

REGULAR MEETING
Litchfield City Council - City Council Room
February 19, 2013 - 6:30 PM

Mayor Smith called the meeting to order at 6:30 PM.

Roll Call: Present – Mayor Edwin Smith, Councilpersons Greg Chapman, Jessica Bills, Rick Siebert, Brenda Thomas, Don Bannick and OR Smith.

Absent – None

Also Present – City Manager- Douglas Terry, Clerk-Susan Ballinger, Treasurer-Jill Pelham, Chief Michelin, DPW Supervisor-Tony Langhann, Mark Schneider, Steve Burns, Tony Trombly, Surveyor -Brad Fish, Surveyor-Dan Cabage, Gavin Carr, Tom Strickland, Andy Barrand (HDN), and Mike Warner (Index).

Consent Agenda – Councilman Siebert moved to approve the consent agenda, seconded by Councilwoman Bills. Motion Carried.

Call to the Public – Mr. Burns requested to be allowed to address the board regarding Stock Street after the city attorney was finished addressing the board. Mayor, Smith agreed.

Public Hearing - IFT HI-Lex – Mayor, Smith opened the Public Hearing at 6:31pm and asked for any questions or comments from the board, public and/or the representatives present from Hi-Lex with no comments or question the Public Hearing was closed at 6:32pm.

Resolution 2013-01 Hi-Lex IFT - Councilman, Bannick moved to adopt Resolution 2013-01 IFT HI-Lex seconded by Councilman, Smith. Motion Carried.

Stock Street –Kevin Shirk, City Attorney – Attorney, Kevin Shirk talked with the board about the ongoing issues regarding Stock Street and the current survey that was done by the city. Attorney, Shirk stated that he was present to answer any questions the board might have regarding Stock Street or the survey, and stated that this has been an ongoing issue in different aspects of where property lines are, where the city right-of-way is, whether it's an alley, street, or highway whether any of those issue make a difference. After a survey was commissioned I met with the Mayor, Manager, Surveyors, and a portion of the city staff. Now the issue becomes what does that survey mean and from my stand point the survey really doesn't change anything, but it gives the board a map that actually locates found property lines. Up until that time there had not been any of those kinds of property lines that were specified in a single drawing that the board now has for planning purposes. Attorney, Shirk stated that he is aware of an ongoing discussion with one of the property owners which is Mr. Burns. Mr. Burns has hired an attorney that I have talked with and I am in the process of still having conversations with and I have not heard from any other property owners. So now that is where the city is, you now have a survey and it's the first survey that I know of, there were drawings done historically, but an examination of those drawings show that they are not surveys of existing property lines, but what the drawing (survey) did do, was provide two descriptions of property that I have to assume looking back at the drawing that these were things that the city manager at that time was interested in knowing or adding to that existing roadway. As I can determine that drawing (survey) doesn't report to describe any particular property other than the two descriptions that were created for potential add-ons to the road. Councilman, Bannick stated that at the last meeting when he asked about Mr. Burns losing 12 feet of property, I was told no, that the property line had moved/shifted, so if the property line shifts down, so now we're taking part of Charlie Phelps property, and then that would go into Mr. Sieberts property. Attorney, Shirk stated that he was unsure what Councilman, Bannick means by moving. Councilman, Bannick replied when he asked if the 12ft from Stock Street is moving south. Attorney, Shirk stated that what I'm suggesting to you is, what a survey does it finds existing lines, it doesn't move anything. What it does say is this in fact is where the property line is, now somebody else based on a description that was only meant to be a description of a certain parcel located up here, says okay, if you where to extend that line it would come down here and now that new line says

there's a 12 ft" difference on the current survey. But that's not a 12ft" move, because the most recent survey done did not move any property lines it found existing property lines. When I legally describe something it's right there, now over the years you might think the line is in a certain place and I might think the line is in a certain place and someone else might think it's someplace else. So a surveyor comes in and finds where the lines are, the surveyor doesn't move anything. So what that survey did was find existing lines it doesn't move anything. Councilman, Bannick so the line hasn't shifted. Councilman, Siebert stated that what Councilman, Bannick is trying to figure out is if an existing property line has been located but a neighbor has been maintain that area. Attorney, Shirk stated you can run into that but I don't find that happening here, it can when someone occupies's lines that are not theirs. This still doesn't move property lines what it does is move lines of occupancy and that doesn't have much to do with the situation the board has here because there are no occupancy lines. Councilman, Bannick questioned that back in 1998, Mr. Burns made an agreement with the city and sold the city a piece of triangle property, that line wasn't valid at that time does that null and void the city's agreement with Mr. Burns? Attorney, Shirk stated that the only agreement that I'm aware of is that Mr. Burns transferred property to the city and Mr. Burns did that transfer by a quit claim deed. And what a quit claim deed says to the city is "I'm not making any representation about ownership" there could be a confusion of who owns it so I'm giving you a quit claim deed rather than a warranty deed. A warranty deed says that "I am guaranteeing you that I have good title to this property". What the survey most recently done is, those people were commissioned to go out and find existing property lines. The survey that you just referred to and I'm assuming the Wolverine survey, if you read that survey, what that survey purports to do is describes two sections of property. That the city manager at that time apparently wanted those properties to add to the roadway. There is nothing says there was a survey to say who owns that property or what the history was and if you go out and look where the stake was is in the thoroughfare of what's been a paved road for as long as anyone can remember. And even if that property had been owned by someone else, after ten years it wouldn't have been because there is a thing called 'road by user', but when you look at the other survey that was commissioned to go out and find existing property lines it doesn't show that triangle as ever have been a part of the adjacent lot. If the board looked at that same piece of property today and done a title search and assuming the vitality of this survey, you wouldn't pay money for it because the city already owned it.

Mr. Burns stated a question to Attorney, Shirk asking that he hadn't talked to Wolverine Engineering, if not I did. Attorney, Shirk address the board by stating that he is at the meeting to answer questions, but one of the things that he is not here to do and that is to carry on argument with Mr. Burns. Mr. Burns has a lawyer, so I can't really do that, so if you want Mr. Burns to speak do not take my silence as any type of agreement with what Mr. Burns is saying, I am required to speak to his lawyer. Mayor, Smith stated to Mr. Burns that this is a good time to address the board if you want to do so. Mr. Burns stated that he had emailed the board members an agenda of what he was doing for the night. Mr. Burns asked if the board understood what was going on as far as the deal that he had made with the city. Mr. Burns stated that a line was created by Wolverine Engineers and it was a staked survey and after speaking with Wolverine because I had a lot of questions. Wolverine had told him that they had put in six to eight hours into this survey free of charge, because he (Wolverine) wanted to come up with what Maurey had done years ago and he (Wolverine) wanted to bring himself up to a level of what was going on with this, so I benefitted from that actually. What Wolverine had informed me of was that his is a stake survey and Wolverine had stake survey that line, Wolverine had to stake survey it to create Mr. Burns giving the city a piece of property line. Both the board and Wolverine were on board with me and aware of the line the survey and what the deal was, there was misunderstandings between then I had direct deal with Litchfield. Mr. Burns stated that everyone was aware of that and there have been issues along the way with snow removal, water drainage, but the line was always upheld by the city and me. I've depended on that line, built upon that line and Wolverine did this work for the city, I did not hire Wolverine. Mr. Burns stated that he agreed upon the deal that he had with the city. Mr. Burns then read a paragraph from the 1998 Litchfield City minutes to the board. Mr. Burns stated that he is aware that the city is immune from certain things, but if that line that Wolverine did was made between me and anyone on the board singly and not a municipality we wouldn't be setting here talking that would be a done deal. The board can't bring something back, I've occupied the line we made a deal and it was a staked survey. Mr. Burns stated he would like to say is that when I did talk to Wolverine, a lot of Stantec did was based on one stake

that was found in the back yard. Wolverine did tell him(Mr. Burns) that when someone does look at something like that a judge could put a lot of precedence on a stake like that and they could determine something, it would be above this deal, but Wolverine didn't think that would happen but the worst case scenario, if they(Stantec) did that and the line was found and if it wasn't a moved stake we don't know because it was a long time ago and it use to be a junk yard back there and a lot of excavation has gone on back there for years. So who knows if that is an accurate marking or not, but the line that went up to M-99 was projected is what Wolverine had informed him it was not something found. So Wolverine stated to Mr. Burns that his line would definitely take precedence on that end. So it almost makes me (Mr. Burns) think that if push comes to shove and this did go, it would almost be like a split between the two surveyors saying one would be right in the back and one would be right in the front. So what we've got are two surveys and wasted money in Mr. Burns opinion getting them when all the city was doing was running a straight water line to Frank's building along an existing survey that really didn't change anything. Mr. Burns feels that if the city continues to do this the city would be renegeing on a deal to him, that he had set in the minutes of 1998, we agreed upon that line and I think the line should definitely stay. If both Stantec and Wolverine were setting here and they could discuss the pluses and minus's of what they found then maybe we could grasp the realization of what's really going on, but I don't care about either one of the surveyors. Mr. Burns said his deal was with the city, we both we're on board in 1998 and that's straight from the minutes. So Mr. Burns asked the board to honor that line and that's what I wanted to say. Mayor, Smith thanked Mr. Burns for his comments.

Domestic Harmony Contract – Manager, Terry informed the board that this is annual contract that the city enters into to help our citizens find refuge from domestic abuse. We are requesting the board to approve this contract for our own citizens. Councilwoman, Thomas motioned to approve the contract with Domestic Harmony in the amount of \$300.00, seconded by Councilman, Siebert. Motion Carried.

Bills for Approval – Councilman, Bannick moved to approve the bills in the amount of \$57,384.67, seconded by Councilman, Smith. Motion Carried.

Police Report – Chief Michelin asked if the board had any questions. Councilman, Siebert motioned to accept the police report as presented and place on file, seconded by Councilwoman, Thomas. Motion Carried

Public Works Report – Superintendent, Langhann informed the board that the bell is done if anyone wishes to stop and look at it. Councilman, Siebert motioned to accept the public works report and place on file, seconded by Councilwoman, Bills. Motion Carried.

Treasurers Update – Treasurer, Pelham stated that office staff has spent a lot of time seeking a new person for the office and it's tax collection time. Next month she will bring budget amendments and financial analyses for the board. We are working with the vendors to change their due dates so that they are all uniform so the bills for approval will be the majority of the bills.

City Manager's Update – Manager, Terry stated that the city is eligible for a Michigan Natural Resource Trust Fund Grant; the city has an approved 5 year Recreation Plan. We are reviewing the plan again with an engineer company; we are also looking at some possible matches from the Hillsdale County Foundation. The city was given a gift of Little Tykes Playground equipment that will be setup over by the pool area. One of the things that the Mayor and I have been working is shade for the pool area, so we are looking at developing a shaded area for the pool area. The grant applications are due April 1st, that doesn't mean we are going to apply but we are shooting for some targets if not with equipment perhaps with shade. We are in budget season, we are looking at different equipment in police and public works and the uncertainty of personal property taxes at this time does have an impact on our city right now. This year there will be approximately around \$5000.00 decrease in the collection of personal property tax. We are making long terms plans in that regard.

Committee Reports – None

Clerks Update – Clerk, Ballinger informed the board that after attending the clerks meeting that the information out there is very limited. The state is still giving cities the choice to move to an even year election it currently is not a requirement. If you as a board decided to move to an even year election then I would have to hold a public hearing and a resolution would be passed, but this still would not take effect until after December 31 of the year the resolution was accepted by the board. Clerk, Ballinger's only concern is will the voters be overwhelmed when having to vote on all the issue at once. Attorney, Shirk stated that if the board does decided to vote in an even year election, it can't be enforced in such a way that it would lessen the terms of anybody that is elected in that year, so there is a couple of years before it would all catch up and the board would be uniform again.

Councilman Concerns – Councilman, Bannick motioned to stay with the 1998 survey regarding Stock Street, support none. Mayor, Smith stated that the motion has died due to lack of support.

Adjournment – Councilman, Bannick moved to adjourn at 7:01pm, seconded by Councilwoman. Bills Motion Carried.