

Village of Martin's Additions
7013 Brookville Road, Suite B, Chevy Chase, MD 20815
Council Meeting Minutes
May 13, 2021
VIA ZOOM CONFERENCE CALL

Council Members Present: Susan Fattig; Arthur Alexander; Todd Mann; Jeff Blander; Katya Hill; **Village Manager:** Niles Anderegg; **Manager Assistant:** Martha Fessenden; **Building Administrator:** Doug Lohmeyer; **Village Attorney:** Ron Bolt; **Residents and other Attendees:** Keith Allen (Turner Ln); Tiffany Cissna (Bradley Ln); Marty Langelan (Chestnut St); Naomi Naierman (Quincy St); Larry Wasson (Delfield St); Paula Goldberg (Bradley Ln); John MacDonald (Summit Ave); Lynn Welle (Oxford St); Katie Filipczyk Howard (Taylor St); Susan and Peter Kahn (Bradley Ln); John Sharrow (Chestnut St.); Amanda Sahl (Brookville Rd); Andrew Kauders (Turner Ln); Lorie Mitchell (Cummings Ln); Susan Post (Turner Ln); David Saulter (Brookville Rd); Alex Ghesquiere (Bradley Ln); George McAleese (Melville Pl); Paula Desio (Quincy); Cathy Klion (Delfield St); Janine Trudeau (Bradley Ln); Bill and Jean Sperling (Shepherd St.); Kathleen Bishop (Taylor); Maisy Meenan (Shepherd), Peggy Brown (Summit); **Dave Wachtel?** (Shepherd)

7:32 PM Call to Order: Fattig

The meeting was called to order at 7:32.

Keith Allen (Turner Ln) gave his weather report. He forecast pleasant weather all weekend and dry weather with above normal temperatures in the low-to-mid-eighties next week.

7:33 PM Opportunity for the Council to Hear Residents' Comments

Tiffany Cissna (Bradley Ln) spoke in favor of getting permits to have the July Fourth event and the movie night in September.

Marty Langelan (Chestnut St) asked the Council about the driveway at 7200 Delfield (Taylor & Delfield). Susan Fattig clarified that the 10' width limitation for driveways pertains only if a single type of material is used. In this case, 3' of concrete will line both sides of a 10' brick driveway.

John McDonald (Summit Ave) commented on the proposed tree ordinance and asked if there could be a footnote or annotation to the Montgomery County code that defines what a sediment control permit is.

Susan Kahn (Bradley Ln) expressed concern that Montgomery County might approve Zoning Text Amendment (ZTA) 19-07, which would allow cell antennae and poles to be erected within 30' of a home without a hearing, resident notification, or notification of municipalities. She believes that 19-07 would eviscerate the Village's own ordinance. She asked the Council consult

Ron Bolt and legal experts in telecom law to determine what 19-07 would mean for Village residents and trees.

Naomi Naierman (Quincy St) asked if sitting Council members should be allowed to endorse and/or campaign for any running candidates. She questioned whether this, if not illegal, is appropriate or if it injects bias into an election. She further raised these questions: if three out of five Council members endorse a candidate, does that comprise a quorum and would that endorsement represent the full Council; should the full Council be permitted to endorse and/or campaign for a running candidate; and should these questions be presented to the Ethics Committee? She requested an analysis by Ron Bolt of these issues.

Andrew Kauders (Turner Ln) raised three concerns about the election: he called for an extension of the deadline for receiving ballots to ensure that every vote is counted; he asked if there is a formal recount mechanism; and he would like the incoming Council to consider prohibiting public endorsements by Council members in future elections.

John Sharrow (Chestnut St) asked if the Council had taken any action on the recommendations put forth by the Walkability Committee. Susan noted that Niles Anderegg will provide an update in his Manager's report.

Katie Filipczyk Howard (Taylor St) asked if everyone who needed a new corrected ballot had received one. Susan responded that the Election Committee and/or Niles will address this in their reports. Katie also suggested that closed captions be added for future meetings held via Zoom for hearing-impaired residents. Niles said he would look into it.

Larry Wasson (Delfield St) expressed support for Andrew Kauders' comments.

Marty Langelan (Chestnut St) asked if Electec, the election vendor, had been instructed to do a machine count of the votes not cast. Niles said that, once the vote counting procedures are approved by the Council, he will have a conversation with Electec to go through the procedures step-by-step. Marty also asked if, for rejected ballots, a report would be given on how many were rejected, whose names were on them, and why they were rejected, and that rejected ballots and envelopes be retained along with the counted ballots. She urged the Village to account for 100% of the votes. She also expressed concern about endorsements by a quorum of sitting Council members, which she sees as a violation of the election rules and/or ethics ordinance and called for Ron Bolt to address the issue. In response to Marty's question of what might constitute a violation of the ethics ordinance, Susan gave as an example an Election Committee Chair applying election rules in a way that might advantage one candidate. Larry objected to her example.

Jeff Blander noted that a vaccine will not be available for children under 12 in time for the Village's Fourth of July event. He pledged two things for next year: 1) if he were to run for election next year, he would make a public announcement a few weeks before candidates' statements are submitted so everyone would have the same information; and 2) he would not endorse someone, or he would wait until after the forum to give everyone a chance. He also

expressed the view that the ethics ordinance may impact the issue of endorsements. Lastly, Jeff asked about the new Zoom subscription and if the video can be used going forward.

8:04 PM Building Administrator's Report: Lohmeyer

The Village Council received Building Administrator Douglas Lohmeyer's report on ongoing building projects in the Village. (See attached.)

8:05 PM Approval of Minutes

Arthur Alexander moved to approve the minutes from the April 15th Council meeting. Todd Mann seconded. Motion passed unanimously.

8:07 PM Committee Updates

Community Engagement Committee

Chair Keith Allen reported that the Committee or Niles will get permits ready by June 1 for the July Fourth celebration.

Public Safety Task Force

Council liaison Jeff Blander said the Task Force has been working very hard. They held their first public meeting in April and are currently working on a survey that will likely be approved next month. He noted also that the Task Force may work with Niles Anderegg and Ron Bolt to research options to protect the Village in light of the County's ZTA ordinance.

8:12 PM Discussion and Next Steps on an Ordinance to Amend the Village Tree Ordinance

Arthur Alexander noted that the tree ordinance is ready to be adopted but there have been questions about whether additional research might be needed. Arthur asked that residents send in their comments to the Council, either for or against the ordinance. He reminded everyone that the ordinance requires that anyone, a developer or a resident, either plant a tree or pay a reforestation fee if there is a movement of earth that requires a sediment control permit. This would be consistent with the County requirements; by opting out of this requirement, the Village may have been giving developers a free ride when taking down trees in the Village. Arthur called for a final vote at the next Council meeting. Jeff Blander expressed support for the call for resident comments. Todd Mann spoke in favor of postponing a public hearing and vote until next month to give residents more time to consider the ordinance.

8:15 PM Discussion and Possible Adoption of Emergency Voting Counting Procedures for the 2021 Election

Committee chair Tiffany Cissna reported that Electec has received ballot return envelopes from more than 50% of the qualified voters in VMA, the highest voter turnout since 2015. She thanked candidates who participated in and everyone who submitted questions for the Candidate Forum. An open Election Committee meeting was held on April 29 to discuss vote counting procedures. While the Council did not approve vote counting procedures last year, the Committee was advised that the Council should approve the procedures pursuant to the Charter's

requirements. The process starts with sorting ballot return envelopes received by the vendor into two stacks, conforming and non-conforming, based on the vendor check that the outside of the envelope includes a signature, name, street name, and house number, and that all of that information matches the control number issued by the vendor. The non-conforming ballot return envelopes will then be adjudicated by the Committee on a case-by-case basis, as required by law. After this review, the ballot return envelopes are opened, separated from the secrecy envelopes, and sequestered. The secrecy envelopes are then opened and the ballots are fed into the computer. The Committee will review all non-conforming ballots and all ballots with write-in candidates. The vendor will then report the preliminary numbers. Both the vendor and the Committee will track all challenges and the vendor will return everything to the Village for safekeeping, where, as public records, the materials will be available to individuals. Two differences this year are: 1) each candidate's named observer will be there for the entire vote count; and 2) there will be no certification of results until written confirmation is received from Electec. Vote counting will take place via Zoom and the public can join the call. Electec will also go through an internal verification process after the vote count and email the final results. Tiffany also noted that ballots continue to be received within two to three days from the postmark and there have been no extreme outliers in terms of mail delivery time. Committee member George McAleese added that Niles is providing daily updates to the Committee.

Jeff Blander spoke in favor of extending the deadline to receive ballot envelopes by one week to address the ambiguity in the language on when ballots are due. He also recommended establishing a recount procedure. According to Niles, Electec has the ability to recount by machine and also by hand. Tiffany reiterated that the initial count will take place on Zoom but that Electec goes through an internal verification process so votes will be counted twice before results are certified. Todd asked for clarification on what types of situations would trigger a recount. George responded that there is no provision under the Village Charter or the Village Election Plan that provides for a mandated recount, and Ron Bolt advised the Committee that, in Maryland, recounts at the municipal level are something traditionally handled in the judicial system. George commented that to establish a recount procedure an entirely new structure would need to be approved that would outline under what circumstances a recount would happen, how it would be funded, and what procedures would be used. Arthur commented that the word "recount" needs to be defined; is it a matter of simply counting again or a process after the event if questions remain?

Andrew Kauders (Turner Ln) asked what might trigger a hand tabulation of votes and if the voting period could be extended by a week to accommodate outliers. Marty Langelan (Chestnut St) also urged that the date to receive ballot envelopes be extended to May 27. If not, she asked that on May 20 around 5 pm the Committee use postal tracking to see if there are ballots enroute and ensure that those votes are counted. Katie Filipczyk Howard (Taylor St) thanked Jeff Blander for supporting the extension that the candidates requested. She wondered how a run-off would work if there was a tie between the 2nd and 3rd place winners. Larry Wasson (Delfield St) thanked Arthur and Katie for their comments. He asked what the longest number of days a ballot had taken to arrive and how a tie would be handled. Marty asked that decisions on non-conforming ballots be adjudicated in an open meeting. Niles noted that he meets daily with Electec to determine the status of ballots and should there be outstanding ballots, he would share that information with the Committee. Tiffany commented that as a practical matter the

Committee needs to set a deadline. Jeff expressed support for Marty's idea of using technology to drive decision-making on accepting ballots that may be in process in the postal system but again urged the Council to extend the deadline by one week.

John Sharrow (Chestnut St) asked if there is a list of all VMA residents who have voted. Niles clarified that every day Electec tallies ballots and will confirm if a ballot has been received upon a request. If a voter wants to know if their ballot has been received, they can ask Niles. Larry asked if outstanding votes could be counted if they were in sufficient number to affect the outcome of the race. Ron pointed out that a preliminary vote tally could present the appearance of conflict with respect to a Council decision on whether to extend the deadline. Susan Kahn (Bradley Ln) commented that the lack of confidence in the election may be related to the discretionary element regarding an envelope being counted, based on many details. Susan Fattig responded that the lack of confidence, if any, may be related to a concerted effort by some residents to undermine confidence in the process. Andrew Kauders agreed that voter intent to vote should be honored. He urged that the deadline to receive ballots be extended to provide a buffer. Todd Mann noted that the Village has publicized the dates widely and relaxed the postmark date to give residents ample time to vote. Jeff countered that the "and/or" language used to define the deadlines created ambiguity.

Katya Hill moved to keep the current deadlines for receiving and counting ballots in place. Arthur Alexander seconded. Motion passed with a vote of 4 in favor, 1 opposed (Blander).

Arthur Alexander moved to accept the vote-counting procedure proposed by the Election Committee. Katya Hill seconded. Motion passed with 4 votes in favor. (Note: Council member Jeff Blander had left the meeting by the time this vote was taken).

9:19 PM Discussion of Options for a New Village Listserv

Arthur Alexander surveyed 8 neighboring municipalities regarding listservs. The Town of Chevy Chase has the most extensive hands-on monitoring with monitors who go over every message and suggest edits to posters. Others have a monitor who resubmits the messages on a go/no go basis. There are towns that have extensive rules of what is permitted, while others have virtually no rules. Some discourage commercial activities while others permit that. Some encourage political discussion and others prohibit all political discussions. They are all run by resident volunteers. Arthur suggested asking for volunteers to work on moving forward on this and holding a town hall meeting after the election. Katya expressed support for a new Village listserv, which would be open to everyone and which she believe may help unite the community. She suggested that this might be referred to the Community Engagement Committee. Arthur reported that Somerset may be withdrawing their listserv due to concerns about free speech. Ron noted that once the government creates a public forum, that forum generally has to be open for free speech. Sometimes it can be hard to draw the line between free speech and something the moderator may feel to be inappropriate. Arthur also commented that Council members would need to be careful to avoid exchanges that develop into a conversation among a quorum that would violate the Open Meetings Act. Most of the communities include a link on their listservs telling people that the listserv is not part of the town or village and that it is not run by the municipalities.

9:25 PM Financial Matters, including Treasurer’s Report and including a Public Hearing on and Possible Adoption of the Fiscal Year (FY) 2022 Budget Ordinance and Tax Rates Resolution: Alexander

The Charter requires that the budget be approved by May 15. The budget, which has been open for review for two months, is conservative with only a few minor changes from last year. After the Village’s budget collapsed in 2010, VMA has been very frugal so there is now a healthy surplus. Residents have suggested that the Village expand services in a number of directions or offer a rebate on the excess that the Village has taken in over the last few years. The Council is looking for more information about what residents would like to see in the future. Arthur encouraged residents to use the annual survey for that purpose. Arthur called for comments on the 2022 Budget Ordinance and Tax Rates Resolution. Todd Mann and Susan Fattig commended Arthur on his explanation of the budget.

Motion to adopt the tax rate resolution passed with 4 votes in favor, none opposed. (Note: Council member Jeff Blander had left the meeting by the time this vote was taken).

Motion to adopt the 2022 Budget Ordinance passed with 4 votes in favor, none opposed. (Note: Council member Jeff Blander had left the meeting by the time this vote was taken).

9:31 PM Manager’s Report: Anderegg

Niles Anderegg gave the Village Manager’s Report (see attached). Niles, Joe Cutro, Village Traffic Engineer, and Doug Lohmeyer have been following up on the recommendations of the Walkability Task Force, starting with updates to Village signage and adding speed bumps to some streets. The U.S. Treasury Department has produced a 151-page set of guidelines on the American Rescue Plan, which will govern how funds can be used by the Village. The paperwork has been submitted to receive the funds. An RFP for street maintenance is about to go out and will include walkability improvements. The bids for waste and recycling are due May 21. The stop sign at the corner of Quincy and Oxford was knocked down but will be returned tomorrow and re-installed. In response to a question from Arthur Alexander, Niles clarified that the American Rescue Plan funds can be used for improving infrastructure to build resilience to big-weather events. Susan asked Niles to include curb extensions in the RFP for street maintenance.

9:36 PM Opportunity for Council to Hear Residents’ Comments: Fattig

Larry Wasson (Delfield St.) asked that all crosswalks in the Village be repainted as part of maintenance. He also asked about fire hydrants and repaving over damaged gas lines. Niles reported that WSSC inspects fire hydrants once every three years. They only flush hydrants in response to issues with the water such as discoloration. Larry requested that Niles ask WSSC to produce the records that show they have actually inspected the hydrants. On repaving over damaged gas lines, streets were last repaved in 2017 so the Village would not be repaving again for some time.

Marty Langelan (Chestnut St) asked if the Election Committee will report on 100% of this year's votes including the number of ballots disqualified and why, the number of votes cast, the number of votes not cast, the number of write-in votes, and the number of all envelopes accepted and rejected. Election Committee member George McAleese noted that he could not speak for the whole Committee, but he expressed support for a full, robust report with plenty of transparency. Andrew Kauders (Turner Ln) expressed appreciation for the Council's hard work and volunteer time, especially outgoing members Todd Mann and Katya Hill.

Susan Kahn requested funding for telecommunications counsel about ZTA 19-07 in order to have informed understanding of its impact and to get out in front of a potentially divisive issue.

9:53 PM Adjournment: Fattig

Arthur Alexander moved to adjourn the meeting. Todd Mann seconded. Motion passed unanimously.