

CITY OF BURTON  
LEGISLATIVE COMMITTEE MEETING MINUTES  
OCTOBER 6, 2008, 6:00 P.M., COUNCIL CHAMBERS  
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The Meeting is called to order by Chairwoman Laurie Tinnin at 6:03 p.m.

MEMBERS PRESENT: Tinnin, Conley and Ellenburg.

MEMBERS ABSENT: None.

OTHERS PRESENT: Mayor C. Smiley, Atty. R. Austin, G. Kray, DPW Director and J. Adams, Deputy City Clerk.

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

- 1) Subdivision Control Act. To establish criteria and safeguards to protect the City of Burton from financial loss due to developers not fulfilling their obligations to finish all stages of paving prior to the City taking over responsibility of these roads into the City's road system.
- 2) Establish language preventing a developer or a corporation seeking profit from utilizing the City's special assessment petition process enabling them to achieve financial gain from the City bonding on their behalf of the City's good faith and credit.

**PRESENTATION:**

Mrs. Tinnin referenced in the Codified Ordinance Book, Pages 338 and 389 titled The Final Plats Submission Review and Approval, Section 15624 under procedures. She has some ideas to make it easier to deal with. She inquired if the City can take over streets prior to final plat submission.

Mr. Kray replied not until the top lift has been placed on them.

Mrs. Tinnin said she is looking at the cost equation. We are having difficulty collecting the money some of these subdivisions that owe for doing the final paving. She suggests asking for a contingency of 20%. We have an 80% rule in place where we are not actually collecting the money till after we finish the final paving. Mrs. Tinnin stated further that in Section 15624 under procedures, "the dollar value of the above 5 acceptable assurances shall be an amount equal to 100%. Instead of having 100%, we could put in 120% of the unfinished public improvements and that would be the only change. She asked if there would be anything legal involved.

Mr. Austin questioned the 100%. The dollar value of the 5 acceptable assurances shall be an amount equal to 100% of the unfinished public improvements as certified by the Director of the Department of Public Works. Mr. Austin asked if the DPW Director goes out and solicits bids, just states the general information about the cost of asphalt or certify this amount.

Mr. Kray responded he does not know what prior DPW Directors did. He believes it was done on average prices, the best estimate. It is usually the final lift of asphalt that we held back and an amount for repairs to the asphalt. As the ready mix trucks go in and they turn the drum it tends to tear up the pavement. He is quite sure a contingency was added in there.

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Mr. Kray stated further the problem is the price of asphalt has tripled and in some cases quadrupled, which no one could have foreseen. We can continue holding back on the top lift of asphalt and continue to estimate the amount of dollar value based on today's prices it would take to finish the road, up it by 50% or 20%, and then have a built-in escalator tied to the price of asphalt every year that would require the developer to bond that additional amount every single year until it is done. Or, you could have the developer finish the pavement when he builds the road and have another type of rider that any roads damaged during the construction of the home would have to be repaired at that time. The downfall is, you end up with a finished road with a path here and there.

It is best to wait a few years and pave it. The old formula was 80% build, maybe even 90% at one point, and then we put the top layer on.

In summary Mr. Kray stated, you can require an escalating bond or final out the road when you build it and require any damage to be fixed by the builder. Mr. Kray expressed sitting down at a round table and discuss more on these issues.

Mrs. Tinnin said once someone purchases one of the built homes, you almost have to take over the streets into the City street system because you have the paving there and have to take care of it in the winter and summer months. She asked how would you not take it over into the City street system until it is completely finished.

Mr. Kray said there have been subs we haven't taken over yet, or we didn't take over immediately.

Mrs. Tinnin said something has to be done when you have to try and coheres the developers into paying you what is owed for the work that the City already put money into. We are dealing with too many unfinished subdivisions where we are going in and using our monies that should be used towards the subdivisions that have already been developed and fully paid for to repair those roads.

Mr. Austin said he appreciates what Mr. Kray was trying to get to. I think that might be an administrative nightmare keeping track of trying to escalate these assurances that we have. It is hard enough to be sure that we have them at all and that the bonds are annually kept current. We could possibly establish a time limit when the roads will be completed so the 20% contingency doesn't turn out to be inadequate, whether that is a 3 year or 5 year window. He does not know who would establish that window, if it would be the DPW Director or Council.

Discussion ensued concerning final plat approval and when it comes to Council for approval.

Mayor Smiley stated we have a plan in place that has worked well. If we are lucky to have a subdivision come in tomorrow, we are going to estimate at our cost based on today's prices. We didn't have a problem before until everything skyrocketed.

Discussion followed concerning the economy, increase costs of steel and asphalt, other subdivisions paving situations, and looking at other municipalities language.

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Mayor Smiley said once you cap that road, it is ours to fix. The developer puts the last coat on at their expense, no expense to the taxpayers. We have had very little complaints. If you put that brand new street in a subdivision that is not developed, you will be using taxpayers money to fix it from the damage that is being done from construction of the vehicles coming in there.

The Mayor stressed further we don't want to make it harder for us to develop if we get another developer coming in. By putting a 2 year limitation on that, it would be on us to fix the road on the 3<sup>rd</sup>, 4<sup>th</sup> or 5<sup>th</sup> year, no matter what damage is done. We ask the developer not to put the final cap on until it is done because it looks better for the residents. It is cheaper for the developer to do it from the get go. There will be damage done to that road, there always is. Once we relieve him from the responsibility of that road, it is ours to fix.

Mr. Kray said the developer would just as soon pave earlier than later. One reason a lot of these didn't get done sooner is we told them they couldn't put the cap on till they have 80% of the lots filled.

Mayor Smiley said we try to protect the residents so that when it is all done they have a beautiful street.

Mrs. Tinnin inquired regarding the problem of collecting money from the developer that owes the City money.

Mr. Kray responded that is the procedure we have been in. We execute the bonds and lien the property.

### AUDIENCE PARTICIPATION:

Rick Fuhst, 1208 S. Genesee, said he believes the developer should have to pay for everything. The taxpayers cannot afford it.

Mrs. Conley inquired regarding The Orchards Phase II and Burton Estates.

Mr. Kray said he believes The Orchards is capped in the first section.

Mayor Smiley said he is unsure about Burton Estates. Usually residents will call and complain and he has not received any calls.

Mr. Austin said there has been good discussion. He thinks administration is saying what we have got works pretty well, and the Legislative Chair wants to see a change to include a 20% contingency and a time cap established by the DPW Director.

Mrs. Tinnin said she is not so much concerned as to the time cap. She too wants to see a nice looking development at the end.

Mrs. Tinnin stated further, if we have slow developments, the economics doesn't warrant that the development is going to start gun-ho and remain that. I don't want us to get stuck with finishing that project immediately and have those new homeowners looking at a poorly constructed road.

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Mr. Austin spoke on adding a 20% contingency on Pg. 389 and preparing an ordinance amendment to that subsection.

The Legislative Committee indicated they would like the information to come back to their next committee meeting to review it.

Mrs. Tinnin referenced further pages 309 and 310 on the financing of public improvements special assessment. She stated on Page 310, under petition by owners, Section 150.03 under D, she would like to have an E and F added. E would state the special assessment petition process shall not be used for private enterprise or a sole proprietor to develop undeveloped lands. Mrs. Tinnin said this wouldn't eliminate anyone in a subdivision that currently wants to put in water or a paved road to be able to petition. This would eliminate the process being used for private enterprise for undeveloped land. She wants the petition process to be used for developed land, but doesn't want to special assess in the City's name. Section F would state that the City shall not provide private enterprise with public utilities paid from advanced funding secured by the good faith and credit of the City of Burton.

Mayor Smiley stated he doesn't know why Council would want to limit their hands. I think there are certain tools that Council has used over the years. If anything you would be enhancing your marketability to promote developments of all types whether residential or commercial. To limit yourself down and say you can't use something that has been done very successful in this City and throughout this State, I think is a terrible injustice to our residents. Mayor Smiley asked Mrs. Tinnin why she would want to eliminate that.

Mrs. Tinnin responded that Pebble Creek is one.

Mayor Smiley said Pebble Creek is our infrastructure. The water, roads and the sewer belongs to every resident of the City and is paid 100% by somebody as all the other development has. But if it wasn't for us entering into an agreement, we wouldn't have 20 beautiful homes sitting over there.

Mayor Smiley gave the example of Winding Creek and stated we have no involvement or partnership in that what-so-ever and we don't have a home built in there. Where we have involvement as a City, we have done very well and been successful.

Mrs. Tinnin said there are 71 parcels of land that nobody owns.

Mayor Smiley said he predicts there will be homeowners there as well.

Mrs. Tinnin stated the last 3 years the County Revolving Tax Funds is charging us back. When the lot gets purchased, that purchaser gets the lot free and clear. They don't owe for the last 3 years that the City has paid for the water, sewer and paving.

Mayor Smiley stated that is not going to happen. He also stressed we may not have the tools to special assess if a General Motors plant wanted to come in. There is a town not too far from us that bought 211 acres for the Chrysler plant. They also bonded and put in infrastructure.

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Mayor Smiley also added, whatever level of government they do something to entice development, which creates jobs and opportunities.

Mrs. Ellenburg indicated it is one of Burton's perks to entice developers to come in and develop, and people to come in and live in Burton.

Mrs. Tinnin feels that when you have a good community, a good school system and a low tax base, those are good enticements to bring somebody to your community without financing their projects in the City's name.

Mayor Smiley said we had all those good things before 1990 and didn't build one home in 20 some years. They were building all over this County. I can remember approaching Council with a drain and bringing water 2 miles, (\$3 million dollars) from Lapeer Road to Maple Road to put in a watermain for Maple Pointe Subdivision. Council supported us on that. It has been paid off and completed. We did the same thing with Hidden Trails when we ran water down Vassar Rd. We ran it down Milano on a very short street. We have done this time and time again, which has brought in tremendous opportunities in our communities and jobs have been created. We have increased our population by over 10% in the last census and brought in thousands of dollars. Had it not been for all that development and us being proactive in reaching out and thinking out of the box, we would have been in some serious trouble.

Mrs. Tinnin and Mayor Smiley continued to debate this issue.

Mr. Austin spoke concerning some problems with the language for section E. Mrs. Tinnin asked Mr. Austin to research what other communities have done with their petition process language and if there is some exclusions.

Mrs. Ellenburg offered to help in calling other communities and doing research.

Mr. Austin stated he will be out of town and it would be a couple of weeks before he can begin this project. If the Legislative members would like to, they could contact other municipalities and gather information that would be relevant. They can then call, e-mail or come to his office and give him whatever information they obtained.

### COMMITTEE RECOMMENDATIONS:

Tinnin moved and Conley seconded the following motion:

1. The Legislative Committee recommends that Attorney Richard Austin research and bring back to the Committee legal opinions on the financing of the public improvements special assessment process.

Motion carried 2-1, with Ellenburg voting no.

Meeting adjourned at 7:15 p.m.

jra