CITY OF BURTON
SPECIAL COUNCIL MEETING MINUTES
JANUARY 26, 2001, 7:00 P.M., COUNCIL CHAMBERS

The Special Meeting was called to order by Bob Centilli, President, at 7:05 P.M.

MEMBERS PRESENT: Brawner, Centilli, Cross, Martinbianco, Tinnin and Wells.

MEMBERS ABSENT: None.

OTHERS PRESENT: Mayor Charles Smiley; C. Abbey, Administrative Assistant; G. Webster, City Clerk; C. Ladd, Deputy City Clerk and J. Adams, Clerk's Office.

PURPOSE OF THE MEETING: Interview and Vote to fill the vacancy on the Burton City Council.

ADMINISTRATIVE REPORT:

Mayor Smiley clarified the responsibilities of the council as it related to filling the council vacancy. He stated that Section 3.14 of the Charter required the Council to select a replacement within thirty days of the resignation of one of its members. He referred to Section 1.6, which deals with the penalties for violating provisions of the charter. He hoped to keep the council focused and moving in the right direction on this pending issue. He referred to the impasse that the council has reached with two candidates. He suggested council reconsider some of the other candidates that have applied to help move past the deadlock. A new member will need to be selected by January 30th or Council will be in violation of the charter. If a decision cannot be made tonight, he suggested the council meet Saturday and Sunday to resolve this serious issue.

Mr. Martinbianco appreciated the Mayor's passionate concern on this issue. However, he didn't want the Council to feel berated for doing their job. He asked for clarification on who called tonight's meeting.

Mayor Smiley and two members of the Council called the meeting.

Mr. Centilli clarified that he and Mr. Wells had called the meeting. Mr. Wells was out of town and unable to sign the notice, so the Mayor signed the notice.

Mr. Martinbianco questioned the procedures that were followed when calling the meeting. He asked for clarification on the purpose of tonight's meeting. He felt Council was moving in the right direction to fill their responsibility as a Council.

The Mayor clarified that Mr. Centilli and Mr. Wells called for a meeting. In order to comply with the city charter, they would have to sign the notice. Mr. Wells was not available to do that, so the Mayor called for the meeting. He called tonight's meeting due to a parliamentary problem with the adjournment of the January 24th meeting. That meeting could not be adjourned beyond the date.

Mr. Martinbianco asked the attorney to comment on this issue. He suggested the Council needed more time to research what they did and reconsider some alternatives. He thought the meeting should be held Monday night. He was concerned that the attorney was present and advised the council on this issue. He was confident that what council had done met the spirit of the charter.

The Mayor felt it would be a violation of the city charter to go beyond the designated date to fill the council vacancy.

Discussion continued on the scheduled meeting and filling the vacant council position.

Mr. Martinbianco said the Council members believe passionately in their selection of candidates. This will be a difficult decision to make. The two candidates at hand are both very capable and qualified candidates. He asked the attorney if the Council should rescind the action that was taken February 24th to rectify any parliamentary procedure violation.

Attorney Austin indicated that Council did not have to rescind the previous action for a future meeting. You could possibly still have a meeting on that date. This meeting was called pursuant to Section 4.7 of the charter, which does provide that the clerk on the written request of the Mayor or two members of the Council can call a special meeting. A twelve-hour written notice is to be given of that meeting and that the notice be served personally by the clerk or her designee to each member of the Council. For this meeting to be held as a special meeting is appropriate and that doesn't render inappropriate the action of the Council yet to be held.

Discussion continued in reference to the two meetings at hand.

Mr. Martinbianco clarified that this meeting stands on its own merits.

The attorney agreed with that statement.

Mr. Abbey referenced the Home Rule City's Act. He said the city had looked into other avenues such as a special election or governor's appointee, but the charter does not allow anyone but the Council to appoint a new member.

Mr. Wells had concerns with the attorney ruling from the other night. He called to clarify the decision so he wouldn't be in violation of his oath or the city charter. He thought a meeting should be called, so he had the Mayor act on his behalf.

Mrs. Tinnin said the evening that we held the meeting Attorney Hamilton assured us that we were doing everything that we could to make sure that we were going forth to reach our ultimate outcome. He thought we were covering all the avenues that we needed to cover. Why would the administration be so concerned, now that we would be in violation of the city charter, if the meeting were to be held February 2nd.

Mr. Austin said the charter provision mandating the selection of the replacement to this council is in fact a mandatory provision and it does as the Mayor indicated state that the selection shall be made within the thirty-day framework. There is no question but that literally a violation of the city charter is a criminal act. In order to initiate criminal proceedings someone would have to begin the process. That would be the decision of prosecutor Arthur Busch to initiate proceedings.

Mrs. Tinnin said it was Council's intent to make an appointment prior to the deadline. She felt Council should have been given more consideration when this meeting was scheduled tonight.

Mr. Cross said he took his oath very serious so he cancelled his plans for the evening. He had concerns with the attorney's advice that was given at the last meeting. He has been in contact with several individuals trying to find some way to break this impasse. He thought Council should get on with the business at hand.

AUDIENCE PARTICIPATION:

Pauline Dargel, 6119 Hugh, spoke in opposition to the Mayor calling a council meeting tonight. She reviewed the history of another council appointment that was made in 1979, and indicated that appointment went beyond the thirty-day allotment.

Bud LaGrande, 2105 E. Buder, discussed the history of the city charter from the viewpoint of one of the founding fathers. He felt the charter overlooked the issue of a council candidate appointment with a deadlock. He suggested a revision be made to the charter to correct the problem. He hoped Council would live up to their obligation and choose a replacement for the vacancy.

Joel Florida, 12488 Margaret Drive, spoke in favor of the appointment of candidate Herm Clark. He felt that Mr. Clark would have the right temperament, a sense of justice and would be fair beyond the political agenda.

COUNCIL DISCUSSION:

Mr. Martinbianco asked for clarification on the procedure for tonight's business.

Mr. Centilli said voting would resume immediately after council discussion.

Mrs. Tinnin spoke in favor of the appointment of candidate Jane Nimcheski for council. She felt her experience would be an asset to the Council. Mrs. Tinnin felt she and Mr. Martinbianco compromised during the last council appointment and it was time for those that are aligned with the Mayor to compromise on this appointment.

Mr. Centilli spoke in favor of the appointment of candidate Herm Clark for council. He felt he would be impartial, fair and would be a good asset to the council. He felt the city has progressed so far because this council worked so well with this administration. He would like to see that progress continued.

Discussion continued on the scheduled meeting and filling the vacant council position.

Mr. Martinbianco moved and Mrs. Tinnin seconded the motion to adjourn the meeting to Monday, January 5, 2001 at 5:30 P.M.

Mr. Brawner spoke in opposition to the Mayor's public scolding. He felt the council was trying to do their job to the best of their ability. He also had concerns with the attorney's opinion, because ultimately the council would be the ones in violation of the city charter if we don't make a decision. He indicated that the council had other meetings on Monday night. He questioned why Mr. Martinbianco wanted to delay this until Monday.

Mr. Martinbianco said the attorney suggested everyone needed some additional time to reflect back on the situation, make some informal contact with the candidates and with each other over the next week before meeting again. In the process we would still be meeting our obligation and the spirit of the charter by trying to resolve the issue by February 2nd.

Discussion continued in reference to adjourning the meeting until Monday night.

Mayor Smiley indicated that he didn't mean to upset anyone. Basically he just wanted to present the facts as they relate to the provisions of the charter. There is no provision for a special election. He said we couldn't violate the city charter.

Mr. Abbey said it does take four votes out of six to pick a successor to the council. He said Mr. Wells would not be available next week and it will be even harder to get a consensus out of only five individuals.

Mr. Wells said that he would make time to be here on Monday, but he won't waste time on Monday. He said the meetings should be more productive and council should concentrate on the business at hand. He suggested the council takes a recess and then tries to come up with a compromise. If there can't be a decision made on the two candidates at hand, then it might have to be someone else.

Mr. Brawner suggested Council set a time limit and begin voting, if that doesn't work out he would support the motion to adjourn to Monday night.

Mr. Martinbianco offered an amendment to vote until 9:00 P.M. If we can't arrive at replacement candidate by 9:00 P.M. this evening we would reconvene Monday afternoon at 5:30 P.M. Mrs. Tinnin supported the amendment.

Discussion continued on the topic of filling the vacant position.

Mr. Cross thought the Council needed a cooling off period. He planned to vote in support of the motion to adjourn at 9:00 P.M. He felt the Council could come to a compromise before the deadline.

Mr. Martinbianco called the question.

A roll call vote was taken on calling the question. Motion passed 5-1, with Mr. Centilli voting no.

A vote was taken on the amendment to adjourn the meeting at 9:00, if a replacement candidate was not chosen. P.M. Motion passed 5-1, with Mr. Centilli voting no.

A vote was then on the main motion to adjourn the meeting at 9:00 P.M. if a replacement candidate was not chosen the meeting would be reconvened Monday, January 29, 2001 at 5:30 P.M.

Voting proceeded until 8:30 P.M.

Council recessed at 8:30 P.M.

Reconvened at 8:55 P.M.

Mr. Wells suggested as a compromise, adding the other six applicants into the mix again and over the weekend, keep them in mind while Council was contemplating this issue.

Mr. Martinbianco said he doesn't have a problem with that, but he doesn't want to feel so restricted to the other individuals that were there. If we come to a final impasse, we may have to select someone that the Council could mutually agree upon. The person may or may not have gone through the selection process. It is unfortunate that we have come to this, but at the point that we must make a decision, and have a duty to make that decision, if we can expand it to other individuals, it would be good.

Mr. Centilli asked if Mr. Martinbianco was suggesting that the Council bring in other names.

Mr. Martinbianco explained that if there is an individual, that four people on this Council could live with, that perhaps we take that into consideration. It may not be any of the others, and it may not be the two that are under discussion this evening or anyone who has come before us previously. We need the opportunity to interact and find somebody that will satisfy the needs of this great City.

Mr. Centilli asked if there should be a board of people that are non-concerned.

Mr. Martinbianco said he didn't mean to imply that. Anyone we could entice to help move the City and Council forward and satisfy our Charter driven responsibilities should be considered. Mr. Martinbianco said there are six people who will make the decision on fulfilling an obligation that we have in lieu of the electors. We will find some person, and there are many qualified to do so. When we replaced Mr. Hammon, we had 17 individuals, all very qualified, very knowledgeable and eager to represent the City in that capacity. If it gets to where we have to go beyond the six, eight or nine, we have the ability to do that. We need to move forward with our responsibility and address the important issues facing the City.

Mr. Wells said he appreciated what Mr. Martinbianco had to say. If there is someone who might be interested, they should be considered and we must work together, communicate and stay focused on the City's business and somehow, forget about the past.

Mr. Wells strongly suggested getting this done Monday, so there is no violation of the Charter.

Mr. Cross said he would like to have a consensus of the Council to stop the negative press concerning the appointment to fill the vacancy.

Mr. Wells agreed.

Mayor Smiley clarified the motion and said he posted meetings for Saturday and Sunday, if Council decides they would like to meet on this issue. If there is going to be a meeting on Monday, it must be posted tonight and that is not a problem.

Mr. Wells suggested that if the Council has a candidate they would like considered, they should contact one another and discuss it. If necessary, he would be willing to stay this evening and discuss the issue further, if necessary.

After discussion, Mayor Smiley said he would cancel the meetings scheduled for Saturday and Sunday.

Mr. Cross suggested that a meeting be posted for Tuesday also, just in case it is necessary to meet.

COUNCIL DISCUSSION ACTION:

Martinbianco called the question and a roll call vote was taken. Motion passed 5-1, with Mr. Centilli voting no.

Martinbianco moved, Seconded by Tinnin to amendment the main motion to adjourn the meeting at 9:00 P.M., if a candidate was not chosen. Motion passed 5-1, with Mr. Centilli voting no.

Martinbianco moved, Seconded by Tinnin to adjourn the meeting at 9:00 P.M., if a candidate was not chosen the meeting would be reconvened Monday, January 29, 2001 at 5:30 P.M. Motion carried 5-1, with Centilli voting no.

Wells moved and Martinbianco seconded the motion to approve and authorize considering the six people who applied for the position and were eliminated, as well as others who are qualified and the two individuals being discussed this evening. Council should have communication this weekend and do some research. Council could meet again on Monday, January 29, 2001 at 5:30 P.M. and make a decision based on what is best for the City. Motion carried 6-0.

Moved by Cross, seconded by Brawner to tentatively schedule a meeting for Tuesday, January 30, 2001 at 5:30 P.M. to continue the interview and vote process to fill the vacancy on the Council. Motion carried 6-0.

COUNCIL ACTION:

1. Approve and authorize the appointment of _____, of (address) _____ to the Burton City Council, term expiring November 2001.

Moved by _____, Seconded by _____, Carried_____.

Meeting Adjourned at 9:14 P.M.

Gayle Webster
City Clerk

Cheryl M. Ladd
Deputy City Clerk