11, when the Board will meet from 3:00 p.m. to 9:00 p.m. All meetings will be held at Burton City Hall, 4303 S. Center Rd., Burton, Michigan.

Motion carried 7-0.

Ellenburg moved and Tinnin seconded the following motion:

4. Approve and authorize that a resident taxpayer may file their Board of Review appeal by letter, without a personal appearance being required. This is pursuant to Section 211.30 M.C.L.

Motion carried 7-0.

Haskins moved and Zelenko seconded the following motion:

5. Approve and authorize the City of Burton Guidelines For Granting Poverty Tax Exemption. These guidelines are pursuant to P.A. 390 of 1994, and as further amended by P.A. 620 of 2002.

Motion carried 7-0.

Haskins moved and Ellenburg seconded the following motion:

6. Approve and authorize a Resolution Regarding Disposition of Tax Reverted Property to reject the reversion of Parcel No. 59-31-400-039 to the City.

Motion carried 7-0.

Tinnin moved and Zelenko seconded the following motion:

7. Approve and authorize the Standard Resolution for Step V of the Burton City Demolition Procedure, determining said premises at **3266 S. Dort Highway** to be a public nuisance or hazard and to further require the owner(s) or occupant(s) to:
    4. Postpone any further action until January 5, 2009, based on the following circumstances: Mrs. Fischer needs to have her Attorney present at the next meeting, provide a detailed plan with a timeline for completion of the work and begin remediation of the north east corner of the building immediately.

Motion carried 7-0.

Heffner moved and Zelenko seconded the following motion:

8. Approve and authorize the setting of a public hearing on Tuesday, January 20, 2009 at 6:45 p.m., for consideration of the application filed by James E. Kirby, President, Kirby

Steel, Inc.
Motion carried 7-0.

Ellenburg moved and Conley seconded the following motion:

9. Approve and authorize the Mayor and Clerk to enter into a four-year agreement with POAM, on behalf of the City of Burton, effective July 1, 2008 to June 30, 2012.

Motion carried 7-0.

Haskins moved and Heffner seconded the following motion:

10. Approve and authorize the Mayor and Clerk to enter into a four-year agreement with AFSCME on behalf of the City of Burton, effective July 1, 2008 to June 30, 2012.

Motion carried 7-0.

Heffner moved and Ellenburg seconded the following motion:

11. Approve and authorize a Resolution Amending Property Sales Procedure By the Authorization to Sell Lots upon Pre-Approval Terms, Conditions and Prices and Authorizing Sales.

Motion carried 5-2, with Conley and Tinnin voting no.

INTRODUCTION OF AN ORDINANCE:

Conley moved and Tinnin seconded the following motion:

1. Approve and authorize the Introduction of an Ordinance, being Ordinance 156.24 (D) (3) (b), Establishing assurances for the City to assure the completion of unfinished public improvements, and to provide penalties for the violation thereof.

Motion carried 7-0.

Conley moved and Tinnin seconded the following motion:

2. Approve and authorize the Introduction of an Ordinance, being 150.03 (A), Amending the special assessment petition process for public improvements for proposed districts which are less than fifty (50%) percent improved or which have majority ownership by one owner, and to provide penalties for the violation thereof.

Motion failed 5-2, with Ellenburg, Haskins, Heffner, Martinbianco and Zelenko voting no.

Meeting adjourned at 9:45 p.m.

Gayle K. Webster, CMC
City Clerk