

Present: Council President Downey; Members: Domzal, McCleary, Mooney, Pfeifer and Schmitt

Absent: Woodrow

Also Present: Village Manager, Murphy
Public Services Director, Spallasso
Assistant to the Manager, Pasieka
Director of Public Safety, Woodard
Building Official, Byrwa

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

Motion carried.

PUBLIC HEARING – 2003 SPECIAL ASSESSMENT ROLL FOR SOUTHFIELD ROAD BUSINESS ASSESSMENT DISTRICT

The Village maintains the public right-of-way along the Southfield Road business district and assesses the cost of landscaping maintenance and water for the sprinkling system to the property owners on the west side of Southfield Road. A public hearing was declared open at 7:31 p.m. on the costs assessed to business owners for this maintenance. No one wished to be heard; therefore, the public hearing was closed at 7:32 p.m.

PUBLIC COMMENTS – CONSENT AGENDA AND ITEMS NOT ON BUSINESS AGENDA

Robert Walsh of 20655 Smallwood Court stated that he attended the last Council meeting and commented on one of the four proposed Charter amendments that will be on the ballot of the March 8 Election. He is opposed to the fourth ballot proposal dealing with Chapter 12 of the Village Charter. Walsh referred to an article in the February 15, 2004 Observer & Eccentric newspaper that quotes his objections to the proposed Charter amendment along with the Village Manager's disagreement with his view.

Walsh related why he believes that the Village's form of government does not ensure that administration will keep the Council in check and that Council will watch administration. He questioned whether there will be Council review or competitively bid contracts on items purchased that are under the spending limit designated by ordinance. Walsh believes that a method other than amending the Charter could be devised to adjust the spending level upward to compensate for inflation. He does not relish the idea of losing public oversight of items that come before this Council.

Downey asked Murphy to outline the Village's procurement process. Murphy indicated that all contracts must go through administration under the Council-Manager form of government, and contracts must be reviewed and approved by Council. With regard to spending oversight, Council members receive a copy of the Village's check register every two weeks. This is not

required by the Charter, ordinance, or resolution of Council. Council is only required to receive a quarterly budget statement. This practice will continue whether the Chapter 12 amendments pass or fail.

Murphy related that Council had discussed amending the Charter to provide an inflationary mechanism. A concern was raised by Council that there may be a point in time when it wants more oversight of administration and would not have the mechanism to lower the limit for spending without Council approval if it is set by Charter. In response to an inquiry, the manager offered suggestions on how an ordinance could be developed by Council using different spending limits and authorities.

Kim Holland, member of the Strategic Planning Development Committee and head of the research initiative, commented that there have been recent questions raised regarding the process and timetable for collection of resident opinions for the strategic plan development process. She updated Council and the public on the approach being taken to collect input.

The first step is comprised of focus groups, three of which were conducted in January. Two additional focus group meetings scheduled for February 26 will be comprised of resident volunteers who do not fulfill any position in the Village. The primary purpose of the focus groups is to receive residents' opinions on what they feel is important in the Village and their priorities. Focus group findings will be reviewed with the SPDC at its meeting on the second Tuesday in March.

Information from the focus groups will be compiled and used to develop a mail survey that will be sent to every household in the Village. Issues will be listed and citizens will tell us where their priorities lie. It is anticipated that the survey will be mailed in the middle of March with three weeks allowed for people to return their surveys. Based on previous research experience, a 30% return rate is anticipated or just under 1,300 surveys, which is a valid statistical sample. The survey results will be an instrument for learning what the residents think.

Holland stated that a survey is also being conducted among business owners, service providers in Beverly Hills, and public and private school representatives to obtain their assessment of the Village. Once all of the input is received, it will be provided to the Strategic Planning Development Committee for consideration in the Village's strategic plan.

CONSENT AGENDA

Motion by Pfeifer, seconded by Schmitt, to approve the consent agenda as follows:

- a. Review and consider minutes of a special Council meeting held on January 26, 2004.
- b. Review and consider minutes of a regular Council meeting held on February 3, 2004.
- c. Review and file bills recapped as of Monday, February 9, 2004.

Motion carried.

BUSINESS AGENDA

REVIEW AND CONSIDER THE 2003 SPECIAL ASSESSMENT ROLL FOR THE SOUTHFIELD ROAD BUSINESS ASSESSMENT DISTRICT

Pfeifer stated that the Special Assessment District includes all business frontages on the west side of Southfield Road. Charges accumulated in 2003 include the following: electricity, water, tree treatments, leaf disease treatments, lawn cutting, fertilizing, shrub trimming, bed care, and fall clean up.

Motion by Pfeifer, seconded by McCleary.

Resolved that the 2003 maintenance cost for the Southfield Road Business District was \$3,825.50 and the 2003 water cost for the sprinkling system for the Southfield Road Business District was \$805.54; therefore, be it resolved that the Village of Beverly Hills Council confirm the Village Business District Assessment Roll for Southfield Road maintenance for the 2003 season in the amount of \$4,631.04 as follows:

Beverly Hills Racquet Club	\$848.49
Bed, Bath & Beyond	331.67
Beverly Hills Grill	123.78
Petix	242.86
Emile's	314.71
Taco Bell	287.02
31333 Building	417.80
Beverly Venture	853.10
Vic's Fruit Market	1,211.61

Domzal suggested that the Village consider upgrading the landscaping along the business district as it moves forward with the Southfield Road corridor study. Business owners could be approached regarding further upgrades in the years to come.

Mr. Kim Demars, General Manager of the Beverly Hills Club at 31555 Southfield Road, commented that the sprinkling system has not always been functional, which caused the Club to be assessed for services that were not received. He added that the Beverly Hills Club had been assessed for fees on the basis of inaccurate square footage.

Murphy responded that, when a discrepancy in the total square footage being assessed to the Beverly Hills Club was found, an adjustment was made from that point forward. When the question of retroactive consideration was raised, the Village Attorney indicated that the Beverly Hills Club could go before the tax tribunal and ask for redress.

Demars mentioned that repairs to the sprinkler system have been made, and he commended Murphy on his handling of the situation. The Club spent a considerable amount to replace shrubbery along Southfield Road that was not watered properly. He would like to be assured that the landscaping will receive proper irrigation.

Murphy commented that the Village has a contract with Johnson Landscaping to mow the grass, trim shrubs and trees, and activate the irrigation system along the Southfield Road business district. The Village will keep on top of this in the future.

Roll Call Vote:
Motion carried (6 – 0).

SET PUBLIC HEARING DATE FOR STAFFORD ROAD SPECIAL ASSESSMENT DISTRICT

Council set a public hearing date of Monday, March 2, 2004 at 7:45 p.m. to receive public input on the costs involved with the Stafford Special Assessment District.

Council received a petition from Stafford Drive residents about 11 months ago to construct an under drain system on their street. Engineering plans and specifications and cost estimates have been prepared for the proposed drainage project. A public hearing was held on December 1, 2003 to review the costs associated with the Stafford special assessment district and to consider moving forward with this drainage project. Council determined the necessity of drainage improvements on Stafford including construction of new under drains and swales. The Village has received approval of a \$100,000 grant from the Wayne County Department of Environment for this drainage work. At the next meeting, Spallasso will provide the percentage breakdown of cost shared between the grant, benefiting residents, and the Village. Council will consider authorizing administration to spread the special assessment roll for this project.

REVIEW AND CONSIDER CONTRACT WITH ENTERPRISE COMPUTER SOLUTIONS FOR COMPUTER SUPPORT SERVICES

Before Council for consideration is the renewal of an existing contract with Enterprise Computer Solutions for pre-paid computer support services. The proposal does not call for an increase in the hourly rate. Pfeifer stated that the contract was not put out for bid because it involves the employment of professional services as proscribed by Village Charter.

Motion by Pfeifer, seconded by Mooney.
Resolved that the Village of Beverly Hills Council award the pre-paid service contract to Enterprise Computer Solutions, Inc. in the amount of \$2,400. Funds are available for this purchase in Account 100-900-976.

Roll Call Vote:
Motion carried (6 – 0).

REVIEW AND CONSIDER RECOMMENDATIONS FROM THE VILLAGE COUNCIL AD HOC TREE SUBCOMMITTEE

Domzal reviewed that Council has expressed an interest in preserving and protecting trees in the Village. The emerald ash borer disease has raised the urgency of this issue. Approximately 120 dead and diseased trees have been removed from Beverly Park. The Village will have to spend money to protect and replace its trees in the coming years.

A subcommittee of Council was established to look at some of the data accumulated over the last several years and arrive at recommendations. Domzal thanked Phil Schmitt and Janet Mooney along with Jack Harmon from the Parks and Recreation Board and Manager Brian Murphy for their input. Domzal reported on the subcommittee's recommendations.

- At some point in the near future, a policy should be developed and adopted dealing with the Village’s obligation to trim trees in the public right-of-way and to remove dead and diseased trees in the public right-of-way.
- The current Village ordinance dealing with trees (Chapter 17 of the Municipal Code) should be reviewed and updated to address the following matters: 1) the current requirement that the public remove diseased trees from private property should be expanded to include all diseased trees and not just those infected with Dutch Elm disease. Time limits for removal of diseased trees should be reviewed; 2) consider adding language to protect trees within the public right-of-way while construction activities are taking place; 3) review and expand the list of “disapproved” trees to encourage a greater variety of species within the public right-of-way.
- The Village should prepare a brochure for public use encouraging the planting of “preferred” species.
- No further inventory of trees is required at this time.
- A line item should be added to the 2004/2005 Village budget as well as subsequent budgets to provide for tree maintenance. The level of funding for this item should be determined on an annual basis during budget season.
- A motion should be approved by Council requesting the Parks and Recreation Board to develop a program after obtaining input from community groups (such as the Village Garden Club) and outside entities (such as Rouge River groups, MSU Extension Service, Oakland County Forestry Department, etc.) to encourage the planting of trees in the Village. The assumption should be made that the Village financial contribution to such program will be minimal, probably limited to staff services. The Parks and Recreation Board should report back to Council within 90 days on its progress in developing such a program.

Motion by Domzal, seconded by Schmitt, that Council requests the Parks and Recreation Board to develop a program to encourage the planting of trees within the Village. The Parks and Recreation Board shall report back within 90 days on its progress in developing such a program.

Schmitt thanked Domzal for spearheading this effort and bringing the issue before Council for action. Mooney remarked that, if anyone doubts the need for planting trees in the Village, they should drive by Beverly Park and notice the trees that are down along Beverly Road.

Questions from Pfeifer regarding the public’s responsibility to remove trees on private property were answered by Murphy. Murphy stated that the current tree ordinance refers only to removal of diseased elm trees, which must be removed in 10 days. Removal of other diseased trees are not covered in the tree ordinance but are addressed in the property maintenance code adopted by reference. The rule of thumb for requiring removal of dead trees has been 30 days.

Downey expressed his support of a tree planting program. He maintains that trees in the rights-of-way are a significant asset to the community, and there is a need to start contributing funds towards protecting that asset.

Sharon Tischler of 21415 Virmar Court questioned how many permits the Village has issued to plant trees in the right-of-way. The ordinance requires residents to pull a permit to plant a tree in the public right-of-way. Spallasso responded that there are about two to four of these permits issued each year.

Motion carried.

DISCUSSION ITEM – UPDATE FROM BIRMINGHAM AREA CABLE BOARD

Pfeifer welcomed Birmingham Area Cable Board Chairman Bob Borgon and Treasurer Jim Delaney, who are present to give an update on Cable Board activities for the benefit of the Council and public.

Borgon related background information regarding the creation of Birmingham Area Cable Board, a body that serves the communities of Birmingham, Beverly Hills, Bingham Farms and Franklin. The BACB was created to advise the four-community cable consortium on matters related to cable communications and to monitor the franchisee's compliance with the franchise agreement and the cable communications ordinance. The Cable Board also acts as a liaison between the franchisee and the public, hearing complaints from subscribers and seeking resolution from the franchisee. The BACB accepts Internet complaints although it has no jurisdiction in that area. Comcast has been responsive to those complaints. The Cable Board oversees the operation of the local and government public access channels. The Board appropriates money deposited in an account in the name of the Cable Board by the four communities.

There are 13 members of the Cable Board, with membership determined by population. Birmingham has seven representatives; Beverly Hills has four; Bingham Farms and Franklin each have one representative. The Board meets on the third Wednesday of every month in the Village of Beverly Hills municipal building at 7:45 a.m.

The consortium signed a 15 year contract with Comcast two years ago to provide cable television to the communities. Borgon related that a series of problems were experienced with customer service, which resulted in the Board assessing liquidated damages to Comcast. He outlined how this situation was resolved in the best interest of the subscribers while delivering the message to Comcast that the Cable Board will hold them accountable for poor service.

In the last three years, Comcast has raised its rates in the four communities five different times. According to Board calculations, this represents a 39% increase from April 1, 2000 to April 1, 2003. Comcast has indicated that they will try to hold increases to an annual basis. It blames rate adjustments on higher programming costs. Due to contractual agreements with programmers and other cable operators, Comcast cannot provide the Board with specific information on its programming cost increases.

Borgon addressed the topic of competition. Residents have expressed a desire for competition in the form of an alternate cable provider. Borgon noted that there is competition in terms of satellite TV and dish network.

Borgon related that Americast came before the Cable Board about five years ago with a proposal to provide cable service to Birmingham and possibly Beverly Hills but not Franklin or Bingham

Farms. Because this cable consortium consists of four communities, the Cable Board could not pursue the proposal. SBC then acquired Americast and announced that they would no longer be expanding its cable system. Wide Open West (WOW) acquired that cable system and also declared that it would not undertake any rebuilds. In fact, two rebuilds that were in progress were abandoned. Borgon commented that overbuilds have not been successful. The economies of scale do not provide alternate companies the ability to have all the infrastructure at the same level of service.

Borgon stated that both he and the attorney for the Cable Board have talked to WOW representatives. They are not interested in building a system to provide cable in our area. Borgon noted that there is only a \$.10 to \$2.00 difference between Comcast and WOW rates for basic cable in Royal Oak and surrounding areas where WOW offers service. Charter Communication, another cable company north of this area, has also taken the position that it will not overbuild. There are communities that have entertained building their own cable system owned by the municipality. This has only been successful in the State of Michigan in those communities that own their utility systems.

Borgon emphasized that the franchise agreements for the BACB communities are not exclusive. Another cable provider can offer cable service if they want to spend money to build the infrastructure. The Cable Board intends to do whatever it can to keep the pressure on Comcast and to work with the cable company to provide our residents with the best possible service.

Borgon commented that the Federal Communications Commission appears to believe that the marketplace will take care of cable pricing and does not provide any cable rate regulation. He urged each local government to help the Cable Board by writing letters and talking to their representatives and senators on this topic.

Pfeifer underscored the fact that the Cable Board has no control over programming or rates set by Comcast. She requested an explanation of how franchise fees are utilized within the consortium.

Delaney commented on how franchise fees provided to the Cable Board are spent. The Cable Board employs an Executive Director, engages the legal services of Tim Carrier, and uses a recording secretary. Grants are made to Birmingham Schools. A mobile production van is maintained. Comcast gives the Cable Board a 3% PEG fee, which allows the Board to contract with Bloomfield Community Television to provide programming for the consortium's two channels, municipal/library channel 15 and public access channel 18.

Delaney related that the BACB assessed liquidated damages against Comcast in the amount of \$30,000 for franchise agreement and ordinance violations about two years ago. The Board would have had to go to court on each default in order to enforce these sanctions, which would have cost more than what they were worth. In addition, the \$30,000 would not have been returned to the customers. The Board reached a settlement with Comcast to resolve outstanding customer issues and waive liquidated damages for defaults by seeking a customer friendly alternative through a system-wide rebate to the customers. In addition, some customers received credits for their complaints. Delaney stated that going through the punitive damage process established the fact that the Board does have a hammer and can use it if it chooses. The Board has chosen to work with Comcast in attempting to improve service to each customer.

Delaney stated that subscribers should first contact Comcast if they have a problem with cable television. The number is on their cable bill. If a problem is not resolved to their satisfaction, customers can call Kathryn Hagaman (248/646-8450). She will fill out a complaint form over the phone and forward it to Comcast. The Cable Board follows up on every complaint it receives.

Delaney asserted that the Cable Board needs regulatory authority. The rate paid for preferred basic cable in the four consortium communities is among the lowest in metropolitan Detroit. The Board is trying to keep it that way. Delaney stated that residents can help by contacting their local congressmen and senators and ask for their assistance.

Delaney commented that he intends to ask the Cable Board to formally send letters to cable suppliers asking if they are interested in providing cable television service to the consortium communities. He suggests making complaint forms available at the municipal offices. A complaint form will be available shortly on the BACB web site.

Delaney related items that the Cable Board is investigating. He has expressed concern that Comcast's move toward uniform pricing in the Detroit metropolitan area may result in this consortium paying for problems in other communities. The Board is attempting to convince Comcast to provide discounts for senior citizens. Cable Board members have observed programs being moved to the digital tier. Comcast has been asked whether the company is attempting to move customers to the digital tier. Delaney concluded that the Cable Board is doing everything within its power to protect the cable subscriber.

Rosanne Koss of 17506 Kinross understands that the current infrastructure available for cable television is owned solely by Comcast and that a new provider would have to construct its own system.

Mr. Kim Demars from the Beverly Hills Club related the difficulty experienced with trying to get through to Comcast with the number on the bill. He was informed that he could contact Cable Board Director Hagaman at 248/646-8450 if he cannot reach Comcast.

W. A. Zimmerman of 22191 Camelot Court suggested that a provision be added to the franchise agreement with Comcast stating that the loser pays attorney fees in the event of sanctions imposed on Comcast and litigation is required.

In answer to a comment from Zimmerman, Borgon stated that the Cable Board does not have control over Comcast rates for cable television. The franchise agreement states that Comcast must advise the communities and subscribers 30 days in advance of a rate increase.

Zimmerman stated that it was mentioned at a recent Cable Board meeting that a class action suit was filed against Royal Oak, Troy, and other cities contending that the imposition of a cable franchise fee constitutes a violation of the Headlee Amendment. Cable Board Attorney Tim Currier cited a landmark case in which the court defines the franchise fee as rent and not a tax. Zimmerman argued this point.

PUBLIC COMMENTS

Bob Borgon of 32340 Drury commended the Village on its annual informational calendar. He noted that the back of the pages act as carbon paper allowing writing to come through to the next

calendar page. Murphy responded that this has been considered, but the cost of the product increases exponentially with a higher quality paper.

John Mooney of 19111 Devonshire, Director of the Beverly Hills Little League, thanked the Village for allowing the Little League to use this chamber for its registration. He reported that approximately 375 families in the Village will be participating in the BHLL this year, and probably in excess of 405 children will be playing ball.

The Beverly Hills Little League provides a recreational opportunity for the children of the Village. Mooney realizes that the Village of Beverly Hills will have budget difficulties in the coming fiscal year and will be required to reduce the amount of money earmarked for recreational activities of the BHLL. Mooney proposes seeking approval from the Little League Board of Directors for Village funding to be used elsewhere in the coming fiscal year. This is not to say that the Little League will not need a contribution from the Village in future years.

Mooney related that the Little League would like the opportunity to discuss with the Village Manager and Director of Public Works opportunities to improve the fields in Beverly Hills at no cost to the Village other than possibly the cost of labor to drag the field or set dugout benches. Mooney thanked Council for its past support to the Beverly Hills Little League.

Dave Taylor of 16950 Buckingham commented that he supports Council's tree planting recommendations. With regard to the cable presentation, he would support a regulatory agency and would want to know the steps to enforce cable regulations.

Jim Delaney of 18129 Riverside Drive, former council member, recognized the sacrifice and frustration of Council members as well as the satisfaction that is experienced at times. He thinks that Council is doing a wonderful job this term.

Delaney expressed the view that councils have fallen short in one area. He does not understand why the Township of Southfield continues to exist, and he questioned why there is a second level of government. Delaney thinks that this is an issue that should have come before the Village 30 years ago. He questioned what Southfield Township does for the Village that Beverly Hills cannot do itself. Delaney proposes that one government is needed in this community, and he requested that Council look into this. He suggested that representatives from Beverly Hills, Bingham Farms and Franklin meet with Southfield Township to discuss whether there are other ways to conduct business to save the people money. It is Delaney's opinion that there is not one thing that will change in this community if it becomes a city.

REPORTS – MANAGER

The Strategic Planning Development Committee is conducting two more focus groups on Thursday, February 26th. There are still five vacancies for the 6 p.m. session. Interested residents should call the Village office. Information collected from those focus group sessions will be used to develop a community-wide survey. The survey will be mailed in mid-March and results tabulated by mid-April.

The first day that residents can reserve the park pavilion is Wednesday, March 3, 2004. Due to plans for improvements to the pavilion this year, the rental schedule may be interrupted.

The Village Hall lobby will serve as a drop off location during a week-long food drive coordinated by the Food Bank for Oakland County. The food drive is scheduled to take place next week, February 23-27.

COUNCIL

Schmitt stated that there has been a preliminary inquiry to the Township regarding a new cell tower to be erected in Acacia Park. The Township will give notice of its hearing of this proposal. The Parks and Recreation Board will meet on Thursday, February 19.

Domzal stated that the next meeting of the Planning Board will be on Wednesday, February 25. The Personnel Committee consisting of Downey, Pfeifer and himself met this evening with Mr. Murphy to conduct the Manager's annual review. Committee recommendations will be forthcoming, and this will be discussed further as part of the budget process. Domzal commented that the Village is fortunate to have an individual of Mr. Murphy's qualifications serving as Village Manager.

Domzal commented that there was evidence tonight of volunteerism in the community. The Strategic Planning Development Committee members and Cable Board representatives donate much time to the community. These and other volunteers work hard to make our community what it is.

McCleary reported that the Zoning Board of Appeals met last Monday on February 9. The Board requested that Council review Section 22.21 of the Zoning Ordinance, Parking and/or Storage of Conveyances Other Than Licensed Private Passenger Cars or Vehicles.

Pfeifer reported that the Birmingham Area Seniors Coordinating Council (BASCC) Board welcomed a new representative from the Area Agency on Aging. There were interesting discussions at today's Board meeting on potential prescription drug procurement for seniors. She will make this information available to Village residents.

Pfeifer was pleased to have representation from the Cable Board present at tonight's meeting. If residents require further information on cable television matters, they can attend a Cable Board meeting tomorrow morning at 7:45 a.m. in these chambers.

Pfeifer hopes that Council members received the invitation from State Senator Gilda Jacobs about a meeting on March 11 for municipal and elected officials to discuss the fiscal picture of the State. Attendees were asked to list three or four issues that they would like to have addressed by Jacobs and other speakers.

Downey commented that retiring Deputy Director Art Smith will be honored at a gathering next Tuesday evening, February 24. The Retirement Board will be meeting on Monday, February 23, at 7:30 p.m. in the Public Safety building.

Downey stated that a Passport Day was held recently at Groves High School at which time the Village collected \$1,470 in fees. He thanked Village Clerk Marshall and staff for supporting this activity.

Downey received an invitation to a SEMCOG (Southeastern Michigan Council of Governments) neighborhood commercial revitalization workshop on March 17. He thinks that this would be an interesting session if a member of Council is available to attend.

The Rouge Green Corridor organization will hold a community meeting on Thursday, February 19 at 7:00 p.m. at the Birmingham Community House. There will be a discussion of Rouge River Day scheduled for Saturday, June 5.

Downey congratulated Patrick Degregorio of Riverside Drive on his achievement as a distinguished finalist in the Prudential Spirit of the Community Award.

Downey remarked that there have been questions from the public about the efforts of Council and administration to address budget constraints that are due to a decrease in state revenue sharing. He maintains that Beverly Hills has been a fiscally prudent community and will continue along that course. Downey highlighted measures taken by administration and staff: front office staff has been reduced by 19% since 2001; over \$700,000 in grant funds, not including the park grant, were received since 2001; the Drinking Water Revolving Fund, a low interest loan, saved the Village money and allowed for a larger contract to construct a greater portion of the water main replacement program; labor contracts have been negotiated and members of staff are contributing to retiree health care funds; there has been a reduction in some health care benefit costs; the vehicle replacement schedule has been changed; and there have been reductions in technology replacement funding. Downey emphasized that the Village has been looking for ways to be more efficient. He is pleased with the way in which administration manages Beverly Hills and appreciates the support of the Village staff.

Motion by Mooney, seconded by McCleary, to adjourn the meeting at 9:32 p.m.

Motion carried.

Doyle Downey
Council President

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary