CITY OF BURTON
SPECIAL COUNCIL MEETING MINUTES
JANUARY 8, 2007, 5:00 P.M., COUNCIL CHAMBERS
www.burtonmi.us

The Meeting was called to order by Council President Charles Cross at 5:10 p.m.

MEMBERS PRESENT: Conley, Cross, Isham, Major, LaDuke, Tinnin and Wells.

MEMBERS ABSENT: None.

OTHERS PRESENT: Attorney R. Austin and G. Webster, City Clerk.

PURPOSE OF THE MEETING: **Re-organization of the City Council.**

PRESENTATION:

Attorney Rick Austin referred to an opinion that he had prepared regarding the Special Council Meeting that was held Thursday, January 4, 2007. His opinion addressed the invalid appointment of Ralph LaDuke to the Burton City Council and his ability to vote as a member. He referred to Section 4.7(l) of the City Charter. The Charter requires a four-vote majority of the Council to take official action at Special Council Meetings. On Thursday night the vote to appointment Mr. LaDuke to the Council was three to two. This was done in good faith with no ill will intended. Everyone at that meeting felt the appropriate action had been taken. Mr. LaDuke was sworn in as a Burton City Council member. Actually, four votes were required to secure the appointment. Therefore, this was an invalid appointment.

The next question related to the effect of the appointment that was made contrary to the requirements of Section 4.7(l). Mr. Austin referred to Section 3.10 of the Charter regarding vacancies in office. He explained this office could not be vacated by the City Attorney's opinion. Therefore, Mr. LaDuke should be permitted to deliberate with the Council and vote until such time as a Court of law determines otherwise.

Mrs. Tinnin wanted to know how long it would take for the Tribunal to make a decision on the validity Mr. LaDuke's council appointment.

Mr. Austin indicated that anyone could challenge Mr. LaDuke's right to hold office by filling a circuit court complaint. He thought this process would take at least three to four weeks. The Attorney indicated that he could not be instructed to pursue legal action at tonight's meeting because it is not on the agenda. He needed a majority vote of the Council before initiating circuit court litigation to commence such action. The Charter provides that Mr. LaDuke was sworn into office. He has the right to hold that office, even if his appointment is called to question, unless and until a court of competent jurisdiction rules otherwise.

Mr. Major referenced Section 4.7(h) of the Charter, which stated four members of the Council shall be a quorum for the transaction of business. He indicated that at least four members were present.

The Attorney did not share that opinion. He felt that 4.7(l) indicated that four affirmative votes were required at a special meeting to carry any action.

Mrs. Tinnin wanted to know if a resident could file a complaint on this issue.

Mr. Austin said for a resident to file a complaint, they would probably be asked to show standing or special interest in this case. He said the Council could reaffirm the appointment of Mr. LaDuke at a later date. This would remove the potential problem.

Mrs. Tinnin wanted to know if a candidate running for the vacant council seat had standing.

Mr. Austin said that she was asking a question that really didn't relate to city business. This might be a potential scenario, but that would be up to the judge to decide.

Mr. Wells said before that meeting took place the Council President made an announcement that he had an attorney's opinion and that a simple majority or three votes out of five would put everything into motion. No one objected to that. Everyone accepted it.

The Attorney felt that everyone in the room that night did believe that Mr. LaDuke was properly appointed.

Mrs. Conley wanted to know if Council could set another meeting and revote on the appointment.

Mr. Austin said as long as four council members voted with the majority. In addition, action items must fall within the realm of the agenda.

Mrs. Webster noted that she accepted the Attorney's opinion. She acknowledged he was the ultimate authority on all legal issues.

AUDIENCE PARTICIPATION:

Gerry Johnston, 2058 Valley Forge, wanted to know why council members thought the new appointees would be beneficial to the City of Burton.

Pauline Dargel, 6119 Hugh St., opposed the reorganization of the Council. She felt this would set precedence. We need stability not disorder.

Duane Burnash, 2239 Culvert, felt the Council appointment was predetermined. He commended Mrs. Tinnin for holding true to what she believed.

Mary Crawford, 6203 Briggs, said Mr. Cross thought he had the right to change the agenda. He took away the administrative report. He has done things that weren't good for the City. Under the circumstances, she felt the other members were doing what was best for the City. She wants a City Council that is going to work for the people, not for their own interest.

Robert Centilli, 4479 Lawnwood Ln., referenced Section 4.7(l) of the Charter. He wanted to know what would happen to all the special meetings votes that took place in the last 34 years. Were all actions by a four-vote majority?

The Attorney did not know if this situation has happened in the past. Now that the Charter provision has been brought to his attention. It takes four votes to carry action at a special meeting.

Jan Bolen, 1169 Howe Rd, said that all members, as well as the attorney, should have been present when a new council member was appointed. She didn't feel that we should acknowledge the appointment if the proceedings were illegal. She felt that it should be done properly.

Bud LeGrande, 2105 E. Buder, felt the Council had a quorum the night of the appointment. The majority vote was three to two. Under Robert Rules, if you have a quorum present, you can vote.

Jane Nimcheski, 2429 N. Genesee Rd., felt the Charter was clear. To rectify the action taken, she felt there should be another vote.

Warren Nimcheski, 2429 N. Genesee Rd., could not remember a five-member board voting at any meeting.

COUNCIL DISCUSSION:

Mrs. Tinnin opposed the reorganization of the Council. She felt Council should only vote to fill the vacancy of the vice president. She thought this would create chaos and instability. She said that Mr. Cross should remain as Council president until after the next election. She felt another meeting should be scheduled to address the Council appointment to avoid legal issues.

Mr. Wells said these are business meeting, not political forums. Right now this Board is not working productively for the residents of Burton. Changes need to be made. He felt the Council had to get back to a positive approach.

Mr. LaDuke said that instead of amending 4.8 of the Charter, we should create a Commission to review the whole document. Several sections are vague and can be interpreted in different ways, leading to confusion. The Chair stated it took three votes for the appointment and he asked the Attorney not to come to the meeting. He felt the Chair should not be making decisions for the whole Council. He wished the Attorney had been present at that meeting. He would like the Council to take another vote to confirm his appointment.

Mrs. Tinnin opposed the Attorney writing an opinion on the reorganization when it wasn't even posted on the agenda.

Mr. Cross thought he was saving money by not inviting the attorney to the meeting that night. It seemed like a simple agenda. He didn't know it would be so complicated. He opposed the reorganization of the Council. He has been on the Council for twenty-three years and this has not been done. He only inquired about the reorganization of the vice chair position.

Mr. Austin spoke regarding the reorganization. It was not done that night, so that part of the opinion is mute.

Mrs. Webster clarified that she always adheres to the Attorney's opinion. Even if we disagree or have different interpretations, the ultimate decision is based on the attorney's opinion.

The Attorney clarified options on how the reorganization could take place.

COUNCIL DISCUSSION ACTION:

Moved by Tinnin, Seconded by Conley: That we continue to support Charles Cross as President until the next regular scheduled election. Motion failed 4-3, with Isham, LaDuke, Major and Wells voting no.

COUNCIL ACTION:

Wells moved and LaDuke seconded the following motion:

1. Approve and authorize the nomination of Gary Isham as Council President.
Motion carried 5-2, with Cross and Tinnin voting no.

Isham moved and Wells seconded the following motion:

2. Approve and authorize the nomination of Jeffrey Major as Council Vice-President.
Motion carried 5-2, with Cross and Tinnin voting no.

Meeting adjourned at 6:15 p.m.

Gayle Webster, CMC
City Clerk