

**Village of Martin's Additions
Minutes of Council Meeting
December 11, 2008
7013 B Brookville Road, Chevy Chase, MD 20815**

COUNCIL MEMBERS AND VILLAGE REPRESENTATIVES PRESENT: Council Members: Noell Sottile, Richard Krajeck, Diane Everts, Larry Wasson, Catherine Gwin; **Village Manager:** Jean Sperling; **Attorney:** Ron Bolt, **Building Administrator:** Alan Beal.

Elections and Ethics Committee Members: Ted Stoddard (3500 Turner Lane), Sharon Hadary Coyle (7305 Summit Ave), Frank Correl (3505 Turner Lane)

Tree Care Supervisor: Dan Gardner (7206 Delfield)

Other residents: Hanna Correl (3505 Turner Lane), Jon Goldstein (123 Quincy Street)

CALL TO ORDER 7:30 PM

DISCUSSION OF MARYLAND WIRETAPPING & ELECTRONIC SURVEILLANCE LAW

Chairman Krajeck noted that Councilman Wasson has been operating a recording device in the Council meetings without the knowledge of anyone in the room. Additionally, it was unclear whether the recorder was operating before and after the meeting, which could include recording private conversations. Mr. Krajeck said the Village Manager had asked for a clarification of the regulations governing recordings from the Village Attorney Ron Bolt.

Mr. Bolt explained that there are two laws that apply to the audio recording of public meetings and private conversations before and after such meetings. First is the Open Meetings Act and second is the Maryland Wiretapping and Electronic Surveillance Law. The Village has the right to record its meetings and members of the public have the right to record those meetings as well, subject to the reasonable regulations of the Village, but those rights have to be considered in light of the Maryland Wiretapping and Electronic Surveillance Law, which may render it a felony to record private conversations where the conversing parties don't consent and there is a reasonable expectation of privacy. In the abundance of caution, the Council should make sure that everyone in the audience, who may be engaged in private conversations away from the Council table, or who may engage in private conversations before or after meetings, is aware that a recording device is being operated in the Village Office and that they are aware of when the recording device is turned on and when it is turned off. Mr. Bolt explained that the Village should continue to do what it's doing now—announce that the official Village recorder is being turned on at the commencement of the meeting and announce that the recorder is being turned off at adjournment. An additional layer of notice that a recorder is being operated for people who come in late and for people that want to participate is provided when the presiding officer directs residents to state their name and address for the record before providing testimony or comments to the Council.

If any member of the Council wants to operate their own recorder, the same rules should be followed. There should be a separate announcement that another recorder is being operated and that it is turned on at the commencement of the meeting and that it is turned off at the adjournment of the meeting.

Mr. Bolt further explained that the Open Meetings Compliance Board has published model regulations for the recording of open meetings. These model regulations provide that the Village has the right to impose reasonable restrictions on the recording of meetings. The Council may want to consider adopting something similar to these model regulations for the Village of Martin's Additions. The Council could also address what disruptive conduct it wants to avoid and clarify that there is only one official recorder; in the event that anyone else on the Council is operating a private recorder, only the official recorder will constitute the official recording for the Village. Such a regulation would help avoid the possibility that another recorder could pick up something that is not before the whole Council and possibly cause a dispute as to what is the official record of the Village meeting.

Councilmember Everts stated that she took offense that Councilmember Wasson did not ask to tape the meeting, that she didn't know when he turned his recording device on. She asked if he turned it off immediately at the end of the Council meeting. Mr. Wasson replied that he did not know. Ms. Everts further asked Mr. Bolt if a private conversation had been recorded between Mr. Wasson and someone else after the official meeting was terminated, how that might relate to the issue of wiretapping. Mr. Bolt explained that the Wiretapping and Electronic Surveillance Law requires the other party to consent when a private conversation is recorded. If a private conversation is recorded without consent before or after a meeting, that would be improper. Council member Catherine Gwin asked if it would be a felony. Mr. Bolt explained that the law does state that the recording of a private conversation without consent is a felony, where there is a reasonable expectation of privacy, but there are other required elements of proof—for example, there has to be a willful attempt to record the private conversation.

Ms. Gwin stated that she was also offended by the recording of the meeting without advance notice that it was being done. She was also concerned that a felony might have been committed if the recording started before or continued after the meeting. Ms. Gwin asked Mr. Wasson to turn over his recording to the lawyers for them to make this determination. Chairman Krajeck asked Mr. Wasson if it was possible for him to turn over the tape to the attorneys and Mr. Wasson said no, it was not possible. He stated further that he called the Maryland Attorney General's office about the matter and was told that the law is well-established and there can be no expectation of privacy in this room (the room where Council meetings are held) before or after the meeting or during the meeting and that he did nothing wrong. He said he appreciated that people might be offended and not expect to be recorded, but he believes that he has every right as a citizen to record a public meeting and before and after the meeting in the meeting room.

Mr. Bolt replied that he was not aware of the attorney general opinion that Mr. Wasson was referring to, nor was he aware of the facts that were given by Mr. Wasson to the attorney general's office. Mr. Bolt stated that he agreed that there would likely be no

expectation of privacy for what was said during a meeting, but that he believed there could be a reasonable expectation of privacy for private conversations occurring before the meeting commences and after the meeting adjourns.

Mr. Wasson stated that it was pure baloney to think that a criminal act had been committed but because Council members Gwin and Everts were both offended, he would tell people when he turned his recorder on and when he turns it off. His intention is to keep an accurate record of what was said or done during a meeting.

Councilmember Gwin felt the law very clearly separates out two different things. One is recording during a meeting which anybody can do. The only requirement is that it be stated that a recorder is turned on for the sake of people in the room. The Council can impose reasonable restrictions that keep this from obstructing the business at hand. The second thing is taping conversations outside the meeting, whether it's people in the room who are Village residents or Council members. The law seems to make a distinction between the official meeting and the conversations before and after. No one was saying there was a felony committed by recording the meeting. There may have been a felony committed by a recording of private conversation without the consent of those being recorded. For this reason Ms. Gwin requested that Mr. Wasson give the tape to the Village attorneys so that can be determined.

Chairman Krajeck asked Mr. Wasson to clarify a statement Mr. Wasson had made earlier about whether he had the previous recording available. Mr. Wasson indicated that he did not know where it was. Mr. Krajeck also asked if Mr. Wasson will announce whether he has turned the recorder off at the end of the meeting. Mr. Wasson indicated that he would do so, but only as an accommodation because it offended people, not because there is any legal requirement whatsoever.

In the discussion of the official Village recording of the meetings Jean indicated that she made a point of informing all present that the recorder was being turned on and turned off. Additionally, notice about the recording is placed on the public agenda and sign in sheet. Ms. Gwin suggested that similar notice be put in the newsletter. Mr. Bolt felt that any additional layers of notice were a good idea.

Mr. Bolt was asked to follow up with the assertions of Mr. Wasson regarding the statement he got from the Attorney General's Office. Mr. Bolt said he would do so and explained that his advice was intended to advise the Village as to what he thought was the safest course of action for the Village to take and that is to avoid unnecessary risk by avoiding the recording of private conversations before and after meetings where an argument can be made that there is a reasonable expectation of privacy. He felt that in the Village Office, which isn't a hearing room, there would be a reasonable expectation of privacy when there is not a meeting in progress. Mr. Bolt also suggested that the Council consider adopting model regulations for open meetings. To that end Councilmember Gwin made the following motion:

Motion: I move that Counsel prepare a draft ordinance on regulations for open meetings that's based on the model regulations that we've been presented with and we'll discuss at the next meeting.

Second: Sottile. There was no further discussion.

Vote: All in favor: Aye

POLICE REPORT : No police officer was available from the Chevy Chase Village Police Department to present a report this evening.

RESIDENTS COMMENT AND CONTRIBUTIONS

Additional Comment Opportunities Proposed.

Chairman Krajeck explained that there have been many Council meetings where the discussions between the Council and people in attendance have gotten so involved that the Council has lost its way in terms of the agenda and keeping the meeting moving on track. In an effort to solicit and hear residents' concerns but retain control of the agenda and business at hand, a section of each Council meeting has been set aside for residents to offer their comments and suggestions related to Village business.

Mr. Krajeck noted that the Open Meetings Act reminds us that Council Meetings are not public hearings that accept constant dialogue with those in attendance. In fact, there are provisions in the model regulations for open meetings that set the guidelines for any open session of the Council. These regulations state that while open to the public, no member of the public attending an open session may participate in the session except in incidents when the council invites public testimony, questions or comments or other forms of public participation or when participation is otherwise authorized by law.

The Council would like to abide by those principals but also provide an additional opportunity for residents to ask questions, make comments to the Council and allow the discussion of Council business to move forward. To this end, the Council will add an opportunity for residents to raise questions during the meeting--index cards will be provided for questions and comments of attendees that may arise outside of the resident comment period. They can be placed in the basket provided and will be answered at the end of the meeting if time allows or within a reasonable period of time after the meeting.

Floor Opened To Public Comments:

Sharon Hadary Coyle 7308 Summit Ave.:

Comments on recording of Council meetings.

Ms. Coyle expressed the concern that while those in attendance know about the disposition of the formal public recording done by the entity, they don't know about the disposition of another recording. Is there a difference between the formal organizational recording and a personal recording over which the Council has no control? Ms. Gwin replied that one major difference was already stated--there is only one official record and the question about the disposition of the private recording is simply that anybody sitting in the room can make a private recording--we have minimal control over what they do with it. It simply cannot be considered the official recording of the Village Council meeting. If they want to take it and sell it they can.

Ms. Coyle felt that a statement or a question about whether anybody is recording the meeting should be made. Ms. Gwin stated that anyone recording must announce that they are doing so. Mr. Wasson disagreed with that statement. He said he would only announce that he was recording at the meeting as an accommodation. He maintained that any person can walk into the meeting and they do not have to disclose that they are recording the meeting whatsoever. Mr. Gwin pointed out that Mr. Bolt will conduct additional research to clarify that statement. Mr. Bolt reiterated that the Council could pass reasonable regulations, under the provisions of the Maryland Open Meeting Act, governing the recording of meetings.

Frank Correll, 3505 Turner Lane:

Fire hydrant at Turner Lane and Brookville Road.

Mr. Correl stated that he found all of this very interesting, but he was concerned about what was really going on in the Village. For example, he would like further information about the leaking fire hydrant and any damage in the homes. Jean reported that she has meet with and discussed the problem at length with WSSC and she has shared this information with residents of Turner. WSSC said that no final repairs could be done for at least 6 weeks since the whole corner will have to be torn up. Further disruption in water service should be expected when the final repair is done. Also, it is important to know that WSSC will reimburse for damages in many situations, so she urged residents to call WSSC if they have had a problem with their water since the shut off. Jean will be sure to communicate anything that WSSC shares with her.

Request for an update on the construction project at 3516 Turner Lane. Building Administrator Alan Beal replied that they are not anywhere near being finished and that it will probably be another 2 to 3 months before completion.

Comment on Resident Input at Meetings. Mr. Correl expressed his concern that a lot of topics come up during the meeting where residents might have a lot to contribute and the idea that there is only a 15 minute period to comment on what is bothering a person or what is on the agenda is draconian. He has served on the Council in the past and it was always that the presiding officer was in control of the meeting. They never had a real dispute. He was concerned that the restrictions on residents comments throughout the meeting give the sense that residents presence is not invited. He asked that these comments be included in the record.

ELECTIONS AND ETHICS COMMITTEE: Frank Correl, Ted Stoddard, Sharon Hadary Coyle

Privacy of Election Ballot.

Chairman Krajeck explained that this topic was being discussed because of a concern that was raised by Council member Wasson about whether completed ballots in the annual Village Council Election were in fact secret ballots as required by the Charter. This issue was a concern expressed to Mr. Wasson by a resident at the election last May who noted that there was no area for privacy. This concern was passed on to Elections and Ethics Committee. Mr. Krajeck turned it over to Mr. Wasson to answer questions from the Committee and add any further explanation.

Mr. Frank Correll, the Chairman of the Elections and Ethics Committee asked what Mr. Wasson had heard and whom he heard it from—Mr. Correll said he was not comfortable addressing charges from unspecified persons. Mr. Wasson said he would not identify the person but did explain the circumstances of the complaint. A person was given a clip board with a ballot. Someone came over and jokingly said “let me tell you who to vote for”. Until that happened, Mr. Wasson had not thought about the lack of privacy. A witness to that incident asked why there was no privacy. Mr. Wasson was surprised to find that the Charter specifically requires that the ballot be secret.

Mr. Correl asked Mr. Wasson if he felt that the person who was offended felt they had no other recourse, such as to say “excuse me, I’m voting?” Mr. Wasson felt that the resident was embarrassed and had no where to go. Mr. Ted Stoddard noted that the committee had always considered it a secret ballot when it is folded and placed in the ballot box. Ms. Sharon Hadary Coyle explained the process the committee uses for handing out and collecting the ballots. She noted that several people took their clipboard and walked away, gaining the privacy they desired. In the future the committee can suggest that residents may want to move away from the area of the ballot box if they want more privacy. She was not sure what other opportunities there are to create privacy.

Mr. Correl suggested that since the election cycle starts in February, the issue of privacy in voting could be included in the standard election information that is disseminated to the community. Mr. Correl doesn’t see this as “fighting for one’s right to vote”. He stated his belief that in a community of like-minded, generous, free people, there is no sense of any kind of coercion on anyone’s part to prevent anyone from casting a ballot or directing them on how to vote. Committee member Stoddard agreed.

Mr. Correll suggested that a statement about privacy could be placed on the ballot itself. Ms. Coyle suggested that the committee consider the layout of the voting process to see if it could improve the opportunities for privacy. The Committee agreed to take up these issues at their election planning meeting to prepare any changes and then make recommendations to the Council.

Conflict of Interest and Financial Disclosure.

Chairman Krajeck noted that Mr. Wasson has also brought up a concern that the Village Charter requires that candidates, council members and employees file a signed statement acknowledging any potential conflict of interest in carrying out the business of the Village Council. The State of Maryland issued an opinion shortly after Martin’s Additions was incorporated stating that VMA was partially exempt from the Maryland Public Ethics Law. Chairman Krajeck explained that Mr. Wasson said he wasn’t aware until after he had been elected that there is a conflict of interest and ethics standards and at least we should make sure that every candidate see the section in the Charter (Section 903) that refers to this issue. Krajeck suggested that the Council just needed to make people aware of that section of the Charter. The Village Attorney Ron Bolt has prepared materials on the subject.

The Elections and Ethics Committee acknowledged receipt of the information. Ms. Coyle suggested that history be reviewed here. In the considerations given to creation of our municipality, one of the questions that had to be addressed was the ethics issue.

Since VMA is a small municipality, the State was asked to grant an exemption from the complex technicalities of financial disclosure. As a result of the review by the State's General Counsel, they agreed that the Village of Martin's Additions should be partially exempted from the requirements of the Maryland Public Ethics Law.

Ms. Coyle noted further that the Maryland Standards of Conduct and State Ethics Commission suggests a reasonable approach—if you as an official have any question about whether there's an ethics issue come to the Ethics Commission. Additionally, people can simply recuse themselves. The Village Elections and Ethics Committee can also address these issues.

Mr. Wasson suggested the Council ask the Elections and Ethics Committee to form a working group to look at what might be appropriate. Ms Coyle stated that the Elections and Ethics Committee would be pleased to do that. She felt confident that everyone in this community understands the concept of conflict of interest. The committee could prepare information on this matter that would accompany the other information that is given to the candidates. Mr. Correl said it could be a simple reminder to potential candidates of Village policies which are reflected in Charter or ordinances.

Council member Gwin made the following motion:

Motion: That the Council ask the Elections and Ethics Committee to take this issue under consideration and report back to the council at the next meeting on what they would advise is the best way to proceed.

Second: Wasson.

Further discussion: Mr. Wasson asked that the document titled *Fiduciary Duties of Public Board Members* previously provided to the Council by Attorney Bolt be given to the committee as well as the management letter to the auditor. Councilmember Gwin said that the audit statement is not a concern of this Committee. Mr. Correl asked if there was anything in the motion that would prevent the Committee from acting on the exemption that the Village has received. Chairman Krajeck assured him there was no constraint on what the Committee considers.

Vote: Krajeck called for a vote. **All in favor.**

VILLAGE TREE PROGRAM UPDATE- Dan Gardner, Village Tree Supervisor

New Tree Plantings: Dan Gardner reported that 17 new trees have been planted this fall under the supervision of Paul Wolfe of Integrated Plant Care. Notice was sent to each resident, informing them of the Village planting plans. A few adjustments were made between initial planning and final planting. A special effort was made to increase the variety of the trees—10 different varieties were planted—some we haven't seen before. New varieties include the Katsura, Amur maple, and a Tree Lilac.

Tree Removal: Dead or dying trees were removed on Raymond, Shepherd, and Oxford, and most notably the Tulip Poplar at the corner of Brookville Road and Turner Lane, which was removed with the assistance of Pepco. Having Pepco involved significantly reduced the cost of removing the tree for the Village and the home owner. The tree shares the private property line with the Village's public right-of-way line. A black walnut will be removed during the winter on Raymond Street.

Tree Maintenance: A great deal of tree maintenance has been scheduled for the fall and winter months and it has required the dedication of a tremendous amount of time by Dan Gardner and Paul Wolfe. Between 50 and 60 locations will receive care over the winter, including top pruning, branch lifting and the like.

Congratulations to Dan. Jean asked that the Council and the audience recognize Dan for his contribution to the care of Village trees. Without Dan's hard work and willingness to spend many hours walking the streets of Martin's Additions our tree care program would not be anywhere near as effective as it is. Dan was given a round of applause.

Tree Watering Program. Richard asked that the minutes reflect that the Village is now watering the new trees that are planted in the right of way to assure that the trees are being properly cared for. This is a change from the past when we relied only on abutting neighbors to water the new trees. Richard asked Dan to make sure that residents are reminded in the spring that mulch is not piled up around Village Trees.

DISCUSSION OF ENERGY AND ENVIRONMENTAL ISSUES

Jon Goldstein, resident of Quincy Street reported that he has constituted a group of 10 resident volunteers who are interested in working on environmental issues. Mr. Goldstein had a list of several topics that the group is interested in pursuing.

Energy Audit Programs.

The County frequently sponsors energy audits and coordinates with the Sierra Club; the group would like to work with the club to disseminate the information about the audits and work with other towns to help develop an audience for these programs.

Village Street lights. Mr. Goldstein reported that street light replacements are scheduled to be completed by 2010 (by PEPCO) at no cost to the community—according to a PEPCO representative. PEPCO is replacing the current lights with high pressure sodium lights. The group is interested in the possibility of getting the more environmentally friendly LED (light emitting diode) lights installed. Neighboring communities are interested in this also. The Town of Somerset has approached PEPCO about using LED's and Pepco gave them an estimate of \$340,000. Mr. Goldstein wants to get involved and find out why we're not getting the most efficient replacements.

Opportunities to share information.

Mr. Goldstein said there are a lot of resources in this area that can provide information for our residents about environmental issues. For example, *Bethesda Green* is a community action group that has a wealth of information that we should share with our residents. Mr. Goldstein said his group would also like to be able to communicate information related to the environment to VMA residents through the website, list serv and newsletter. Mr. Krajeck suggested that it would be appropriate if they are providing useful educational information to VMA. The List Serv is a resident-run operation over which the Village officials have no control. Catherine

noted that if the group is going to have a regular input on the website there has to be a process created so that the content is controlled. That's a complicated issue that we can't resolve right now.

Electronic Version of the Newsletter.

The group would like the Village to consider reducing paper by providing the newsletter electronically. Mr. Krajeck noted that since the VMA website is now up, a plan is being considered.

Group or Committee.

Council member Gwin explained that the Council hasn't decided the best way to recognize this group, whether it is a citizen action group or if they would be functioning as a committee, which would require appointment of committee members by the Council. She noted that it is important to define the nature of the group and make it clear they represent themselves. Ms. Gwin said she envisioned these efforts being conducted by a group initially, but over time a council appointed committee may need to be created. For the time being, it may be appropriate to have this as a residents' action group.

Chairman Krajeck explained that a Committee structure requires a council liaison, compliance with the Open Meetings Act, as well as other considerations. In response to a question from Chairman Krajeck, Attorney Bolt stated that if a committee is not created, the individuals should make it clear that they do not represent the government of Martin's Additions. They are free to do what they want whenever they want but they should make it clear that they are representing a citizen's group or their own interest as a concerned citizen. They may not negotiate on behalf of the Council or the Village. However, they may state that they routinely report to the Council. Mr. Goldstein stated that he understood the definition of the group's ability to act. The Council expressed its appreciation for the interest of this Energy and Environmental group and looked forward to future reports.

ACTION ON MINUTES

October 16, 2008. Chairman Krajeck called for a motion to adopt the Minutes of the October meeting. The **motion** was made by Diane Everts and **seconded** by Noell Sottile

Vote: In favor: Krajeck, Gwin, Sottile, Everts. Wasson not present.

November 19, 2008 . [Special session called to select contract for sidewalk shoveling] Chairman Krajeck called for a **motion** to adopt the minutes of the November session.

The **motion** was made by Richard Krajeck and seconded by Diane Everts

Vote: In favor: Krajeck, Gwin, Sottile, Everts. Wasson not present.

TREASURER'S REPORT

November 2008 Financials

Income for the month of October was \$18,350, the largest sources of revenue being \$9,717 from Real Property Taxes and \$5,765 from Highway User Fees.

Expenses for the month totaled \$34,741. This is considerably below total budgeted expenses for the month (\$60,033). The category *General Government Expenditures* were modestly above the amount budgeted, as was the sub-category of building and permitting. All other categories and several sub-categories were below budget, most notably the category of *Street Expenses* and the *Tree Maintenance* sub-category.

For the first four months of the 2009 fiscal year, income is \$170, 898, or approximately 26 percent of the projected annual income of \$650,920. Expenses year-to-date are \$141,028, or about 18 percent of the FY2009 budget of \$764,400. **Motion to approve the Treasurer's Report:** Noell Sottile; **2nd** Diane Everts;**Vote:** All in favor.

FY 2008 Audit. The Audit report will be discussed at January meeting with Dan Baden, the Village Accountant and Joe McCathern, of LSWG, our auditor.

MANAGER'S REPORT-November and December

The November Report and December Reports have been combined because the Council did not have a quorum to hold the November meeting.

New Trash Receptacles. Five new municipal trash receptacles have been ordered from Victor Stanley, Inc; for the area around the commercial center. They are expected by end of February. Total cost is \$5,096. Purchase of the bench has been delayed until spring.

LUTF Meeting 10/23/08 -Replies to 10/23 meeting were compiled and provided to Task Force for their meeting in November. The Transcript was also received from BETA Court Reporting and available to the Task Force and the Council.

Contribution to Center For Conflict Resolution. The Council agreed by email to make a contribution to Center for Conflict resolution in the amount of \$1,250 for their assistance at the Land Use Task Force Public Meeting on 10/23/08.

Snow Plowing Contract for Winter 2008-2009 reflects a \$10 per hour increase per truck (all inclusive) to \$180. It is the second year of a 4 year renewable agreement with Peyton Tree and Snow Removal Service.

Snow Shoveling Contract. A Request for Proposal was sent to 3 snow shoveling companies. Three bids were received. (Refer to the minutes of the meeting of 11/19/08 for more information about these proposals.) Mulheron Tree Expert's bid was selected. They have been providing this service to the Village for a number of years. Service recipients were all called to confirm their continued need for the service. Mulheron agreed to pre-treat the Brookville Road sidewalk with a salt melting product to see if it is any easier to clear. This is being done as an experiment.

Sand Bins have been placed throughout the community and filled with salt and sand in preparation for the winter.

Recycling Bin order has been received from Montgomery County (50) at a cost to us of \$6.79 per bin payable to Montgomery County. New Martin's Additions Recycling Program bin stickers have been ordered for residents to use to identify their recycling bins with their address. This should help eliminate the "Disappearing Recycling Bin Syndrome" that many residents seem to be suffering.

Trees Planted: Seventeen new trees were planted this fall. All residents were notified in advance of the planting. The cost for the new trees is \$7,640. These trees will be monitored by Integrated Plant Care, Inc. throughout the winter.

Tree Removed at the corner of Turner and Brookville Road was done with the assistance of PEPCO who agreed that the tree was significantly entangled in the wires that certified PEPCO crews should bring the tree down to just below the wires. It was quite a project since traffic needed to be re-routed through the Market Parking lot and Turner Lane had to be closed for the day. The Fire Department was notified that the road was inaccessible.

Holiday Fund for the men of Waste Management was initiated and checks are coming in.

Village Survey final document has been received. The Geographical Information System (GIS) is completed. The Arc View Reader program is needed to activate the data base at a cost of \$1,199. We needed to purchase this program because the Contract only called for a downloadable version of the software which turned out to be inadequate. The Village has received an invoice for the balance of the Survey, which is \$29,780 as per the contract. Payment will be made after the full Arc View version has been installed and is operational.

Street Cleaning and Leaf Vacuuming. The agreement between Peyton's Tree Service and the Village to clean the streets using vacuum trucks, which was conducted as an experiment, has been very successful. We have been able to clean the street four times—twice the number of street cleanings that have been performed in the past-- at \$1,400 per cleaning for a total saving of more than \$2,000 and two times the level of service delivered in the past. (The total bill will be \$5,600 compared to about \$7,600 in the past). The only complication has been that some residents have been raking leaves into the street and there has been some “dumping” in the remote ends of Village streets (dead end of Raymond Street for example). The response has been resoundingly in favor of this service. We have received many compliments.

Fire Hydrant at Turner and Brookville has been leaking for some time and has required many calls to WSSC to get some action. The most immediate concern was the water freezing on the street. The problem has been temporarily resolved. The hydrant was replaced but the underground pipes that connect to the main are leaking. The final resolution is going to require tearing up the corner of Turner and Brookville Road and is not expected to be scheduled for at least 6 weeks. WSSC is concerned about the telephone pole and the potential that it could be undermined, so PEPCO will be involved in the planning. Residents of Turner Lane have been kept informed as best possible.

WSSC sponsored a briefing for municipal officials on Tuesday December 9, 2008 to discuss their efforts to improve their communications with the municipalities. Jean attended the meeting and gathered information for the Village.

MML Legislative Dinner was attended by Jean and John MacDonald (our Village representative). Three legislative proposals to the State of Maryland were put forth that will be sponsored by the MML. These proposals have been forward to the Council in John's report.

MML Convention Planning Committee. Jean was appointed to and has been serving on the MML Convention Planning Committee for the June 2009 Convention in Ocean City. These meetings are held at MML Headquarters in Annapolis. The last meeting will be held in January 2009.

Website. The Village website is now officially launched (about December 3, 2008) and the balance of the contract (\$1,750) has been paid. Jean has completed two training sessions with Calvert Design Group on how to navigate and update the website. A maintenance agreement has been signed for 8 hours for \$720. VMA resident Bill Lebovich (an architectural historian) has been most helpful with the website enhancements. He has provided us with many photographs and comments to improve the site.

-Future changes that might result from the website being operational could include no longer having to publish the Minutes in the newsletter now that they will be available on the website.

-We can set up a notification “push”, as it is called, for residents to receive notices that we would provide; they need only register on the website with their email address. This is a one-way communication from the Village to the residents. The Listserv would continue to be an interactive multi-user tool for resident communication.

Winter Gathering at La Ferme has been tentatively set up for **Sunday, February 8**, the Sunday after the Super Bowl and before Washington's Birthday weekend.

Street Repairs on Raymond were performed by Washington Gas in three locations. The repairs were initiated by our need to return a construction bond to P.K Keating at 3501 Raymond. The Village was able to return two bonds—Keating and McNamara.

Shred-It Event. We have had a resounding response to the suggestion that the Village sponsor such an event. Inquiries to the “Shred-It Company” provided cost data—about \$1,200 for 4 hours of service. A large truck is brought into the community and people line up to load their papers into the truck. Jean envisioned using the Market area to accomplish this. She recommended that the Council go ahead and approve the expenditure required to set this up. Perhaps we can set it up as a March or April Village event—Spring cleaning—and coordinate a welcome event at one of the stores in the market area. It was suggested that La Ferme parking lot might be a good place to consider doing this.

Toys for Tots program was offered a drop-off place again this year at the Village Office. A resident volunteer, and Fire Board member from Martin's Additions, Iris Reichert, will be coordinating the collection of the toys in the office and delivery to the Chevy Chase Fire Department.

Food Drive program run by residents Linda and Dick Kirschten is doing well. They have set a goal of 1,000 lbs of food by the end of 2008.

State Highway Road Improvement Report for 2008 was filed with the State on December 1, as required. No road improvements were reported based on the state's definition.

State Treasurer's Anticipated Debt Report was filed by email. It was due by December 31, 2008.

Meeting with O'Malley staff for a meet and greet. Council was invited to a meet and greet with members of Martin O'Malley's staff to discuss any initiative the Council might have. The day of Wednesday, December 17 at 11 am has been selected.

Charter Review Services are available from the University of Maryland's Institute for Governmental Service and Research. The Institute has a Charter Review Program that will work through the Charter with the Council to identify areas for update at a cost of between \$5,000-\$7,000. Jean agreed to circulate the information to the Council for further discussion.

CONSTRUCTION UPDATE Alan Beal

Permits: A permit was issued for a fence at 3414 Shepherd Street. The permit for the demolition and new construction at 3513 Bradley lane (MacCartee) has not been issued yet because we have not been notified of issuance of the County Permit nor have we received the construction bond.

Bond Returns: Keating and McNamara, Raymond Street; Reshevsky, Delfield Street; Shadler, Shepherd Street

GIS: The Geographical Information System will be finalized as soon as the full computer software is installed. It will be updated yearly that will include things such as new houses, new trees, changes to any buildings that need to be recorded. A surveyor from AMT has to prepare new measurements.

LUTF: Had a November meeting to review the comments made by residents regarding the proposed draft ordinances discussed at the October 23rd meeting and to further prepare the draft for transmittal to the Council. They plan on meeting in January. Draft proposal may be ready for transition to the Council in February. Changes will have to be made in the draft because of the recent action by the County Council.

County Zoning Amendment: County Council member Roger Berliner's zoning amendment legislation was recently adopted by the County Council and will be affective April 28, 2009. It will change the LUTF draft ordinances as they presently stand because of the reduction in permitted lot coverage percentages. Under these changes in the county law, of the 15 or so new houses that have been built in the past few years in Martin's Additions, 7 of them would have been significantly altered from as little as 103 sq. ft. to as much as 561 sq. ft. to conform. If a permit is applied for before April 28, the old lot coverage regulations will apply. It will not effect the construction at 3513 Bradley Lane (MacCartee's house), but if it was in effect it would reduce the size of the house by about 433 sq. ft.

10/2308 Meeting Transcript: Responding to an inquiry from Richard, Alan felt that the transcript of the 10/23/08 meeting need not be placed on the Jakubiak website. It is difficult to read. Copies could be available through the office.

NEIGHBORHOOD WATCH INTEREST –Report of Resident Response-Sottile

Noell reported that five or six replies were received expressing interest in receiving a presentation on the Neighborhood Watch Program. The Council directed that a presentation about the community safety program be made at the January meeting and that it be advertised in the newsletter. Larry agreed to forward information he has on this program to Noell. He felt it is important that this program be pushed.

INFORMATION AND DISCUSSION ON REFERENDUM

Chairman Krajeck stated that at the last meeting Council member Wasson presented a motion that the Council pass a regulation that any ordinance, regulation, policy, ruling or similar action regarding zoning or land [use] must be approved by a majority vote of Martin's Additions residents voting in a referendum and shall determine the rules for a referenda. At that time the Council asked that the motion be tabled until the next meeting. Accordingly, Mr. Krajeck has placed that motion back on the table for discussion.

At the direction of the Council, Attorney Bolt prepared research about municipalities' referenda powers. He found that such powers are exclusively found in the Charters. Mr. Wasson noted that the phrase "by petition" had been included in Mr. Bolt's memorandum but should not have been a part of the discussion. Mr. Bolt explained that Mr. Wasson was proposing that the referenda be mandatory, whether or not residents want it --no petition would be submitted to call for it.

Mr. Bolt stated that the question is really a political one, rather than a legal one. The Council can decide whether it wants to update or amend its Charter in order to confer a right of referendum. Currently the Charter of Martin's Additions does not confer a right of referendum either by petition or as a mandatory function. Mr. Wasson's motion would require a mandatory referendum for every ordinance, regulation, policy, ruling or similar action related to zoning and land use. Requiring every ordinance to go through a referendum would result in greater administrative burden and would require quite an effort on the part of the Council to establish the mechanisms for doing so and to implement them. Additionally there are certain pitfalls with the referendum process.

The first point was a quote from the case, City of Takoma Park vs. Citizen's for Decent Government. The court said that generally referendum petitions or procedures are disfavored because they can be subject to abuse; people can file petitions just to delay a new law that is undesirable to them. It can delay enactment of an ordinance that is aimed at correcting an evil. Second-- a referendum right needs to be narrowly tailored. If the right of referendum is conferred, the Council may wish to consider conferring just the right to revoke rather than to revoke and/or amend, to avoid possible unintended consequences. Third, it's important to look at the current Charter --it doesn't confer a referendum right. It's reasonable to assume that the founders of the VMA made a choice not to confer that right, and thus it could be viewed as inconsistent with the current structure of governance. If the Council would choose to confer the right of referendum, it would require a Charter amendment whereby all eligible VMA residents would have an opportunity to vote on whether they want that right added. Right now Council members all serve as representatives of the community and are responsible for passing laws for the benefit of the community. Fourth, the Council still has the option to conduct non-binding

referenda. Chevy Chase Village did that in connection with its new building regulation ordinance. When faced with something that is potentially divisive or of great importance and the Council feels they haven't heard enough from the community at Council meetings and want to get a better understanding of what others in the community think, a non-binding referendum is certainly an option, and one that is available to the Council now.

Chairman Krajeck confirmed the understanding that the Council can't hold a binding referendum without a change in the Charter. Mr. Bolt explained that the VMA Charter establishes the structure of government and because a right of referendum could alter the structure of the government, and the allocation of legislative power, the right should be set forth in the Charter, by a charter amendment.

Council member Gwin called for the motion to be re-read.

Chairman Krajeck read the motion from the minutes:

I [Larry Wasson] move that the Council pass a regulation requirement that any ordinance, regulation, policy ruling or other similar action regarding zoning or land [use] must be approved by a majority vote of Martin's Additions residents voting in a referendum. The Council shall determine the rules for the referendum based upon the recommendations of the Elections and Ethics Committee. The Elections and Ethics Committee shall manage the referendum and shall report to the Council whether a majority of the referendum votes were cast in favor of the proposed action being considered by the Council.

Ms. Gwin seconded the motion. Richard asked for further discussion.

Mr. Wasson commented that he feels very strongly about property rights and the use of people's land and that they should have the right to make this decision. He doesn't think referenda prevent timely action on ordinances.

Ms. Gwin asked for confirmation of her understanding of the powers the Council has right now: The Council has the right as elected government officials in this Village to ask our residents to express their opinions in a non-binding referendum. Attorney Bolt confirmed that.

Mr. Krajeck suggested that the Council might want to use this mechanism to measure resident sentiment if, for example, after a series of public hearings on the building codes issue, the Council still feels that they need a further sense of community opinion. A non-binding referendum could be used to give the Council additional guidance before a vote. Ms. Gwin added that there may be a number of instances where the Council may want the sense of the community, but it's at the judgement of the elected officials.

Chairman Krajeck called for a vote.

Aye: Larry Wasson

Ney: Richard Krajeck, Catherine Gwin, Noell Sottile, Diane Evert

Vote: 4-1 against.

Mr. Wasson stated that he would like the Council to consider the same motion for a non-binding referendum. Ms. Gwin pointed out that the Council doesn't have to, since they already have that right.

Mr. Krajeck asked if Mr. Wasson wished to make a motion.

Mr. Wasson asked the Council to consider having a non-binding referendum on the ordinances that are right now being studied by the Land Use Task Force.

Mr. Krajeck called for a second. No second was made. The motion dies for lack of a second.

ADJOURNMENT: The meeting was adjourned at 10:25 pm

Diane Everts moved, Noell Sottile seconded. All in favor.