

**Village of Martin's Additions
Council Meeting Minutes
September 18, 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: Jon Goldstein, Rick Michel, Steve Schmal, Ernie Leibman

CALL TO ORDER BY CHAIRMAN KRAJECK: 7:30PM

CCV POLICE REPORT: Presented by Corporal Tiedemann accompanied by Officer Lacayo, the newest member of the Village Force. The force is now up to its full complement of officers—they will have three people to cover all the shifts, including the midnight shift.

During the past month the Village police received one report of graffiti on traffic signs in Martin's Additions. Montgomery County took most of the calls overnight on September 4th and 5th when there were reports of 22 separate incidents related to vehicle break-ins. Many of the vehicles were not locked. It included areas outside of Martin's Additions; break-ins were reported on Quincy, Georgia, Taylor, Brennon, Bradley and Raymond Streets. Jean received a report that a car was stolen on Delfield, along with the purse that was inside. Credit cards were used and the car was eventually recovered behind BCC High School. The CCV Police had not received this report from the County. Hopefully the County will give us more routine patrols. Recommendations: Lock your car and leave nothing in sight!

CCV Police Chief Gordon met with a team from Montgomery County investigating the incident of a home invasion on Seven Locks road that resulted in a homicide. These break-ins have occurred in the homes of elderly residents. The pattern has been that the criminal(s) usually enter through a basement window, cut the power, the resident goes downstairs to investigate and they then get tied up.

RESIDENTS COMMENT AND CONTRIBUTIONS

Village Environmental & Energy Matters-Jon Goldstein/Gwin.

Catherine Gwin explained that she and Jon Goldstein (Quincy Street) met in July and discussed what the Village could do in the area of environment and energy conservation. One of the first things they had talked about was doing a Home Energy Audit (HEA) informational meeting for our residents. It was suggested that because the agenda is so full right now that a Home Energy Audit Information meeting be planned in the New Year. In the meantime, the first step would be to get an environmental committee established and then set up a HEA informational meeting. Jon agreed to help establish a committee that would identify ways to reduce the Village's carbon footprint. Catherine urged Council members to identify residents who might be interested in the committee and that it be put on the List Serv and in the newsletter.

APPROVAL OF MINUTES-July 10, 2008 (Discussion deferred at the request of Larry Wasson until he was present). See notes later in these minutes.

TREASURER'S REPORT

• ***Year-end reporting based on Final June 30th Financial Statements, 2008***

June 30 was the end of FY2008. As follow-up to the Treasurer's report for the July Council Meeting on the financials for the month of June, this report provides information for the full fiscal year based on the final June 30th financial statements which will be submitted to the auditors later in the fall.

There are four items to note:

1. Income revenues for the fiscal year are \$45,000 less than budgeted. We had anticipated an August payment of approximately that amount, but did not receive any income tax payment for August. Based on information provided by the income tax office for the State, the \$45,000 shortfall appears to be related to a **timing** difference in when tax returns were filed. It appears that there were more extensions filed this year than previous years. The September distribution, which includes the four-month extension returns, is going to be \$120,610. For the past two years this September distribution was \$22,469 and \$49,824 respectively. So the shortfall in FY08 will be made up in FY09.
2. Interest income is about \$12,500 under budget for the fiscal year. This is the result of decreasing interest rates over the past year. Right-of-way maintenance expenditures are over budget by \$263.
3. Office expenses are over budget by \$75. Outstanding bills are anticipated to bring the total amount over budget to close to \$500.

Overall, un-audited FY08 revenues were \$611,013 and expenditures were \$733,938, for an excess of expenditures over revenues of \$122,926. This will decrease the operating surplus from \$1,091,501 to \$968,576. This is in line with what we projected the fund balance to be at the end of June 2008, with the one modification discussed above of income tax revenues.

- **Proposal to amend the FY08 budget**

Maryland municipal tax law prohibits any municipal government from spending resources not allocated in its budget. Given the several categories of budget overrun identified above, the following motion is proposed to amend the 2008 budget:

Catherine moved to amend the FY08 budget in the amount of \$900 to provide for additional office expenses of \$600 and \$300 of right-of-way-maintenance expenditures. The amended budget will total \$807,610, reflecting the amended additional appropriations.

Action on FY 2008 Budget Amendment: Moved: Catherine Gwin; 2nd: Noell Sottile; Vote: All in favor. (Wasson Absent from vote)

- **July-August 2008 financials**

Since there was no Council meeting in August, this report covers the first two months of the new fiscal year, July and August. For the two months expenses totaled \$74,971. One expenditure notably higher than anticipated is waste collection and recycling, which is due to an increased fuel surcharge reflecting higher fuel prices. This is something that we are likely to have to take account of throughout the year. Three other expense categories to note are: 1) insurance, which reflects a one time payment at the beginning of the year; 2) our share of the property tax and insurance payment on the Village Office space as per our lease agreement, and 3) dues and subscriptions/conferences which reflects expenses for attendance by the village manager and vice chair at the Maryland Municipal League conference.

Income for July-August is \$7,781. Although this seemingly low level of income is not unexpected because of the normal timing of income tax revenues throughout the fiscal year, our level of income bears monitoring carefully this fall.

Action on Financial Report: Noell Sottile moved for approval of the July and August Financial Reports as presented; 2nd was made by Diane Everts; Vote: All in favor. (Wasson Absent from Vote)

MANAGER'S REPORT: Jean Sperling

- **Leaf bags** were purchased from Laniado Wholesale for the lowest price we were able to find. I worked with Andy Harney of Section 3. They were distributed by Verges Construction
- **Fall street cleaning.** Efforts are being made to improve fall street leaf collection—a reduced price and more service. An estimate is expected by the end of this week. The goal is to deliver additional street cleanings (3) for the same price as the two we have had in the past.
- **Website development** is coming to completion. Newsletters, agenda and minutes have been uploaded. Noell has been helping with the written descriptions and the domain name was recently re-registered—***martinsadditions.org***. Calvert Design Group will be hosting the site.

- **Village Survey** final products include the drawings and GIS which will be completed the week of October 3rd and delivered October 6th for our review. Training on the use of the GIS data base will begin in Mid-October. There is an email from AMT included in the packet explaining the final schedule for the completion of this project.
- **Land Use Handbook** was distributed with a cover letter to all residents of Martin's Additions as the Council directed. Residents asked that the meeting date be rescheduled because of the Vice-presidential debate. The Committee members and the Council concurred, and Jakubiak and Studio 27 were able to adjust their schedule.
- **New trash can and bench order** for the market area is in process.
- **Arrangements have been made for the public hearing in October (final date yet to be confirmed)** in Chevy Chase Village Hall and Beta Recording Inc. will be providing the recording and transcript services. The services cost about \$250 per hour. The meeting is estimated to go for 3 hours. Public notice has not yet been provided, to allow for agreement on a final date for the meeting.
- **Unemployment compensation audit** was completed and corrections were made. An additional contribution to the fund of about \$65 was required to correct the oversight of Jana Coe as a covered employee. Jana was acting Village Manager during a transition period in 2006.
- **Trees.** A large tree limb came down at 3500 Raymond Street and blocked the road – fortunately the police called the County and they cleaned it up for us. A state permit was obtained for the removal of the rest of the tree and it has since been taken down. Additional new-tree watering was performed by Integrated Plant Care during August. Three trees that died have been removed. We will soon begin fall plantings and scheduling of winter pruning work.
- **State Highway Revenue Report was filed as required.** Reports were made to the State Highway Administration as required on the use of highway user revenues in FY 2008 and what we planned to spend in FY 2009. The Maryland State Senate Budget and Taxation Committee and the House Appropriations Committee are investigating how counties and municipalities spend their Highway User Revenues. Dan Baden helped with the report.
- **Municipal Energy Enterprises (MEE)** is working with Kensington and preparing a feasibility study for the cost of purchasing, replacing and owning the operation of their street light program from Pepco. MEE representatives met with the manager. Having talked to the surrounding jurisdictions it would appear that the wise action is to wait and see how this project plays out for Kensington. The detailed materials can be provided and we can have representatives from MEE make a presentation if the Council wishes.
- There was a good response to the **Shred it** event proposal about 25 calls—several follow up calls. The main issue right now would be working it into the schedule. It is a service that the Village would pay for, as do several other towns, as a service for their residents. Richard expressed an interest in partnering with other jurisdictions.

CONSTRUCTION UPDATE: Alan Beal

- **Subdivision Potential.** At the July Council meeting, Alan Beal, the Village Building Administrator, was directed to identify potential lot subdivisions within Martin's Additions to assist the Council in deciding if it should consider adopting a Subdivision Review Policy.
 Alan's analysis divided possibilities into two categories—(1) lots that have been recorded that had no structures on them, and (2) lots that may have some *potential* for subdivision—some obvious, some not so obvious, where coordination between property owners would be needed for such re-configuration to occur. A lot is sub-dividable based on its square footage and its frontage. In an R-60 zone, such as we have in Martin's Additions, the minimum requirement is that the lot must be at least 6,000 sq ft and have at least 60 feet of street frontage. In response to a question about pipe steam lots, Alan explained that Maryland-National Capital Park and Planning

Commission (M-NCPPC) will consider them but generally won't shoehorn them in. We already have at least one such configuration.

There are a number of large lots that present a possible scenario for multiple lot subdivision, but there is no road access; M-NCPPC would have to be convinced to provide access. Alan explained that possibilities for new buildings do exist where two houses cover three lots—houses may straddle lot lines—but this is not a likely scenario.

Findings: In sum, Alan found three empty lots where a house could be built now, one that could potentially be split and seven properties that would take a lot of effort to subdivide for a total of 11 potential lots.

Discussion: Richard asked the attorney, Ron Bolt to clarify and expand on the question before the Council regarding whether the Village would want to establish a subdivision policy to allow for the expeditious review of subdivision requests.

Mr. Bolt explained that a municipality can submit a recommendation of approval or denial to the MC Planning Board related to a proposed resubdivision of property, but that there are procedural requirements that have to be followed in order for the municipality to do this; for example, the Village would have to hold a public hearing and be prepared to submit its recommendation within 45 days from receipt of the notice of a proposed resubdivision. Having a policy in place before the Village were to face such a situation could facilitate meeting the procedural requirements and also help guide the decision-making related to taking a position. Developing a policy to govern what criteria the Council would consider in reviewing a subdivision proposal could make the whole process less subject to arbitrary decision-making. Adopting such a policy doesn't mean the Village would have to make a recommendation on a particular resubdivision, but it would allow the Council to be more prepared to take such action if it chose. The Village can't *defeat* a resubdivision proposal by recommending denial, but once a municipality recommends denial of a resubdivision, the MC Planning Board is required to approve the subdivision by a 2/3rds majority vote, also known as a super majority.

The Council asked for a reiteration of how many lots might fall within the consideration for subdivision. Alan replied that at its broadest, there are 11 lots that might be considered; 3 of the 11 can build a house by right (vacant lots), leaving 8 lots, with 5 of those being unlikely. It would seem then that a subdivision policy would apply for only three possible lots. The sentiment was expressed that it hardly seemed worth the work to develop such a subdivision policy when so few lots that would be involved.

Councilmember Wasson added that there is also an issue of land rights. Mr. Wasson expressed the opinion that if the Council is going to do anything with land rights the Council should do it with ordinances not policies and it should be notorious and everyone should know it so everyone has time to speak on it. When asked for a clarification on his position, Mr. Wasson agreed with the discussion that no policy needs to be developed but for different reasons.

The other Council members decided that the development of a policy would probably be of little use since there are not enough instances that would allow for subdivision. Richard thanked Alan for all his work.

- **Permits Granted/In Process**

- **7223 Chestnut Street** : Dumpster approved for interior renovation
- **3529 Raymond street**: Fence permit (house on corner
- **3516 Turner Lane**-House demolition and new construction
- **3513 Bradley Lane** - Demolition and construction. A meeting was held on Sept. 15 with the owner, builder and interested residents about the project—it went very well
- Request for **return of bond to 3503 Thornapple Street**—approved.
- Request for **return of bond to 3501 Raymond Street**—on hold, utility cut held up by the need for tree removal which is now complete.
- Request for **return of bond to 7215 Delfield Street**—to be determined. Street has received some damage and will be reviewed this week.

- **Fence at Brookville & Raymond**

The Village has received numerous calls about the fence along Brookville Road at the corner of Raymond Street. The Village doesn't regulate fence height—the County does—the requirement is within 15 feet of the corner—the shaded arc area on the illustration handed out —any fence, wall or hedge can't be any taller than 3 feet. The column that starts the fence is 18 feet from the curb. It complies with the County requirement. The fence can be as tall as 6½ beyond that arc. Jean suggested that the LUTF may want to consider regulations for the Village with regard to fences and corners.

APPROVAL OF MINUTES-July 10, 2008 (Discussion deferred at the request of Larry Wasson until he was present).

Richard mentioned that the minutes went out for everyone's review and since Larry had wanted to defer the discussion of the minutes until he was present Richard wondered if there were corrections that weren't sent in.

Larry said he had a correction. He recalled at the last meeting during the discussion of whether the Village needed a policy regarding the subdivision of lots, the attorney commented on that issue but Larry found that there was nothing in the minutes.

Larry expressed concern that a policy has the same effect as an ordinance and none of his comments nor the attorney's are in the minutes. It was noted that both have been included and the discussion is moot as the Council has decided to take no action on a policy or ordinance regarding the subdivision of lots.

Larry said that whenever we get advice from the Village attorney, it should be quoted in the minutes as it costs us a lot of money to get that advice. Further, he said that, upon reflection, he felt that the executive session held on July 10, 2008 should not have been a closed session. It was noted that the session was closed so that the Council could obtain legal advice from counsel about laws that apply to the Village's operations and the actions of Council members. 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. He further noted that minutes of the closed session had not yet been done. It was noted that minutes had been included in the Village's monthly Council Meeting Minutes. Larry felt the Open Meetings Act requires more than that. More detailed minutes will be completed and, at the recommendation of legal counsel, the minutes of the closed session will be placed in a closed file. The Council will vote on whether to approve the minutes at the next monthly meeting.

Larry continued that he thought the executive session held on July 10, 2008 violated the Open Meetings Act because nothing was discussed at the closed session that Larry thought could be considered as legal advice. He requested the Council to send a Written Statement to the Open Meetings Compliance Board according to Section 10-508(d)(3) of the Act. It was noted that Section 10-508 requires the preparation of a Written Statement of the reason for closing the meeting. The Written Statement had been prepared by Jean at the time the vote was taken for the closed session. Legal counsel recited the process for objecting to the closing of a session and the submission of the Written Statement according to Section 10-508(d)(3) when a person objects. It was noted that no objection was made during the vote to close the session. Mr. Bolt stated that, without a transmittal letter providing an explanation of the objection, it may not be clear to the OMCB why the Written Statement is being submitted because it does not reflect that an objection was raised. After a lengthy discussion, and the continued insistence by Larry that the Written Statement be sent to the OMCB, Richard asked for a motion to send the Written Statement to the OMCB. No motion was made. Richard suggested that Larry could send a letter explaining his objection to the OMCB if he wished to do so.

Richard called for a motion to approve the minutes.

Motion: Catherine Gwin moved that we approve the minutes as presented

2nd: Diane Everts

Discussion: Larry Wasson objected, stating that he found the minutes to be incomplete as they do not include the minutes of the closed meeting.

Vote: Ayes: Richard Krajeck, Diane Everts, Catherine Gwin, Noell Sottile. Nay: Larry Wasson

DISCUSSION OF OPEN MEETING'S ACT

Richard asked Larry if this discussion has sufficiently addressed the discussion of the Open Meetings Act that is on the agenda under Old Business or was their further discussion. Larry said there was another issue but he didn't have the document so he would bring it up at the next meeting.

REVIEW OF LAND USE TASK FORCE DOCUMENT AND UPDATE.

The Handbook was sent to all residents. The originally scheduled public hearing for October 2nd had to be changed because of the conflict with the Vice Presidential debate. Ahead of the public meeting, the LUTF proposals will be sent to all residents. At the public meeting, those proposals will be reviewed and there will be an opportunity for residents to ask questions and to give public comments. Jakubiak & Associates have been asked to prepare a document that compares the proposals being made by the LUTF with current Montgomery County codes and the recently adopted codes by Chevy Chase Village and the Town of Chevy Chase.

It was noted that the letter be clear about the status of these proposals—that they are not a final proposal and that the Council has not accepted any recommendations to date. There was also discussion on how to improve turnout at this important meeting.

NEW BUSINESS

Report from Meeting of 9/15 with Commander of District 2.

Council member Wasson reported on his attendance at a meeting on September 15th where Police Commander Russ Hammill spoke about criminal or suspected criminal activity and how it needs to be reported as soon as possible. The police need information to look for patterns and to increase chances of solving/stopping crime. He urged residents to call 911 if suspects are around or activity is happening or just happened. If an event has already occurred it should be reported to 301-279-8000. Commander Hammill seemed frustrated that some people feel its too much bother to report suspected or minor incidents, e.g., that someone rifled through their car. Criminals grow bolder if their activity is ignored; their activity tends to increase and get worse.

Larry suggested that residents keep disposable cameras near their front door and in their car. Taking a picture with a flash is a great deterrent against road rage and people hanging around the neighborhood. It doesn't really matter whether you got the picture; when that flash goes off people seem to lose total interest in whatever they were intending to do. Also pictures of the other person, car and license plate are all a big help in an accident

Motion to Adjourn: Richard Krajeck

2nd:Noell Sottile

Vote: ALL