

**Village of Martin's Additions
Council Meeting
MINUTES of MEETING
October 16, 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; Ron Bolt, Attorney; Alan Beal, Building Administrator.

Residents in Attendance: Rick Michel (Brookville), John Sharrow (Chestnut), Ernie Liebman (Thornapple)

CALL TO ORDER: The meeting was called to order by Chairman Richard Krajeck at 7:30 PM

POLICE REPORT: Sgt. Dasilva, Chevy Chase Village Police Department.

The CCV Police reported no serious criminal activity in Martin's Additions during the month of September. There has been a lot of nearby activity: Three suspects were chased in Kensington on 9/14 after being seen rifling through cars—one was apprehended, the others got away. All three suspects have prior arrests.

Vehicle break-ins continue throughout the area, however, and unlocked vehicles are being targeted. Recently two suspects were chased by Chevy Chase Village Police on Quincy Street at about 3:30 AM; one was apprehended, the other got away. The officer reported that the suspects in all the cases they have investigated were on foot, dressed in black, with gloves and knit caps. The one juvenile was carrying all the goods and got away. It was clear that the suspects were aware that the juvenile would receive less punishment than the adults for being caught with stolen goods. The Sgt. urged residents to call the police whenever anything happens.

RESIDENTS COMMENT AND CONTRIBUTIONS:

No residents were present at the time designated on the agenda for this item.

Noell spoke on behalf of Josh Bowers, the Village's List Serv moderator, and explained that the problem Josh has brought to the Council's attention was actually resolved when users were urged to carefully address the list serv postings.

ACTION ON MINUTES:

- **SEPTEMBER 18, 2008 COUNCIL MEETING MINUTES**

Motion: Catherine Gwin moved for the approval of the minutes.

Second: The motion was seconded by Diane Everts.

Discussion: Wasson felt that the minutes did not accurately reflect the changes he had proposed and asked that his comments related to what is and is not a closed meeting be added to the minutes as follows: "Larry disagreed and said it turned out to be just a training session that should not have been a meeting. Larry noted that training sessions can be closed without violating the act." Larry said he never suggested that the meeting should be open. He suggested that it shouldn't have been a meeting.

Vote: All voted in favor of approving the minutes, with the inclusion of Larry's changes.

- **JULY 10, 2008 EXECUTIVE SESSION RECORDATION OF MINUTES.**

The minutes were prepared for the July Executive Session and circulated by email. Their formal approval was executed as follows:

Motion: Wasson moved for the adoption of minutes prepared for the 7/10/08 Executive Session.

Second: Sottile **Discussion:** None **Vote:** All in favor.

TREASURER'S REPORT: October 2008. Presented by Councilmember Catherine Gwin

Income for the month of September was some \$144,768, which includes an income tax rebate of \$120,610 and County Revenue Sharing revenues of \$19,850. The size of the tax rebate reflects, in part, delays in incoming revenues in prior months. Additional revenues come from permit fees (\$650), highway user fees (\$906), code infractions (\$169), personal and real property taxes (totaling some \$516), and interest (\$2,067).

Expenses for the month totaled \$33,482. This is considerably below expenses budgeted for the month, due in part to a number of expenses yet to be paid out, including among others: fees for Urban Planner, Building and Permitting, Legal, Street and Sidewalk Maintenance and Street Improvements, Tree Maintenance, and Community Events.

For the first three months of the 2009 fiscal year, income is \$152,548, or approximately 23% of the projected annual income of \$650,920. Expenses year-to-date are \$44,096, or about 6% of the FY2009 budget

\$764,400. **Motion to Accept the Treasurer's Report:** Diane Everts; 2nd: Larry Wasson; **Discussion:** None;
Vote: All in favor

MANAGER'S REPORT

- ***TREES.***

General Care. Integrated Plant Care will be assessing the Village trees to identify pruning and lifting that is needed during the winter months. A number of trees will have to be thinned out a bit because previous radical thinning has resulted in extra-ordinary suckers and small limb growth.

Planting. There are a host of locations identified and requests made by residents for new trees to be planted this fall. Dan Gardner, the Village Tree Supervisor, will be working with Paul Wolfe of Integrated to select and coordinate the tree planting. Trees can be planted up until the ground freezes.

Removal. Two trees (one on Shepherd, one on Summit) died very suddenly and were removed. Both trees, which appeared to be about the same size and age, had been planted in their wire baskets killing the trees when they get to a certain size. The wire baskets were discovered when the stumps were removed. Jean felt confident that Integrated Plant Care is now properly planting the new trees.

Independent Arborist's Report. Barb Neal, the independent arborist the Village uses for additional tree assessments was asked to evaluate several trees that Paul Wolfe has also identified as a problem. The report is attached. The biggest concern is:

- ***Jointly Owned Tulip Poplar.*** The right of way runs directly through the middle of the Tulip Poplar at the corner of Turner and Brookville Road. The Tree Hazard Evaluation form indicates that this tree's demise was predominantly a result of construction. Jean has requested a permit from the State for its immediate removal. The Council directed the manager to coordinate with the homeowner and the builder to see if a contribution could be made by the builder for the tree damage. There is general consensus that the death of the tree was the result of the construction. The Council directed Jean to pursue financial remuneration from McCullough.

- ***Black Walnut Tree.*** Until recently, we were not aware that a Black Walnut tree at 3511 Raymond St. was a Village Tree. The tree is dropping huge walnuts onto the sidewalk and the homeowner fears that if a walnut were to fall on someone's head it could cause serious injury. He has marked off the sidewalk with caution tape to make sure no one walks under the tree. Arborist Barb Neal is not in favor of removing a tree simply because a part of it is a nuisance, but she has recommended that the tree be removed because it poses a hazard to pedestrians. Attorney Ron Bolt agreed that, because the arborist has found that the tree represents a hazard, it likely would be in the best interest of the Village to have the tree removed.

Resident Question (John Sharrow, Chestnut Street): According to John Sharrow, a maple tree at 7209 Chestnut Street looks stressed from the construction at the location. John Sharrow believes that if it falls down, it may take power lines with it. He asked that it be examined. Building Administrator Beal noted that the tree is apparently located on private property. Attorney Ron Bolt noted that, if there is a problem, the Village may be limited in what it can do because the tree is on private property, but the Village has the authority to maintain the right-of-way. Councilmember Wasson stated that he would examine the tree and speak to the homeowners.

- ***NEIGHBORHOOD WATCH.***

In response to an interest expressed in the Neighborhood Watch Program (NWP) by Councilmember Wasson, the Village Manager enclosed a brochure provided by our County Police Community Liaison Officer, Denise Gill, for the Council's review. Chief Gordon of the Chevy Chase Village Police has offered to make a presentation to the Council at the November meeting if there was interest. Jean asked how the Council would like to proceed, suggesting that it is important to assess resident interest in the NWP before any further action was taken.

Discussion:

Wasson asked if the time that Chief Gordon would use to make the presentation to the Council would be charged against the Village's monthly scheduled hours. The general consensus was that the few minutes of Chief Gordon's time would likely be provided out of courtesy. Wasson reported that the Montgomery County Police are encouraging the NWP. In the presentation at the meeting that Wasson attended, Bethesda Station Commander Hamill said that MCPC liaison officer is available to provide information

on the NWP. Wasson noted that if there was no charge by the CCV police it didn't really matter who made the presentation. Jean said she felt it was important that Chief Gordon make the presentation since he is the person who is most accessible to us. Wasson commented that if the County police are too busy to assist our municipality then they are not meeting their responsibilities and they should be encouraged to recognize the Council members and Jean.

Wasson added that the mothers in Martin's Additions are interested in safe homes; people are concerned that houses will be stripped during funeral services. We may have interest in signs and safe homes. Krajeck suggested that we find out who is interested and the Council agreed. They suggested that the List serv and the newsletter be used to assess interest. The Council also agreed to go with Jean's preference in terms of who should make the Neighborhood Watch presentation since Jean manages the daily village business. Wasson agreed to contact the County police because he would like to hear about the resolution of several major crimes in the area.

- **CONTRACTS**

Snow Shoveling- A copy of the pricing page from Mulheron's 2008 Service program is included in the packet. There are no changes in price for the service from last year except for a 3% fuel surcharge. Since the price of gas is dropping Jean suggested that she will contact Mulheron to see if he has any plans to drop the surcharge. Jean noted that this service is expensive but so necessary for the people who need it.

Discussion: Krajeck noted that Brookville Road is probably the biggest problem we face because the state plows Brookville Road and keeps re-piling the snow and ice on the sidewalk. Wasson asked that we check if they are pre-salting the sidewalk. Sottile suggested that the residents could also be asked to do the pre-salting.

Snow Plowing- The 2009 contract with Peyton Snow Removal will be ready for signature at the November meeting. It does not appear that there will be any price change but there may be a fuel surcharge.

Street Cleaning- Leaf/street cleaning have been rescheduled to the last week in October because the leaves have been slow to fall. The Village has made arrangements with the contractor, Mark Peyton that the price will be \$1,400 for one-day cleaning and twice that if it takes 2 days. This will still be about \$1,500 less than what we had been paying. The quality of the service will be comparable to prior years.

- **AMT SURVEY**- A. Morton Thomas has successfully completed the Village survey according to the schedule presented last month and a draft final survey has been received. AMT has the office computer and is installing the GIS (Geographic Information System). They asked that we review the document carefully for errors. Jean will coordinate with AMT for the scheduling of the training on the use of the GIS.
- **WEBSITE**—the website is almost finished. Calvert Design group is now hosting the site—we had a lot of problems setting it up. A few details are still hanging out such as the Census data and the map.
- **LAND USE-DOCUMENTS**- The second mailing was prepared and sent. Most residents received it on Saturday October 10th. A post card is being sent as a reminder and it will be placed on the list serv. A team continues to work on preparing the documents for the meeting on October 23rd.
- **SOCIAL EVENTS- HALLOWEEN PARTY**- Mr. Ed France has been hired to oversee the set up, operation and clean up of the Halloween parade. Pumpkin painting and candy bag preparation activities will be provided by village residents. Residents will staff a Food Collection table and hand out reflective VMA Halloween Bags to the children. Paul Wolfe of Integrated Plant Care will pick up the pumpkins for the Village and deliver the extras to Children's Hospital. There is no charge for the delivery services.
- **RESIDENT SUGGESTION**- A resident has suggested that the Village consider designing Martin's Additions tee shirts (see the enclosed letter from the Metzger family on Taylor Street). Council agreed that it would be fun to consider for next summer's picnic.
- **REPORT ON ENVIRONMENTAL COMMITTEE**- Jon Goldstein (Quincy) who is spearheading this effort, has agreed that we need to issue another call for volunteers in the newsletter and the list serv. So far only Barbara Glickman(Raymond) has volunteered for the Committee.

- **SHRED-IT EVENT**- More planning is needed on it but residents continue to ask if we are going to do it.

RESIDENT COMMENTS AND CONSIDERATIONS: Chairman Krajeck commented that this agenda item had been passed earlier in the meeting but since there were now residents present he would take comments.

Mr. Sharrow (Chestnut Street): Expressed a concern about the building specifications. Krajeck commented that the Land Use task Force is going to go through their proposals at the public meeting on October 23, 2008 and that the Council is unable to answer any questions on the Land Use Task Force's materials.

Sharrow asked if the materials had been distributed throughout the Village and the Council indicated they had been. He asked if the Task Force recommendations were going to pass without citizen input. The Council replied that the purpose of the hearing of 10/23 was to begin the citizen input process and to allow the Task Force to receive comments before finalizing any recommendation to the Council. Sharrow asked if there was going to be a referendum or any kind of vote. The Council replied that they are not at a point where such a question could be answered. Krajeck referred Sharrow to the cover letter that accompanied the LUTF documents which explained the purpose of the public hearing on 10/23 and he outlined the requirements for adoption of an ordinance. He estimated that the Council is likely approximately six months away from taking any formal action, if any action is to be taken. Krajeck urged Mr. Sharrow to come to the 10/23 hearing and offer his views during the public comment period.

CONSTRUCTION UPDATE: Alan Beal reported on the building permit action requested during the past month. There was one permit-111 Quincy Street-1 story addition and a Bond Return request being processed for 3409 Thornapple.

OLD BUSINESS

- **REVIEW AND DISCUSSION OF ARTICLE "FINLEY'S OHIO MUNICIPAL SERVICE" VOL.15 ISSUE 5-WASSON**

Wasson thanked Mr. Bolt for the article cited above, indicating that he considers it a primer on performing fiduciary duties for Council members, committee members and employees. He cited a section of the article:

"We who operate as agents on behalf of others must protect the interests of those persons above all other interests including our own self interest". Wasson further noted that the article encourages the use of a disclosure statement as a way to guard against conflicts of interest. Section 903 of our Village Charter requires Council members and employees to make such disclosure. Chapter 4 of the Ordinances deals with some of the issues that should be disclosed. Wasson noted that he was not asked to disclose any information nor asked to fill out anything when he ran for Council.

Wasson made the following **motion:**

"That we [Council] request the Election and Ethics Committee to form a working group to develop a disclosure review document and a disclosure questionnaire to be filled out and signed annually by all Council members and employees so we can better comply with Section 903 of the Village Charter and Chapter 4 of the Village Ordinances."

Catherine Gwin seconded the motion in order to initiate a discussion. Gwin asked if the Council could even discuss this if it hadn't been put on the agenda. She remarked that she was uncomfortable addressing a motion on an issue that's not even on the agenda and acting on it. Wasson asked if the motion should be tabled. Krajeck suggested that the Council gather more information. Gwin suggested that it was certainly steamrolling her and steamrolling the residents if the Council were to proceed at this point on the motion presented.

Attorney Bolt read the Section in the Charter related to this matter. The Section of the Charter refers to "bylaws" which Wasson pointed out we do not have. Bolt remarked that it may be that the reference to "bylaws" refers to the Code of Ordinances and that the term "bylaws" may have carried over from the time the Village was a special taxing district and are not a part of the code. The Village Code has a section on Public Ethics and certain disclosures are required under Section 402. This section states that before participating on behalf of the Village in any debate or determination that may have a reasonable potential of thereafter affecting a public interest any official that is subject to this chapter shall have an affirmative duty to disclose in writing to the Council ... This implements the Maryland Public Ethics Act which requires certain disclosures by public officials.

Gwin asked if this means that if something comes up, someone is obliged to disclose a potential conflict of interest at the time of the incident. This is different from saying "if you're elected to the Council there is an

abstract disclosure process.” She expressed concern that something like this can be very burdensome. Wasson expressed the opinion that disclosure should be done in advance of any Council action to keep the council “vigilant against conflicts and better able to preserve the duty of loyalty.” Krajeck asked if other municipalities sign disclosure statements such as this. Bolt replied that to his knowledge none of the municipalities he and David represent require a written disclosure of this nature in advance of employment or running for election, but he offered to investigate. Krajeck expressed the opinion that a simple disclosure statement might not be such a big deal but he would like to know if there is a practice and process to be found elsewhere right now. He suggested that Bolt do some research, check with the other jurisdictions and report back next month to see how we might want to move forward. Gwin suggested that it be put on the agenda. Wasson supported this suggestion. He also suggested that this item be tabled at this time. The motion was tabled at this time.

Wasson added that his reading of the Charter says that even before someone would run for Council they would be required to file a disclosure statement. Krajeck brought the discussion to a conclusion stating that this will be addressed under Old Business-conflict of interest for the next meeting. Bolt remarked that when a new member takes the Oath of Office he/she swears to faithfully uphold the Charter and the laws of Maryland; that oath imposes the requirement to comply with the Maryland Public Ethics Law, as set forth in the Martin’s Additions Code, which in turn imposes a continuing duty to make disclosures. Wasson is proposing a reminder document and a statement to require these disclosures even before the oath is taken.

NEW BUSINESS

- ***REPORT ON WORK SESSION BETWEEN COUNCIL/LUTF: PRESENTED BY RICHARD KRAJECK, COUNCIL LIAISON TO THE LAND USE TASK FORCE.***

The LUTF meet on 10/14 for about four hours where they discussed the recommendations and the draft proposals of the Task Force. They discussed how the presentations will be handled at the public hearing on 10/23. There was a lot of work on how to clarify the presentations. Facilitators from the Center for Conflict Resolution of Montgomery County were very helpful at this meeting and are going to help at the public hearing on 10/23. The process laid out on this proposed agenda was discussed and suggestions were made on how to make this hearing the most effective. They will help try to categorize the comments. The LUTF is hoping to have some sense of whether their work is generally supported by the residents. Written comments will be accepted after the hearing (until October 31, 2008) to allow residents to make additional comments.

- ***REFERENDUM – MOTION PRESENTED BY COUNCILMEMBER WASSON***

Wasson presented the following motion: ***“I move that the Council pass a regulation requiring 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 Addition’s 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 report to the Council whether a majority of the referendum votes were cast in favor of the proposed action being considered by the Council.”

Chairman Krajeck noted that it would be useful if Councilmember Wasson sent out such proposed motions ahead of the meeting so that other Council members would see them in advance to give them consideration. Krajeck called for second of the motion. No second was made.

Krajeck asked if Wasson wanted this to be an agenda item for the next meeting and Wasson agreed. The motion was tabled at this time. Gwin suggested that it should be brought up as new business especially since this was not on the agenda for residents to be made aware that the topic was going to be discussed.

Krajeck said it will be ***New Business*** for the next meeting. Attorney Bolt noted that the Village Charter doesn’t currently contain a referendum provision. Thus, a Charter amendment would be required to implement Wasson’s motion. The Council asked Mr. Bolt to prepare a paper on the issue of referenda and the practices of surrounding jurisdictions. Gwin asked that the pros and cons be presented.

9:00 MOTION TO ADJOURN: Wasson; Second: Everts; Vote: All in favor