

CITY OF BURTON
LEGISLATIVE COMMITTEE MEETING MINUTES
FEBRUARY 15, 2010, 5:30 P.M., COUNCIL CHAMBERS
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The Meeting is called to order by Chairwoman Paula Zelenko at 5:40 p.m.

MEMBERS PRESENT: Zelenko, Wells and Haskins.

MEMBERS ABSENT: None.

OTHERS PRESENT: Atty. R. Austin, G. Kray, DPW Director, D. Heidenberger, Assessor, and J. Adams, Deputy City Clerk.

PURPOSE OF THE MEETING: Discussion and possible recommendations concerning the following:

- 1. Sale procedures of City owned properties**
- 2. Sign Ordinance concerning electronic sign boards**
- 3. Registration fees for abandoned structures**
- 4. Backyard Chickens**
- 5. Purchase of Water Meters**

Sale procedures of City owned properties

PRESENTATION:

Mrs. Zelenko asked the Committee if they are at the point of going forward to have Mr. Austin draft an ordinance and then review at their next Legislative meeting.

Mr. Haskins stated the one thing under consideration is the time lapse we have to take before the 30 day waiting period.

Mr. Austin stated to avoid an unnecessary delay, by the first of each year they can adopt a resolution describing the properties that the City has for sale, and have that serve as the first resolution. Thereby, allowing us to go forward with only one more action by the full Council. In our attempt to streamline these land sales, Council will always have the final say. If this procedure turns into an ordinance format and adopted by the full Council, it would accelerate the timeline from the time we get an offer, to the time we can sell the property by doing away with two meetings. One would be automatic in January each year. Mr. Austin stated further, in being true to the Charter limitations, he feels this is the best way to streamline the process.

Mrs. Heidenberger said 3 or 4 properties that were acquired this year from the County had some type of structure on them. She spoke on the need of some type of inspection, an As Is clause, or stating Hold Harmless in the wording.

AUDIENCE PARTICIPATION:

John Stapish, PO Box 190134, stated if there are structures on properties, it should just be as is inspections. It will make it much easier.

COMMITTEE DISCUSSION:

Mr. Haskins stated if we sold it as is, before it could be habitable, we would have to make sure it meets all codes of the city. The building inspector would be involved.

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Mrs. Zelenko said they are going to need a Certificate of Occupancy once they try to inhabit it. Mr. Wells said we still will require an inspection before someone moves in.

Mr. Austin said he thinks all properties should be sold as is where we have a willing buyer, whether it has been improved or not because the land itself may be contaminated, or otherwise. All of the sales, whether the property has been improved or not and including the title, we have up till now required the purchaser to obtain title work at their own expense. The as is provision is a good idea to put into the procedure. Since he has been the City Attorney, we have sold everything on an as is basis.

Mr. Kray said he could see a potential problem with the as is when you are talking about a property with structures on it. If we end up selling a structure that needs work before it can be occupied, and then it sits there and becomes blight, then we are going to have to open up the demolition proceedings. I think it would be wise to consider the option if there is a structure on the property, then find out when the sale is made. A provision either is put in that the current property owner is planning on demolishing it, or they have a certain amount of time to bring it up to code. There doesn't have to be an inspection at that time, but I think it is wise to consider that as well, a contingency plan.

Mrs. Zelenko asked if this is something that needs to be addressed in the ordinance. Mr. Austin said he does not know how that fits into the Land Sale Procedure.

Mr. Kray explained that if we just sell it as is, the buyer is going to know what they are getting. If their intention for that property is to let it sit for awhile until things pick up and they will work on it later, what we will have is what we have now with a lot of properties in declining physical condition. We have to go out and if they are tagged, then they have to get repairs made. If they are not made, we start the demolition proceedings. I think it is wise to get an inspection report and prior to that happening so we know what is going to happen, and what the intent of the property is.

Mr. Austin said if there is a property already questionable, we could make it part of the purchase agreement that would be set before Council to approve. The purchase agreement would state premises and restitutions made in the purchase agreement would survive the closing. It would lay out that timeline so the property doesn't end up on the demolition list. I don't think I would put that in the procedure to be applied in every situation. Mr. Austin indicated further, if you hear about a property that is about to be sold, let me know if there is an issue and we can address it in the purchase agreement.

Mr. Haskins suggested something be put in the as is clause for a prospective buyer to know the situation of what they are buying.

Mr. Kray said it would be completely counter-productive to sell a home, and then tag it in open demolition procedures.

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Mrs. Zelenko said do we need a provision in the ordinance stating an as is clause pending certain purchase agreement specifications.

Mr. Austin said the resolution approving the sell should reference the as is provision. The procedure should also have a check mark some place on the as is issue, and that issue will be addressed by the resolution that the Council considers for adoption.

Mr. Wells inquired if the wording should state in the ordinance that they have a 30-60 day window to ask for an inspection.

Mrs. Heidenberger said not necessarily, depending on the sale. Someone may just want the lot to build a garage on the premises. That should not hinder the sale of a property. It is a case-by-case basis.

Mr. Haskins and Mr. Kray both expressed evaluating on a case-by-case basis.

Mrs. Zelenko said she feels at this point, the attorney can draft the ordinance and bring it back to the next Legislative Meeting on March 1st. We can go through it before we take it to Council.

Mr. Austin said he would have an ordinance for the Committee to review before their next meeting.

Sign Ordinance - concerning Electronic Sign Boards

PRESENTATION:

Mr. Kray said newer cars have radios that scroll a message on what station you are listening to, the name of the song and who the artist is. Reading that information in a car can cause an accident. At least with the sign, you have your eyes looking out onto the road. My only concern and question is do we want to legislate everything.

AUDIENCE PARTICIPATION: None.

COMMITTEE DISCUSSION:

Mr. Wells said he agrees with Mr. Kray. Anyone driving is going to be distracted by something. He thinks the City has a pretty good policy and ordinance in place now. It is just a matter of administering the ordinance.

Mrs. Zelenko said her only concern is getting the proper permits pulled for the sign and that they comply with the square footage.

Mr. Haskins said he is in agreement. Drivers have full responsibility. He counted the seconds on the Northbound US 23 / I-75 sign and it was exactly 7 seconds. He hasn't heard of any problems or major catastrophes with that sign. Anything that can help our businesses within realm and reason, I think we owe it to them. He doesn't see a problem.

Mrs. Zelenko said it seems the consensus of the Committee is to enforce the current sign ordinance.

Mr. Wells expressed having the 7 second change in the ordinance.

Mr. Austin said it is not currently in the wording. If you want the 7 or 8 second provision that no sign shall be animated or scrolled or changed except for once every 7 or 8 seconds, that would have to be included in the ordinance.

Mr. Kray stated in addition, the variable message signs that are set up for construction could potentially violate any restricting ordinance because it does the same exact thing. M-DOT uses that to keep drivers informed.

Mrs. Zelenko expressed enforcing the current ordinance, and that it can always be re-visited in the future if necessary.

Registration fees for abandoned structures

Mrs. Heidenberger stated that in reviewing the registration forms and invoices of 661 parcels, to date \$29,000 was billed out and \$17,000 in fees was paid back. She is requesting a Certificate of Occupancy be in place once a home is sold. The concern she has is seeing sales come through after the initial foreclosure that is extremely low. Homes are being stripped of light switches, electrical wiring, kitchens removed and appliances. We need to address some type of inspection. If people are purchasing them for their own homestead, they are more than likely to bring them up to code. If they are using them for a rental property, they can sit there for a time in hopes that the market will turn around. Currently, there are 260 properties that are in the foreclosure process. It is a big influx affecting the neighborhoods. Mrs. Heidenberger stated further, her office does not always know what properties are being sold until they are. She does not have the staffing levels to monitor realtor sales.

Mrs. Zelenko said if we require a Certificate of Occupancy, than that will trigger an inspection and we will know if there has been a sale.

Mrs. Heidenberger said a number of mortgage companies have received our form. They are not good though about getting an inspection.

AUDIENCE PARTICIPATION:

John Stapish, PO Box 190134, asked if commercial properties would be addressed as well as residential. He mentioned several empty businesses and spoke concerning selected enforcement.

COMMITTEE DISCUSSION:

Mr. Austin addressed Mr. Stapish's comments regarding residential and commercial structures. He said the current provision is found in Section 91.04 of the codified ordinance book. Our registration requirements apply to all abandoned structures whether they are residential,

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commercial or industrial in nature. It is universally applicable to all abandoned structures in the City.

Mr. Austin asked if the property maintenance code, by its terms, require a Certificate of Occupancy for these structures. Would it be a redundant provision, or make reference to a provision in the maintenance code that requires a Certificate of Occupancy.

Mr. Kray replied that Mr. Butzke said this is going to require a final inspection prior to occupancy. He would need to have a final inspection and issue a Certificate of Occupancy permit.

Mr. Austin said he could add a provision "and a Certificate of Occupancy as required by the property maintenance code shall be obtained before re-occupation of the premises".

Mrs. Heidenberger explained once the Sheriff's Deed comes through, we generate a letter with a registration form to individuals or banks, etc. We have received a good response with the fee itself, but it is not coming in quickly with the registration form being completed on who owns it, who is responsible, and who is maintaining it. Of the \$29,000 billed out, they have received \$18,000. That part seems to be working out fairly well. As far as completing the form and getting it to the building department, they don't do a very good job. Mrs. Heidenberger expressed further, there are currently 257 mortgage foreclosures. Thirteen commercial, one industrial and 243 residential.

Mr. Austin indicated the ordinance has a separate penalty provision stating any violation of the ordinance is a civil infraction. It also states the fine shall not exceed \$500 for residential properties and \$1,500 for commercial and industrial. Mr. Austin asked if there is some other enforcement mechanism they would prefer to see in the ordinance. Even though the civil infraction requires some time involved from DPW, I think it is the easiest enforcement mechanism possibly available. It is a civil enforcement citation. Someone has to fill it out and get it to the property owner. After that, it is pretty easy for me to enforce it.

Mr. Haskins expressed possibly increasing fees as an incentive for people to get the forms turned back in.

Mrs. Heidenberger said most of these are companies that hold a mortgage.

Mrs. Zelenko stated basically the mortgage company is not informing you who the servicing agent is locally that are responsible. There would have to be another contact on our part with that mortgage company.

Discussion ensued further concerning an upfront fee, paperwork involved with invoicing, civil infraction citation procedure, and sending out a second letter to obtain information.

Mr. Austin said the ordinance now provides that the owner shall have a period of 10 days from the day of the notice, to register the property on the registration form to be provided to the City. Any

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follow up letter would read “more than 10 days have lapsed since you were notified to register your property and you failed to do so. You sent us your money but you failed to properly register the property by completing the registration form. We hereby are going to extend your registration time for a period of 20 days and if you don’t comply by submitting your form, we will have to proceed with a civil infraction citation”. He doesn’t think he needs to amend the ordinance to give you the authority to do that. It is all in the process of enforcement.

Mr. Austin suggested further they be notified that they have only 10 days from the day of the notification to get their property registered and the fee paid.

Mrs. Zelenko said she would put that information on the form too. You are still looking for a change on the re-registration, “if the property stays abandoned for more than a year you are required to pay a \$100.00 re-registration fee”.

Mrs. Heidenberger said we talked about that and looked at what the costs were for each property and \$50.00 is not enough. It does not cover our cost. I spoke with Greg Kray and Mike Butzke and we felt that \$90.00 would cover our cost, unless you are going to add in the registration fee. Then either increase it from \$50 to \$90, or from \$50 to \$140.

Mrs. Zelenko said the fee portion would have to go before the Finance Committee. Mrs. Heidenberger would like this new language regarding re-occupancy of vacant abandoned properties: “Abandoned and /or vacant property structure shall not be occupied until the City is issued a certificate of occupancy, all violations have been corrected in accordance with all codes. In addition, a certificate of occupancy shall not be issued until all outstanding cost assessments, taxes and /or liens owned to the City have been paid in full”.

Mrs. Heidenberger asked for Mr. Austin’s opinion if that reading should be included.

Mr. Austin said he would have to do some legal research to see if we could justify not issuing a certificate of occupancy for a building that was safe to occupy merely because they still owed us a water bill. I don’t know that we can do that. I am for identifying the need for a certificate of occupancy and that is fine to be addressed here. I will need to have a discussion with Mike Butzke as to whether or not this is a new certificate of occupancy requirement, or I am mirroring what we already have in the resident maintenance code.

Mr. Austin stated he would have a proposed amendment to this ordinance ready for the Committee’s meeting on March 1st.

Backyard Chickens

Mrs. Zelenko said from her notes if we go forward, there is to be no roosters, up to 6 hens (female chickens), permit required (we need to discuss a fee), a 1 year or 5 year permit, chickens must be provided with a covered shelter located in the owner’s back yard, at least 10 feet from the property line and 30 feet from a neighboring residence.

Mrs. Zelenko said she took that language from a sample ordinance. She asked the Committee if they want to go with square footage or acreage. She doesn’t know if they need to talk about

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definitions such as female hens, shelter must be kept in a sanitary manner free from offensive orders, prevent harboring of mice, rats and other rodents. It must be kept in a covered or fenced enclosure at all times, and all feed and items associated with the keeping of chickens shall be stored in a manner to prevent access by mice, rats and other rodents. Homeowners Associations by-laws and deed restrictions and such shall supercede the ordinance.

AUDIENCE PARTICIPATION:

Vickie Morgan, 4195 Springfield, said she hopes they consider square footage of 10 to 20 feet from a neighboring structure because that would make it more accessible for people to have them.

Toby Bauldry, 1141 Sunnydale, asked why they do not want roosters. She hopes they do not go by acres. She feels 5 acres is excessive.

Mrs. Zelenko explained prohibiting roosters was due to the noise. The current ordinance says you have to have 5 acres. The committee needs to decide if we want to go square footage, ½ an acre or 1/3 of an acre, or go by setbacks, 10 ft. from a property line and 20 ft. from a structure.

John Stapish, PO Box 190134, said he thinks backyard chickens is a great idea and also ducks. Square footage would be a better way to go because not everyone has 5 acres. He does not feel we need permits and fees, and the City can just enforce what there is.

Deborah Ward, 4306 Farmcrest, said she lived on a chicken farm her whole life. Last year at this time, her neighbor across the street decided to buy chickens. She put them in her house along with some ducks in her bathtub. Come Spring she moved them to her back yard. Every night and morning they heard the rooster. The hot steamy nights we couldn't keep our windows open because of the stench. You have to clean that up. The ordinance was put into effect for a reason; there must have been a problem. This is residential area, not rural. She also speaks on behalf of her neighbors who are in Florida. We are against it. If you allow this, you are opening the door for varmints to come in. Raccoons like chickens and eggs, as do weasels and other animals. Then there are diseases with salmonella and e-coli from the ducks. If you live next to it you wouldn't like the stench and if you want to go out and sit in your back yard and here cluck-cluck to your right and to your left and maybe even to the back of your yard, it is annoying and the stench – especially when it gets really humid and hot, and when it rains. This is a city and our homes are assessed with city taxes. If you want to rezone our property to rural farmland and lower our taxes, it would be great. I moved here to Burton to be in a residential area. Mrs. Ward stressed that they are not pets. They take a lot of care. You can't just put them in a city lot and say "aren't those nice, they lay eggs". There is a lot of cleaning up after a farm animal and they are a lot of work. You also cannot cage a Banty or a Guinea hen. They like to fly. Mrs. Ward asked the Committee to please consider all of this.

John Staphish, PO Box 190134, said he feels 6 chickens would not cause that much of a problem.

Vickie Morgan, 4195 Springfield, said it is 4 to 6 hens and not a commercial chicken house. As long as restrictions are in place as far as they have to be penned. It was brought up at the last

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meeting that 4 chickens equate to a small dog. Chicken waste can be used as a fertilizer in gardens or put in a compost bin.

COMMITTEE DISCUSSION:

Mr. Wells said the only restriction he can think of is lot sizes. In the south end lots are 60 ft. and there could be a problem. Permit fees of \$35.00 would include a permit to build a coop.

Mr. Wells indicated they could give this a one-year shot and see if it becomes a problem. I think there will be a small minority of people that will actually buy chickens.

Mrs. Zelenko asked if they want to address square footage, setbacks, and acreage.

Mr. Austin said with regards to fees, in the ordinance he would draft a provision that fees to be established by resolution and amended from time to time by resolution of Council. I think you need to have a permit requirement and a fee to cover the administrative overhead in getting these permits in and keeping them on file. Setback or square footage is the Committee's call to make. I think those 60 ft. lots you could have a problem. We don't know how many people might want to go out and try this. We can certainly take a look at it in a year. This will probably get incorporated into the zoning ordinance, so it would be non-conforming use rights that we would have to be concerned about. In a year's time if you decided to increase the setback requirements or increase the yardage and square footage requirements, the existing permitted spots would have to be grandfathered in. You wouldn't be able to alleviate an existing problem.

Mrs. Zelenko said she thinks we need to have setbacks regardless if you have the square footage requirements as well. You need to have the coop, the covered shelter. It has to be 10 ft. from a property line and so many feet from a neighboring residence.

Mr. Austin said we need to determine whether or not these structures that house the chickens would be considered accessory structures under the terms of the Zoning Ordinance. Under the terms of the Zoning Ordinance specifically that limit the number of accessory structures per lot, I think you are probably looking at an ordinance that wants to say irrespective of any prohibitions on the number of accessory structures.

Mrs. Zelenko said we are probably talking about a structure the size of a large doghouse when you are talking 4 to 6 hens. I don't think we are talking about anything real elaborate or the size of a shed. We don't need to have a permit for a doghouse.

Mr. Austin said they are affixed to the ground in some fashion, so they would be structures.

Mrs. Zelenko said some are not though.

Mr. Austin asked if they are going to require that they be affixed to the ground.

Mrs. Zelenko said she thinks it is a personal preference. They have things on wheels that can be moved around the yard and keeps them confined. We have to regulate that they have to be confined in some way either in a covered enclosure or at least in a fenced in enclosure.

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Mr. Wells said the information he read said a minimum of 8 square feet per chicken.

Mrs. Zelenko said that is including an exercise run. A nesting box is 2 square feet per chicken.

Mrs. Zelenko said we could continue this discussion at the next meeting. Mr. Wells acknowledged that more information is needed on this. He feels they are on the right track and he is still for it.

Mr. Haskins said he read all the different ordinances and they basically say the same thing. One had a stipulation of an approval letter from surrounding neighbors. He didn't know if the Committee might want to consider that, and also address uncleanness in the ordinance.

Mr. Austin asked if this is to be a freestanding ordinance or require special use approval by the Planning Commission.

Mrs. Zelenko responded that residents can come in and get a permit as long as they can meet the basic requirements (setbacks and property size).

Mr. Austin said he would draft an ordinance for the Committee.

Mrs. Zelenko said the Committee would address the purchase of water meters at the next Committee meeting on March 1st. Mr. Wells indicated he has more information that will be coming from the County Drain Commissioner Jeff Wright and he will get copies for everyone to review.

Meeting adjourned at 7:06 p.m.

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