

Present: President Koss; Members: Burry, LaFerriere, Mercer, Mooney and Oen

Absent: Briggs

Also Present: Village Manager, Wilson
Assistant Manager/Clerk, Marshall
Village Attorney, Ryan
Director of Public Safety, Woodard

President Koss called the regular Council meeting to order at 7:31 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

Motion by Oen, second by Mooney, to approve the agenda as published.

Motion passed (6 – 0).

COMMUNITY ANNOUNCEMENTS

None

CONSENT AGENDA

Motion by Oen, second by Mooney, to approve the consent agenda as published.

- a. Consider approval of minutes of a regular Council meeting held July 5, 2011.
- b. Review and file bills recapped as of Monday, July 18, 2011.

Motion passed (6 – 0).

BUSINESS AGENDA

UPDATE FROM PUBLIC SAFETY GRANT WRITER

Linda Davis Kirksey, President of Davis Kirksey Associates, presented an update on the status of Public Safety Department grant applications. A COPS (Community Oriented Policing Recovery Program) Grant was submitted to the Department of Justice on May 25, 2011. The funding request is for one public safety officer; funding would cover salary and benefits for 36 months with no match. There is a requirement that, at the end of the grant period, the Village will fund the officer through its budget for at least 12 months. The total grant over a three year period is approximately \$277,389.00 (total salary and benefits for PSO). These grant requests are currently under review with grant notification anticipated in the Fall of 2011.

A primary grant effort will be the Assistance for Firefighter Grant (AFG) Program of the Department of Homeland Security's Federal Emergency Management Agency. An announcement regarding the next round of funding is expected to be released in August of 2011. Currently, technical workshops are taking place to assist in the application process. The Village's proposal is being developed for a new engine and generator for the building upgrade. The match will be 5% of overall cost of the proposed project.

Future grant funding projects include an updated building entry/access system and a remote public camera system to assist in traffic safety control. Both are technology programs that would be eligible under FEMA and COPS technology programming funding as grant request periods open, generally in early Fall of 2011.

REVIEW AND CONSIDER WAIVING SALES RESTRICTIONS AT BEVERLY PARK ON AUGUST 20, 2011 FOR WORLD’S LONGEST LEMONADE STAND

Mooney reviewed that organizers of the World’s Longest Lemonade Stand came before Council in April to request the use of Beverly Park for their event to be held on Saturday, August 20, 2011. The group has since organized various activities that day including a bounce house, food sales, carnival games and promotional sales/distribution. The motion passed in April to approve the event did not waive the restriction on sales at Beverly Park for that day. The organizers are requesting that Council waive the sales restrictions.

Motion by Mooney, second by Oen, that the Village of Beverly Hills Council waive the restriction on sales at Beverly Park on Saturday, August 20, 2011 during the World’s Longest Lemonade Stand event.

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

ACCEPT MAUREEN FRANCIS’ RESIGNATION FROM ZONING BOARD OF APPEALS

Maureen Francis has notified the Village of her resignation from the Zoning Board of Appeals for the reason that she will moving out of Beverly Hills in August.

Motion by LaFerriere, second by Mooney, to accept the resignation of Maureen Francis from the Zoning Board of Appeals.

Mercer said that he sat on the Zoning Board of Appeals with Maureen Francis and commended her on a job well done. He thanked Francis for her time an input on that Board.

Motion passed (6 – 0).

FIRST ANNOUNCEMENT OF VACANCY ON THE ZONING BOARD OF APPEALS

LaFerriere made the first announcement of a vacancy on the Zoning Board of Appeals due to the resignation of Maureen Francis. Her term on the Board will expire on June 30, 2013. The deadline for submitting applications for this position will be Friday, August 5, 2011 at 4:30 p.m. A subcommittee of LaFerriere as chair, Mooney and Oen will meet on Tuesday, August 16 at 7:15 p.m. to review applications and recommend a candidate to fill the vacant seat.

REVIEW AND CONSIDER MORATORIUM FOR MEDICAL MARIJUANA DISPENSARIES

Village Attorney Ryan referred to a memo sent to Council members regarding the status of the medical marijuana issue in the Village. There has been activity regarding the medical marijuana topic including a Michigan Supreme Court decision to hear two Michigan medical marijuana

cases in the fall of 2011 term and an opinion issued by Attorney General William Schute relative to medical marijuana dispensaries. The Department of Justice has indicated that the possession of marijuana is still a federal offense in spite of state law. Recent activity is tending to be more anti-medical marijuana.

The Village's medical marijuana moratorium will expire on July 31. It was Ryan's suggestion that Council take action to extend the Village's medical marijuana moratorium for 90 days for the specific purpose of amending its zoning ordinance to target any use of medical marijuana that does not comport with federal or state law. A zoning ordinance amendment will require preparation, a public hearing by the Planning Board, and two readings at the Council level. The three month extension would also include the appeal process if someone wished to seek exception from the ordinance.

Motion by LaFerriere, second by Oen, to adopt the following Resolution:

**RESOLUTION EXTENDING MEDICAL MARIJUANA
MORATORIUM**

Whereas, on November 4, 2008, Michigan voters approved a ballot initiative that legalized medical marijuana; and

Whereas, on December 4, 2008, the Michigan Medical Marihuana Act, MCL 333.26421, *et seq.*, (the "Act") took effect; and

Whereas, the Act leaves unclear many aspects of regulation and control of the dispensing, distribution, growing, and acquisition of medical marijuana and related activities ("medical marijuana activities"); and the question of whether and how local units of government may provide for zoning and other regulation of medical marijuana activities remains an issue of discussion and debate; and there remains a great deal of uncertainty among municipalities as to how to regulate medical marijuana activities; and

Whereas, the Michigan Department of Community Health has stated that "There is no place in the state of Michigan to legally purchase medical marihuana"; and

Whereas, marijuana is a controlled substance under federal and Michigan law and the legalization under the Act of medical marijuana activities has a potential for abuse that should be closely monitored and to the extent permissible regulated by local authorities; and

Whereas, if not properly monitored or regulated, the presence of marijuana even for the purposes legally permitted by the Act can present a potential increase of illegal conduct and this threat affects the health, safety, and welfare of the residents of the Village; and

Whereas, the Village Council is concerned that action by the Village to regulate or control medical marijuana activities may facilitate or encourage violation of the federal Controlled Substances Act, which makes it illegal to possess or use marijuana; and

Whereas, there is pending litigation challenging ordinances adopted by various municipalities regulating or prohibiting medical marijuana activities; and

Whereas, the Michigan Legislature may take action to amend or supplement the Act and to clarify the rights of municipalities to regulate and control medical marijuana activities; and

Whereas, on February 1, 2011, the Village Council adopted a resolution declaring a 180-day moratorium pertaining to medical marijuana dispensaries pending study and consideration by the Planning Board of the zoning classification for medical marijuana dispensaries and possible amendments to the master plan to ensure consistent, cohesive, and sensible development in the Village; and

Whereas, the Village Planning Board has not yet completed its study and consideration and has not yet made a written recommendation to the Village Council on this subject; and

Whereas, the 180-day moratorium will expire at midnight on July 30, 2011; and

Whereas, the Village continues to explore how best to regulate or control medical marijuana activities, which will require further study of possible amendments to the zoning ordinance, enactment or amendment of other ordinances, or other actions by the Village; and

Whereas, the Village Council has determined that it is in the best interest of the Village to await further judicial and legislative developments before determining what, if any, actions to take to regulate and control medical marijuana activities; and

Whereas, the Village Council has determined that, pending further action to regulate and control medical marijuana activities, it is in the best interest of the Village's health, safety, and welfare to provide for a moratorium on the establishment or continuation of facilities or land uses for medical marijuana activities;

NOW THEREFORE BE IT RESOLVED:

1. A moratorium is hereby declared effective on July 31, 2011 concluding at midnight on October 28, 2011, on the establishment and continuation of facilities or land uses for the dispensing, distribution, growing, or acquisition of medical marijuana and related activities, including, but not limited to, medical marijuana dispensaries, medical marijuana storage facilities, medical marijuana exchange facilities, medical marijuana growing facilities, medical marijuana caretaker facilities, and medical marijuana compassion clubs. All such facilities and land uses are prohibited in the Village during the moratorium, except that this moratorium does not prohibit a qualifying patient's personal use of medical marijuana in that person's private residence in accordance with the Act.

2. During the period of this moratorium, an aggrieved property owner or business is entitled to a hearing to demonstrate to the Village Council that the moratorium will preclude all viable economic use of their property or otherwise violate the Michigan or federal constitution or Michigan or federal law. The Council will conduct the hearing on an expedited basis. As soon as practicable after the conclusion of the hearing, the Council will make findings and conclusions as to whether the petitioner demonstrated that the moratorium has precluded all viable economic use of the property or this resolution on its face or as applied violates the Michigan or federal constitution or Michigan or federal law. If the Council concludes that the moratorium has precluded all viable economic use of the property or this resolution violates the Michigan or federal constitution or Michigan or federal law, the Council shall grant relief from the moratorium to the degree necessary to cure the preclusion or violation.

3. The Council directs the Planning Board to consider and recommend to the Council whether and how the Village should regulate medical marijuana activities by possible amendments to the zoning ordinance, enactment or amendment of other ordinances, or other actions and to provide its recommendations to the Council by August 2011 so as to enable the Council to take appropriate action

before the expiration of this moratorium. The Council further directs the Village Manager to transmit a copy of this resolution to the members of the Planning Board.

Mooney stated that he voted on two occasions to extend a moratorium on the establishment of any medical marijuana dispensary within the Village. He did not think that it was in the best interest of the community to continue to impose a moratorium. The Village should have enacted an ordinance within the last six months.

Council members discussed the proposed Resolution and how to proceed with addressing various aspects of the Michigan Medical Marijuana Act.

Ryan emphasized that the Medical Marijuana Act has not been on the active radar of the State Legislature; municipalities have been waiting for the Legislature to provide clarity. The difficulty has been how to translate the vote of 2008 into a legislative act, which has not been handled well in the opinion of Ryan and most attorneys in the State of Michigan. Three neighboring jurisdictions have been sued on ordinances they enacted. Ryan thought that there was better direction now after the Court of Appeals decisions and a Circuit Court case in Midland, and he is comfortable recommending an ordinance to the Village. Ryan has given direction to the planning consultant and thinks that an ordinance can be adopted in 90 days.

Roll Call Vote:

Koss	- yes
LaFerriere	- yes
Mercer	- yes
Mooney	- no
Oen	- yes
Burry	- yes

Motion passed (5 – 1).

FIRST READING OF ORDINANCE AMENDING CHAPTER 41 MOTOR CARRIER SAFETY OF THE MUNICIPAL CODE

Ryan stated that four Public Safety Officers are being trained in state and federal Motor Carrier Enforcement as part of the Department's increased attention to truck traffic on major Village roads. Before Council for consideration is an Ordinance to amend the Village Municipal Code, Chapter 41.07, currently entitled Motor Carrier Safety Regulation to be Retitled: Motor Carrier Safety.

Attorney Ryan conducted a first reading of the proposed ordinance. He highlighted the various headings of ordinance amendment sections as follows:

41:07.780 Bumpers or similar devices required for certain motor vehicles; underride guard requirements; exemption; "asphalt hauling vehicle" defined.

41:07.781 Maximum driving time.

41:07.782 Failure to complete record of duty activities; correction to service records, certification; non-applicability of twelve consecutive hours on duty requirement.

41:07.783 Applicability of article and rules; construction; compliance; instruction.

41:07.784 Adoption by reference of codes adopted by the State of Michigan and Federal government relative to Motor Carrier Safety.

41:07.785 Motor carriers; submission of documents to motor carrier officer; facsimile of identification card.

41:07.786 Violation of act or rules.

41:07.787 Penalties; “serious safety defect” defined.

41.07.788 Conditional dismissal of certain equipment violations for owners and operators of commercial motor vehicles.

Ryan stated that the Village has a Motor Carrier Ordinance in place. However, there has been new action taken by the State and Federal Governments; the proposed ordinance provides enforcement of particular safety violations relative to trucks in the Village.

REVIEW AND CONSIDER AWARDED CONTRACT FOR 2011 LOCAL STREET CONCRETE REPLACEMENT

Mercer reported that the Village received eight bids for the 2011 Local Street and Sidewalk Concrete Replacement Program ranging from the high bid of \$579,878.00 to the low bid of \$332,566.80 from Lacaria Concrete. Public Services Director Meszler recommends awarding the bid to Lacaria Concrete. The company has done satisfactory work in the Village previously and has done the last two concrete replacement programs for the Village.

Mercer noted that the Village has received competitive pricing for sidewalk replacement from Lacaria at \$2.70 per square foot. The engineer’s estimate was \$3.50 per square foot and other recent municipal bids have ranged from \$3.00 to \$3.25 per square foot.

Motion by Mercer, second by Mooney, that the Village of Beverly Hills Council award the 2011 Local Street and Sidewalk Concrete Replacement Program to Lacaria Concrete and authorize the Village Manager to sign the contract with Lacaria Concrete. The funding for this program will come from 2011-12 FY budget account #203-451-810.03, Local Street Concrete Replacement, which has an allocation of \$207,470 and from dedicated millage account #402-000-390.00, which has a balance of \$1,929,444. A portion of the cost for replacement of sidewalks will be paid for by the residential property owner when replacement occurs along their frontage.

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

REPORTS – MANAGER

Manager Wilson related a portion of his Manager’s Report regarding the Community Garden fencing prior to Council receiving public comments. At the most recent meeting of the Zoning Board of Appeals, the Community Garden located at the United Methodist Church received a hearing on a variance request regarding the fencing surrounding the garden. Wilson explained the background and circumstances surrounding the erection of the fence and request for variance. The variance request was denied by a vote of 3-6.

Unfortunately, during the meeting, comments were made by a member of the ZBA accusing the church of being dishonest in its dealings with the Village and questioning the integrity of their actions in regard to the Community Garden and the fencing. Wilson felt that these comments were unwarranted; they were neither measured nor appropriate and in no way represent the opinion of the Village of Beverly Hills, Village Council, Village Administration or the Zoning Board of Appeals. While members of boards are entitled to their individual opinions, those representing the Village of Beverly Hills in any such capacity should measure their responses when serving in an official Village capacity.

Wilson apologized to the Beverly Hills United Methodist Church for these comments. This institution has been an important member of the Village of Beverly Hills for over 50 years. They are to be commended on their positive participation in the Village, including their participation in the Community Garden. Wilson has asked representatives of the community garden to make contact with him to determine what efforts can be undertaken to bring the fence into compliance with the Village Fence Ordinance. He is hopeful of a positive outcome and looks forward to working with this group and the Beverly Hills United Methodist Church on this and all future endeavors.

PUBLIC COMMENTS

Maureen Francis of 16982 Dunblaine, member of the Community Garden and the Zoning Board of Appeals, commented that Chris Wilson addressed many of her concerns about the Community Garden fence issue. She found the meeting to be disappointing because Village residents were given a poor example of how local government is conducted in Beverly Hills. Francis referred to the unnecessary and unpleasant accusations made against the petitioner by a member of the Zoning Board. The garden is a wonderful addition to Beverly Hills. She hoped that Council and Administration could find a way to bridge this poor experience so that this positive community effort can thrive and make Beverly Hills an even more desirable place in which to live.

REPORTS – MANAGER

Wilson stated that Council has approved the contract with Lacaria for Local Street and Sidewalk Concrete Replacement. He noted that the price of \$2.70 per square foot was better than the engineer’s estimate at \$3.50 per square foot. Homeowners who would be assessed a portion of that sidewalk replacement will be charged somewhere between \$55-\$65 per slab, which is less than the Village estimated and far less than the price homeowners could achieve on their own.

During the process undertaken for marking and identifying sections of sidewalk that need replacement, it was observed that there are areas that do not front on a residential home; these sections are within the road right-of-way at various intersections. The cost of that sidewalk

replacement will be the responsibility of the Village. There are other areas where sections of sidewalk have been disrupted by trees within the Village right-of-way. Wilson and Meszler have reviewed different sections of the Village code and are working with Attorney Ryan to obtain a formal assessment of who will bear the cost of that sidewalk replacement. Wilson will bring this information back to Council so that the Village can notify homeowners of their responsibilities in these cases.

REPORTS - COUNCIL

Burry announced that the Birmingham Area Cable Board will meet tomorrow morning, July 20, at 7:45 a.m. in the Council chamber.

Mercer apologized to members of the Community Garden members and the United Methodist Church for comments made at the Zoning Board of Appeals meeting. It did not reflect well on the Village, and he hopes that there can be resolution of the situation with the community garden.

Mercer stated that the Longest Lemonade Stand has sold about 1400 feet of lemonade stands to date that will be constructed and erected in Beverly Park on August 20. The group has raised about \$10,000 for local schools. The event has extended to include not only Beverly Elementary School families but people from surrounding communities and businesses.

Mercer congratulated the Beverly Hills Little League tournament team consisting of 11-year olds who won their district game and are moving on to the sectional competition.

LaFerriere said that he attended the recent Zoning Board of Appeals meeting and was concerned about what transpired. He thought it was incumbent on the Village to work with the Community Garden members on a solution to the fence situation.

LaFerriere attended a SEMCOG workshop last week that focused on a requirement that all communities produce a citizens' guide to finances and provide a "dashboard" for citizen use in terms of explaining finances. The specifics of this project have come out in the form of a letter from the Governor and the State Treasurer. The key will be transparency in local government.

Mooney commented that the United Methodist Church has been a foundational organization in this community. It is supportive of the Village and has offered a variety of community groups access to their facilities. The Community Garden is an asset to the community. Mooney remarked that the individual who attacked the church has also confronted a number of other Village groups and individuals and appears to lack the temperament to act as a public official of Beverly Hills.

Mooney commended resident and scout from Troop 1024 Andrew Hausman on construction of an extraordinary sandbox in Beverly Park as his Eagle Scout project. He and fellow scouts also raised \$950 towards the project by collecting bottles and cans. Further, Hausman was able to persuade a company to contribute a costly digger toy for the sandbox to the Village as a donation. Scouts from Troop 1024 and other troops have done much to improve and maintain Beverly Park. Mooney expressed a sense of pride in what Andrew Hausman and others have done for the Village; these people are the face of our community.

Oen announced that the Planning Board will meet next Wednesday, July 27, at 7:30 p.m. Oen commented that it was unfortunate that a member of the Zoning Board chose that forum to disparage the United Methodist Church and the Community Garden group. He hoped to have the issue resolved and to move forward in a positive manner.

Motion by Mooney, second by Oen, to adjourn the meeting at 8:36 p.m.

Motion passed (6 – 0)

Rosanne Koss
Council President

Ellen E. Marshall
Village Clerk

Susan Bernard
Recording Secretary