



Town of Berwyn Heights

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Minutes Worksession November 3, 2014

The meeting was called to order at 7:00 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 Town Administrator (TA) Jessica Cowles, Code Compliance Supervisor Kevin Simpson, Director of Public Works Adrian Lockley, Clerk Kerstin Harper, as well as code appellants Jorge Franco, Marilu Tomas, and Jerry Yaremko.

1. Mayor

Agenda: Four code appeals are scheduled to be heard tonight. They will be moved up on the agenda to accommodate the appellants who are present tonight.

Announcements: Gubernatorial elections will be held tomorrow, November 4, from 7:00 a.m. to 8:00 p.m. at the Berwyn Heights Elementary School cafeteria. Officer Krouse's wife gave birth their first child, Elena, on October 28.

Calendar: A presentation on the Indian Creek water main replacement project should be scheduled for the December Town meeting. The Clean Lot Ordinance will be introduced at the November Town meeting and the public hearing is to take place at the December Town meeting.

Minutes: On a motion by CM Dennison, and second by MPT Kulpa-Eddy, the October 6 worksession minutes were approved 5 to 0.

Department Reports: CM Dennison reported that Trunk or Treat was another big success. The Town's Police and Public Works Departments, as well as TA Cowles participated. The Wolfinger family won first place for best decorated car, the Buker family second place, and the Stevens family third place. Mayor Calvo commented that the Fire Department also had a scary truck there, and the Higgins family display was noteworthy. The Historical Committee held elections and elected Kerstin Harper as chair, Vice Chair Lee Fuerst, and Secretary Jeffrey Baldwin-Bott.

CM Schreiber reported that loose leaf collection has begun and reminded residents that leaves in plastic bags will not be collected. Residents are also requested to not place recyclables into non-see through plastic bags. The Prince George's Recycling Center will not credit them for payment. Public Works can provide additional recycling bins if a household needs them.

MPT Kulpa-Eddy noted that the Neighborhood Watch/ Emergency Preparedness Committee is accepting responses for their community preparedness survey until December 1. It was published in the October Bulletin and is also online and can be accessed from the Berwyn Heights website. Mayor Calvo reported that Chief Antolik has worked on the issue of vehicles displaying only one license plate. This is a violation of state law but is not covered in the Town's ordinances. The Council may be asked to address this problem early next year.

Citizen comments: Mayor Calvo received a comment about a large stand of bamboo a resident has started to remove, and about the rental inspection process. CM Rasmussen received a complaint about an overflowing T-Mobile dumpster in the Staples parking lot. MPT Kulpa-Eddy received several kudos for the retirement party of former TA Murphy.

2. Code Compliance (discussed out of order)

Code Appeals: Mayor Calvo said that the Council will hear 4 code appeals tonight. He then explained the code appeals process, in which the Council sits in a judicial capacity. Each appellant's case will first be summarized by Code Supervisor Simpson, followed by the appellant stating his or her case, and ending with the Council's deliberations and rendering of a decision. Appellants may appeal the Council's decision in the Prince George's County District Court but must obtain a municipal infraction citation from the Town in order to do so.

CM Rasmussen, head of the Code Compliance Department, thanked the appellants for coming out and noted that all code appeals heard tonight relate in to the Town's rental licensing process and the paperwork landlords are required to file.

5909 Natasha Drive appeal: Appellant Jorge Franco, the owner of the rental property 5909 Natasha Drive was present. Code Supervisor Kevin Simpson gave an overview of events that led to the imposition of a \$400 fine for the late filing of an incomplete rental license renewal application. The Code Department sent out a rental license renewal application packet to Mr. Franco on May 30, 2014, with a filing deadline of June 30. An incomplete application was received by the Department on July 30, one day prior to the expiration of Mr. Franco's license term. On September 12, the Code Department imposed a \$400 fine, a \$100 fine for each of 4 missing or incomplete documents. Mr. Franco submitted the missing documents to the office on September 22 and requested the fine be waived. Mr. Simpson denied the request because the documents were not submitted by the deadline. On September 23, Mr. Franco submitted a letter of appeal. On October 15, the rental property was inspected and failed inspection, but passed the re-inspection on October 29, when the license was renewed.

Mr. Franco explained that he followed the process he had followed in previous years to renew his license. He paid the \$300 license fee before his license term was up, and was expecting to coordinate submission of any missing documents with the Code Department afterward. He further stated that at the time he received the rental application packet he was preparing to travel to his home country and was in a hurry to complete the application. Upon his return, he found that a \$400 fine had been imposed, with additional fines of up to \$1,000 due if the incomplete documents were not submitted by the deadline of September 27. He thinks the amount of the fine is excessive for missing documentation, and that he should have received a warning letter. He also would like the Council to consider that he purchased the home in 2006 for more money than it is now worth. He moved out to live with family in 2011, and

began to rent his house to pay for the mortgage. He cannot afford to pay a \$400 fine.

Mayor Calvo asked why Mr. Franco waited 2 months from receipt of the Town's rental application packet, and 1 month after the due date of June 30, to submit license fee and application. Mr. Franco said that he was focused on travel preparations but wanted to make sure to pay for the license before it expired. He was out of the country from late July through August. Mayor Calvo asked how many renters he had last year. Mr. Franco replied that he rented to a family last year, but that additional family members moved in during the year. This year he is renting to a group of 5 friends. Mayor Calvo said he has the impression that this rental property is not as well managed as it should be, with additional people moving into the house and no papers being filed for them. Also, neighbors filed complaints about cars being repaired in the driveway, which is not permitted. Mr. Franco admitted this happened but that he tries to rent to good people and that he checks his tenants' history.

CM Rasmussen noted that in past years Mr. Franco had worked with Code staff to complete all necessary forms to renew his rental license. He asked if the Code Department had reached out to Mr. Franco prior to the imposition of the fine to let him know that the application was incomplete. Mr. Simpson said, given the lateness of the submission, this was not done.

Mayor Calvo said that he is concerned about Mr. Franco describing the Town's rental process as "outrageous" in his appeal letter, which seems to indicate a lack of respect. The licensing process has been put in place so that the Town can inspect a property prior to renewal of a license and ensure it is fit to rent. The rules aim to ensure that rental homes do not become a burden on the neighbors and the community. He asked if Mr. Franco plans to follow the rules in the future. Mr. Franco said he would.

In deliberations, Councilmembers made the following observations: The Town not contacting the rental owner about missing parts of his rental application does not change the fact that the submission was late and the documentation incomplete. The property effectively was without a license for several months and had deficiencies, such as non-working smoke detectors, which are a safety hazard. The very late submission of the application is an indication that the rental owner did not take the process seriously, which is also manifested in a number of problems this house experienced last year. The Code Department could have imposed additional fines for late submission but chose not to do so. For these reasons, it was recommended to uphold the \$400 fine. MPT Kulpa-Eddy so moved. CM Rasmussen seconded. The motion passed 5 to 0.

8512 60th Place appeal: The appellant Rod Schwarz was not present. Code Supervisor Simpson summarized the events that led to the imposition of a \$200 fine for missing and incomplete documents in submitting the rental license application. He noted that the rental property in question was not issued a license during FY 2014 due to a failed inspection in August 2013 and a failure to schedule a re-inspection, which resulted in a lien of \$200 filed against the property. In 2007, the Council heard an appeal by Mr. Schwarz of a \$600 fine for failure to renew a rental license. That fine was reduced to \$200.

Mr. Simpson stated that the Code Department mailed a rental license application packet to Mr. Schwarz on May 30, 2014 with a due date of June 30. In addition to the mailing, a renewal letter was emailed to Mr. Schwarz. On June 7, the Code Department received an email from Mr. Schwarz saying that he did not receive the rental packet. On June 9, TA Murphy replied by email advising Mr. Schwarz the packet was sent to his registered mailing address and attaching all required rental application documents. The

email also informed Mr. Schwarz that a \$100 fine will be applied for each missing or incomplete document. On June 30, Mr. Schwarz submitted a rental application with insurance information and floor plan missing. On July 17, the Code Department imposed a \$200 fine. On August 15, Mr. Schwarz filed the missing documentation and requested an appeal hearing of the fine. The property was inspected on October 29, and failed inspection. A re-inspection must be scheduled by November 30. Mr. Simpson recommended upholding the \$200 fine.

Mayor Calvo commented that this fine should certainly be upheld, but it also raises questions about the Town's rental licensing process. This property has essentially not been in compliance for the last year and still has not passed inspection. A \$400 fine for renting without a license should be imposed if an inspection is not scheduled and passed by November 30. MPT Kulpa-Eddy moved to uphold the fine. CM Dennison seconded. The motion passed 5 to 0.

5912 58th Avenue appeal: The appellant and rental owner Marilu Tomas was present. Code Supervisor Simpson summarized the events that led to the imposition of a \$300 fine for missing and incomplete documents in the rental license renewal application. The Code Department mailed a rental packet to the property owner on July 30, 2014, with a due date of August 29. The license term was to set to expire on September 30. The rental license packet was filed on August 15, but lacked the insurance policy number and tenant contact information on the application, as well as a Tenant Rights and Responsibilities form and a floor plan. On August 18, the Code Department sent an email to Mrs. Tomas requesting the missing information by the end of August. A delivery receipt indicates that the email was delivered successfully. With no additional information received, the Code Department sent a letter and an email to the rental owner on September 17 informing her of the imposition of the fine.

On September 18, Mrs. Tomas sent an email to Mr. Simpson appealing the fine. In subsequent emails and phone calls, Ms. Tomas explained that she did not file information about the second tenant because it was the spouse of the first tenant and that a policy was not required in previous years. Beyond that, she did not see Mr. Simpson's email in which missing information was referenced because it went into her spam filter. Mr. Simpson offered to reduce the fine by \$100 because one tenant form is sufficient for married tenants. TA Murphy followed up advising the owner that she could pay the reduced fine or appeal to the Town Council. On September 30, Ms. Tomas requested an appeal. The rental property is now licensed after having passed inspection.

Mrs. Tomas stated her case. She said that she has rented this property since 1996 and has always come to the Town office in person to pay the rental license fee and submit all documentation. She again did so on August 15, 2014, and gave the forms to Ms. Odoi as Mr. Simpson was not in the office. When Mr. Simpson sent the first email to her on August 18 detailing the missing information, she did not see it because it went into her spam folder. She never supplied the Code Department with her private email. Mrs. Tomas further noted that she uses her prior year application to fill out the next year's application. The missing insurance policy number and 2nd tenant information requested by Code Supervisor Simpson had been missing since 1996.

Mrs. Tomas further explained that, previously, the Code Department had always called her after she filed the rental application to schedule an inspection. This year the process was very different. When no one contacted her, she took the initiative and called the Code Department, leaving voice mails, requesting confirmation of receipt of her application and an inspection. When she was finally able to speak with Mr. Simpson and state her concerns, he offered to reduce the fine by \$100. She also spoke

with TA Murphy and then requested an appeal with the Town Council.

In deliberations, Mayor Calvo stated he thinks a missing policy number and contact information are not a serious issue. However, he would like to know if Mrs. Tomas has ever filed a floor plan. Mrs. Tomas said she did submit a floor plan at some point and thought the Department kept it on file. She did not know that she had to file it every year. Mayor Calvo further asked whether Mrs. Tomas intended to leave blank item #12 on the application, where landlords can supply an email address as a secondary contact. Mrs. Tomas said she never supplied that information to the Town. Mr. Simpson said that it is noted on her 2013 application. Inspecting the page, Mrs. Tomas said that it is not her handwriting. On her copy of the 2013 application, this item is blank. She thinks her not using that email in communicating with the Town is why the Code email went into her spam filter.

CM Rasmussen asked when Mrs. Tomas last filed a floor plan and whether any changes have been made in the layout and function of rooms. Mrs. Tomas said she does not remember when she filed the plan but that no changes were made to the interior since she has rented the house. CM Rasmussen asked on what basis Mr. Simpson recommends reducing the fine to \$100. Mr. Simpson said that the owner has shown a good faith effort to be in compliance over the years, and that there was an obvious miscommunication between her and the Code Department this year.

Mayor Calvo said that he would waive the fine because the Town used an unauthorized email address to communicate with the home owner. This resulted in her not receiving the critical notice about missing information on her application. The other items were minor and had not been flagged in the past. MPT Kulpa-Eddy disagreed that the problem was communication. The Town did also communicate by regular mail, and she regards a missing floor plan as an important document the Department should have on file. Mr. Simpson said that he does have a floor plan now. CM Schreiber thought this is a case of the code being written one way, but its application handled a different way for many years. This resulted in tenants submitting applications that were not technically complete. He supported voiding the fine. CM Rasmussen stated he thinks the Code Supervisor made a reasonable effort to come to an accommodation waiving one fine and reducing the others. He supports the recommended \$100 fine. MPT Kulpa-Eddy so moved. CM Rasmussen seconded. The motion passed 3 to 2, with Mayor Calvo and CM Schreiber opposed. Mrs. Tomas was advised she could pay the reduced fine or appeal the decision to the District Court.

5802 Pontiac Street code appeal: The appellant Jerry Yaremko was present. Code Supervisor Simpson summarized the events that led to the imposition of a \$100 fine for an incomplete floor plan. The Code Department sent a rental application packet to Mr. Yaremko on June 30, 2014 with a filing due date of July 31. The rental license was set to expire on August 31. All rental application forms were received on July 28, but the floor plans lacked the required dimensions of all rooms. On the same day, Mr. Simpson sent an email to Mr. Yaremko advising him of the missing information and the filing due date of August 4. The required information was not received by the due date, and the Code Department sent a letter and an email to Mr. Yaremko on September 12 advising him that a \$100 had been imposed. On September 17, the Department received an email from Mr. Yaremko requesting the fine be waived. On September 18 he had a phone conversation with Mr. Yaremko about the fine and on September 19 Mr. Yaremko submitted a letter to request an appeal before the Town Council. An inspection of the property is scheduled for November 5. Mr. Simpson recommended a reduced fine of \$50.

Mr. Yaremko stated his case. He explained that he works at the Census Bureau and during the week

stays at his rental property in Berwyn Heights. However, on weekends he drives home to Pennsylvania, a 400 mile round trip. Due to his limited time, he relies on his wife to handle most of the paperwork associated with the rental property. Until receipt of the fine letter, he was under the impression that everything was in order. It was a complete surprise when Mr. Simpson informed him that the Department had sent an email to his wife advising her of the missing dimensions on the floor plan. Mr. Yaremko further stated that his wife is an epileptic and has impaired brain function. Lately, her seizures have been getting worse and she is scheduled for an operation. Due to her condition, she did not notice the email notifying them of the missing information.

MPT Kulpa-Eddy noted that the floor plan is quite detailed even without the missing information. She asked if this is the original plan submitted. Mr. Simpson said it is not. His staff has filled in some of the missing information, which he has since asked them not to do. CM Rasmussen asked if this document would stand up in court. Mr. Simpson said it would not. Mayor Calvo said that this appears to him a minor omission for an otherwise conscientious landlord. He would waive the fine. CM Rasmussen so moved. MPT Kulpa-Eddy seconded. The motion passed 5 to 0.

Rental license application guidelines: Mayor Calvo further stated that some of the documents required for rental license renewal are an unnecessary burden, including: dimensions for all rooms in the rental home, excepting sleeping rooms; information on tenants that are minors; and insurance information that has not changed. MPT Kulpa-Eddy said she mostly agrees, but all adult tenants should be asked to sign the tenants rights and responsibilities form, and the application should have check boxes for information that has not changed.

The Council agreed to give guidance to Supervisor Simpson for discretionary enforcement of rental licensing regulations to reduce paperwork required for the annual filing of rental license applications:

1. Require only dimension of sleeping rooms on floor plan of rental home;
2. Require only adult tenant information, exempting all minors except their number;
3. Waive requirement to file unchanged documents every year, but provide check box to indicate that information has not changed.

MPT Kulpa-Eddy moved to approve the guidelines. CM Schreiber seconded. CM Rasmussen asked whether any fines have recently been issued for not filing information that the Council would now no longer require. This may open the door to more appeals. Mayor Calvo said that the waivers would only apply to information that is already on file. CM Rasmussen offered an amendment to ask Code staff to investigate the implications of discretionary enforcement and recommend a course of action at the next worksession. The motion failed for lack of a second. Mayor Calvo suggested that staff move forward with implementing the above guidelines and recommend changes to the process where needed later. The motion to implement the guidelines passed 4 to 1, with CM Rasmussen opposed.

At 9:13 p.m., the Council took a 5 minute break.

1. Mayor (discussed out of order)

Clean Lot Ordinance: Mayor Calvo asked the Council to review the language of changes made to Ordinance 107 to date for introduction at the November Town meeting. TA Cowles explained that she has reworked certain sections of the Ordinance to ensure consistency and clarify content.

Section 4 (A) – Definition for abandoned vehicles was clarified to include all types of inoperable, non-road worthy, unregistered or improperly registered vehicles kept on private property. In response to CM

Schreiber, TA Cowles said that the current laundry list of criteria for abandoned vehicles could be numbered or bulleted so that any combination of criteria could be selected to qualify a vehicle as abandoned and not permitted.

Section 4 (C) – Definition for bamboo was reworded to be more easily understood by laymen.

Section 4 (F) – Definition of invasive species was rewritten to mean a plant species that is non-native to the ecosystem under consideration and can cause ecological or economic harm.

Section 4 (I) – Definition of paved parking area might be rewritten to encourage property owners to install pervious surfaces for parking areas.

Section 4 (P) – To the definition of vacant property, which refers to residential properties found to be unoccupied for 15 consecutive days, might be added the criteria that the current owner or his whereabouts are unknown. The length of vacancy before being listed as such is still open to discussion.

Section 5 (B) – The term “noxious plant” was removed, as it is already covered by the term “invasive plant,” defined as causing environmental or economic harm.

Section 5 (G) – Extermination of insects or other pests harbored by improperly stored wood is by definition injurious to animals and could be removed or reworded.

Section 5 (L) – The abatement process of a faulty accessory structure should be consistent throughout the Ordinance. It would require adding the following phrase to this section: “cost can be covered by an ad valorem tax or the lien process.”

Section 5 (M) – The requirement that all premises shall have approved address numbers, plainly visible from the street was added to ensure that a home can be readily found by public safety services. This conforms with the International Property Code and Prince George's County Code.

Section 5 (N) – This provision was previously added to provide a registration process for vacant properties.

Mayor Calvo said, for purposes of introducing the amended Ordinance, the Council needs to make a decision on several issues. This includes establishing time frames for addressing violations. Different categories of violations and their corresponding corrective actions might be set up for 1) violations that entail immediate fines, such as parking on grass; 2) fines imposed after 10 to 15 days, such as for failure to keep grass below 10”; and 3) fines for failure to come up with a plan to address more expensive code violations, such as rebuilding retaining walls that pose a safety hazard.

In addition the Council needs to decide how to treat several specific violations, such as abandoned and inoperable vehicles. The Council agreed that no more than 2 abandoned, inoperable or unregistered vehicles can be kept on a property, which must be properly covered with a fitted cover. In addition, a vehicle can be in violation of the Ordinance if it becomes a breeding ground for insects and vermin, even if properly covered. This provision needs to be added to section 5 (D).

Regarding repeat violations, the Council agreed that a home owner becomes a repeat violator after receiving two violation notices within a 12 month period. A shortened 7 day period then applies to correct the violation before a fine is issued. If a third Clean Lot violation of any kind is issued to the same owner over the same period, he becomes an egregious offender and can be fined immediately. An offender can come off the repeat violator list after 18 months without a violation. While tracking of repeat violations would be difficult under the current system, it would not be with an electronic code tracking system that can issue reminders. Code Supervisor Simpson noted that a fine issued without any kind of notice may not stand up in court. Mayor Calvo replied that the Town Attorney may have to review this issue before introduction. TA Cowles said a definition of egregious offender could be added in Section 4 to clarify this status.

Regarding vacant properties, Mayor Calvo proposed that a process be set up by which a property is placed on a vacant property list, and once on the list the owner is notified that an accelerated abatement process applies. Prince George's County has set a 3 day period to correct a violation for a property that is vacant, which might be the model for the Town. The Council debated whether a registration process for vacant properties should be introduced. Code Supervisor Simpson explained the registration process of the City of Mount Rainier, which helps identify the owners of properties that are vacant long term and have violations of some type. Often those are foreclosed, bank-owned properties that have no particular incentive to maintain the property. Owners of such vacant properties must pay a registration fee and a fine if they do not register. No decision was made whether to implement a vacant property registration in Berwyn Heights.

Regarding the storage of wood, as regulated under Section 5 (G), the Council agreed to add a provision that extermination of insects, rodents and other pests harbored by wood piles must be done in a manner that is not harmful to the health of humans and domestic animals.

Regarding invasive plant species, regulated under Section 5 (B), it was agreed to add a provision that prohibits invasive plants, such as poison ivy, to become a nuisance for neighbors and public property, nor endanger the health of trees. It was further agreed to introduce the Clean Lot Ordinance amendment with the new rule that homes have clearly identifiable house numbers.

Commercial Clean Lot Ordinance: Postponed.

Berwyn Heights legislative dinner agenda: Postponed.

PGCMA legislative priorities: Mayor Calvo explained that the Prince George's County Municipal Association (PGCMA) has produced a list of 9 possible legislative priorities provided in the background documentation. Each municipality is requested to give feedback as to their top priorities before PGCMA votes on them at its November meeting. The Council agreed to nominate the following issues as top priorities: 1) Prince George's County zoning code; 2) municipal tax differential; and 3) WSSC communication.

PGCMA legislative dinner attendance: Councilmembers were requested to inform Clerk Harper if they plan to attend the December 2 legislative dinner.

Four Cities marketing video: MPT Kulpa-Eddy said that a video promoting Four Cities communities as the location for the future FBI headquarters was discussed at the last Four Cities meeting. The draft script provided to members, however, was very Greenbelt-centric. It featured Greenbelt's Town Center and other amenities within the City of Greenbelt. Other Four Cities members were encouraged to submit any videos and/or photos of their communities that could be included.

Mayor Calvo thought that Greenbelt has taken the wrong approach. He would prefer that the Four Cities agree on a common theme for their communities, hire a videographer and ask him to write the script and film the video based on that theme. He proposed to contribute \$5,000 to the production of the video if this approach is taken. The money would be taken from the cable reserve and the video could be shown on the Berwyn Heights access channel. The Council agreed that, considering the stakes, a professional should be hired to produce the video that would feature the communities around the

Greenbelt Metro site. MPT Kulpa-Eddy moved to commit \$5,000 to the project, provided a professional is hired to promote the communities surrounding Greenbelt Station. CM Schreiber seconded. The motion passed 5 to 0.

MPT Kulpa-Eddy noted that the Four Cities also provided a draft resolution supporting the FBI headquarters relocation to the Greenbelt Station, asking all members to pass it. CM Rasmussen so moved. CM Schreiber seconded. The motion passed 5 to 0.

Nevada Street trail naming (added item): Mayor Calvo explained that County Councilmember Eric Olson will have a retirement party in November before leaving office. This would be a good occasion to honor his 8 years of service on the County Council. He proposed that the Town request Park & Planning to name the newly constructed trail connecting Nevada Street with the Indian Creek trail “Olson's Way,” and erect a sign. CM Schreiber so moved. CM Dennison seconded. The motion passed 5 to 0.

3. Public Works

Recycling rules flyer: TA Cowles said that a new version of a flyer explaining recently revised recycling rules to residents was provided in the background documentation. The Council is requested to approve it for mailing. The Council approved the flyer, provided an explanation is added as to why the rules were changed as well as some graphics to capture the reader's attention.

Bus stop pads and benches: Mayor Calvo said that a list of 12 possible bus stop locations was compiled from priority lists of retired TA Murphy and Director Lockley. The Council is requested to select 10 locations where bus stop pads and benches will be installed. CM Schreiber moved and CM Dennison moved to approve 8 locations marked on a map of Berwyn Heights based on bus traffic and pedestrian safety considerations. The motion passed 5 to 0.

4. Administration

Bulletin cover: The following items were approved for the December Bulletin cover: Happy Holiday theme; announcements for Tree Lighting, Clean Lot Ordinance hearing, trash collection changes, and WSSC presentation on the Indian Creek water main replacement project.

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

The meeting was adjourned at 11:39 p.m.

Signed: *Kerstin Harper, Town Clerk*