

**Village of Martin's Additions
Council Meeting
7013 B Brookville Road, Chevy Chase, MD 20815
November 19, 2009**

COUNCIL MEMBERS AND VILLAGE REPRESENTATIVES PRESENT: Council Members: Noell Sottile, Mike Zielinski, Chris Mueller. **Village Manager:** Jean Sperling; **Attorney:** Ron Bolt
Residents: Bill Catherwood, Keith Allen, Jeff Stann, Sharon Hadary, Hanne Correl, Rick Michel, Dan Rotrosen, Liz Dugan, Dan Gardner.

**CALL TO ORDER: 7:30PM, Vice Chairman Sottile
POLICE REPORT**

Sgt. Dasilva of the Chevy Chase Village Police Department was unable to attend the meeting. He submitted the following report:

- 10-05-09 Disabled vehicle at Connecticut Ave and Bradley Lane. Officer responded and assisted the citizen.
- 10-22-09 Connecticut Ave and Bradley Lane hazard. A deer running in the roadway. Officer responded and the deer was not located.
- 10-25-09 Suspicious situation. Officer noticed subjects moving furniture from a truck. Officer checked with the homeowner and they were having furniture delivered to the house.
- 10-29-09 Accident at Connecticut Avenue at Bradley Lane. Village Officer assisted Montgomery County Police with an accident at the intersection. No injuries reported.
- 10-31-09 Alarm at 3506 Shepherd Street. The alarm company received the proper cancellation code and canceled the call.

The County Police report was not available. Sgt. Dasilva promised to email it when it became available.

MINUTES of October 17, 2009 Council Meeting

There were no changes to the minutes. **Motion to Approve:** Councilmember Mueller; 2nd Zielinski;
Vote: All In favor.

MINUTES from Work Session of October 20, 2009 on Street lights. Motion to Approve:

Councilmember Mueller; 2nd Zielinski; **Vote:** All In favor.

FINANCIAL REPORT for the Month of October- Councilmember Mueller

Numbers are rounded for ease of reading.

Income for the month of October was \$12,262. Of that, approximately \$10,300 was from property tax, \$825 from permit fees, \$650 in income tax and about \$250 each from interest income and personal property tax.

Expenses for the month totaled \$41,770, generally reflecting typical expenses for the month of October. Exceptions are \$800 in budgeted fees for our street lighting advisor and about \$8,100 in building and permitting activity.

Expenses were \$29,500 more than income in the month of October. For the fiscal year, July through October, expenses are about \$135,000 more than income. This imbalance is anticipated and typical, given our annual revenue and expense cycle.

The Village has received its audited financial statement from our outside auditor, Linton, Shaver, Warfield and Garret, PA. We're pleased to report that the audit revealed no significant audit adjustments. The audit also resulted in the filing of the Village's uniform financial report with the State of Maryland.

A review of YTD budget and expenses shows a growing variance in several categories of recurring monthly expenses:

- YTD, note reduced legal fees by about \$8,000.
- YTD, note reduced police patrol fees of about \$6,000, largely resulting from scheduling constraints by the Village of Chevy Chase Police Force.

- YTD note reduced salaries and benefits of about \$7,000. This imbalance will true up by EOY with the addition of part time staff.
- YTD, we are exceeding waste collection fees by almost \$3000, largely a result of fuel surcharges.
- YTD we are exceeding third party building and permitting expense by about \$6,500, largely a result of a significant number of complex construction projects.

Variances in other spending areas have not been noted since these are anticipated and seasonal in nature.

Motion to Approve Financial Report: Councilmember Zielinski; **2nd**; Councilmember Sottile **Vote:** All In favor.

TRANSMITTAL OF FY 2009 AUDIT REPORT

Councilmember Mueller noted that the Village has received the audit report for fiscal year 2009 prepared by Linton, Shafer, Warfield & Garrett. The report is available for review in the Village office. A formal presentation will be made at the December meeting.

CHANGE IN PROCEDURES RELATED TO CONSTRUCTION BONDS

It was recently brought to the attention of the Council that the Village was paying a set rate of interest on construction bonds that was considerably in excess of what the Village is currently earning. After examination of Village records, there does not appear to be any evidence of the Council formally adopting this practice. Accordingly, Mueller recommended that the Village cease paying any interest on construction bonds as of today's date. The limitation was added because bonds already issued have a promise to pay interest.

Motion to not add interest to the payment of construction bonds deposited to the Village after November 19, 2009 was made by Councilman Mueller; **2nd** by Sottile; **Vote:** All in favor.

8:00 PM PUBLIC COMMENT ON PROPOSED ORDINANCE 10-09-1 RELATED TO STANDARDS FOR THE CARE OF THE RIGHT-OF-WAY.

Councilmember Sottile presented the background of proposed ordinance 10-09-1. It was introduced last month. Public comment was taken at tonight's meeting.

The following summarizes the comments that were made:

- The 12" limitation on planting in the public right-of-way seems excessively low. There are many plants which would work there without blocking the line of sight –could be even 3 ft.
- Concern was expressed about the Village mandating the use of the public right-of-way when it comes to aesthetic issues.
- The intent of the public right-of-way is for people to walk out of the street; nothing is supposed to be planted in that area. Keeping the area clear is just as important when there are already sidewalks as when there are not. There needs to be a way for people to get off the street.
- The suggestion was made that the proposals related to what can be planted in the public right-of-way be made more flexible.
- A resident suggested the concept being put forth about the use of the right-of-way was antiquated.
- A suggestion was made that visibility and access could be the standard used, rather than a precise limit in inches or meters for plant growth height.
- It was suggested that neighbors should work things out; the Village should not get involved if no view is being obstructed.
- The Village must develop standards that apply to all variations of the current configuration of the public right-of-way—one sidewalk, two sidewalks, and no sidewalks—and this presents a challenge. It should be the same for everybody.

Discussion of the Council:

In response to a question from Councilmember Mueller, Attorney Bolt reiterated that the purpose of this ordinance is not to regulate the aesthetics or the appropriateness of one plant over another; the purpose is to expressly set forth in the Code the common law that already exists. The

Village holds the public right-of-way in trust for the benefit of the public. Property owners have no right to install plantings within the public right-of-way without permission from the Village.. After the Village was cited by the County for failing to maintain plantings located within the right-of-way at a certain intersection, the Village Council decided to formally adopt regulations pertaining to the maintenance of the public right-of-way and the responsibilities of abutting land owners. The ordinance is not aimed at curtailing what landscaping a property owner can do on his or her property. The ordinance is aimed at the proper maintenance of the public right-of-way and the prevention of interference with pedestrian and motorist use the right-of-way and the Village's ability to fully access and maintain the right-of-way.

A question was raised about increasing the plant height to 18" and how that would be adverse to the Village. Motorist visibility or obstruction of pedestrian traffic was cited as a possible issue as well as the issue of being able to see as they back out of their driveways. Another example discussed was how a 3 ft hedge located close to the curb obstructs the ability to exit a vehicle. The Council continued to discuss ways that the standards might be more flexible.

The 12" heights for grass and weeds is something that is derived from the Montgomery County Standard—if you allow grass and weeds to grow taller than 12" you can be cited for that and we've stated therefore you can plant low growing plantings less than 12" in the ROW, but anything taller than that requires a license to use the ROW from the Village. Therefore there is not an absolute preclusion or impossibility to plant in the ROW. There is a process available for fair consideration. The Village has a procedure to allow private use of the ROW with a license—the license states that the adjoining homeowner has permission to do x and y provided however, if the Village needs that public ROW space back in the future for some reason then the homeowner agrees to remove the structures, etc., at the owners' expense.

The discussion continued about the licensing process and Mr. Bolt explained that clarity is provided when you have a written license—the license will state what objects are permitted to be located within the public right-of-way and that these specific objects have to be removed upon demand by the Village and the homeowners or successors in title shall bear the cost of removal.

Vice Chairman Sottile asked for a motion on the matter.

Motion: Council member Zielinski motioned that the Council adopt the ordinance as currently presented with the caveat that the Council in the short term future takes a look at the possibly of finding ways to make this more flexible but preserving the intent and the enforcement right. **2nd:** Sottile. No further discussion. **Vote:** All in favor.

Zielinski will prepare some thoughts on the suggestions heard this evening for further discussion by the Council. He asked for confirmation that this is comparable to the ordinances found in other jurisdictions. Jean confirmed that and reiterated that is where this entire process started.

NOVEMBER MANAGER REPORT:

Street and/or Utility Improvements or Issues:

- Permission was issued to WSSC to repair the Sanitary Sewer line on Delfield and Raymond Street. A separate additional request from WSSC was received for water line replacement from Oxford Street to Quincy. Coordination with be done with Chevy Chase Village where the bulk of work is being done.
- Verizon box on Cummings Lane (3517 meeting with Verizon) is being examined by a representative from Verizon and the VM in response to resident concern.
- Missing light on Raymond that was destroyed in the June storm that brought down a tree has been discovered in the bushes, accounting for the lack of light on Raymond Street.
- The 250 watt street light has been completely replaced on Shepherd Street in response to a special request to PEPCO.
- Turner Lane Cul-de-sac curb repairs by the County have been finished. The job required return work on the part of the County.

- Corner of Turner Lane and Brookville Road on-schedule for repair. WSSC, the Village and the contractor have agreed on the re-design. The Village will pay for another bollard to be installed by WSSC's contractor.
- Curb at Thornapple and Summit corner has been repaired by WSSC. Asphalt needs to be checked.

Safety Improvements/Issues

- Speed humps' markings have been repainted on Summit and Cummings Lane. Other humps, crosswalks and stop bars will have to wait for warmer weather.

Service Delivery Maintenance/ Changes/Improvements

- Snow shoveling list has been reviewed and updated for this winter.
- Reaffirmed that the shoveling is for paths and sidewalks only; the Village does not shovel driveways even if sidewalks do not exist.
- Street leaves have been cleared twice so far this fall. Weather has been a particular challenge—rain prevents the leaves from being cleaned up and then throws off the schedule. Debris has been glued to the streets.
- Recycling “bumps” seem to be smoothed out.

Administrative Work/Issues

- New Village Code updated if anyone needs a copy.
- Met with Brian Raines from Calvert Design Group for training for Deb on the Website and additional updating of files. We are working on an operational handbook.
- The VM was in court on Tuesday, November 24, 2009 responding to a citation from the County pertaining to a fence and vegetation located in the public right-of-way at the corner of Cummings and Brookville.
- The VM attended the Municipal Manager's Breakfast Meeting with County's CEO Rep- Tim Firestine. Discussed County and State budget situation for FY1-2010 and 2011.
- Additional computer power is needed for the Assistant Village Manager. The old lap top died and was disposed of. Estimated to be under \$1,800. Funds are available in the office expense budget. Additional telephone power also needs to be put in place. No estimate yet, but the one line we have is not sufficient.

Tree Report

- We have completed 12 new tree plantings this fall.
- Dan Gardner, our Tree Supervisor and Deb Schmal the Assistant Village Manager attended a meeting with representatives from the Department of Natural Resources to review the new State Tree Permitting regulations. It appears that we already have tree care controls in place that will be sufficient to address any new requirements.
- Very large tree at 114 Quincy Street has been identified by Paul Wolfe as in need of further evaluation; follow up done with Barb Neal our arborist. Request has been filed for State Forest Officer's review and recommendation. Additional trees to be checked by Wolfe, advice will be sought from Arborist Neal consistent with code.
- Trees have all been pruned back around the lights, consistent with recommendations of Scott Watson. Plans being developed for winter pruning.

Up and Coming Work/Project awaiting completion

- Toys for Tots again in Village Office.
- Confirmation that Energy Grant of \$5,000 can be used for street lights. Martin's Additions allocation was included in encumbrance request to the Feds.
- 25th anniversary celebration this coming winter.
- Holiday Fund will be kicked off soon.

NEW RECYCLING BINS:

Jean presented options for new recycling bins, explaining that only one company offers a good range of different size lidded, rolling bins—Toters, Inc. Larger size bins are needed to accommodate the additional recycling that is now possible with the single stream system offered by Waste

Management. The more we recycle the less we have to dump. New lidded bins will also help eliminate the problem that wind and rain presents to the content of the bins. The Council looked at the different colored materials available and directed Jean to determine how many we want to order and what sizes we want to order.

REVIEW OF SNOW SHOVELING PROPOSAL

The snow shoveling proposal from Mulheron Tree Experts is unchanged from last year. Other contractors who bid last year on the job were contacted again this year and have made no change in their prices or services. The Manager therefore recommended that the Village renew the contract.

Motion to Approve the Snow Shoveling proposal, which will be attached to the standard Village Contract was made by Sottile; **2nd** Mueller; **Vote:** All in favor.

REVIEW SNOW PLOWING PROPOSAL

The snow plowing proposal from Peyton Services is unchanged from last year. The Manager therefore recommended that the Village renew the contract. Mueller asked about the amount of insurance carried by Peyton. The standard contract that the Village uses specifies the amount of insurance needed and requires that upon signing the contract certificates of insurance must be provided. Jean will make sure that information is available.

Motion to Approve the Snow Plowing proposal, which will be attached to the standard Village Contract was made by Zielinski; **2nd** Sottile; **Vote:** All in favor.

STREET LIGHT CONTRACT

The proposal for the Design and Specification Phase of the Street Lighting Update Plan from Scott Watson was presented. The proposal is offered as a not-to-exceed contract of \$7,500. Once underway it will take about a month to complete. The Village survey will be used to determine which utility poles will be used for the new lighting fixtures. Some new poles may be necessary. The plan will be based on the PEPCO standard Teardrop Esplanade lantern, using the 55-watt induction lamp.

The work product will be a lighting plan and specifications for the light fixture, which will be engineered into the grid by PEPCO. PEPCO will provide a price for the installation and they will produce their own installation drawings which will be reviewed under a future construction Administration Phase of the project. Fees for site meetings have not been included.

Discussion: Councilmember Zielinski felt that the information the Council already has on street lights suggests that the design should not require an additional expenditure of \$7,500. He noted that there was no breakdown in the estimate of the particular tasks that would be performed, or how many hours they would require.

Motion to accept the street lighting proposal for the Design and Specification phase as presented made by Councilmember Mueller; **2nd** Sottile, **Vote:** 2 in favor 1 against.

BUILDING ADMINISTRATOR'S REPORT presented by Manager Sperling

There have been no new major construction activities in Martin's Additions over the past month.

NEW BUSINESS

Introduction and discussion of Ordinance 11-09-1

AN ORDINANCE TO ADOPT PERMIT REQUIREMENTS FOR DUMPSTERS AND PORTABLE STORAGE UNITS AND TO PROHIBIT THE PLACEMENT OF DUMPSTERS AND PORTABLE STORAGE UNITS IN THE PUBLIC RIGHT-OF-WAY.

Councilmember Sottile explained that this proposed ordinance derived from an incident in the Village where a dumpster in the street obstructed a fire truck responding to a medical emergency. Current regulations do not prohibit dumpsters from being placed in the street. Additionally, dumpsters often lead to damage to the street. Also the Village does not regulate the moving/storage "pods" that are now frequently used. The Village Manager asked the Council to develop these restrictions.

The proposed change to Chapter 7 of the Village Code is shown below:

ARTICLE 2. PROPERTY MAINTENANCE

* * *

Section 7-210. Dumpsters and portable storage units.

(a) **No person shall place or maintain a dumpster or portable storage unit on private property within the Village without obtaining a permit from the Village Manager. The Village Manager may condition such permit upon such terms or restrictions as the Village Manager deems necessary to protect the public health, safety or welfare, including, but not limited to, a limit on the number of consecutive days a dumpster or portable storage may be placed or maintained on private property.**

(b) **No person shall place or maintain a dumpster or portable storage unit on private property within the Village for which a permit is required by this Article unless such person has deposited with the Council a deposit for repairs in the form of a bond, letter of credit or other security in such amount and/or form as the Council deems necessary or appropriate to insure the restoration or repair of any damage to the Village rights-of-way, sidewalks, curbs, or roadways and that the placement and use of the dumpster or portable storage unit will be in accordance with the terms of the permit issued in connection therewith. The deposit and any interest thereon may be applied to repair or correct any damage or injury to public property, including treatment or replacement of Village trees and plantings, as the Village Council in its discretion shall determine. Upon removal of the dumpster or portable storage unit for which the permit was issued, the balance of the deposit, including any interest earned thereon, less any amounts retained by the Village pursuant to this subsection, shall be returned to the person who made the deposit.**

(c) **No person shall place or maintain any portable storage unit or dumpster on public property or in the public right-of-way.**

Underline indicates new material

~~Strikethrough~~ indicates material deleted

* * * indicates material unchanged

Motion to Introduce: the ordinance was made by; 2nd Zielinski; **Vote:** All in favor.

9:45 PM ADJOURNMENT. Motion: Mueller, 2nd: Zielinski; **Vote:** All in favor.