

Present: President Stearn; President Pro-Tem Pfeifer, Members: Berndt, Koss, Oen, Peddie and Woodrow

Absent: None

Also Present: Village Manager, Spallasso
Director of Public Safety, Woodard
Building Official, Byrwa
Village Attorney, Ryan

President Stearn called the regular Council meeting to order at 7:30 p.m. in the Village of Beverly Hills municipal building at 18500 W. Thirteen Mile Road. The Pledge of Allegiance was recited by those in attendance.

ADDITIONS TO AGENDA/APPROVE AGENDA

Stearn stated that it has been suggested that the public hearing on the Timlin Group request to operate a European Spa be moved to follow item (b) on the business agenda. This would give the audience an opportunity to hear a presentation on this proposal prior to voicing questions and comments.

Motion by Pfeifer, second by Koss, to hold a public hearing on the Timlin Group request to operate a day spa following item (b) on the business agenda.

Motion passed (7 – 0).

Motion by Woodrow, second by Oen, to approve the agenda as amended.

Motion passed (7 – 0).

PUBLIC COMMENTS

Chuck Moss introduced himself as State Representative elect for the 40th District, which includes Beverly Hills. He mentioned that he comes from local government and started out as a Birmingham city commissioner and mayor. Moss stated that he has the same phone number and office as the previous state representative and established that his door is always open. He invited Council members and residents to contact him with any questions they may have.

CONSENT AGENDA

Motion by Pfeifer, second by Koss, to approve the consent agenda as published.

- a. Review and consider approval of minutes of a regular Council meeting held November 21, 2006.
- b. Review and file bills recapped as of Monday, November 27, 2006.

Motion passed (7 – 0).

BUSINESS AGENDA

ACCEPT RESIGNATIONS OF RON BERNDT, JON OEN AND TODD STEARN FROM THE ZBA AND MAKE SECOND ANNOUNCEMENT OF THREE VACANCIES ON THE ZONING BOARD OF APPEALS

Peddie made the second announcement of three vacancies on the Zoning Board of Appeals due to Ron Berndt, Jon Oen and Todd Stearn being elected to Council at the November 7, 2006 election. Applications will be accepted until Friday, December 8 at 4:30 p.m. A subcommittee of Lee Peddie as chair, Ron Berndt and Rosanne Koss will meet on Tuesday, December 19 at 7:00 p.m. to review the applications and make recommendations to Council on the appointments. All applicants will be invited to attend the subcommittee meeting. At this time there are six applications on file for the open positions.

Motion by Peddie, second by Pfeifer, to accept the resignations of Ron Berndt, Jon Oen, and Todd Stearn from the Zoning Board of Appeals.

In response to an inquiry from Koss, Stearn confirmed that there was a consensus of Council to appoint a member of the Planning Board to one of the open positions on the ZBA in order to comply with the new Zoning Enabling Act.

Pfeifer requested that copies of the applications be forwarded to ZBA chairperson Todd Schafer in accordance with policy.

Motion passed (7 – 0).

REVIEW AND CONSIDER REQUEST FROM TIMLIN GROUP TO OPERATE A EUROPEAN SPA AT 31815 SOUTHFIELD ROAD

Berndt stated that, at its last meeting, the Planning Board reviewed a request from the Timlin Group to operate a day spa in an existing suite of the office complex located at the southwest corner of Beverly and Southfield Roads. This proposal came before the Planning Board on the basis that use of office space as a day spa that offers massage as one of its services places the use under the ordinance definition of an Adult Regulated Use. Such uses are permitted in the 0-1 District only after receiving approval under the Adult Regulated Use standards of Section 22.08.340 of the Zoning Ordinance. The Planning Board made a recommendation to Council following its consideration of the proposal.

Present in the audience were Patrick Timlin, managing partner for Medical Village, assistant Erica Skrabut, Real Estate Broker Jeff Scissors, and spa owners Krystyna and Ziggy Ejsmont. A brief power point presentation provided information on spa services offered by Krystyna's, the current Birmingham spa location, and the floor plan for the spa operation proposed for Suite 32 at Medical Village. Two rooms are dedicated to massage therapy, which represents 250-300 square feet or about 8% of the total floor space.

Patrick Timlin mentioned that Council has received detailed information on the proposal. He expressed the opinion that the Municipal Code cited that requires special use approval based on massage being an adult regulated use was probably not meant to refer to day spa use.

Krystyna Ejsmont, owner, stated that her day spa operation has been located in Birmingham for over 12 years. They proposed to move their European Spa to Beverly Hills because additional space is needed for their clientele, and parking in Birmingham is becoming a problem.

PUBLIC HEARING ON TIMLIN GROUP REQUEST TO OPERATE A EUROPEAN SPA

Stearn declared the public hearing open at 7:46 p.m.

Bob Walsh of 20655 Smallwood Court had questions on the public hearing notice and size of the spa operation, which were addressed by administration and Council. He asked about the proposed hours of operation of the spa. Krystyna Ejsmont stated that the spa hours will be 9 am to 6 pm Monday and Tuesday; 9 am to 8 pm Wednesday and Thursday; and 9 am to 4 pm on Saturday.

Walsh referred to the Zoning Ordinance section that states, in part, that the structure of any adult regulated use shall be at least 750 feet from the nearest property line of any school, library, park, playground, or other recreational facility that admits minors. He pointed out that Beverly Hills Athletic Club property abuts the Medical Village site and Beverly School is located within 750 ft. from the west boundary of Medical Village. He is opposed to the proposal for this reason.

John Furton, President of the Beverly Hills Athletic Club Board, stated that the club received notification of the hearing and obtained background information on the day spa. He supported Mr. Timlin's view that the Zoning Ordinance was written to regulate a different type of adult activity than a day spa. He did not believe that the proposed spa represents a threat to the BHAC and he supports these neighbors. Furton mentioned that the Club would come back before Council if they have any future concerns about the spa operation.

Stephen Satovsky representing Beverly Hills Club at 31555 Southfield Road expressed the view that the intent of the Zoning Ordinance is not to allow a massage parlor in the community. He believes that there is nothing in the plan submitted that restricts this entire suite to be used for a massage parlor if approval is granted.

Satovsky stated that Beverly Hills Club, which is a licensed day care, is within 750 ft. of the proposed spa operation. He maintains that the intent of the ordinance is not to allow for a concentration of adult regulated uses. The ordinance states that an application to establish any adult regulated use cannot be approved if there is one or more such uses already in existence within 750 ft. of the proposed site. Satovsky stated that there is a massage area in the Beverly Hills Club and in Emile Salon. Approval of this request would allow three massage areas on Southfield Road.

Stearn asked Satovsky on what he bases his definition of a massage parlor, noting that the definition section of the Zoning Ordinance includes definitions that apply to adult-regulated uses. Stearn read the definition of "Massage Parlor" under Section 22.04 (e) and referred to the definition of "Specified Anatomical Areas" in section 22.04 (g). He proposed that these definitions should be considered to determine whether a request for special use approval is

required for operation of this day spa. Stearn was of the opinion that, based on the language in the definition section of the Zoning Ordinance, a spa with a massage element does not fit within the definition of massage parlor. He thought that the adult regulated use ordinance was designed to prohibit places of ill repute.

Stephen Satovsky suggested that Council place a limit on the amount of floor space that can be used for massage at the day spa. In response to an inquiry from Stearn, Satovsky stated that Beverly Hills Club has been offering massages for 34 years and they have not received any complaints from Emile Salon, Beverly School, or the Beverly Hills Athletic Club.

Bruce Wayne, resident of 25 Riverbank and Planning Board member, commented on his impressions after making an unannounced visit last week to Krystyna's European Spa in Birmingham. He endorsed it as a professional operation. Wayne related that he spoke to the Village Building Official, who stated that the massage space of the spa can be limited and that he has the authority to investigate any business to make sure that everything meets acceptable standards. Wayne suggested that Council could consider limiting the amount of floor space used for massage. He thought that Beverly Hills would benefit by the addition of a successful business. He stated that the Planning Board recommended approval of the proposal.

Stearn referred to Section 22.08.340, paragraph 6, of the Adult Regulated Use ordinance, which states: "Prior to granting a permit for any Adult Regulated Use, the Village Council may impose any such conditions or limitations authorized by law in connection with the grant of special uses." Village Attorney Ryan affirmed that Council can place conditions on a special use approval.

Eric Clough of 18202 Beverly questioned whether this business requires any zoning change to the property and what other businesses can move into that area.

Building official Byrwa responded that the Medical Village site is zoned 0-1 Office, which permits uses that are less intense than a business owned district that allows retail sales uses. An office zoned district is generally more compatible with a residential district. Permitted principal uses include professional office use.

Clarence Chambers of 18175 Beverly Road questioned the impact of the proposed spa in terms of traffic.

Patrick Timlin stated that the former tenant, Beverly Hills Pediatric Group, left because they needed more space. Their operation was open from 9 am to 9 pm Monday through Friday, for several hours on Saturday, and open on Sunday for emergency purposes. The European Spa will be a less intensive use of the site.

Timlin asked if other businesses on Southfield Road performing massage therapy have received special use approval. Stearn responded that the statute was adopted in 2000, and existing uses were probably grandfathered. Timlin asked that Council not overly restrict the use of floor space for massage.

Jeff Scissors, real estate broker located in Southfield, commented that he has known Mr. and Mrs. Ejsmont for a number of years and is a witness to their character, which is beyond reproach.

Stephen Satovsky reiterated his position on the proposal. No one else wished to be heard. The public hearing was closed at 8:18 p.m.

Council members commented favorably on the request to operate Krystyna's European Spa at Medical Village. There was discussion on whether to limit the square footage for massage operation, possibly to 15% of the total square footage. Members of Council questioned whether the operation of a day spa as proposed required Council approval. Woodrow expressed the opinion that this day spa proposal did not fall within the definition of a restricted adult use.

Berndt offered a motion to approve the request to operate Krystyna's European Spa at 31815 Southfield Road. He did not include a square foot limitation on the amount of floor space used for massage in his motion.

Ryan remarked that he is not the arbiter of the ordinance, and a conservative approach was taken in terms of referring this proposal to the Planning Board and Council for a decision. Council approval should state that special use approval is granted for the operation of a day spa including massage.

Stearn stated that Council can decide that this is not an adult regulated use. Ryan concurred. Stearn also said that Council can find that this is an adult regulated use but that it meets the requirements of paragraph 5 of ordinance Section 22.08.340 based on findings following the public hearing. Council can also stipulate a limitation on the square footage of floor space used for massage. Stearn suggested that Council should first determine whether the proposal for the day spa is an adult regulated use. Berndt withdrew his motion.

Motion by Woodrow, second by Koss, that the use requested by the Timlin Group to operate a European Spa at 31815 Southfield Road is not an adult regulated use as articulated in Zoning Ordinance Section 22.08.340.

Roll Call Vote:
Motion passed (7 – 0).

REVIEW AND CONSIDER THREE YEAR RENEWAL CONTRACT WITH ASSET STRATEGIES FOR PENSION CONSULTING SERVICES

Woodrow stated that Asset Strategies Portfolio Services, Inc. is a firm that has been providing investment consulting and performance monitoring services to the Public Safety Department Pension Fund for the last three years. The current contract with the Village is coming to an end. The Retirement Board has reviewed a proposal from Asset Strategies for a new contract and recommended approval of the contract to extend their services for another three years.

Motion by Woodrow, second by Pfeifer, that the Beverly Hills Council approve the proposed three year contract with Asset Strategies to continue to provide investment

consulting and performance monitoring service for the Public Safety Pension Plan at a cost of \$15,000 per year and authorize the Village Manager to sign the contract.

Stearn commented on the improvements made to the Retirement System portfolio in terms of diversification and fund monitoring since Asset Strategies was engaged as consulting firm to assist the Board with asset growth and management. The Village receives a great benefit for the fees charged for this service. Both Stearn and Woodrow were at the last Retirement Board meeting when there was a unanimous vote to extend the contract of Asset Strategies for consulting services. Attorney Ryan has read the contract and finds it to be in order.

Woodrow remarked that Asset Strategies oversees the fund and makes recommendations to the Retirement Board. That body then takes action based on the advice received. He added that money is saved by having Asset Strategies available to make sure that the Village is not charged hidden fees by fund managers. It was noted that the fees paid to Asset Strategies are drawn from the Pension Fund.

There was discussion on issues including the terms of the contract with respect to an extension period and the amount of professional liability insurance carried by Asset Strategies. Pfeifer questioned whether the \$1 million coverage limit provided was adequate, and the topic was discussed at some length. The point was made that Asset Strategies is a consultant and that the Retirement Board takes all action that affects the portfolio.

Roll Call Vote:
Motion passed (7 – 0).

REVIEW AND CONSIDER RESCHEDULING JOINT MEETING WITH PARKS & RECREATION BOARD TO MAY 17, 2007

At its November 16 meeting, the Parks and Recreation Board unanimously voted to request that Council reschedule its joint meeting with the Board from January 18, 2007 to May 17 or another warm weather date that Council finds convenient. Oen stated that the Board suggested that a meeting at Beverly Park would be more productive and that there is no pressing issue that would prevent the meeting from being rescheduled.

Motion by Oen, second by Woodrow, to reschedule the joint meeting of the Council and Parks and Recreation Board to May 17, 2007 in Beverly Park, or another warm weather date as Council finds convenient.

Pfeifer commented on the purpose of holding joint meetings with Council's advisory boards. Programs and priorities for the upcoming year are a topic of discussion along with budget requests. It was decided by the previous Council to videotape and replay its joint meetings with the Parks and Recreation Board, Planning Board and Finance Committee. It is an opportunity to educate residents as to the operation of these advisory boards. The joint meeting dates were scheduled and noted on the 2007 Village informational calendar.

Board members discussed whether or not to reschedule the joint Council meeting with the Parks and Recreation Board. There were members who thought that it would be beneficial for Council

to meet with the Board prior to May. Others favored meeting later in the year at Beverly Park. It was noted that the cable access provider is able to tape meetings offsite with mobile equipment, and it would be an opportunity to showcase the park. The point was made that the Parks and Recreation Board could put forth its budget requests at Council budget sessions.

Roll Call Vote:

Stearn - no
Woodrow - yes
Berndt - yes
Koss - no
Oen - yes
Peddie - no
Pfeifer - no

Motion failed (4 – 3).

REVIEW AND CONSIDER PUBLIC HEARING STATUS REGARDING MASTER PLAN

Berndt stated that the Planning Board has completed its review and rewrite of the Village Master plan. The public agency review period has ended and the Village is ready to proceed with the public hearing and adoption stage. The Planning Board has scheduled a public hearing on the updated Master Plan at its regularly scheduled meeting date of Wednesday, January 24, 2007. The Board would like Council to consider conducting a joint public hearing session on that date for efficiency purposes.

Council discussed whether to hold a joint meeting with the Planning Board on January 24, 2007 and conduct one public hearing on the Master Plan or whether to schedule a separate public hearing following the Planning Board hearing date. Ryan affirmed that the Village would be fulfilling its legal requirement by conducting one hearing.

Members of Council thought that the public hearing on the Master Plan should be televised for the benefit of Village residents. It was questioned whether there was a way for both bodies to meet jointly and conduct a public hearing that was televised. It was thought that an entire Council meeting would have to be dedicated to the Master Plan due to the size of the document. A concern was expressed that holding two public hearings would involve duplication of efforts.

Bob Walsh of 20655 Smallwood Court stated that, in the past, the first public hearing was held by the Planning Board. Input is received at that time, which provides Council with the opportunity to review comments that result from the hearing. He suggested holding two public hearings, which gives the public two opportunities to express their opinions.

Bruce Wayne of 25 Riverbank agreed with holding both a Planning Board and a Council public hearing on the Master Plan.

It was the consensus of Council to have two public hearings on the Master Plan. The Planning Board will have a public hearing and forward its recommendations to Council. Council will then hold a public hearing.

DISCUSSION ITEM – SCHEDULE COUNCIL STUDY SESSION

Stearn stated that members of Council have suggested scheduling a study session in January. He proposed meeting on a Saturday morning. Stearn envisioned beginning with a brief presentation by department heads or board members yet to be determined proceeded by a Council study session to set the priorities of Council.

Council members agreed to schedule a study session on Saturday, January 13 from 9 a.m. to 12 noon. The meeting will be posted in accordance with the Open Meetings Act.

REPORTS – MANAGER

Spallasso reminded residents that the last day for yard waste collection is December 7. A closed session of Council will be scheduled after the December 19 Council meeting to present an update on the status of contract negotiations.

A public information meeting on the Acacia Park Sewer Relief project will be held tomorrow, December 6 from 7:00 to 9:00 pm in the Council chamber. Over 100 residents who live on streets abutting the project were invited to review plans and ask questions that will be answered by the consultants.

COUNCIL

Berndt stated that the Planning Board is moving forward with the neighborhood study. The planning consultant has provided informative aerial maps of the east side of the Village that are marked up to assist with an analysis of existing conditions. He encouraged members of Council to attend the next Planning Board meeting to view the material.

Koss reminded people that the Village Woman’s Club is holding its luminary sale on Saturday December 9 and on December 16 from 10 am to 2 pm in the Village municipal building.

Pfeifer stated that souvenir decks of cards offered by the Birmingham Area Seniors Coordinating Council are available for sale at \$10 a deck.

Oen announced that there will be a Southfield Township Board meeting on Tuesday, December 12 at the Township offices.

Motion by Berndt, second by Pfeifer, to adjourn the meeting at 9:22 p.m.

Motion passed (7 – 0).

Todd Stearn
Council President

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary