CITY OF BURTON
REGULAR COUNCIL MEETING MINUTES
DECEMBER 20, 2010, 7:00 P.M., COUNCIL CHAMBERS
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The Invocation was led by Sadonna Myers and Councilwoman Ellen Ellenburg led the Pledge of Allegiance.

The Regular Meeting was called to order by President Steven Heffner at 8:05 p.m.

MEMBERS PRESENT: Heffner, Zelenko, Martinbianco, Ellenburg, Wells, Haskins and Smith.
MEMBERS ABSENT: None.
OTHERS PRESENT: Mayor C. Smiley, Fire Chief D. Halstead and Julie Adams, Deputy City Clerk.

Ellenburg moved and Martinbianco seconded the following motion:
Approve and authorize the minutes of the Regular Council Meeting on December 6, 2010 at 7:00 p.m. Motion carried 7-0.

ADMINISTRATIVE REPORT:

Mayor Smiley referenced the Finance Meeting relative to the Fenton Road watermain project. They were told it was a 50-50 split with Flint Township and the City of Burton. DEQ came forward with 15% and the developer's interest at 4 ½ for 20 years. Flint Township has voted on it as well. The watermain project has been going on for several years and I think it is a win-win for us. We have an opportunity to put in a mile long much-needed water line, less than 50 cents on the dollar. We have some issues at the mobile home park with well problems and arsenic levels. The DEQ will not allow them to continue to use the same well water. He can continue to use well water with a treatment facility or use municipal water. The choice is really his. We believe it is cheaper for him to hook into municipal water than to worry about trying to increase his well water. We are enhancing our system so we have a better water service and I think this is a great project and hope Council will support that tonight.

Mayor Smiley stated further the Fire Department is on the agenda and was also on Finance earlier tonight. That has been another very long issue. We have hopes for a new fire station and improvements to Fire Stations 1 and 3. We talked about when our police station paid off the bond, we had hopes of using that money that was going toward the police station to cover the cost of the bond. Little did we know that revenue sharing was going to be cut so drastically that we wouldn't be able to pull that off. The voters last year were very supportive of our community and our fire department that they passed the mill to build a new fire station and make necessary improvements to the other two. I want to personally thank all of the voters that did that. I want you to always think of why voters support us. Look at some of the front pages and see communities around us. You see massive lay offs, cuts in services. We haven't had that in our community and we can be proud of that. We can be proud the fact our employees are still working and doing a great job, we are staying within our budget. We are not having the financial difficulties as others not far from us are having. That says a lot about the progression that we are going and saying why voters are supportive of our millages. I want to encourage all of you. This is my last official meeting as Mayor. Continue to stay involve in the community and remember the Oath of Office that we take and how important it is that we get out and do the things we are suppose to do as elected officials.

Mayor Smiley stated further, I know we do that each and every day and it just becomes second nature to us, and please don't let that ever stop. Depending on whom you talk to, the economy is improving both State and national levels. If that is true, this city will move ahead leaps and bounds. We haven't really slowed down much. Some of the construction has slowed down, but we are still in business.

Mayor Smiley referenced the Rotary, Kwanis, Parks and Recreation, block clubs, churches, schools, as well as others. He stated look at what is going on. They have taken a little bit and made a lot, as we continue to do our part, this city will be one of the greatest cities in the State. We are still one of the lowest levied cities in the State. There is only so much you can give up. But what we have to offer, none of the others can match. With that, I want to wish all of you well, Merry Christmas and Happy New Year, and God bless you.

Mr. Heffner expressed to Mayor Smiley that it has truly been a pleasure working with him and we are going to miss him.

COMMITTEE REPORTS:

Mr. Martinbianco said we had a Finance Meeting and another will be scheduled. It called attention to what Mayor Smiley brought issue to with respect to the Fenton Road Watermain extension from Bristol Rd. to Maple Road and the construction agreements as presented by the Drain Commissioner. I had an opportunity to discuss this afternoon with Charter Flint Township Supervisor Miller relative to some of her questions, and where her prospects are that she was going to be with the Flint Township Board. She did have several questions concerning a phone conversation between her, Township Attorney Goodstein and John O'Brien, a representative of the County Drain Commissioner Office, relative to the extent of the agreement, the longevity, and most importantly, if they opted out of the agreement. She refused to speak on behalf of the Board, but took a very cautious approach to what Flint Township's posture might be with respect to the project. They apparently alluded to the fact that if Flint Township did not participate, the City of Burton would have a line that would satisfy Burton only, and at some point in time if they ever chose to address that project again, they would have to put a line similar to the size we have in at their own expense.

Mr. Martinbianco stated further he spoke with Attorney Austin relative to an agreement that we had tentatively, and the Mayor was in audience with Mr. Stein, that talked about Enterprise Estates and construction. It talks about their responsibility. Be mindful of the fact this was in August of 2008. We talked about shared cost, his ability to pay, his con-activity, particularly Item #3 within the scope of the proposed waterline agreement, number 3 was the connection fee of the connection of the Enterprise customers currently calculated to be (this is over 2 years old) $177,000 based on the number of mobile pads to be serviced in addition to the front footage lots owned by Enterprise. To date, this has never been an executed agreement. How he has been able to fly underneath the DNRE radar really escapes me because of the arsenic levels that were talked about in great length by Commissioner Wright at our meeting discussing the necessity of the project. This gentleman obviously would be the biggest benefactor of that based on his willingness to move forward. But since 2008, he has not made any kind of movement to go in that direction.

Mr. Martinbianco stated further, the Committee voted to bring it to the whole Council for vote. Given the date lines Commissioner Wright shared with us, talking about a bid opening January 13, 2011, we can put this on our January 3rd agenda. It is a very extensive project. It is one of the projects very similar to what we incurred with Grand Blanc Township on the Maple Rd. waterline. A lot of people are familiar when we were entertaining the thought of getting water down Maple Rd. in order to establish Maplewood Meadows as a subdivision and bringing a water source at that point. Perhaps Flint Township will have had an opportunity to address the issue and take another look at it. I am a little concerned because our biggest potential customer over there would be Enterprise Estates and the mobile home parks along the Fenton Rd. project, parcel that project. Even given the fact we are going to be doing some cost sharing, Mr. Wright's figures which differed from the $500,000 shared cost now has gone to $770,000 by his numbers.

Mr. Martinbianco stated the architectural engineering has already been paid. Despite what it would cost in savings over that 20-year period in interest savings, we have to make sure we have some sense of con-activity within that mile stretch. It will provide us with increased fire protection and the location of it from a geographic sense will also give us the opportunity to loop back down Bristol Rd. and hook back up to Camden.

Mr.Martinbianco said with regards to agenda Items 6 through 10, we have had a couple of meetings in addition to one this evening. Apparently when bids went out they were subject to a prevailing wage agreement. There was some discussion that we really wanted a project labor agreement, which is far more extensive in nature. The parties in Item #6 is DCC Construction and Item #8 is Usztan LLC for the renovations at Stations 1 and 3. In addition, it would follow that the bid of Schaefer's Office Source wouldn't be approved prior to the acceptance of the other bids. I have set another Finance Meeting for Wednesday, January 5, 2011 at 3:00 p.m. to hammer everything out. If we need to set up a special meeting, which the Fire Chief indicated wouldn't be a necessity, but if we needed to set that up for January 10th to finalize the rest of the agreement so we can get that going. My recommendation is to remove Items 6, 7, 8, 9 and 10 and refer those back to Committee on Wednesday, January 5, 2011 at 3:00 p.m.

Mr. Haskins asked for clarification on the bids and labor agreement.

Mr. Martinbianco said to his understanding, when the discussion began and when the bids went out, they went out with a prevailing wage agreement, which apparently differ from what a PLA or project labor agreement is. There are 2 sides to every story and we have heard a lot from the proposed contractor designated for Station 2. We haven't heard from the contractor that is proposed to do the renovations to Stations 1 and 3. We have listened to the reasoning in discussion that could potentially involve PLA and how it may potentially impact the cost of the project on the cost of the reconstruct as well as the ground up super build of Station 2.

Mr. Haskins asked what could be impacted.

Mr. Martinbianco replied it could impact financially and whether or not the understanding that was raised by the general contractors through the scope of the work that was identified by THA and each of the components that goes into each of the projects that was identified. A PLA would be markedly different in a lot of respects as it impacts the subcontractors and how they may have to be allowed to adjust their prices. We have built in some fringe. Typically, we would build in a 10% contingency fee in a project like this but because of how tight this thing was bid, we had to cut that almost in half, if we are talking about a $4 million dollar project instead of having a $400,000 contingency, now we are talking about $200,000. You may be looking at less than that if we employ a PLA, depending on if the subcontractors would come back and come to the table with that understanding with that agreement.

Mr. Haskins said the problem he has is the delays with the fire stations. You won't find a person more union than myself. I am not against unions' what-so-ever. This project has been delayed now for at least 2 months. I don't think delaying it any longer is good. The residents voted for this and want it. I don't think delaying the project and going out for bids is a necessity. We need to get moving forward on this.

Mr. Wells said he agrees with Mr. Haskins. The only people that stand to come out in the good are the residents. It isn't for the contractors or the union. We want to make sure we know what we are paying for this thing when we go in. There is a discrepancy between the lowest bidder now and the people that want to PLA. We may not go that way. It sounds like it is in the best interest of the City to do it right now because they will have people on site to make sure there aren't any cost overruns. I deal with this all the time. People are hurting right now. When they go and bid these jobs, they try to put a little bit extra in there for their overruns. We are in it for $4.1 million dollars and they know we can go to $4.5 million. I spoke to Mr. Bendzinski and he said it would take 2 weeks after we finalize this thing before the bonds go out and it could be another 4 weeks after that before they get them all sold, and then another 2 or 3 weeks after that to actually push the project through. By holding it off another couple of weeks, nothing is going to start anyways over the holidays. All we are really doing is our due-diligence. I wanted to do it 2 or 3 years ago. It is in our best interest and the residents to know what we are talking about when we sign that contract.

Mr. Haskins asked how a PLA is going to protect us. This was on the agenda 2 months ago and it got tabled then.

Mr. Wells said we have asked for mostly Burton contractors or at least Genesee County contractors. We need somebody to oversee that project. In another 2 weeks we will have a meeting and by the time we leave that meeting we will have it hammered out. Mr. Martinbianco and I are going to meet with both sides.

Mrs. Zelenko said normally when you bid something out prevailing wage, the PLA terms are incorporated in that. So there was a discrepancy of which there was enough built into the prevailing wage to cover a PLA. We really need to table this to go onto another meeting to get this all hammered out. We all want to see this move forward.

Mrs. Zelenko stated further, it is a good thing that it didn't go forward last October when we had some other issues that came up. We need to be sure and certain. I will vote to remove it from the agenda tonight.

Mr. Wells expressed that after the first of the year he wants to discuss a communications system. We still do all our meetings with cassette tapes. You cannot find a cassette tape player out there. We are going to discuss putting in a CD burner, and burn 10 copies so we all have a copy of the meeting that night.

AUDIENCE PARTICIPATION:

Sadonna Myers, 1495 Alberta Ave., stated as President of the Friends of the Library, she has a presentation for Mayor Smiley. She thanked Mayor Smiley and the Burton DPW for helping with the renovation of the Memorial Library and making it beautiful.

Gary Card, 2098 Delaney St., inquired regarding the need for a strong Mayor government. He suggested a City Manager for a lot less money or reducing the salary of the Mayor by 10 or 20%. This would help in eliminating police officers and fireman. For the first time in his 30 years in Burton, his street wasn't plowed the next day. He got out, but it took a couple of days to get it plowed. Usually when they plow it, they salt it and they didn't do that. That tells me something down here is going away, that is revenues. Out of the 28 houses on my street in the last year, 5 have been repossessed. When you have houses selling for over $100,000 2 years ago that are now on the market for $40,000, something is going to happen here pretty quick. You are not going to get the revenue, and not be able to operate this city and you are going to have people marching on City Hall. This is going to hit the fan pretty quick. The sky may not be falling right now, but we are in for trouble shortly.

John Stapish, PO Box 190134, commented on the length of time for the Finance Meeting. He suggested expanding the Clerk's office for more storage space.

COUNCIL DISCUSSION:

Mr. Wells said he wants to clear things up. He still disagrees with putting someone in for Mayor from City Council. I know there are some capable people outside. The last 4 or 5 days since the Burton View came out I have been inundated with calls and people stopping by. He doesn't in any way think Mrs. Zelenko would not make a good mayor, under different circumstances. When the Mayor came in almost 20 years ago, he was less politically astute than Mrs. Zelenko is now. He had going for him a brilliant attorney, Mr. Hamilton, the architect of his campaign and his mentor Ken McArdle, Brad Becker in the Controller's room and Dennis Lowthian as Assessor. All these people with 12 to 15 years of experience that new the city inside and out. He had Howard Throop, Rick Riess, Ralph LaDuke and Jeff Major. He had Herm Clark and former Mayor Thomas that would stop by and help him out. He had Bud LeGrande, Pete Holmes, Alta Walls, Ted Hammon, Mr. Martinbianco, Mr. Abbey and long time businessmen on the Planning and Zoning Commissions. Not none of the problems that we have right now.

Mr. Wells stated further the city is facing some desperate times. We all know what the budget is going to look like this year. I just think it is ridiculous to put someone in there under those situations that is going to have to immediately start campaigning for the job again. Mr. Smith says he is very meticulous; he didn't look at one person besides Mrs. Zelenko. That is not meticulous. We had an opportunity to go outside or at least have discussions, which got shut down. People's minds were already made up. We had a unique opportunity to at least bring some people in, get some fresh ideas from outside, see if there was somebody better, and just be an administrator. I hope everyone can go home over the holidays and think about this before we do it. It is not in my best interest or the City's best interest for anyone to fail. Mr. Wells indicated further the possibility of Ken McArdle for the Mayor's position and his wife Pat for administrator.

Mr. Martinbianco said what is lacking today is the lack of transparency. Make our judgment call based on what we know for a fact of what we think is best for the City. You bring up a great anomaly of maybe Mr. McArdle being that person or that individual that is already intimate with the goings on of the City. I don't know about bringing back his wife or supporting that. His residency would be an issue as far as making sure he was a Burton resident and taxpayer in order to discharge those duties. That is an innovative idea and a very good suggestion and should be looked at. I think we need to follow the Charter and if we could or could not come to some agreement relative to naming one of our own as Mayor, then we can look outside.

Mr. Wells said a lot of people have expressed to him that it is a good idea. There are a lot of well-qualified people that are signing up for the open seat. Hopefully we can get them involved and getting them running for City Council or Mayor. I have told other people that I don't have to be a Mayor or even on City Council to be a leader in this city. Mr. Wells expressed to the Mayor that he appreciates him and has learned a lot from him. He has been a tremendous mentor to him. He hopes they do not waste his talents in Lansing.

Mrs. Ellenburg said we are going to miss the Mayor. We are proud to have known him for 50 years and seen all his accomplishments. Her 91-year-old mother spoke on how much he has done.

Mr. Smith asked Mayor Smiley if he ran for office when he handled the position of Mayor.
Mayor Smiley acknowledged yes.
Mr. Smith asked if he felt he could do both at the same time, taking care of his duties for the residents. Mayor Smiley acknowledged yes.

Mr. Smith asked if Mr. McArdle is in Burton now.
Mayor Smiley said he moved to Vegas in 1997 and came back a few years ago.
Mr. Smith questioned further if he is not really a Burton resident, he is working here as a contract employee.
Mayor Smiley responded yes.
Mr. Smith asked if Mr. McArdle has health issues.
Mayor Smiley stated yes.

Mr. Smith asked Mr. Wells if he has spoke to Mr. McArdle about being available or if he was interested. Mr. Wells acknowledged he hadn't.
Mr. Smith asked Mr. Wells the persons that he spoke to.
Mr. Wells said he talked to Herm Clark and Dennis O'Keefe. There were others that did not want their names mentioned. Mr. Clark said Council already took a vote and shown their support for Mrs. Zelenko. By coming in now, it would put him at a disadvantage and he didn't want that.

Mr. Smith asked Mr. Austin to explain Section 4.6 of the Charter.
Mr. Austin said his opinion indicates the Charter says you shall meet within 10 days from the date of the vacancy to appoint a successor to the Mayor. The Charter envisions you will fill the vacancy from a member of this Council and in the event a successor to the Mayor cannot be selected from the members of the Council, at that point the Council shall appoint a successor in the same manner as provided in Section 3.14 for filling a Council vacancy.

Mr. Austin said the clear intent of Section 4.6 is that you shall meet within 10 days and appoint a Mayor from the members of Council.

Mr. Smith asked Mr. Austin to read aloud Section 7.2 regarding budget procedure and inform him if it is currently being practiced by the City of Burton.

Mr. Austin stated on or before the 1st of February of each year, each officer and department head shall submit to the Mayor a complete statement of the financial needs and expected revenues of his office or department for the next fiscal year. The Mayor shall assemble all of the statements so submitted and prepare for the Council a budget proposal for the next fiscal year. Such budget proposals shall be presented to the Council at its first regular meeting in April.

Mr. Smith asked if we are practicing it at this time. Mr. Austin said as far as we know, yes.
Mr. Smith said we have the Mayor leaving, the Clerk and the Controller has left. If we are going to follow this Charter, we have less than a month for a new Mayor to be brought on board, new department heads that haven't done this before to put together a budget of what you are going to need, in less than 30 days. We are doing this in a state of declining revenue and you are probably going to have to look at taking cuts.

Mr. Smith stated further, if they are lucky, they have had conversations with the department head prior to that person leaving. If not, we are asking that person in a key position to put together a budget in less than 30 days. That is asking a lot of that person. The intent of the Charter is that the person to run this city comes from the Council. Danny stated some names that the Mayor had to help him through that transition. Whoever is on there, a lot of those people are going to be gone. Why would we not want to bring someone in from the Council that has been involved in the day-to-day operations of the City. Why would we want to bring someone in that has not been involved in the day-to-day operations of the City, opens up the books and says why are we doing this. We are asking a Controller of one week to come back to us in a few months, trying to balance a budget in declining revenues, and have that person do a good job. They are probably still looking for where accounts are and what the purposes are.

Mr. Smith indicated further the Assessor has been here since August – one of our key areas. We are asking all this from someone sitting up in a chair in the Mayor's office that has no history here, no matter how good a thinker they are, how good a business person they are, going to departments heads that have been on a job for a very short period of time and have a budget ready in less than a month after the new mayor is sworn in. How could we do that? How can I do that as a Councilperson? I took an oath to protect the interest of the residents. How about the employees? They don't know what is going on. I worked for a company that didn't know what was going on when things were being changed with management. It scares the daylights out of them. We owe them more than that and the residents than to wing it. No matter how good that person is over there, we will be winging it. Mr. Smith stated further, he feels Mrs. Zelenko has skill sets and talent and can lead us through a very treacherous time in the next 11 months. This person should come from the Council. That was the spirit of the Charter. Personally, I feel Paula Zelenko is that person. I have been impressed with her. There is a lot of talent here, Danny and Tom to. Those 3 people have the most experience. If nothing else, it should be one of those 3 people because of the continuity within the transfer of leadership within the City. I have been on board only a year. I do have an extensive background but not in this business, I am learning. I can write and wrote professionally for over 30 years as a media consultant. I was a manager – I know you do your homework before you do anything. I did my homework and at the end of that day, I thought Paula had the best skill set for us to move forward. We will find out January 3rd if the rest of the Council feels that way.

Mr. Austin said all of you know of the Mayor's accomplishments and he is the City's biggest cheerleader. I say this in the most affectionate sense. The City needs a cheerleader and he has filled that role extremely well. I worked with Charlie Smiley for a long time before I became the full time City Attorney. I worked with Dick Hamilton and worked more and more with Council and the Mayor. Then one day all of a sudden I was the City Attorney. Most of you weren't here then. It was an extremely tumultuous time. It is difficult for those of you that weren't here to realize what was going on every day. It was open warfare, particularly between this Council who hired me and the Mayor. I would leave Council meetings with my stomach tied in knots. The hostility didn't end when the gavel fell and ended the meeting. That just started the phone calls among and between the Council people and myself, and it was bitter. The Mayor single-handedly fought through those difficult times. I did my very best to be the City Attorney throughout that period of time. I tried not to play favorites and I know some of the calls I made didn't make him happy. I did my level best not to take sides during that bitter battle. I want to tell you that he is going to do just fine in Lansing. He has an inner strength that will serve him well there. He is going to represent this City, this community and his constituents very well there. I am glad he will be representing my wife and myself there. He is tough and I saw it first hand during those years. Mr. Austin thanked the Mayor.

Mayor Smiley said 19 years ago when he walked into the job as Mayor, yes I had the staff here. It wasn't all cake and ice-cream. I had my battles. The first thing Brad Becker told me when I started to prepare a budget was "you have 2 choices - lay off or raise taxes". We started coming together as a team and think about ways that we could enhance our City because everyone around us was having problems. We started to put in infrastructure and working - making things happen.

Mayor Smiley stated each and every day things started changing. This City was in the pits when I first got elected. There were obstacles and all kinds of issues over the years and we overcame them. The staff that we have today is just as qualified as the staff that was there in 1991. Karen Foster did a great job and now we have Ginger that will become Controller January 3rd. She is very qualified to do the job. He had Bobbie Bendzinski, Tadd Harburn, Iris and Karen in the room and interviewed candidates and then we chose one that shined. She is going to do an outstanding job. Ken McArdle will be here at the next meeting. We have an excellent Fire Chief, Police Chief, DPW Director. We restructured the DPW numerous times. We stayed within the budget. Council did the right thing by giving me someone to work with during this transitional time. That had to happen. Employees and residents were uneasy. It gave me an opportunity to work with Paula. It gave Paula a chance to evaluate staff and employees, and then come January 3rd if she is the one that has the votes, she will be able to sit down and move the Zelenko administration in place. Today we put the budget together and sat down with the new Controller, sat down with the department heads and put the budget together to present to City Council. There will be no more tough times this year then there was last year, or the year before that. Every year that I have been in office, I have had revenue shortages. Not because of expenditures, but because the State is taking our money and that is probably going to happen again this year. Are we going to survive, yes we are. This Council and the next administration are going to come together and come up with a plan. As far as cutting the Mayor's salary that is set by the Salary Commission and that can't be done unless the Salary Commission does it. As far as doing away with the Mayor, I would encourage you as you travel to inquire as to what City Manager's make. This Charter has been in place since 1972. They put in a strong Mayor form of government and that Charter has withheld many challenges and obstacles from Councils and administrations, and it has worked well. When I walked in – in 1991, everyone thought I was going to clean house. The 5 Charter and non-union Charter individuals easily could have been wiped out at any given time – it didn't happen. Mayor Smiley stated further he would answer any questions on the administration.

Mr. Haskins stated to everyone Merry Christmas and Happy New Year. It is a long night with a lot of conversation. He has known the Mayor for a lot of years. He pours his heart and soul into the City. The City is his passion and the residents. Anyone willing to take advice or learn from you, you are willing to teach. He agrees with Mr. Austin, you can't ask for a better person to represent us in Lansing. Thank you for everything.

Mr. Haskins suggested holding a Special Council Meeting on January 5th at 5:00 p.m. on the Fire Department issues to see if we can't get this moving forward. This would be after the Finance Meeting on the same date.

Mr. Wells said the Finance Meeting might not be done by 5:00 p.m. It may run till 5:30 p.m. or possibly to 6:00 p.m. We have committed to being here till we are finished. Mr. Wells suggested a Council Meeting of the Whole on January 5, 2011 at 3:00 p.m. to discuss Items #6 through 10.

Mr. Martinbianco stated he will cancel the Finance Meeting on January 5th and agreed with Mr. Wells' suggestion that a City Council Meeting of the Whole be held on January 5, 2011 at 3:00 p.m. so everyone could have input.

Mr. Haskins discussed scheduling a Special Council Meeting for January 1, 2011 at 9:00 a.m., for a mayor appointment. Mr. Wells stated he could not be in attendance. Mrs. Ellenburg said we would have to pay overtime for the clerk. She feels it is inconvenient and doesn't see an urgency to have it before January 3rd. Mr. Martinbianco asked the City Attorney who is the acting Chief Executive between the 1st and the 3rd. Mr. Austin replied from a practical perspective, any emergency that would come up would be under one of the jurisdictions of the department heads. A lot of the things that would come up would be the jurisdiction of the DPW department head, Fire Chief or the Police Chief. A general jurisdiction would probably fall under my domain. I would presume to act on behalf of the city in a general emergency.

Mr. Haskins said he feels there could be a huge difference between January 1st and January 3rd. There are incidents that occur on a daily basis within the City where you need to have the Executive Chief make decisions and run things. An example is Boulder Creek. When it burned down there were 200 people out needing places to live. The Mayor was institutional in getting it put together to where things were set up in DPW and getting people clothing. Any type of emergency could happen January 1st, 2nd or January 3rd. It is in the City's best interest we act on it swiftly. I think it is imperative that it be done.

Mrs. Ellenburg said there has been many times the Mayor is out of town or out of state on vacation and if something were to happen, it would have been solved. Somebody would have stepped up like Rick Austin or the Fire Chief. I don't think there is a dire emergency that can't be dealt with.

Mr. Haskins said when the Mayor is on vacation he was still available. Mr. Austin is a great attorney but I just don't think the City should go without an Executive Chief for 3 days.

Mr. Wells said he has a problem with not all of us being able to be here. It is a national holiday, New Years Day.

Mrs. Zelenko said she agrees that it is a national holiday and I would like everyone to be here for that vote. What difference does it make 3 days or 9 hours. It could happen in 9 hours in that day. Anything that would come up emergency wise, we have an excellent Police Chief and Fire Chief that would handle such situations like you described at Boulder Creek.

Mr. Haskins said there are different facets when you are a Police Chief, Fire Chief and a Mayor when you are organizing different things. There are things that could happen and I don't think the City should go without a Mayor. I realize it is a holiday and I am willing to sacrifice a few moments of my time on my holiday so the City is protected. It is part of our elected duties.

Mrs. Zelenko said if something, God forbid, was to happen to our Mayor on the way home tonight and he was incapacitated from his duties, we would have 10 days to appoint a mayor. Would you want to call an emergency meeting within 9 hours? Mr. Haskins acknowledged yes. Mrs. Zelenko stated she would be voting in the negative.

Mr. Smith said this is a very important vote for the City. Everyone should be here and I wouldn't want to leave anyone out.

Mrs. Zelenko said not only us, but also the general citizenship of the City of Burton. With it being a holiday and their being able to participate in the meeting as well, I think that hinders participation from the general public.

Mr. Martinbianco said they are really precluded from anything other than voicing an opinion about whom they thought perhaps should be the best selection. Ultimately, like every other decision that comes before us, it is ours to make. I would be here on the 1st, I voted against the 3rd because I had the firm belief that the 1st was the best date for it. I apologize for anyone that can't make it. I am really uneasy about the void even for 2 days, the lack of leadership at the top. Our job is 24-7, seven days a week. Mr. Wells voiced his opinion that he thinks the 3rd would be fine.

Mr. Haskins asked for clarification regarding the Fenton Road Watermain Extension project. Mayor Smiley indicated the Drain Commissioner said Flint Township is having their meeting January 6th. It seems they have been told that we can't afford it and he doesn't know how anyone at Flint Township can make a determination whether we can or can't afford our partnership rights. We have had no issues what-so-ever. We have had to deal with Davison Township and Grand Blanc Township and have had no problems. I am not sure how that got told. We have the revenues. If we want to wait till the 3rd to take the final vote that is fine. Mr. Wright hopes the State doesn't hold the 15%. It seems there is always a reason why we can't make that final decision to put in a watermain. I am still confused as to why Flint Township would say that.

Mr. Haskins asked Mr. Martinbianco if he would see a problem adding this to the agenda tonight.

Mr. Martinbianco said there are 2 issues and the Mayor raised one about our ability to pay. What is called into issue is the project that was estimated at $500,000 2 years ago has increased to $770,000 as was proposed. The length of the years that we can carry is estimated at 20 to bond out for that level. Several projects we put in at our expense within our own water system and water fund that has been underutilized. Putting this in for fire suppression and future benefits down the road where it might complicate things and certainly assist fire suppression as we go down Bristol Road to take care of some of the other south end subdivision area back there. It needs to be at some point proved to be revenue neutral. I think we need to have more discussion with DNR relative to how far they are going to push Mr. Stein and Enterprise Estates and the mobile home parks down there. The Mayor can attest to the meetings where we both sat with the proprietor of this development, and had many assurances from both the Drain Office as well as MDRE that he was out of compliance because of the condition of his system.

Mr. Martinbianco stated further, we are 3 years down the road and he has not yet complied. I would like more answers that Mr. Wright was able to afford us at the meeting the other day, and the opportunity to research that. He is going to have to be a player in this one-way or the other. The State will either force him to hook up or close him down. We offered him a 3rd option which was to take part of the watermain from the back side which would have required him to obtain an easement in the back end of the Church property to allow that to go back to service both ends of his mobile home parks. Short of him also putting pressure regulating systems in there so we don't turn those 2 parks into sprinkler systems, the only way he was going to do that was either through the implementation of coming through the back, or having us build the watermain down Fenton Rd. In Flint Township's case, Supervisor Miller had more questions than she did with answers.

Mr. Martinbianco stated further she had some deep rooted concerns, through a 3-way conversation, if they didn't participate, what would Burton do if we said okay – well they are going to down-size what we got. We still don't know what that project cost will be. The Drain Office would dictate that as they continue with their design and once they know that they are going to participate and put one line down or we are going to be the sole proprietor of that line. What is that going to cost us? It might not be half of the $770,000, it could be the whole $500,000. Until we get some more answers from MDRE and I will assure you at that meeting I will have that information, in addition to something else from Mr. Stein. In my conversation with the City Attorney, he also elicited that same concern that he has to be a player in this for it to end up being a payback system. We are not going to put a water line down there and just pay for it year after year with potentially nobody else to hook up. There are some pockets of commercial in the Bristol Rd. corridor to Judd Rd. and towards the end of Maple Road. But in between other than the mobile home park there is nothing else to hook up to.

Mr. Haskins inquired regarding comments of possibly the Feds pulling out if this wasn't done by a certain date.

Mayor Smiley responded that he didn't know if they gave us a timeframe with Jeff Wright's office. I didn't see any issues because we met with Flint Township, the Drain Commission, DNR and the DEQ. Mr. Stein is not a player and has never been one. Unless State Law has changed, we can't force connection. We have to look at our water system master plan and how it is we feel we need to put in our infrastructure. Mr. Stein is DEQ's problem. He has to remove that arsenic and he either does it with municipal water or a well. The prices are still going out of sight; the watermain costs are going up. The longer we prolong this the more the prices are going to go up. The material costs itself is mainly causing the increase. We have had agreements with Grand Blanc and Davison and not had an issue what-so-ever with any other project that we have done in the City. For some reason, we seem to have these issues on Fenton Rd. that are really not an issue. We need to decide if we are going to do it or not. If we are going to do it, it is time to do it for our system. If not there is other areas of the City that need water as well. We talked about water down Genesee Road being a good project. Howe Road is a good project. There are a lot of ways you can spend it but you are not going to get 50 cents on the dollar over there on those streets. The people on Fenton Road are going to pay for the watermain just like they would on Maple Rd., Belsay Rd., or any other road. There is no free water in this City if they tap in, you can't force them. Somehow Flint Township thinks if we don't make the payment they are stuck with it. He doesn't know how the other contracts were worded, but that wasn't an issue when we dealt with Grand Blanc Township or Davison Township. But we didn't bond either, so we had to pay outright for the costs of those. This is probably the first partnership we bonded.

Mr. Austin said he is not advocating for or against the waterline, but assuming Council decides to go forward with the project, conditioned upon the participation of Flint Township. Language in the resolution would contain that condition. It can't contain the condition of the connection of the mobile home park, but it can contain the condition of the participation of Flint Township. All of the paperwork would require the joint contractual obligation of Flint Township and Flint Township's approvals would likewise contain the requirement that the City of Burton be contractually obligated to participate as well. It would be a multi-party contract we would enter into.

Mayor Smiley asked if it would be a County owned project or State?
Mr. Austin said he suspects it would be a County owned project.
Mr. Smith expressed making a motion conditional of Flint Township's participation.

Mr. Heffner called for a 5 minute recess at 9:50 p.m.
Meeting reconvened at 10:05 p.m.

Mr. Heffner asked for an update on the State Police investigation relative to the Open Meetings Act. Mr. Austin said he spoke with a Detective Sergeant for about 20 to 25 minutes and shared with him everything he knew. At no time did I take the 5th amendment. We had a full frank discussion. The Detective Sergeant's name I do not recall. He indicated he was closing the investigation with that phone call. He indicated he did not believe he would make any additional phone calls to any other persons. I have not heard he contacted any other persons. I don't know if he has contacted any of you or not. I assumed you have not. If you have, you have not contacted me. He indicated the matter was closed as far as he is concerned. Mr. Austin stated further, as far as he is concerned, the matter was closed and concluded with that conversation.

Mr. Wells said he had spoken to Detective Sergeant Ansley. He called him back and told him he was upset at some of the proceeds from the meeting. I still think there was some coercion between the City Council. He said it is a classic case the way things went down and nothing would come of it. I told him to drop the whole thing, I didn't want to bring any bad light on the City. I will handle it myself from here on out. There is no other way to explain it that someone had a chat. When I got here Mr. Haskins informed me you guys were making a motion to put Paula in as Mayor. Mrs. Ellenburg when we had left the meeting on the 15th, and I had given her credit for going outside, is the first one to support it, so someone must have grabbed her off to the side. The mere fact he said nothing will come of it, I will do my report, everyone will say their peace, I will take it to the Prosecutor's Office and he probably won't even as much as send out a letter.

Mr. Austin said as City Attorney it is my job to protect and represent the City and City Council. I told the Detective Sergeant and I will say this at this meeting, I saw nothing and I heard nothing that would leave me to believe that there was any violation of the Open Meetings Act that evening. I sat next to Danny and at that meeting he turned to me and said there is a violation of the Open Meetings Act going on, or words to that affect. I didn't respond in any way because frankly I saw nothing and heard nothing that led me to believe that. Danny has his belief and opinion and is entitled to that. I have my belief and opinion and that is what I told the Detective Sergeant, and I don't think there was any violation of the Open Meetings Act.

Mr. Heffner said unfortunately it did make it into the newspaper that the five of us were being accused of breaking the Open Meetings Act. I feel Mr. Wells owes the five of us a public apology. I never broke an Open Meetings Act nor know that any of my colleagues did.

Mr. Wells said he doesn't know why Mr. Haskins would have said you have this thing going on. I don't know why you would have called the question in a debate. I don't know why Mrs. Ellenburg would suddenly change her mind.

Mr. Heffner said I think Mrs. Ellenburg should have been asked that question instead of asking the State Police.
Mr. Wells asked why Mr. Smith would have called the question.
Mr. Smith responded because you were saying the same thing over and over again.
Mr. Wells said Mr. Martinbianco has been coming to the meetings and going on and on for 20, 30, 40 minutes and no one calls the question on him, and he has made motions to table things that you have gone along with and tabled, then 2 weeks later passed them without any discussion or debate. I try to debate something that I think is very important to the City, and I get the question called on me.

Mr. Smith said you made acquisitions that I didn't write the motion, I did. I spent a good part of Saturday and Sunday researching the Charter before I wrote that motion. You did not know that, you never asked me. I consulted the Attorney on what I can and could not do. I type a lot of things. If you look over here, you will see I type a lot of things. You never bothered to call me. You made wild acquisitions and if the paper was correct, you said you use to respect me.

Mr. Wells stated he said he was building a lot of respect for Mr. Smith. I think he has been pulled into something he doesn't understand.

Mr. Smith said you made comments to the media that you did not have any foundation for making. You guessed. That is not due-diligence.
Mr. Wells expressed when you stopped the debate I took it personally.

Mrs. Ellenburg in response to Mr. Wells' statements said she did talk about trying to go outside of Council and harped on it for about a year. Not everybody together, but individually said we have to go within the Council. So I figured we will go within the Council because the Charter states to do that first. Because we got 4 votes for someone from the Council, that I feel will be able to fill the Mayor's shoes, and will be able to do the things that need to be done, I feel she can do it and if she can't, we will have to take the next step. My support is for Paula. I think she has the education and background and worked at it in Lansing. I thought since no one else was really thinking that it was a good idea, I dropped it. I even asked you if it was a good idea and you didn't think so because you thought it had to be within Council. Then when the election was over, you decided it was a good idea. It might have been if people were on board about it, but we didn't. Mr. Heffner wasn't on board; Mr. Martinbianco said we have to go with what the Charter states. I think Paula is going to be able to do a good job. The Mayor ran many times and still answered the questions and runs the City well.

Mr. Wells referenced Item #11. He said when we had our Finance Meeting this week, supervisors from Flint Township came in and had some questions. In talking with Mr. Wright, he said their attorney had her ask those questions of what our finances were. He agrees with the Mayor, we have never backed out of a deal any time that I know of. They have dragged their feet on it. It is incumbent upon us to do it. There is a big problem there with arsenic in the wells. Bottom line is the State is going to come in and make us do it regardless of what the guy at the trailer park does. They will make us do it at their cost. So we are never going to have a better opportunity to do it for less money than it is tonight. I am going to vote for this.

Regarding Item #11, Mr. Martinbianco said it was demonstrated early on that a shovel ready project would be given top priority when the new Federal Administration came in. We got the engineering done and had a shovel ready project and that couldn't get advanced. That doesn't speak well to what the Federal Government promises and what they deliver. It would have cost us pennies on the dollar, not what we are going to prospective pay.

Mr. Heffner said immediately following this meeting, upstairs in the community room we have food for a Council get-together and the audience is more than welcome to come up and share with us. I wish everyone a Merry Christmas and Happy New Year.

COUNCIL DISCUSSION ACTION:

Moved by Martinbianco, seconded by Wells to: Remove agenda Items 6, 7, 8, 9 and 10, and refer those back to the Finance Committee. Motion carried 6-1, with Haskins voting no.

Moved by Smith, seconded by Haskins to: Add as agenda Item #11 to approve and authorize the Fenton Road Watermain Extension at a cost not to exceed $777,125.53, less 15% principal forgiveness by MDNRE, contingent upon Flint Township participation in the project. Motion carried 7-0.

Moved by Martinbianco, seconded by Wells to: Schedule a City Council Meeting of the Whole on January 5, 2011 at 3:00 p.m., with the purpose of discussion and possible action regarding agenda Items #6 through 10, that were removed from the December 20, 2010 Regular Council Meeting. Motion carried 7-0.

Moved by Haskins, seconded by Martinbianco to: Schedule a Special Council Meeting on January 1, 2011 at 9:00 a.m. for the purpose of a mayor appointment. Motion failed 4-3, with Ellenburg, Wells, Smith, and Zelenko voting no.

COUNCIL ACTION:

Haskins moved and Zelenko seconded the following motion:

1. Approve and authorize the Attorney Billing (Richard Austin) from December 1, 2010 through December 15, 2010 in the amount of $4,778.00.

Motion carried 7-0.

Zelenko moved and Haskins 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 October in the amount of $340.27.

Motion carried 7-0.

Haskins moved and Zelenko seconded the following motion:

3. Approve and authorize the Attorney Billing (Keller Thoma) 440 East Congress, 5th Floor, Detroit, MI 48226, for the month of November in the amount of $84.14.

Motion carried 7-0.

Haskins moved and Zelenko seconded the following motion:

4. Approve and authorize the Mayor and the City Clerk to acquire the following permanent easement:

    1. Permanent easement for Parcel No. 59-21-577-065 as detailed on the attached Bridge and Sidewalk Easement and Right-Of-Way Grant, with compensation also as detailed on the Bridge and Sidewalk Easement and Right-Of-Way Grant.

Motion carried 7-0.

Haskins moved and Zelenko seconded the following motion:

5. Approve and authorize the Mayor and the City Clerk to acquire the following permanent easement:

    1. Permanent easement for Parcel No. 59-21-577-066 as detailed on the attached Bridge and Sidewalk Easement and Right-Of-Way Grant, with compensation also as detailed on the Bridge and Sidewalk Easement and Right-Of-Way Grant.

Motion carried.

Removed.

6. Approve and authorize the low bid of $3,132,000 subject to the sale of bonds, submitted by DCC Construction for the construction of Fire Station Number 2 at 1320 Belsay Rd.

Removed.

7. Approve and authorize the Mayor and Clerk to sign contract with DCC Construction for the construction of Fire Station Number 2 at 1320 Belsay Road, subject to review of City Attorney.

Removed.

8. Approve and authorize the low bid of $488,765 subject to the sale of bonds, submitted by Usztan LLC for the construction and improvements to Fire Stations 1 and 3 at 2033 East Bristol Road and 4515 East Davison Road.

Removed.

9. Approve and authorize the Mayor and Clerk to sign contract with Usztan LLC for construction and improvements to Fire Stations 1 and 3 at 2033 East Bristol Road and 4515 East Davison Road, subject to review of City Attorney.

Removed.

10. Approve and authorize bid of Schaefer's Office Source of $62,150.41 subject to the sale of bonds, for furniture for Fire Stations 1, 2, and 3.

Haskins moved and Zelenko seconded the following motion:

11. Approve and authorize the Fenton Road Watermain Extension at a cost not to exceed $777,125.53, less 15% principal forgiveness by MDNRE, contingent upon Flint Township participation in the project.

Motion carried 7-0.

Meeting adjourned at 10:27 p.m.

jra