

**Village of Martin's Additions
Council Meeting
January 15, 2009
7013 B Brookville Road, Chevy Chase, MD 20815
Minutes of Meeting**

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, Sharon Hadary Coyle, Frank Correl

Residents: Hanna Correl, Keith Allen, Bill Catherwood, Anita Difanis, Steve Schmal, Lucy and Ed Hand, Rick Michel, Holly Worthington, Paul Gleason.

Note: The January 2009 Council meeting was preceded by a presentation by Officer Dana Matthis Montgomery County Police Department (MCPD) on the Neighborhood Watch Program. Details on that presentation were published in the March newsletter.

8:00 PM CALL TO ORDER: REGULAR MONTHLY COUNCIL MEETING RICHARD KRAJECK.

Chairman Krajeck reminded residents that when called upon to speak please state their name and address. He also noted that a second recording device was being operated by Councilmember Wasson in addition to the official Village recorder.

POLICE REPORT: Sgt. Dasilva reported that there were two calls in December that they responded to, a road hazard at Brookville and Bradley and a parking complaint. He also reported that the County Police made an arrest in the armed car jacking on Brennon Lane last month. There is a warrant out for a second person in the incident and an ongoing investigation. He did not have information on the outcome of other car jackings in the area that occurred back in the spring.

FY 2008 AUDIT REPORT PRESENTATION: Mr. Joseph McCathern, Principal, Linton, Shafer & Company, P.A. (LSWG)

LSWG has completed their audit in accordance with generally accepted auditing standards and found that the financial statements provided by the Village of Martin's Additions present fairly, in all material respects, the financial position and results of operations for the year ended June 30, 2008 in conformity with generally accepted accounting principles.

No significant audit adjustments were proposed by the firm in connection with the audit. The few adjustments made were generated from information provided by Village staff and consist of adjustments to reclassify receivables due from other governments for financial statement purposes only. No disagreements arose between the auditor and the Village during the course of the audit.

No additional consultation with additional accountants was made. LSWG experienced no significant difficulties in dealing with management in forming the audit.

Last year LSWG recommended that the Village investigate the building deposit fund to determine if they were due to be paid back or could be recorded as revenue of the Village. LSWG was pleased to report that this account has been analyzed and properly adjusted. The account balance now includes only current deposits held by the Village.

Total revenues were budgeted at \$676,705; actual revenues came in at \$611,013 or \$65,692 less than that. Expenditures were about \$73,000 under budget; on a budget basis the Village had planned for a loss primarily as a result of certain sidewalk and street capital improvements that don't occur every year. So, on a budgeted basis VMA budgeted a loss of \$130,000 but the actual loss was only \$123,000.

Income tax receipts were under budget by about \$45,500. Interest income was down about \$12,300. The Local Government Investment Pool that Martin's Additions participates in started off the year at 5.5% interest rate and ended the year at about 2.3% interest rate—that accounts for most of the difference. Comparing FY08 revenue with FY07 revenues, the Village revenues decreased about 7% primarily as a result of the income tax revenues which were down about \$42,700.

The Village is in good financial condition, with reserves at about 1.6 times our expenses—a little better position than other municipalities.

Motion to Accept the Report: Mr. Krajeck moved to accept the FY 2008 Audit report for the Village.
2nd: Councilmember Sottile, **Vote:** All in favor.

RESIDENTS COMMENTS AND CONTRIBUTIONS

Steve Schmal (Summit Ave): Asked the Council if the Land Use Task Force has presented their recommendations to the Council and what the anticipated timing is. Mr. Krajeck explained that the report has not yet been forwarded to the Council.

Holly Worthington (Turner Lane): Asked how residents can find out what other towns did with their authority to develop their own building regulations. Alan explained that the *Land Use Task Force Handbook: Dealing with the Challenge of Promoting Compatible Residential Construction* was sent to all residents in September. It contains the comparative information Ms. Worthington requested.

ELECTION AND ETHICS COMMITTEE (EEC) REPORT presented by Frank Correl, Committee Chairman.

Election Schedule.

Mr. Correl presented the following recommended Schedule & Procedures for 2009 Elections

Terms are Up for: Diane Everts, Catherine Gwin

Council Election will be on May 7th. [Charter requires that Elections and Annual Meeting shall take place by May 15].

Nominations Open Monday, March 2nd to meet the 60 day requirement. [Nominations shall be requested by the Election Committee not less than 60 days prior to the election. March 8th is the 60-day mark]

Nominations will be received in writing no later than Wednesday, April 1, 2009 [Must be "received in writing at least 30 days prior to the election". April 7th is the 30-day mark]

Candidate Statements due into the office **Thursday April 9th.**

Candidates Forum at Regular April Council Meeting: Thursday April 16, 2009

[Written notice of nominations given "at least" 2 weeks prior to the election]

Candidate Statements must be published by Thursday April 23, 2009 at the latest; (Proposed Budget must accompany) ["At least two weeks prior to the election...written notice of the nominations {shall be given} together with resumes of the nominees".]

Ballot Secrecy.

The EEC Committee discussed the question of further protecting the integrity or secrecy of the ballot. The Committee will be sure that all elections documents make it clear that protecting the secrecy of the ballot is of the utmost importance. They will encourage voters to keep that in mind. This would be repeated on the paper ballot and the absentee ballot.

Mechanics of the Elections

The Committee felt that the most practical approach to assure that voters could find privacy if needed to cast their ballot would be to make sure that a notice about privacy be provided on the day-of election ballots and on the absentee ballots. The EEC felt that voters would be able to find space for additional privacy if they felt it was necessary. The Committee will be very attentive to the possible need for privacy and will re-organize the layout from last year so that the receipt of the ballot and the depositing of the completed ballot are far enough apart to provide more privacy. The Committee hopes that the Council plans to have a street festival like last year.

Motion: Councilmember Gwin moved to approve the date of May 7, 2009 for the Election and give the Committee the authority to move forward with the scheduled as outlined.

2nd: Councilmember Sottile. **Discussion:** Mr. Wasson asked if the discussion of the privacy issue would affect the schedule and the Chairman's answer was no. **Vote: All In favor**

Further discussion of privacy. Mr. Wasson expressed his dissatisfaction with this action. Mr. Krajeck suggested that if Mr. Wasson wanted to do something differently he could make a motion.

Mr. Wasson agreed and made the following motion:

Motion: "We [the Village] comply completely with Article VI, Section 602 of the Charter and provide secret ballot facility for all Village members". Mr. Krajeck asked for a clarification, restating what he believed Mr. Wasson to say "that we should provide a place for people to vote in secret". Wasson further refined his description saying the voters had a right to an enclosure where they can cast the vote provided by the Village. Ms. Gwin pointed out that the word "enclosure" is not included in the Charter. Chairman Krajeck replied it's in Wasson's motion that he wishes to require an enclosure and called for a second of the motion. **No second was made.** Wasson's motion failed for lack of a second.

Ms. Gwin asked that the record show the complete support of the Council to abide by our Charter and that resident' votes are a matter of privacy. The Council has taken what it believes are adequate steps to assure this; the record should reflect the prevailing view of the Council with a dissenting view of one. Mr. Krajeck stated that the issue has been addressed and that accommodations are being made to improve the assurance of the secret ballot. Beyond that there is no support on the Council to bring in voting machines.

CONFLICT OF INTEREST DISCUSSION

At the December Council meeting, the Council asked the EEC to look further into the issues of conflict of interest and disclosure statements and make recommendations. The following was offered by EEC Chairman Frank Correl:

Report of the Elections and Ethics Committee

As requested by the Village Council, the Elections and Ethics Committee held a special session to discuss the issues of conflict of interest. This session was held on Saturday, January 11, 2009.

The Committee believes that the conditions which led to the State Ethics Commission ruling re: the acceptability of Chapter 4 of the VMA Code of Ordinances remains relevant and that this Chapter of the Ordinances continues to provide adequate protection from conflicts of interest.

The Committee re-enforces the spirit as well as the letter of the Ordinance. As provided in the Ordinance, individual Village Council members have an affirmative duty to disclose a potential conflict of interest at the time it arises.

We recommend that the conflict of interest policy be reviewed annually at the first Village Council meeting after the elections as part of the orientation of new Village Council members and as a reminder for continuing Village Council members. Each member should receive a copy of Chapter 4 of the Code of Ordinances.

Consistent with the ordinances and with the published procedures of the State of Maryland Ethics Commission, we urge any Council member who believes that some activity of the Village Council may raise an issue under Chapter 4 of the Code of Ordinances to contact the Elections and Ethics Committee for guidance. All ethics issues--potential and/or perceived--should be reviewed by the Committee prior to being discussed by the Village Council or its legal counsel.

The Elections and Ethics Committee recommends that the following statement be printed on all elections materials, correspondence and articles soliciting candidates for the Village Council. It may be printed in a font that is smaller than the body of the material on flyers and other "promotional" material. In any case, however, it should never be smaller than 10-point type.

Proposed Statement:

"Conflict of Interest: Please be sure to note that candidates for the Village Council are responsible for ensuring that they have no fiduciary or other private interest which would conflict with their ability to serve the citizens of Martin's Additions. For more information on the Martin's Additions Conflict of Interest Policy, please see Chapter 4 of the Code of Ordinances, which is available from the Village Manager." ***Respectfully submitted by the Election and Ethics Committee.***

Chairman Krajeck thanked the Committee, expressing the appreciation of the Council for the hard work of the Committee. He asked for comments related to disclosure and conflict of interest statements from the Council members.

In further discussions on disclosure and conflict of interest, Attorney Bolt explained that people aren't necessarily unfit for candidacy because they may have a potential conflict of interest and the Council may therefore wish to consider altering the disclosure slightly to avoid conveying to prospective candidates that they must ensure that they have no conflict. In a small community, conflicts may be likely to arise now and then but that doesn't necessarily disqualify one from service. Rather, the conflicts that may arise from time to time need to be disclosed before that person participates. If the conflict exists, the duty exists to disclose and recuse, if necessary. When the State Ethics Commission granted a partial exemption to Martin's Additions from the State ethics rules many years ago, part of the rationale for the exemption was to avoid discouraging potential candidates in this small community where it may be difficult to find a great number of candidates.

Also, because the Village doesn't have anything in the code describing *what* disclosures "candidates" for office should make (because Chapter 4 concerns current officials and employees), the Council may wish to consider creating a written disclosure statement--perhaps a one page document that candidates could be given to report anything that they need to report on the topics described in Chapter 4. Current council members

and employees could do likewise. Mr. Wasson suggested that the question be raised whether a candidate has a purpose that should be disclosed for seeking office.

Ms. Gwin felt it was important that disclosure should occur at the time an issue arises that may present a conflict of interest. She noted that the committee is recommending that candidates be informed that they may have to disclose conflict of interest and that we review at the start of every year exactly what our policy is.

Mr. Wasson pointed out the EEC's recommendations did not address the Village's disclosure requirements for applicants for employment and for employees which must be dealt with. Ms. Coyle said that the issue for the Village Council and employees should be addressed separately and the EEC would be pleased to go back and do that.

Motion by Mr. Krajeck: That the Village Council adopt the Elections and Ethics Committee recommendations that information be prepared for Council candidates that informs them of the requirements of Chapter 4 of the Village Code of Ordinance, and that the requirements of Chapter 4 be reviewed by Council members on an annual basis.

Second: Councilmember Everts

Discussion: Ms. Gwin pointed out that this action in no way excludes the EEC from the preparation of appropriate information for employees.

Vote: All in favor.

ACTION ON THE MINUTES-December 11, 2008 Meeting

Motion to Adopt: Wasson

2nd: Sottile; No discussion. Vote: All in favor

TREASURER'S REPORT -NOVEMBER AND DECEMBER 2008 FINANCIAL REPORTS

This report is in two parts, dealing with income and expenditures for the months of November and December. This two-month report accounts for the fact that the schedule of meetings at the end of last calendar year were in advance of available financial reports for the month of November. The overall year-to-date figures are covered as part of the December reporting.

Report for November 2008

Income for the month of November was about \$193,990, the largest source of revenue was \$186,173 from the State income tax rebate to our Village. This brings the fiscal year to date income tax revenue to \$307,138 or close to two-thirds of the annual budgeted amount of \$495,000. Revenue from remaining revenue categories were reasonably in line with budget expectations.

Expenses for the month totaled \$50,712. This is some \$10,000 below total budgeted expenses for the month (\$60,033), largely due to considerably lower payments to date for budget category "streets" and specific item of "tree maintenance". It should be noted, however, that both accounting and, especially, legal fees considerably exceeded amounts budgeted for the month.

Report for December 2008

Income for the month of December was some \$9,429, the two largest sources of revenue being \$6,600 for the holiday fund (a good \$600 more than budgeted) and \$1,922 for highway user fees.

Expenses for the month totaled \$35,700, significantly below the \$75,158 budgeted. This is largely due to overall lower than budgeted general government, street and waste and recycling expenditures for the month. Tree replacement was the only notable expenditure above the expected monthly expenditure, but the year to date amount is still well within the annual budget.

At this point in the year, it is worth paying particular attention to the six-month year-to-date figures compared to the annual budget. For the months July-December, income is \$374,317, or approximately 57.5% of the projected annual income of \$650,920. Expenses over the same time six-month period are \$227,441, or about 30% of the FY2009 budget of \$764,400. Two income items bear mention as lower than budgeted for the period. These include: highway user fee income of \$10,797 compared to the YTD budget of \$18,999 and interest of \$8,338 compared to the budget of \$19,999. On the expenditure side, tree replacement is now well above the YTD budget and approaching the annual budget (perhaps due to the appropriate planting time of the year). Overall, however, expenditures for the first six months are notably lower than the amount budget for this period. **Motion to Adopt: Sottile, 2nd: Wasson, Vote: All in favor.**

MANAGER'S REPORT

- **Meeting with Governor's Office.** Richard, Noell and I had a very cordial meeting with **two representatives** of the **Governor's Office of Community Initiatives** which serves as the outreach office for the Governor. They offered their services if we have any problems with or need contacts in any state agencies. They introduced us to www.problemsolver.maryland.gov, a resource for our residents. Richard expressed our concerns about State pass-through of income tax revenues and how important a source of revenue it is for our operations.
- **New municipal trash cans.** Five new municipal trash cans were delivered, unloaded and installed. Mid Atlantic lent its hand with Wayne Fowler and Verges Construction also provided assistance. The trash cans have not been replaced in 22 years.
- **Website.** I have continued Website training with Calvert Design and am able to post updates to simple documents such as the minutes, agenda and newsletters. Calvert has provided the ability for residents to register on the website for information postings but the program is not ready to be operational.
- **GIS and AMT survey.** The ArcView program is up and running; there were some glitches with the data base and AMT needed to return to correct the problem but it appears to be operating properly.
- **WSSC** has improved the temporary repair to the fire hydrant at Turner and Brookville but it will still need major overhauls that will be done in the spring. Water interruptions will occur at the time but WSSC promises to work with us to keep residents informed. Also, notice was received from WSSC that they intend to perform sewer pipe upgrades to several of our homes along Thornapple Street but no time frame is available.
- The **Census Bureau** has sent us materials on our village boundaries, asking for final confirmation, all in preparation for the 2010 Census. Noell is assisting on this.
- **Hole on Shepherd.** The sudden appearance of a very large hole in the right-of-way on Shepherd Street required a call to Pepco, who assured us that there was no undermining of the Pepco pole. The hole has been filled by Verges construction. We will watch it to make sure it is now stabilized.
- **Pedestrian Crossing sign paddles.** Section 3 has asked us to work with them to consider requesting the State to place Pedestrian Crossing sign paddles on Brookville Road at Raymond Street and Turner Lane. Joe Cutro, our traffic engineer will prepare a simple assessment of the situation before any request is sent to the state.
- **Street light Education Forum.** Section 3 and Martin's Additions would like to explore the possibility of holding a roundtable discussion and workshop for the managers of the surrounding jurisdictions to get more information on the street light issues that we are all facing. Several lighting experts have been recommended and I have contacted Scott Watson of the Lighting Practice to discuss the idea and have consulted with Joe Cutro. The Council recommended that the environmental group provide input into the preparation.
- **Ice on Quincy Street.** We are having major water and ice issue on Quincy Street that Alan will discuss further in his presentation, but I have asked Verges Construction to sand the icy areas.
- **La Ferme event** is confirmed for February 8th. The food and serving plan has been changed this year to more finger food. Council members were asked to provide any recommendations for who should be recognized and reminded to bring their name tags.
- **Trees.** Integrated continues our winter tree care and pruning program. We were able to provide chipper services to residents after the last storm. We will soon remove the walnut tree on Raymond Street and the stump here at Turner and Brookville.
- **Residents concerns:** Fox sightings, Examiner Newspaper.

CONSTRUCTION UPDATE ALAN BEAL

- **Construction at 3513 Bradley Lane.** The demolition and new construction project on Bradley is underway.
- **Fire in New Home in Town of Chevy Chase.** A new home under construction and almost complete on Oakridge Ave was completely destroyed by fire and the neighboring home was slightly damaged. The cause is under investigation.
- **Ice on Quincy Street.** A major section of Quincy Street is having ground water problems that are resulting in ice in the gutters and flowing out onto both the north and south side of Quincy Street. The Village is having the ice tended to with sand and salt. This problem needs an evaluation from a

professional water engineer with thoughts to possibly installing a dry well to better handle the water. Alan recommended that we contact Bill Bissell, a water engineer that Section 3 and the Town of Chevy Chase have used for this type of issue to have it thoroughly evaluated.

- **Mid Atlantic Inspections** has hired Wayne Fowler who will provide assistance on building matters to Martin's Additions and to other municipalities that MAI contracts with. This increases the service to Martin's Additions and costs less because he is billed at a lower rate.
- **Zoning Text Amendment** was passed by the County Council and will become effective April 28, 2009. It will have an effect of lot coverage requirements and may necessitate a change in the proposals of the Land Use Task Force.

DISCUSSION OF OPEN MEETINGS MODEL ORDINANCE

The Model Meeting Ordinance was developed by the Village Attorney Ron Bolt at the request of the Council, to help clarify meeting protocol. This is substantially the same as the model ordinance published by the Open Meetings Compliance Board except for the text shown in italics that's added. The Chairman suggested that additional review time is needed by the Council. The Council agreed that it be discussed at the next month's meeting.

DISCUSSION OF RESEARCH ON MARYLAND WIRETAPPING AND ELECTRONIC SURVEILLANCE LAW

At the last Council meeting, the Village Attorney had been asked to provide further clarification on what constitutes a reasonable expectation of privacy in the Village Office at times other than during official open meetings. Mr. Wasson insisted that based on a conversation with the Attorney General's office, he understood that no one would have an expectation of privacy in the Village Office. Mr. Bolt stated that after conducting additional research, he has found that there is no definitive answer-- as with most legal questions, the answer remains, "it depends". There are many facts and circumstances that a court or jury would review in order to answer the question, "Is there a reasonable expectation of privacy for a conversation taking place". The issue is not always answered based solely on the location where the conversation takes place.

Factors to be considered based on the cases that he reviewed include whether there are third persons present, where the people are conversing within the office, whether effort is made to keep the conversation private, such as huddling in a corner or whispering. These facts may demonstrate a reasonable expectation of privacy. Those conversations should not be recorded without the conversing parties' prior consent.

Attorney Bolt spoke with assistant Attorney General William Varga, counsel to the Open Meetings Compliance Board, to discuss the interplay between the Open Meetings Act and the Maryland Wiretapping and Electronic Surveillance Law. Mr. Varga agreed that the Wiretapping and Electronic Surveillance law is very fact-specific and that there is generally no clear answer for any one set of facts. He stated that if there are other parties present, who can overhear the conversation, then it would be hard for the conversing parties to argue that they had a reasonable expectation of privacy for that conversation. Mr. Varga reiterated, however, that the question may depend on other facts such as whether care was taken to avoid the public from overhearing, such as engaging in the conversation behind a closed door. Mr. Bolt reiterated that even though there may be no reasonable expectation of privacy for certain conversations, based on the circumstances of the conversation, the question is subject to interpretation and assessment by a fact-finder. Based on the attending circumstances, conversing parties may have a reasonable expectation of privacy in conversations taking place in the Village Office. Mr. Bolt's recommendations to the Village of Martin's Additions are the same as that offered in the past—avoid any unnecessary risk of recording private conversations without consent of the conversing parties, specifically referring to conversations that take place in the Village Office before and after open meetings.

Motion to adjourn: Ms. Everts

Second: Ms Sottile. **All in Favor.**

Mr. Krajeck issued a reminder that all recorders should be turned off.