

CITY OF BURLINGTON  
Committee of the Whole Minutes  
Robert Miller, Mayor  
Beverly R. Gill, City Clerk  
January 18, 2011

**1. CALL TO ORDER/ROLL CALL**

Mayor Bob Miller called the meeting to order at 6:30 p.m. starting with roll call. Aldermen present: Bob Prailes, Ed Johnson, Peter Hintz, Jim Prailes, Tom Vos, Steve Rauch, Jeff Fischer, Katie Simenson

High school students present: Lauren Nadolski Absent: David Martin

Also present: City Administrator Kevin Lahner, City Attorney John Bjelajac, Police Chief Peter Nimmer, Treasurer Steve DeQuaker, Public Works Director Connie Wilson, Library Director Gayle Falk, Fire Chief Dick Lodle, Assistant to the Administrator Megan Johnson, and Tom Foht of Kapur Engineering

**2. CITIZENS COMMENTS AND QUESTIONS**

Mr. Jack Baker, 141 West Chandler, Burlington, Wisconsin was in attendance and addressed the council regarding the sale of the Department of Public Works Building at 824 Milwaukee Avenue. With over thirty years of experience in real estate, he felt that he could speak with some authority on the subject. He had done some investigating on his own and was taken aback as a result of what had taken place. He decided to attend a council meeting and report what some citizens had said to him.

Baker spoke about the fact that it had been said on numerous occasions that all of the realtors in town and all the citizens were aware of the potential sale of the building. In speaking to over half the realtors in town, he understood that they were not aware of the immediate sale of the building. They knew that someday the city would sell the property but they did not know the timeline.

Baker then discussed a comment made by Mayor Miller that he had indicated that there had been no discussion prior to getting an offer regarding marketing of the property. Baker then cited a copy of an email to council members from Lahner that indicated that some individuals were expressing an interest in the property. Lahner was putting together information on the potential sale by perhaps using an RFP type process for hiring a commercial broker.

Baker went on to state that Atty. Bjelajac at the last meeting indicated that he did not have a copy of the offer and because of that he did not want to comment. Baker had received a copy of the offer in which Atty. Bjelajac had been copied and he suggested that there may have been an internal snafu that prevented Atty. Bjelajac from receiving his copy.

Baker also had issues with the offer itself. Normally, in a real estate transaction the realtor gets paid as a result of having a listing contract or a buyer's agency contract. With the current offer from Faust it was stated that the commission was to be paid by the city and it would be a full commission as if the property had been listed and then sold. In this case as far as he could tell, the property had never been listed. He further stated that there was no indication in the offer regarding naming the agent as the commission was listed to be paid directly to Bear Realty. He had recently found out that former Mayor Claude Lois was to be paid the commission. It was Baker's opinion that Lois was not a licensed agent at this time as his license had lapsed. Baker continued that Bear Realty could collect the commission but could not pay Lois.

Baker took issue with the fact the property was being sold to an LLC and because of that the city needs to know who the members are so there isn't anyone directly involved in the offer itself that would eventually benefit from the purchase. He further noted that Atty. Hotvedt had drawn up the offer that called for a zoning change and it was Baker's understanding that Atty. Hotvedt serves on the committee with the city that addresses zoning changes.

Atty. Hotvedt responded that he had served on that committee four years ago and he did not draft the offer before council but helped negotiate it.

Baker also spoke on the two payments that were listed in the agreement and how it would be unusual that any commission would be paid prior to the city receiving a final payment. At the very least it would only be a partial commission until the city had received the full payment.

Baker reminded the group that they represent the public and the public needs proper representation. He asked if the city had done due diligence in marketing this piece of property. He was hopeful that the property would be sold at the proper price to the person who could step forward with the best offer.

Baker thanked the council members for giving him the opportunity to speak.

**3. MINUTES FROM JANUARY 4, 2011**

A motion was made by Bob Prailes with a second by Johnson to approve the January 4, 2011 Committee of the Whole Minutes. With all in favor, the motion carried.

**4. RESOLUTION 4459(43) "A RESOLUTION TO CONSIDER AUTHORIZING THE CITY ATTORNEY TO FILE A LEGAL ACTION AGAINST CHRIS' USA RESTAURANT TO STOP ILLEGAL SMOKING ON THE RESTAURANT PREMISES"**

Mayor Miller led the discussion regarding Resolution 4459(43). Atty. Bjelajac stated that he was disappointed in the most recent report regarding illegal smoking at Chris' USA Restaurant. The business had been issued tickets on July 17, 2010 and again on January 11, 2011. Atty. Bjelajac said that Chris's USA has made a calculated decision to intentionally ignore the "No Smoking" laws by encouraging and allowing illegal smoking. He further stated that Chris' USA considered the tickets issued as part of the cost of doing business. Atty. Bjelajac's intention is to create a level playing field for those establishments that are honoring the statutes.

Vos questioned if the violation procedure as a result of this resolution could be used against Chris' USA when it came time for renewal of their liquor license. Atty. Bjelajac replied that any convictions in municipal or any other court cannot be used as evidence in a due process hearing to deny a Combination Class B Liquor License. He further stated that this change was made to state statutes at the time the non-smoking statute was adopted, but the statute is silent if the city has to go into court and get an injunction to counter a pattern of an intentional violation of the law. He advised council to not just automatically renew the license but to take a closer look at any attending circumstances.

Simenson questioned if the city were to win the court case would there be any reimbursement of legal fees and court costs? Atty. Bjelajac stated that we would ask, but typically there would not be any reimbursement as there are no state statutes expressly authorizing reimbursement.

Hintz questioned what the injunction would actually mean. Atty. Bjelajac explained there would be a court order and if there is a violation of the court order then the persons named could be held in contempt of court with penalties that could include jail time. Atty. Bjelajac felt that there was more control through contempt proceedings rather than through citations.

Fischer was advised not to participate in this discussion due to his ownership in a Combination Class B establishment.

Vos asked for an explanation of "injunctive relief". Atty. Bjelajac explained that it meant no more smoking. Simenson then asked for clarification because the state law already says no smoking. Atty. Bjelajac stated that the city would have more "enforcement teeth" with an injunction.

Rauch questioned if Chris' USA had been notified of the discussion this evening. Atty. Bjelajac replied that he did not think they had been contacted.

**5. ORDINANCE 1919(22) "AN ORDINANCE TO CONSIDER REZONING PROPERTY AT 681 MARYLAND AVENUE"**

Mayor Miller introduced Ordinance 1919(22) to the council for discussion. Johnson questioned why it had the current zoning of I-1? Lahner explained that the parcel had originally been owned by the city.

This ordinance is scheduled for the February 1, 2011 Common Council meeting.

**6. ORDINANCE 1920(23) "AN ORDINANCE TO CONSIDER AMENDING THE MULTI-JURISDICTIONAL COMPREHENSIVE PLAN FOR 717 WEST CHESTNUT STREET"**

Mayor Miller introduced Ordinance 1920(23) to the council for discussion. There was no further discussion.

This ordinance is scheduled for the February 1, 2011 common council meeting.

**7. ADJOURNMENT**

A motion was made by Johnson with a second by Vos to adjourn. With all in favor, the meeting adjourned at 6:53 p.m.

Beverly R. Gill  
City Clerk  
City of Burlington  
Racine and Walworth Counties