

Present: Council President Downey; President Pro-Tem Domzal; Members: Mooney, Pfeifer, Schmitt, Stearn and Woodrow

Absent: None

Also Present: Village Manager, Murphy  
Public Services Director, Spallasso  
Assistant to the Manager, Pasieka  
Village Attorney, Ryan  
Director of Public Safety, Woodard

President Downey called the meeting to order at 7:30 p.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road.

**ADDITIONS TO AGENDA/APPROVE AGENDA**

Motion by Pfeifer, seconded by Mooney, to approve the agenda as published.

Motion passed unanimously.

**PUBLIC COMMENTS – CONSENT AGENDA AND ITEMS NOT ON THE BUSINESS AGENDA**

Rick Gladstone, resident of Pontiac and contractor who has done work in Beverly Hills, related a recent incident whereby he received a speeding ticket in the Village of Beverly Hills. He acknowledged his mistake but questioned the decision of the officer issuing the ticket. Gladstone stated that he is here today because he feels that his reputation has been impugned by references made to him by the officer in the process of being issued a ticket. Gladstone commented on his support of police officers and discussed his views on community and national issues.

**PUBLIC HEARING TO CONSIDER REPROGRAMMING COMMUNITY DEVELOPMENT BLOCK GRANT FUNDS FOR PROGRAM YEARS 2000 AND 2001**

Pfeifer stated that Council traditionally allocates a portion of its annual Community Development Block Grant (CDBG) funds to the Birmingham Area Seniors Coordinating Council (BASCC) towards its minor home repair program, home chore service, dispatcher, and equipment for the BASCC senior center. U.S. Department of Housing and Urban Development grant funds allocated to municipalities each year are administered by the Oakland County Community Development Block Grant program office. The Coordinator for BASCC is requesting a reprogramming of CDBG funds for Program Years 2000 and 2001, which would change the specific project description to allow for reimbursement of the redecorating work that BASCC is planning for its senior center.

Pfeifer related that the activity description on the Program Year 2000 application was “carpeting”, and was “chairs and other equipment for senior center” on the 2001 application. If the reprogramming is approved by Council, both activity descriptions will read, “Equipment including, but not limited to tables, seating and light fixtures”. This will allow BASCC to submit requests for reimbursement for expenses related to the redecorating through the CDBG program.

The request to reprogram is \$3,047 from year 2000 and \$3,815.57 from 2001. Pfeifer affirmed that the public hearing on reprogramming of CDBG funds is a clarification of how those allocated funds will be used. The procedures for reprogramming CDBG funds are outlined by the County. Notice of Public Hearing has been published in the Eccentric, the Village's newspaper of record.

Downey opened the public hearing on reprogramming of Community Development Block Grant Funds for Program Years 2000 and 2001 at 7:43 p.m. No one wished to be heard; therefore, the public hearing was closed at 7:44 p.m.

### **CONSENT AGENDA**

Motion by Stearn, seconded by Pfeifer, to approve the Consent Agenda as follows:

- a. Review and consider approval of minutes of a regular Council meeting held on September 3, 2002.
- b. Review and file bills recapped as of Monday, September 9, 2002.

Motion passed (7 – 0).

### **BUSINESS AGENDA**

#### **PRESENTATION BY PATRICIA GREENING – HALLOWEEN HOOT**

Patricia Greening was present to discuss the use of Beverly Park for the Halloween Hoot on Sunday, October 27, 2002 and to request waiver of pavilion permit fee and allocation of \$3,000 to help cover the cost of the event.

Greening stated that she and Jennifer Cook are planning the 7<sup>th</sup> Annual Halloween Hoot. The day will begin at 10 a.m. in Beverly Park with the topping and gutting of pumpkins. Helping hands are always needed to help with this task as well as decorating the pavilion and preparing Hoot soup. Children arrive at noon to carve pumpkins and then ride the hay wagon supplied by Chuck Comeau and staff and place pumpkins along the trail in the woods. About 16 homeowner organizations will decorate kiosks along the trail for distributing candy. The children return in costume around 5:00 to trick or treat along the trail. There will be cider, donuts, and story tellers in the pavilion area.

Greening requested that Council allocate the \$3,000 budgeted this year to conduct this community event. Other sponsors of the event are the Lions Club, the Village Woman's Club, and Maryann McBroom. Greening estimate the total cost of the event at \$5,600.

Motion by Woodrow, seconded by Pfeifer.

Resolved to waive the pavilion permit fee for the Halloween Hoot on Sunday, October 27, 2002 and to allocate \$3,000 budgeted for the 2002 Halloween Hoot.

Council members voiced their wholehearted support of the Halloween Hoot and thanked Greening for doing a great job of organizing the event.

Mooney commented that the Halloween Hoot has been one the most successful community events in the Village in recent years. She asked Council to consider budgeting an amount to

cover the entire Halloween Hoot in next year's budget rather than expecting Mrs. Greening to continue to solicit funds to defray the cost of the event.

Rick Gladstone spoke in support of Beverly Hills' budgeting money for the Halloween Hoot.

Roll Call Vote:

Motion passed (7 – 0).

### **BIRMINGHAM AREA CABLE BOARD ANNUAL REPORT PRESENTATION**

Council has received copies of the Birmingham Area Cable Board Annual Report for Fiscal Year 2001-2002 prepared by Executive Director Kathryn Hagaman. Pfeifer commented that the report is a good means of communicating to residents the function of the Cable Board. She introduced Beverly Hills resident and Cable Board chairperson Bob Borgon.

Bob Borgon thanked Council for the opportunity to present the Birmingham Area Cable Board Annual Report for 2001-2002. He remarked that Council has appointed residents of Beverly Hills to serve on the Cable Board who have shown concern for the community and who have contributed in a positive manner. All four Beverly Hills Cable Board representatives currently hold responsible positions. Ray Lacroix is the Board's Secretary, Jim Delaney is Treasurer, and Carol Woodard serves as the Board's representative to the Bloomfield Community Television (BCTV) Program Development Committee. BCTV provides programming for Channels 15 and 18. Dorothy Pfeifer is the Council liaison to the Cable Board and alternate voting member.

Borgon outlined Cable Board highlights in FY 2001-2002. Major Comcast developments over the past year including billing conversions, a switch in its Internet provider, and a substantial number of customer service issues that led to massive subscriber complaints. While the Cable Board has no regulatory authority over Internet issues, it worked with subscribers and Comcast to resolve issues. He noted that the Board passed a resolution to support local regulation of Internet service and forwarded a copy to Lansing.

Borgon commented on the record number of customer service issues addressed by the Cable Board last year. Comcast issued more than \$150,000 worth of credits to subscribers in all four consortium communities. For the first time in the Board's history, Comcast was held in default of the franchise agreement, and liquidated damages were assessed. Due to anticipated legal proceedings and the fact that a monetary settlement would go to the Board and not the residents, the Cable Board approved a settlement agreement with Comcast that provided subscribers with free pay-per-view movie coupons and other promotional offers.

Projects completed over the last fiscal year include developing a Cable Board web site to provide ongoing information to cable subscribers. Meetings were switched from the Baldwin Library to the Beverly Hills Council chambers, allowing live broadcast of the meetings. The mobile production van was renovated. The van is used to tape community events for broadcast on Channel 15. The Board's financial statements were improved. A franchise fee audit was authorized to be completed in the next fiscal year. The Board continues its grant to the Birmingham Public Schools to improve its audio and video technology. The Cable Board is in its second year of a contract with Bloomfield Community Television. High quality public access

programs have been added this year on Channel 18 and weekend programming has been added to Channel 15.

Questions and comments from Council members were addressed. Domzal suggested that the authority of the Cable Board should extend further than to the one segment of service provided by fiber optic cables. He understands that this is a legislative issue. Domzal also urged the Board to maintain its objectivity and to hold the cable provider responsible for poor service.

In response to questions from Rick Gladstone, Borgon elaborated on service problems experienced with Comcast over the last fiscal year.

Pfeifer is proud of the representation of the Village on the Cable Board. She mentioned that most of the problems experienced with Comcast have involved customer service. She assured the public that the Cable Board steps up to the plate and addresses issues that arise with the cable provider. Pfeifer thanked Borgon for his presentation.

**REVIEW AND CONSIDER SUBCOMMITTEE’S RECOMMENDATION TO FILL VACANCY ON PATHWAYS COMMITTEE**

Domzal stated that the Village was accepting applications through last week from residents interested in serving on the Pathways Committee. No applicants have come forward.

Domzal reported that the Pathways Committee met this evening and arrived at conclusions that will be submitted as its final recommendation to Council. Written recommendations will be prepared and distributed to Council for consideration at a study session scheduled for Monday, September 23.

Domzal remarked that the Committee’s work is complete unless there are new items that Council refers back to them. It may not serve a purpose to keep the application process open. He recommends that the current five member committee remain in place until March.

Motion by Pfeifer, seconded by Mooney, that the Pathways Committee continue with the current five members.

Roll Call Vote:

- Mooney - yes
- Pfeifer - yes
- Schmitt - yes
- Stearn - no
- Woodrow - yes
- Domzal - yes
- Downey - yes

Motion passed (6 - 1).

**REVIEW AND CONSIDER REPROGRAMMING PROGRAM YEARS 2000 AND 2001 CDBG FUNDS**

A public hearing was held to consider reprogramming Community Development Block Grant Funds for Program Years 2000 and 2001. A notice of public hearing was published in the newspaper of record in the Village. There were no comments from the public.

Motion by Pfeifer, seconded by Stearn.

Resolved that the Village of Beverly Hills Council change activity descriptions to read “Equipment including but not limited to tables, seating, and light fixtures” to reprogram Community Development Block Grant Funds of \$3,047 from Program Year 2000 and \$3,814.57 from Program Year 2001.

Sharon Tischler of 21415 Virmar Court asked if this money has been spent. She was informed that some of the money has been spent on carpeting. The project descriptions on the CDBG applications for Program Years 2000 and 2001 were read in answer to her inquiry.

Roll Call Vote:

Motion passed (7 – 0).

**FIRST READING OF AN ORDINANCE AMENDING CHAPTER 43 REGULATION OF ALARM SYSTEMS OF THE MUNICIPAL CODE**

Mooney conducted the first reading of an Ordinance to Amend the Village of Beverly Hills Municipal Code, Chapter 43, Regulation of Alarm Systems. The purpose of this Ordinance is to establish the registration of alarm systems within the Village; to encourage alarm users to properly use and maintain the operational effectiveness of an alarm system; to provide for the identification and repair of defective alarm systems; to establish a fee schedule in order to defray the costs of responding to false alarms; to provide for a penalty for the violation of this Ordinance; and to thereby reduce or eliminate false alarms, which might otherwise divert Public Safety Officers from attending to other responsibilities.

This Ordinance will require residents who have alarm systems to register them with the Public Safety Department. The information is kept confidential. Residents are allowed up to three false alarms per year, after which time they will incur a fee. The fee shall be paid in order to defray a portion of the cost of responding to false alarms.

An alarm system signaling more than five false alarms within a calendar year is presumed defective. The ordinance addresses the testing of an alarm system and the failure to repair or replace a defective alarm.

Council will consider adoption of the Ordinance following a second reading. The Ordinance would take effect 20 days after the final publication by the Village of Beverly Hills. Copies of the proposed Ordinance are available at the Village offices for public inspection.

Council members commented on the proposed ordinance to regulate alarm systems. Village legal counsel was asked to review Section 43.04 pertaining to the prohibition of automatic voice dialer alarms and report to Council on the legality of that section.

In response to an inquiry, Murphy answered that administration will present a fee schedule to Council for consideration following passage of the Ordinance.

It was suggested that permitting three false alarms before issuing a fine may be too lenient. A straw poll of Council was taken, which resulted in a 5-2 vote to allow three false alarms. Section 43.05 indicates that an alarm user must adjust the alarm system so that any audible signal will not sound for longer than 15 minutes. Questions on this section were addressed by Director Woodard. When an alarm resets, it rearms the system to activate when there is another signal. If an alarm shuts off but reactivates continually, the Public Safety Department would arrive at the site and disconnect the alarm pursuant to another section of the Ordinance.

In response to an inquiry, audience member Rick Gladstone was advised that there is an appeal process included in the ordinance.

Sharon Tischler of 21415 Virmar Court questioned whether the Ordinance applies to businesses in the Village. She was informed that the alarm applies to commercial as well as residential property. Tischler applauds Council for considering this type of ordinance. She commented that property owners pay for police and fire protection. Resources could be better spent than responding to a false alarm.

#### **FIRST READING OF AN ORDINANCE AMENDING CHAPTER 1 SECTION 1.06 PENALTIES OF THE MUNICIPAL CODE**

Before Council for consideration is an Ordinance to amend the Village of Beverly Hills Municipal Code, Chapter 1, Section 1.06 Penalties, by adding Section 1.06.1, Definitions and Enforcement Procedures for Municipal Civil Infractions.

Mooney outlined the proposed ordinance relative to municipal civil infractions. A “municipal civil infraction” means a violation of a provision of a Village ordinance for which the remedy and/or penalty is prescribed to be a civil fine, or other sanction other than a criminal penalty. An authorized official may issue a citation to a person if, based upon investigation of a complaint by someone who allegedly witnessed a person violate an Ordinance, a violation of which is a municipal civil infraction, the official has reasonable cause to believe that the person is responsible for a municipal civil infraction and if the attorney for the Village approves in writing the issuance of the citation.

The Penalty section states that any person or persons violating any of the provisions of this Ordinance shall, upon an admission or finding of responsibility thereof, be subject to a fine not exceeding \$500, any remedial action ordered by the court, together with the cost of the prosecution.

Schmitt supports this ordinance on the basis that it allows someone to be fined for violating the alarm ordinance without criminal sanctions. With a civil infraction, the defendant is not charged with a crime, so there is no right to a jury trial. It changes the burden of proof from burden beyond a reasonable doubt to being found responsible by a preponderance of the evidence. There is no right to self incrimination, so, in select cases, the Village could call the defendant as a

witness. If they are found "responsible" they will be assessed a fine by the court, but not face a jail term for a criminal misdemeanor.

Domzal suggested that the penalty section indicate a number to be established by the Village rather than state a specific fine that would require amending over time.

Domzal suggested a change in 3 (a) under Section 1 to replace 'shall' to 'may' to state that an authorized official who witnessed a person violate an Ordinance, the violation of which is a municipal civil infraction, *may* prepare and subscribe, as soon as possible and as completely as possible, an original and three copies of a citation.

Director Woodard explained that Section 1.3 proscribes the circumstances under which a violation is going to be issued. At the time this section is applied, a decision has already been made to issue a violation. Any discretion occurs under Section 1.1, which says that a municipal civil infraction action *may* be commenced..... etc.

Woodrow commented that the proposed ordinance represents enforcement procedures for any civil infraction, not just the alarm ordinance. It was noted that there are no ordinance violations at present deemed to be civil infractions.

Pfeifer had questions on Section 2, Ordinance Enforcement Officer. Murphy stated that the intent is for Council to name someone to have the authority to enforce the Ordinance. The enforcement officer designation was left open in the event that there is a decision to name other violations as civil infractions rather than misdemeanors. This section will then pertain to that civil infraction as well. In this particular case, the Ordinance Enforcement Officer would be a Public Safety Official.

Stearn expressed the view that the proposed Ordinance is a good idea as it pertains to false alarms. However, the Ordinance as written could pertain to any civil infraction. Section 1.3 (b) allows the Village to issue a citation if, based upon investigation, the official has reasonable cause to believe that a person is responsible, which does not even require someone to witness a violation to an ordinance. Stearn questions whether an Ordinance Enforcement Officer appointed by Council will have the training to issue citations in the Village. Stearn stated that he would be more comfortable if the Ordinance was limited to false alarms.

Murphy responded that the power rests with Council to determine what is a civil infraction. The only item that is considered to be a civil infraction is the proposed false alarm ordinance.

Stearn questioned whether this ordinance is the proper mechanism to achieve what we hope to accomplish. He suggested that it be a part of the false alarm ordinance.

Domzal commented that he senses a willingness on this Council to become more active in terms of imposing regulations. He has observed that many communities in the area have municipal infraction ordinances. Domzal views this ordinance as an efficient mechanism to enforce ordinances. He does not view this ordinance as impinging on civil liberties.

Schmitt concurred that many ordinances should not be raised to the level of a criminal misdemeanor infraction.

Rick Gladstone commended Council for giving people in the audience an opportunity to speak on issues before a vote is taken. He expressed the view that anything that would reduce a minor incident from a criminal offence to a civil infraction would be a plus. He encouraged Council to keep fines within reason and avoid over-regulation. Gladstone spoke about officers using discretion.

Sharon Tischler of 21415 Virmar Court questioned the mechanism for collection if someone is issued a ticket based upon a civil infraction. Schmitt responded that the proposed ordinance regulating false alarms states that failure to pay after receipt of a bill from the Village Treasurer shall cause a special assessment procedure to be initiated against the property in question.

Woodard stated that the new alarm ordinance will be supported by a fee schedule. That fee will be billed by the Village Treasurer. If the fee is not paid, it will appear on the tax bill. If a civil infraction is written on the basis of a violation of the alarm ordinance or any other civil infraction, the person's option is to pay the fine or make arrangements for a court hearing.

#### **PUBLIC COMMENTS**

There were no comments from the public.

#### **REPORTS**

##### **MANAGER**

A joint meeting of the Village Council and Parks and Recreation Board is scheduled for Thursday, September 19 at the Village offices at 7:30 p.m. The next Council work session will be held on Monday, September 23 at 6:00 p.m. in the Public Safety building.

The Public Safety Department is hosting a community-wide open house on Saturday, October 12, from 11:00 a.m. to 2:00 p.m.

Murphy reported that bids were opened for the Coryell Estates/Hummel Court project yesterday. Bids came in under estimates. Approval of a contract may be an agenda item for Council's joint meeting with the Parks and Recreation Board on Thursday or at its Monday, September 23 meeting. Fifteen bids were received.

In response to an inquiry from Domzal on Village finances, Murphy commented on the status of State shared revenue. He indicated that the Village is on target with respect to revenue and expenditures. Current financial statements will be distributed to Council shortly.

Downey questioned the status of the 14 Mile Road reconstruction. Spallasso reported that the contractor has been authorized to work around the clock to take advantage of good weather, and work is progressing. The road may reopen on November 15 as projected.

## **COUNCIL**

Schmitt reported on the September 11 meeting of the Planning Board. It was decided that the review and update of the Village Master Plan will not be completed by the end of this year. The timetable for the 14 Mile Road Corridor Implementation Plan was revisited with the public hearing deferred until November. The Planning Board discussed holding a joint meeting with Council and the public employing the services of a facilitator to arrive at a consensus on goals for the redevelopment of the Southfield Road corridor.

Schmitt expressed appreciation to the Cable Board for its hard work. He indicated displeasure with Comcast for implementing a 9.5% rate increase and for proposing to change channel numbers. He remarked that a subscriber without a cable box cannot receive the two free movies offered by Comcast as part of the settlement agreement with the Cable Board.

Schmitt commented that he looks forward to seeing Bob Bliven's historical articles in the Villager Newsletter. Schmitt thanked him for his entertaining and informative comments.

Mooney reiterated that the Public Safety Department will hold an Open House on October 12 from 11:00 a.m. until 2:00 p.m. She outlined the events that will take place and encouraged parents to bring their children to this function.

Mooney commented that upcoming sled hill improvements will be a topic of discussion at the Joint Parks and Recreation Board meeting with Council on Thursday, September 19.

Domzal questioned the status of reimbursement of \$3.5 million by the Southeastern Oakland County Resource Recovery Authority to members of the Authority in lieu of building a golf course. Murphy responded that a meeting is scheduled for this Friday afternoon at which time there will be a review of the proposed refund calculations. The refund to Beverly Hills could be approximately \$62,000.

Domzal understands that previous discussions with the Birmingham School District to work out a voluntary settlement of outstanding litigation regarding cell towers was not successful. He asked Murphy to look for opportunities to talk with joint plaintiffs in this matter. Domzal feels that the public purpose is not being served when villages and townships spend money in a lawsuit against their school district.

Woodrow reiterated that the Parks and Recreation Board will meet jointly with Council this Thursday. The Halloween Hoot will be held on Sunday, October 27 in Beverly Park. He encouraged residents to come out for a great time.

Pfeifer reported on a Birmingham Area Seniors Coordinating Council Board meeting held today. BASCC anticipates receiving the funds allocated in our budget for their organization.

Pfeifer related that she received valuable information by attending the recent Michigan Municipal League convention. Copies of her report have been distributed to Council. She attended three seminars that will be beneficial to Council. Next year's convention will take place in Detroit, which may make it more convenient for Council members to attend.

Pfeifer attended a class entitled “Does Your Charter Need Revising?”. As a result of information received at this session, she has submitted recommendations to Council on how to proceed with a program to update the Village Charter. This will be an agenda item for the Council study session on Monday, September 23.

Stearn thanked Murphy for providing him with information he requested on a number of topics after the last Council meeting. Stearn informed Council that the Michigan Court of Appeals will be hearing arguments regarding the cell tower issue on October 10, 2002 at 11:30 a.m.

Stearn thanked Stan Pasieka for a great issue of the Villager newsletter. Stearn commended Public Safety Officers for enforcing the speed limit.

Stearn reviewed that, a couple of months ago, he proposed that Council send a letter or statement to the City of Detroit expressing its displeasure with their water rate increases. Last week a Macomb County judge ordered the City of Detroit to explain in detail its water rates to the City of Warren. This was done because the City of Warren sued the City of Detroit and demanded the information. Stearn believes that the Village missed an opportunity to express its dissatisfaction of Detroit’s water rate increase.

Spallasso stated that Village administration expressed its dissatisfaction with the water rate increase in front of the Detroit City Council.

Downey invited Council members to join him and Brian Murphy in cooking pancakes for the Beverly Hills Public Safety Officers at the Open House at 7:30 a.m. on Saturday, October 12.

Pathways will be a topic of discussion on the October 7 Council meeting agenda. Downey thanked staff for the current issue of the Villager newsletter.

The Lions Club recently had signs installed noting that they have adopted Lahser Road. They will be picking up debris along that road three times a year. Downey asked that drivers watch out for runners at dawn and dusk, and he urged runners to make themselves clearly seen.

Motion by Mooney, seconded by Schmitt, to adjourn the meeting at 9:22 p.m.

Motion passed (7 – 0).

**Doyle Downey**  
**Council President**

**Ellen E. Marshall**  
**Village Clerk**

**Susan Bernard**  
**Recording Secretary**