

CITY OF FENTON COUNCIL WORK SESSION PROCEEDINGS
Monday, October 6, 2014
City Hall Conference Room
301 South LeRoy Street
7:30 PM

Mayor Sue Osborn called the meeting to order at 7:30 PM.

Present: Bland, Grossmeyer, Jacob, King, McDermott, Osborn.
Absent: Lockwood (excused).
Others Present: Lynn Markland, City Manager; Bob Cairnduff, Fire Chief and Tonya Lall, Assessor.

CITIZENS COMMENTS – Thomas Murphy, Georgie Easton and Whitney Burnash asked to speak on the proposed ice retardant systems ordinance. Daniel Dunn asked to speak on the agenda item regarding the sale of tax reverted property.

PROPOSED ICE RETARDANT (“BUBBLER”) SYSTEMS ORDINANCE

Cairnduff stated this was discussed at length at the June work session and Council asked for more research into the issue. He spoke to Fenton Township Supervisor Bonnie Mathis and asked if the Township had any issues with their current ordinance. Ms. Mathis indicated to him there was a lot of discussion before the ordinance was adopted but after it was put into effect, there have been no appeals. Each year one or two residential properties put a bubbler system in place and the ordinance officer notifies the property owner(s) and the matter is resolved. There have been no real issues since the ordinance took effect.

Cairnduff stated after looking into this more, he is still in favor of completely banning bubblers as he feels they pose a safety risk. Another reason he is in favor of a ban is enforcement/inspection requirements. He cannot find any material relating to the construction of any types of barriers for bubblers and he would be uncomfortable determining what an appropriate barrier device is and stated there are no set standards in place.

King asked if Council moved forward with an Ordinance and something were to happen, would the City be covered.

Schultz responded this ordinance would be considered a police power ordinance, which is an ordinance drafted to protect the public health, safety and welfare. In terms of being sued because the City adopted an ordinance or an issue arose with an illegal bubbler, the City has virtually no exposure as it has governmental immunity for these kinds of actions. He is very comfortable that if an ordinance is adopted that prohibits bubblers altogether that the ordinance would be defensible and sustainable.

McDermott asked Cairnduff if he feels there is an option to allow some areas to have bubblers without potentially impacting everyone else. Cairnduff stated there are ordinances that allow for signage, marking the area, etc. but most of those affect large marinas that are usually inlet off the main body of water so there is some segregation from the main body of water, which isn't the case in Fenton.

Grossmeyer stated he researched the issue and could not find a system designed to isolate a bubbler from the rest of the lake and is concerned there would be no way to inspect or ensure that a bubbler system is working correctly.

Jacob stated he looked online and used multiple search engines to look for information on any injuries or deaths due to bubblers and could not find anything. He asked if anyone had numbers or statistics regarding people that have been injured. He doesn't know that completely prohibiting bubblers is what should be done and thinks some sort of process could be created to evaluate whether the bubbles are contained to a certain area. He doesn't see the need for an ordinance because he cannot find any record of there being an issue with these systems and thinks rules and requirements could be put into place to regulate use.

Cairnduff stated when the Fire Department goes out to inspect a structure, whether it's the building, plumbing, electrical or fire code, it's based on a set standard and that is what is inspected. He does not have that tool available to inspect bubblers.

Osborn stated Fenton Township asked the City to look at adopting an ordinance. She feels bad that Silver Spray Sports would be affected by the ordinance but someone could walk across the lake at night, fall through the ice and the City could be held liable. She would not vote for allowing exceptions to the ordinance.

King stated the overall picture needs to be looked at because many people may not be aware of bubblers on the lakes because many of the bubbler systems in the lake would not have the setup, or be as visible as the system used by Silver Spray Sports.

Bland asked if anyone has checked with the Michigan Municipal League (MML) to see if other communities have had problems with this issue.

Schultz responded he did not find anything on the MML website but he did research and found that a number of municipalities in Michigan and all around the country have adopted this type of ordinance. Some allowed exceptions and some were outright bans. There is an article written by the Attorney for the Michigan Lake and Streams Association that talks about bubbler ordinances and the problems that bubblers create because of the open water which undermines the strength of the ice for some distance away from the open water. He stated exceptions were more common in ordinances in southern and coastal areas as the water tends to be open most of the time; the farther north, where lakes freeze over and there are activities on the ice such as fishing and snowmobiling, ordinances tended to not allow exceptions.

Bland stated he doesn't think there is enough activity in the areas being discussed to require an ordinance.

Grossmeyer stated he thinks the reason Fenton Township approached the City was because portions of Lake Fenton and Silver Lake are in the City and the intent was to have the entire lake have the same regulations so if someone on a snowmobile goes onto the lake in Fenton Township, they don't have to worry about coming across a bubbler in the City portion of the lake. He stated even if there haven't been any accidents, he would rather act before one happens, not after.

McDermott stated the conversation might be different if Fenton Township had not already adopted an ordinance but the fact that they already have puts the City in the position of following their lead so as to not have any problems out on the shared lakes. He doesn't think the City is in the position of saying it doesn't want any ordinance and that standards currently do not exist to safely manage and enforce exceptions to an ordinance.

King stated she lives near Lake Fenton and snowmobiles can be heard out on the lake in the winter and they go all over the lake and a person probably would not know when they've crossed over to the City portion of the lake.

Jacob stated if the use of bubblers can't be regulated, he is in favor of keeping things as they are now instead of complete prohibition; it hasn't been demonstrated to him that there is an issue.

Tom Murphy, 24 Chateaux Du Loc Drive, President of the Silver & Marl Lakes Area Homeowners Association, reviewed the letter he wrote on behalf of the Association to the City Council dated July 23, 2014. He recently served on the Board(s) for the Michigan Lakes and Streams Association, the Michigan Waterfront Alliance, the Michigan Inland Lakes Partnership and the Michigan Chapter of the North American Lake Management Society. He stated the subject of ice retardant systems has been discussed at each Board and is considered to be a safety issue for residents that live on a lake. In addition to safety issues, use of these systems supports the spread of invasive species and interferes with the natural cycle of the lake and noted the City portion of Silver Lake is substantial. He stated the marina did not utilize a bubbler until a few years ago and it's his understanding it was done to maintain open water for a swan and the bubbler is used for water testing boats in the winter. He doesn't believe this is the practice of most marinas and stated there is open water around the shoreline on the adjacent properties and that prior to Fenton Township adopting an ordinance, there were quite a few bubblers being used and there were massive areas of the shoreline with thin ice. He believes currently everyone on the Township portion of the lake complies with the ordinance and the only problems now are on the City portion of the lake. He stated open water encourages the geese to winter over, exacerbating their population. He is primarily concerned for the safety of residents on the lake and hopes the City adopts the same ordinance as Fenton Township.

Georgie Easton, 15073 Marl Drive, stated she lives two doors down from Silver Spray Sports and the bubbler they use does not interfere with her or her family going out onto the ice. She doesn't think anyone on the Council has seen the bubbler operate in the winter to see the safety precautions in place and she wishes everyone could see the set up in the winter months before banning the use. She doesn't feel the bubbler poses any danger. She stated access to the lake is more or less private and the lake is not as open as Lake Fenton or other lakes. She stated Silver Spray Sports has indicated the Fire Department could use the open area of water if needed when fighting a fire.

Whitney Burnash, 15163 Marl Drive, stated she is employed by Silver Spray Sports and her primary job in the winter is to back the boats into the launch for the mechanics and stated she would not be needed as a full time employee as banning bubblers would not allow her to perform the work she normally performs during the winter months. She lives 17 houses from Silver Spray Sports and stated there is a mile and a half between fire hydrants closest to Silver Spray Sports. There is a hydrant at the entrance to the apartments on Silver Lake Road and the next hydrant is in the City of Linden. She stated her house is approximately one mile from a hydrant and she feels the open water in front of Silver Spray Sports is crucial in keeping her house safe in the event of a fire. She also stated Silver Spray Sports does not allow people to use their property in the winter months to gain access to the lake and last year entrances were blocked off where people were found to be trespassing and there are cameras installed.

King asked how many times Fenton Township used the open water to help with fires and who unlocks the gate. Whitney Burnash responded the Fire Department has a key and can access the gate any time and stated the Fire Department also uses the property for training exercises.

Grossmeyer asked with the equipment on the fire trucks, how long it would take to bust through ice to access water. Cairnduff stated anywhere the Department goes that does not have hydrants, chainsaws are carried on the trucks. He does not know if Fenton Township has used the

open water by Silver Spray Sports and that most departments have a tanker with a large porta-tank which is typically used first and then will go to a hydrant because it's easier to fill a tank, even if there is open water, but noted they will access the open water if needed. The decision is based on travel distance from a hydrant. If the department can hook up to a hydrant, water can get flowing a lot quicker than using open water, even in the summer time. If the travel distance is appropriate to go a hydrant first, that is where the Department goes because it saves so much time.

After discussion, it was decided to put this on Monday's City Council agenda for action. The ordinance to be presented Monday will not allow for exceptions and would mirror Fenton Township's ordinance.

FIRE TRUCK PURCHASE

Cairnduff stated he attended the Council work session in February to discuss the need for vehicle replacement. At that meeting, he obtained authorization to go out for bid. Six bids from five different manufacturers were received and he provided a breakdown of bids, as well as a drawing of the proposed vehicle as part of the meeting packet. After review and discussion, the truck committee made the recommendation to go with Payette Sales and Service for a KME brand mini-pumper. The initial bid was \$219,098 but after discussion and some needed changes, the final price would be \$223,801. He is recommending a down payment of 50% and to finance the balance for five years with an approximate payment of \$24,500 and noted he is working with the City Treasurer to find the best finance option available. By placing 50% down, the Department will receive a discount of \$2,450 on the remaining balance. He stated this is a planned, budgeted expense and noted the last payment on the ladder truck will be made in fiscal year 2015. There are two more years of payments on the tanker.

Cairnduff stated one of the purposes for the new vehicle is for the long driveways in Tyrone Township and it will also be used every day on medical calls. He stated members of the Fire Department visited Macomb Township who have four of these vehicles being used for the same purposes and they are very happy with them. Part of the bid includes options for two pieces of equipment – a thermal imaging camera and a Hurst tool (“Jaws of life”). The camera is \$5,794 and the Hurst tool is \$12,730 for a total amount of \$18,524 and this total is not part of the truck contract amount.

Cairnduff stated he is also asking for a contingency of \$2,500 to cover any additions or changes that occur while the truck is being built.

Osborn asked what truck the new vehicle will replace and what will be done with that vehicle. Cairnduff responded Rescue 16 (1999 Ford F550) will be replaced and the vehicle will probably be listed through a company that markets fire trucks nationally and stated there are a few departments interested in the truck.

Osborn asked since this truck will be servicing Tyrone Township will something be added to the contract. Cairnduff stated part of the flat per call fee that Tyrone pays goes towards equipment purchases.

Consensus was to add to the next City Council agenda for action.

REAPPRAISAL SERVICES CONTRACT RENEWAL

Lall stated the Assessor's office has contracted with David Cook for reappraisal services. The contract is expiring and needs to be renewed. The original contract was at a rate of \$7.00/parcel and she is requesting to renew the agreement for two years at a rate of \$8.00/parcel. Lall stated Mr. Cook will also be utilized this year to conduct reappraisal services on residential

parcels that have new construction (decks, additions, finished basements, etc.) at a rate of \$10/parcel.

Schultz stated in the contract the word 'appraisal' was changed to 'reappraisal' and the rate per parcel was updated; other than that it is the same as the contract currently in place.

Markland commented the Tax Commission requires 100% reappraisal of residential properties every five years and this is accomplished by reappraising 20% per year.

Grossmeyer asked if Mr. Cook would be entering into the same contract with the cities of Grand Blanc and Linden. Lall responded he would be working for the City of Fenton and her office would dispatch him where needed. Markland stated Mr. Cook's contract was part of the cost quoted in the contracts with Linden and Grand Blanc.

Item will be put on the next City Council agenda for action.

SALE OF TAX REVERTED PROPERTY

Markland stated the City received a number of parcels through tax reversion. The market is better and he believes the City should consider offering some of the properties for sale. He discussed this with the City Attorney who informed him Council must approve a process for the sale of these properties. He stated there has been interest expressed in some of the properties the City owns; an RFP was done for Lexington Oaks, which is a development with 52 lots and most of the infrastructure is in place.

Schultz stated the charter provides that the City Manager is responsible for the sale of property, but the procedure and process is set by ordinance; setting a procedure by ordinance on how the sale of real estate should occur has never been done. He stated the charter does not set standards or require a particular process, such as competitive bidding and it is up to Council to decide how they want to handle the sale of real estate.

Osborn and McDermott stated they are not in favor of competitive bid. Grossmeyer commented competitive bid can delay things so much that the City would lose prospective buyers because the process takes so long.

Bland asked what the alternative to competitive bid is. Schultz responded the City could solicit bids or list the property with a broker.

Bland asked if an appraiser would be utilized to value the property. Markland responded the City Assessor can provide an accurate property value.

Schultz stated he can draft an ordinance to delegate the responsibility of selling real estate to the City Manager and stated there are checks and balances in place because the charter requires five affirmative votes of City Council to sell real estate so Council will have the final say.

McDermott asked if stipulations can be made that property has be developed within a certain amount of time. Schultz responded that would have to be negotiated with a developer.

Schultz stated he is favor of more generic standards in the ordinance because Council will always have the opportunity for review and each sale will be different, one sale might be for a single parcel, two or three parcels together or an entire development and each situation would be approached differently. He is looking for feedback from the Council so his office can draft an ordinance for Council to review.

Osborn thinks the City Assessor should be utilized to value property. Grossmeyer agreed stating he is comfortable with the Assessor valuing property, the City Manager orchestrating the deal and Council approving the sale.

Daniel Dunn, 998 Waters Edge Lane, stated there are two City owned lots adjacent to his house that he is interested in purchasing to build a new house on and stated he will go through whatever process necessary.

McDermott asked if a process can be defined in the ordinance that would allow adjacent neighbors to make offers on property at fair market value prior to a public sale. Markland commented there has been discussion of not using a realtor, especially for the first round of lots for sale and only utilize a realtor for hard to sell lots. Schultz stated by not defining a specific process, it allows for leeway to deal with one situation differently than another if it makes sense to do so.

Schultz stated he will draft an ordinance that incorporates the comments made tonight and will bring forward for review.

COUNCIL MEMBER COMMENTS

King asked the status of getting 'No Parking' signs installed by Appletree Lane and asked when the solid waste issue will be discussed. Markland responded he will ask the Police Chief to draft a traffic control order for the signs and that the solid waste issue will be discussed when the full Council is present and he plans on bringing it forward at the November work session.

McDermott stated the Fire Department's Open House is this Saturday from 12 p.m.-4 p.m.

Bland asked what the status is of the used equipment at the D.P.W. garage. Markland responded Administration will list the items for sale if that's what the Council wants and he will talk to the D.P.W. Director.

Osborn reminded Council that a session is scheduled with Lew Bender on December 2nd.

CALL TO THE AUDIENCE – Doug Tebo, 409 Bent Oak, commented the Ghost Walk is scheduled for this Saturday night and part of the event includes his son speaking about a Civil War duel and he will speak about this at the gazebo in Mill Pond Park. Part of his son's presentation includes shooting off a replica musket rifle and the rifle would only shoot off black powder. The Police Chief indicated City ordinances do not allow firearms to be discharged in City parks and the process to change that involves approaching the Parks and Recreation Board and then coming to City Council. He is asking for an exception to the ordinance to allow for the presentation to include shooting off a rifle during the Ghost Walk.

Schultz responded the code of ordinances states in part "*No person ...shall discharge or set off anywhere in any park, a revolver, pistol, shotgun, rifle, firearm or bow, or any weapon that discharges projectiles either by air, explosive substance or any other force, subject, however, to the right of the park and recreation board for sanctioned organized lessons and/or authorized events.*" He will look into this and have an answer tonight or tomorrow as this is something the Park Board may have to authorize and not the Council, in which case the Park Board would have to hold a special meeting to approve this. Council agreed that everything possible should be done to allow this to happen.

Meeting was adjourned at 8:58 P.M.

Mayor Sue Osborn

City Clerk, Renee Wilson

Date approved: October 27, 2014