



Town of Berwyn Heights

5700 Berwyn Road
Berwyn Heights, MD 20740
Tel. (301) 474-5000
Fax (301) 474-5002

Minutes Worksession August 25, 2014

The meeting was called to order at 7:40 p.m. Present were Mayor Cheye Calvo, Mayor Pro Tem (MPT) Jodie Kulpa-Eddy and Councilmembers (CMs) Patricia Dennison, Chris Rasmussen and Anthony Schreiber. Also present was TA Edward Murphy, Clerk Kerstin Harper, Code Supervisor Kevin Simpson and Mike Attick.

1. Mayor

Agenda: Mayor Calvo discussed changes to the agenda submission process. A request for agenda items will go out to the Town Council on Monday prior to a worksession. All directors should receive a copy. Submission of agenda items should occur by Wednesday, including background materials, if needed. A draft agenda will be sent to Mayor Calvo by Wednesday afternoon and will be finalized on Friday morning.

Calendar: A presentation on the FBI headquarters will be scheduled for the September 10 Town meeting. A PGCMA meeting was added for November 13. The PGCMA legislative dinner was added for December 4.

Minutes: On a motion by MPT Kulpa-Eddy and second by CM Dennison, the August 11 worksession minutes were approved 5 to 0. The August 13 Town meeting minutes were distributed.

Department Reports: CM Dennison said that school will be back in session tomorrow. New students are now required to have two shots against chicken pox and TDP. The French Immersion specialty school has moved into old Greenbelt Middle School. PGCPs CEO Kevin M. Maxwell and County Executive Rushern Baker visited newly-built Edward M. Felegy Elementary School in Hyattsville, which will have a creative arts focus. CM Dennison also reported on upcoming events.

MPT Kulpa-Eddy reported that the books on FY 2014 have been closed and sent to the auditor. The last income tax disbursement will be added when received. Mayor Calvo said that all department directors should have completed the performance evaluations for their employees and given them to their department heads for review. He has given his feedback to Chief Antolik. He hopes to discuss the evaluations for the directors at the 2nd worksession in September.

Citizen comments: MPT Kulpa-Eddy received a comment from a resident seeking confirmation that

heavy trash will be picked up on Mondays for the north side and on Tuesdays for the south side come January. Mayor Calvo said that Public Works is already picking up heavy trash whenever they see it at the curb.

Mike Attick, 62nd Avenue, commented that the agenda packet, which was sent out as an all-in-one pdf, had pages that were upside down, but it may have been his computer that had the problem.

Egress window policy (discussed out of order): Mayor Calvo said that, for the last year, the Town has made an effort to bring all basement rental units into conformity with the Maryland fire prevention code regarding egress windows. Code Supervisor Kevin Simpson has been asked to draft a policy for the Council's review and approval.

Mr. Simpson explained that egress windows have been his top concern in the rental inspections area since he started to work for the Town. The issue took on added importance when a rental owner contested the Town's enforcement of the egress window regulations. In Berwyn Heights, many basement apartments have been converted from other uses, and existing windows are too small to serve as viable emergency egress if there is a fire. This could expose the Town to greater risk of being liable if someone is burned or killed under such circumstances.

Mr. Simpson said he has consulted with the State of Maryland, Prince George's County and neighboring cities about egress window regulations. The State of Maryland adopted the *National Fire Protection Association's (NFPA) 101 Life Safety Code* as the State's fire prevention code. NFPA 101 mandates that all basement egress windows must be 5.7 square feet in size if they are below grade, and 5 square feet if they are at or above grade. They also may not be higher than 44" above the floor, so that children can get out of the window in an emergency. Additionally, there must be a window well no less than 9 square feet in size if the egress window is below grade, and must have steps or a ladder if it is deeper than 44".

Mayor Calvo asked which regulation in the Town's code Mr. Simpson references to enforce the egress window requirement. Mr. Simpson said he relies on *Ordinance No. 120, Section 6 (G)(1) Fire Safety Regulations - Means of Egress*. Mayor Calvo further asked if there is a reference in this Ordinance that says which standard applies, be it a fire safety code or building code. TA Murphy replied that *Section 1 (A) - Purpose and Authority* and *Section 2 (D) - Definitions, Building Code* cite the Prince George's County (PGC) building code as the applicable standard. However, Ordinance 120 fails to cite a fire prevention code.

Mayor Calvo asked if the PGC building code has provisions for egress windows. Mr. Simpson said the PGC building code relies on the International Building Code and the International Residential Code for standards, both of which set requirements for egress windows similar to those set by NFPA 101. The only difference is that the International Building Code requires a larger 5.7 square foot window if the floor of the basement apartment is below grade, whereas NFPA 101 only requires the larger egress window if any part of that window is below grade.

In the subsequent discussion, the Council sought to determine whether the Town is only bound by the International Residential Code through the PGC building code cited in Ordinance 120, by a fire code cited somewhere in the Town's charter and ordinances, or by county or state fire codes that may apply by default. It was agreed that TA Murphy check the Town's rules and regulations for references to a fire

code before the Council adopts a fire code as a standard. When a fire code is adopted, the Council must further decide whether the International Residential Code or the fire safety code is primary because they have a different threshold for requiring larger egress windows.

Mayor Calvo proposed to designate the fire safety code as primary, and provisionally adopt a rule to subject *Ordinance 120, Section 6 (G) - Fire Prevention* to NFPA 101. MPT Kulpa-Eddy objected to doing so prior to checking if the Town is already subject to a fire code. She moved that the Code Department be directed to draft a regulation to adopt NFPA 101 as the Town's fire code for approval at the next worksession. CM Rasmussen seconded. The motion passed 5 to 0.

At 8:40 p.m., the Council took a 10 minute break.

Nuisance vegetation - bamboo: TA Murphy explained that the Town's *Ordinance 107 - Clean Lot* has no provision that specifically deals with bamboo, although *Section 5 (I)* requires all shrubbery to be maintained so as "not to pose a danger or obstruction to an adjoining property, persons walking on designated walking areas, or visibility at an intersection or along a street." The Town's Commercial Clean Lot Ordinance prohibits growing bamboo. Neighboring communities deal with bamboo in different ways, including holding a property owner who has bamboo responsible when it spreads to adjoining properties. He recommends amending Ordinance 107 to allow bamboo on properties where it already exists, but hold the owner responsible for confining it to this property. It is further recommended to outlaw the planting new bamboo of any variety going forward.

Mayor Calvo said that the Town has received numerous complaints from residents who have problems with a neighbor's bamboo, including a group of residents who submitted a petition asking the Town to act on spreading bamboo in the 8800 block of 58th Avenue. He knows of places where bamboo has damaged driveways, curbs and other structures and supports banning bamboo and possibly some other invasive species. For these reasons, he supports TA Murphy's recommendations.

In the ensuing discussions, Councilmembers raised questions about home buyers who want to purchase a home that has bamboo; about bamboo patches where the originating lot can no longer be identified; and about cooperation among neighbors regarding the removal of bamboo.

MPT Kulpa-Eddy said she would be reluctant to tell private home owners what they must do about bamboo and other nuisance vegetation. Each individual home owner has some responsibility to control vegetation that comes from neighboring properties. Bamboo can be stopped with herbicides. However, she would have the Town remove bamboo when it begins to damage Town infrastructure.

CM Rasmussen said he believes there should be some level of regulation of bamboo. As with other divisive issues, such as noise or trash, the rights of individual home owners need to be balanced with the welfare of the surrounding community. When bamboo impinges on a neighbor's enjoyment of his property, it can become a cause for intervention.

Mayor Calvo said, ideally, disagreements among neighbors about bamboo can be worked out with an agreement. The Town would be in a better position to compel neighbors to work out an agreement if it had a sanction on bamboo. However, writing new regulations is better handled when the Council opens up the Clean Lot Ordinance for a review in the fall.

Code software: Code Supervisor Simpson reported that he has identified two code enforcement programs that would enable his office to better track and report on code activities. Mount Rainier, Hyattsville and College Park all use Comcate software and are happy with it. This software allows users to easily create and access case files for a property in the office and from the field. It would streamline the process of documenting property histories, track code violations and rental inspections and issue notices. The quote for this program was \$14,000, which includes \$8,000 for implementation and \$6,000 for annual maintenance. The other program would cost approximately \$15,000 and higher implementation costs, which include migrating existing code files into the system.

Mayor Calvo said he wants to implement such a system as soon as possible. He has no problem with paying a high up front cost because it would increase productivity down the line. However, he would prefer a system with less than \$6,000 per year in annual maintenance costs. The Council will likely adopt a budget amendment this fall and fund the software purchase. Mr. Simpson is requested to spell out in more detail the productivity benefits in different code areas to help the Council make a decision.

Mayor Calvo asked if Mr. Simpson has an update on the vacant properties the Council wanted to condemn and have torn down. Mr. Simpson said that he had a conversation with county officials but did not get an adequate response. Mayor Calvo thought that the condemnation process was already underway as Officer Snyder had met with county officials. Earlier, the Council decided that it wanted to use the county's condemnation process and have the Town pay for the demolition. Similarly, the Council decided to use the county process for removing inoperable vehicles. TA Murphy said that he has not followed up on this yet, but will do so.

Departmental monthly reports: Mayor Calvo asked to discuss the monthly departmental reports drafted by directors for the Council's review, and give some feedback. Each departmental report is in a different format and has good and bad points. He prefers a one-page report that gives "dashboard"-type overview of monthly activities. It would serve as a performance measure and help the Council to make policy decisions.

The Code Department's report comes closest to the ideal using a combination of bulleted highlights and tables to convey key data and important developments. The "upcoming objectives," are useful reference points for measuring progress towards stated priorities. Suggested improvements include a statistic on how much revenue was taken in, more detail on the violations process, as well as condensing all information to one page. The Public Works and Administration reports are mostly in a narrative format and should present more information in bullets and tables for a better overview. Administration might provide a town-wide overview of sick and annual leave. Public Works could include data on volume of trash collected. This could serve as the basis for the Council to make a decision on whether to transition to a 3-day trash collection schedule.

MPT Kulpa-Eddy said she was satisfied with the reports provided. She likes the narrative report because she can use it for department reports at Town meetings. CM Rasmussen said he agrees that the narrative report is useful for Town meeting reports. However, the quantitative analyses provide a better measure of performance and show how taxpayers' money is spent. Mayor Calvo concluded that ultimately, he would like department reports to distill the key data points that drive Council decisions, but it may take some trial and error to arrive at that format. Once that format is established, entering the data should not be time-consuming.

2. Administration

Comcast franchise agreement: TA Murphy recalled that the Council asked for clarification whether the extension of the Comcast franchise agreement, which was originally adopted in 1999 as Ordinance 106 and expired in March 2014, needs to be done by ordinance. He followed the advice of the Town's cable attorney, who strongly recommended extending the franchise by ordinance because it has greater legal weight. Mayor Calvo said he does not question whether it should be done by ordinance, but rather whether there needs to be 3 ordinances dealing with the Comcast franchise, e.g. Ordinance 106, emergency Ordinance 164, which expired in June, and now Ordinance 168. TA Murphy said that Ordinance 168 has the same and sole purpose as Ordinance 164, which is to extend the franchise agreement until a new agreement has been negotiated, but it does not expire after 90 days. Mayor Calvo suggested reusing the number 164 because that Ordinance has expired and gone away.

TA Murphy said the Council also asked whether each budget needs to be adopted by a new ordinance. Town Attorney Shay advised that a budget is a policy document and each budget should therefore be adopted as a separate ordinance. Mayor Calvo replied Attorney Shay in a subsequent email clarified that a budget could be adopted by resolution as long as the adoption has a number that can be cited. Mayor Calvo further explained he would like to avoid generating too many new ordinances because it makes the Berwyn Heights code confusing.

For purposes of extending the Comcast franchise, the Council agreed to keep Ordinance 168 because it also a temporary ordinance that will not be used when a new agreement is in place.

County tax differential: TA Murphy explained that he spoke with county officials about the decrease in the tax differential municipalities have received for services they provide, such as policing and trash collection. The decrease is due to funds being moved from the County's police patrol budget to other public safety appropriations, resulting in a lower base to which these municipal tax credits are applied. Mayor Calvo said that this essentially an accounting gimmick to increase county tax revenues. It has resulted in a tax increase of 3.1 cents per \$100 of assessed valuation for the Town's residents. The PGCMA will take this issue up.

3. Code Compliance

Code year one goals: CM Rasmussen distributed a new list of Code Supervisor year-one goals incorporating the Council's comments from previous worksessions. The list reduced the goals to 10 and placed deleted priorities into a list of "stretch goals." The list can be discussed in greater detail at the next worksession.

Urban forest initiative: CM Rasmussen said he just learned that the Town already has an Urban Tree Ordinance No. 122, adopted in 1986 and revised in 2000. However, this Ordinance is limited to protecting and maintaining trees in the Town right-of-way. He proposes to amend the existing Ordinance rather than come up with a new one. To start, he will draft a statement of principles, which might extend protection of the tree canopy to include trees on private property, and add sections dealing with replanting of trees and with invasive species. He also plans to contact the Green Team to solicit their input. Mayor Calvo advised he review the Town of Cheverly's tree policies as a suitable model.

Nothing was discussed under 4. **Parks and Recreation**, 5. **Public Safety** and 6. **Public Works**.

Health Fair (discussed out of order): The Council reviewed a memorandum provided by NW/EP

member Mike Attick outlining the plans for a September 6 Health Fair. Logistics and participation in the event are largely set, with the exception of the role of the Prince George's County Health Department. The Council expressed reservations about the success of the event, but agreed to let it go forward.

7. Executive Session (10:20 p.m. 10:59 p.m.)

On a motion by CM Dennison and second by CM Schreiber, the Council went into executive session to discuss 2 personnel matters. With matters discussed, CM Dennison moved and CM Schreiber second to end the executive session.

The meeting was adjourned at 10:59 p.m.

Signed: *Kerstin Harper, Town Clerk*