



Town of Berwyn Heights

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Minutes Worksession September 8, 2015

The meeting was called to order at 7:00 p.m. Present were Mayor Jodie Kulpa-Eddy, Mayor Pro Tem (MPT) Chris Rasmussen, Councilmembers (CMs) Patricia Dennison and Maria Robles. Also present was Town Administrator (TA) Jessica Cowles, Clerk Kerstin Harper, Lynn White, Brad Jewitt, Maurice McFarland and Rod Schwarz.

1. Mayor

Announcements: Several Councilmembers attended Hello Huskies Night at Berwyn Heights Elementary School (BHES) before this meeting. A large crowd of students, parents and teachers enjoyed music, food and companionship. The Berwyn Heights Volunteer Fire Department had one of their trucks on display. The Boys & Girls Club will host a Movie Night on September 26, 7 pm at Sports Park, and a Harvest Fest on October 3 at the Town Center. Lynn White, who was appointed to fill the vacancy left by CM Schreiber's resignation, will be sworn in at tomorrow's Town meeting.

Calendar: The Council reviewed the calendar. A Community Garden Fest was added for September 20, an electronics recycling event for October 24, and an Holiday Tree Lighting for December 5th.

Minutes: The August 12 Town meeting minutes were distributed.

Department reports: CM Dennison reported that she was at tonight's Hello Huskies Night, which had a good turnout. Mayor Kulpa-Eddy reported that Lynn White will likely head the Public Works Department, after she is sworn in as Councilmember tomorrow night. MPT Rasmussen reported that he met with TA Cowles to discuss his transition to Administration Department Head. The recruitment of a new Town Treasurer is moving forward and TA Cowles saved the Town \$10,000 per year in Bulletin mailing costs by utilizing USPS Every Door Direct Mail and negotiating with the current print vendor. CM Robles reported that she met Code Supervisor Glass and reviewed forms and correspondence templates to see if any should be revised. Mr. Glass also provided her with an action plan to implement the new Clean Lot regulations.

Citizen comments: Mayor Kulpa-Eddy received an inquiry on the status of adding new street lights for dark areas in Town, a complaint about trash, a pot hole and faded striping at the 7 Eleven on Greenbelt Road, questions about the timing of mosquito spraying and loose leaf pickup and a suggestion to make

the 8900 block of 58th Avenue one-side parking. CM Robles received a complaint about tall grass at a Cunningham Drive rental property.

Brad Jewitt, Natasha Drive, shared his concerns about the process for filling the most recent Council vacancy, noting that he had sent the Mayor and Mayor Pro Tem an advance email. He also contacted the Ethics Commission about his concerns but they concluded they did not have jurisdiction. His concern is that the filling of the vacancy caused by CM Schreiber's resignation did not leave an opportunity for residents to apply. The Council at its August 24 worksession appointed one of four candidates that had applied for the earlier vacancy left by Mayor Calvo's resignation in June. He understands that CM Schreiber's departure occurred in late August leaving only the September 9 Town meeting to swear in a new Councilmember and still comply with a Charter-mandated 45 day deadline for filling a vacancy. However, he believes that CM Schreiber might have been asked to postpone his resignation on paper to give the Council more time, advertise the new vacancy, and select from a fresh pool of candidates. Another option might have been to inform residents in a special mailing about the new vacancy and the Council to call a special meeting to review applicants and select a candidate within the 45 day time period. He might have applied if given the opportunity.

Mr. Jewitt further stated that the Town Charter is silent on how a vacancy should be filled. While the Council did not do anything unlawful, the manner in which the vacancy was filled did not comport with the principles of good governance, where the public should always be informed and permitted to participate. Mr. Jewitt suggested the Council consult with the Town attorney to clarify the process, possibly in a Council Rule or an Ordinance, to spell out the details.

Mayor Kulpa-Eddy said that CM Schreiber's resignation was unexpected. It would have been better if the resignation could have been delayed to allow more time for candidate selection. But the timing was such that it left only one Town meeting within the 45 day time frame to select and swear in a new Councilmember. Nonetheless, clarification of the process of filling a vacancy in the Town's code is needed. She will ask the Council to consider adding a provision on filling vacancies to the Election Ordinance, which is currently under review. Mr. Jewitt is welcome to submit recommendations as to the content of such a provision. The Town Attorney will be consulted as part of this process. Mayor Kulpa-Eddy thanked Mr. Jewitt for sharing his concerns.

Nothing was discussed under **2. Parks and Recreation, 3. Public Safety, and 4. Public Works.**

5. Code Compliance (discussed out of order)

Mayor Kulpa-Eddy explained that the Town Council tonight will sit in a judicial capacity to address the code appeals that have been filed in the last couple of months. She asked Code Supervisor Glass to join the Council at the table to outline the circumstances of each case.

Code appeal - 8917 57th Avenue: The owner of the property in question, Maurice McFarland, was present to appeal \$300 in Clean Lot fines for untagged and inoperable vehicle violations. Code Supervisor Glass said the record of abandoned vehicle-related violations at this property goes back to 2010 and resulted in 29 door hangers and certified letters being sent to the owner. The current case dates to July 2, 2015, when the Code Department sent a certified letter to Mr. McFarland notifying him that he will be fined for storing two abandoned vehicles and motor vehicle parts in his driveway per Section 4 E and F of Ordinance 107, if the violation is not remedied within 7 days. A July 10 property check turned up the same vehicles still parked in the driveway, and a \$200 fine was imposed, \$100 per vehicle. A July 15 checkup found another untagged vehicle parked in the driveway, for which a \$100

fine was also imposed per Ordinance Section 6 E, which calls for an immediate fine if the violation is a repeat violation, or one of multiple Clean Lot violations. On July 20, the Code Department received a letter from Mr. McFarland requesting an appeal.

In response to questions from the Council, Code Supervisor Glass and TA Cowles replied that the Code Department cannot be certain that all prior violations at this property were resolved and fines paid, as there was turnover in the code supervisor position and a gap in record-keeping. Further, it could not be determined whether any liens had been filed for this property. The Council noted that absence of background documentation on this case, such as photos of the inoperable vehicles and copies of the certified letters sent to the owner, would have been helpful. They should be provided for future appeals.

Mr. McFarland stated his case. He said that he collects vintage cars and repairs cars as a hobby. Friends and acquaintances frequently drop cars off at this home for repairs. On July 2, one of the vehicles then parked in his driveway, a blue Chevy Camaro, was incorrectly cited for having expired tags. The vehicle is registered. The other vehicle was misidentified as a green Nissan Frontier, but it is in fact brown. He covered the vehicle with a tarp after he received the second citation. The immediate fine imposed on July 15 for an untagged red Pontiac Sunfire occurred shortly after the vehicle was dropped off at his property for repairs. He felt he should have been given some time to comply before a fine was imposed. After receiving this citation, he covered the Sunfire.

The Council asked to see pictures of the expired tags on the Chevy Camaro. Supervisor Glass went to his office to retrieve them. The Council then gave Mr. McFarland permission to fetch registration papers for the Camaro from his home. The code appeal was tabled until their return.

Code Appeal - 8612 60th Place: The owner of the rental property Rod Schwarz was present to appeal a \$200 fine for an incomplete rental license application. The application lacked a list of tenants and their contact information, insurance information, complete Housing Disclosure Forms and complete Tenants' Rights and Responsibilities forms.

TA Cowles said that the owner had previous rental license violations, including failure to obtain a rental license from August 2013 to July 2014 due to a failed rental inspection, and renting without a valid license from August 2014 to March 2015. Mr. Schwarz objected that the rules of evidence should preclude these facts from being considered in this case. Mayor Kulpa-Eddy agreed and asked to focus only on the current case. TA Cowles said that a new rental license application packet was sent to Mr. Schwarz on May 29, 2015 with the application due by June 30. The application was received late on July 8 and was incomplete. The Town sent the owner a letter on July 15 informing him that a fine has been imposed and detailing the missing information. Mr. Schwarz requested an appeal on July 17 and sent a formal letter to that end on July 24. Mr. Schwarz supplied most of the missing information by August 20, but a list of tenants and contact information was still missing on September 4. The rental home was inspected and passed inspection on August 3. A license was then issued for the coming year.

In response to Council questions, TA Cowles and Supervisor Glass said the Town was not sure how many tenants were actually renting a room and continued to ask for this information. It was pointed out that Mr. Schwarz operated the rental for at least 8 years and should have been aware of what documents were required.

Mr. Schwarz stated his case. He said that he has not memorized the Rental Housing Ordinance and relies on the Code Department to tell him what he needs. He also expressed his frustration in

communicating with the Code Department, which has supplied contradictory information, such as a July 17 email notifying him of the imposition of a \$300 fine, and later a \$200 fine. If the fine represents \$100 fines for each missing piece of information, he finds it excessive. He thinks the rental license application package should be considered one document and not a collection of multiple documents, with each missing one carrying a fine.

Further, Mr. Schwarz maintained the wording of the application is confusing when it asks how many rooms are rented. He is renting his whole house, or 6 rooms including the living room, not all of which are occupied by a tenant. In July, only 3 tenants were on the lease and about to move out. One of the 3 was on vacation. During the summer, his rooms turn over as students move out and in. His lease runs from August 1 to July 31, and he had a new group of 3 students move in on August 1, whose contact information he did not have when he applied for the rental license. In late August, two more new tenants were added to the lease, and he supplied their documentation by email.

In deliberations, the Council noted that Mr. Schwarz made some effort to comply and provided updated tenant information by August 20. However, as of last Friday the Town still had not received all required information for the 5 tenants now living in the house. MPT Rasmussen moved and CM Dennison seconded to reduce the fine to \$100, provided all required information is supplied by the end of this week. The motion passed 4 to 0. TA Cowles will provide a written form of the decision to Mr. Schwarz. Mr. Schwarz was informed that he may appeal the Council's decision to the District Court within 10 days, in which case the Town has to issue a municipal infraction.

The Council took a 5 minute break.

Code appeal 8917 57th Avenue, continued: Mr. McFarland supplied papers apparently showing that the Camaro registration has not yet expired. Code Supervisor Glass provided photos of the Nissan Frontier and the Pontiac Sunfire without tags. He also said that the VIN number on the registration has been altered. The Council concluded that it cannot make a determination on whether the registration papers match up with the Chevy Camaro without further investigation.

In deliberations, the Council agreed to uphold the fines for the Nissan Frontier and the Sunfire, but to issue no fine for the Camaro, leaving this issue for a possible police investigation. MPT Rasmussen moved and CM Dennison seconded to uphold \$200 in fines. The motion passed 4 to 0.

Code Appeal 8519 63rd Avenue: The appellant, Daniel Johnson, was not present. Code Supervisor Glass explained that Mr. Johnson, the property owner, requested an appeal of an \$800 fine for failure to supply all required information for a rental license renewal that was received on February 6, 2015. On February 10, a \$400 fine was imposed for each missing document: 1) tenant contact information; 2) property insurance information; 3) Rental Housing Disclosure form; and 4) a floor plan of the residence. On March 11, an additional \$200 fine was imposed for continued failure to supply the missing information. Mr. Johnson then requested an appeal. An appeal was not scheduled until July 20, as the Code Department was without a Code Supervisor at the time. This appeal date was postponed at Mr. Johnson's request. On March 28, an additional \$200 fine was imposed for continued failure to supply missing information. As of September 8, insurance policy information and the floor plan are still missing.

In deliberations, the Council noted that once an appeal has been requested the violation enforcement process is stayed. Therefore, the March 28 fine of \$200 should not have been issued. MPT Rasmussen

moved and CM Dennison seconded to reduce the cumulative fines to \$600. The motion passed 4 to 0.

Ordinance 134 - Commercial Clean Lot fine schedule: TA Cowles said that in May the Council amended the Commercial Clean Lot Ordinance, which requires adoption of a fee and fine schedule. Under the old Ordinance, there was no fine schedule. Fine amounts were at the discretion of the Code Director. The average fine amount was \$200 with a limit of \$1,000.

Mayor Kulpa-Eddy said that the fines appear high relative to the residential Clean Lot fine schedule. She would like to see two schedules side by side for a better comparison. She also said that the Commercial District Management Authority (CDMA) should be given the opportunity to comment on the proposed fines. For these reasons, the Council agreed to postpone introduction of the Commercial Clean Lot fine schedule to the October Town meeting.

1. Mayor (continued)

Legislative dinner: The Council confirmed the date for the Town's annual legislative dinner for November 30 to be held at Sir Walter Raleigh's.

MML fall conference attendance: CM Robles confirmed her attendance. CM White will have to check if she can take those days off from work.

Four Cities thank you letter: TA Cowles said that Greenbelt drafted a letter on behalf of the Four Cities to thank the County Council for being responsive to citizens' concerns and reducing the permit fees for farmers markets. Councilmembers are requested to review the letter, offer comments, or approve it as is. MPT Rasmussen moved and CM Dennison seconded to authorize Mayor Kulpa-Eddy to sign the letter as is. The motion passed 4 to 0.

Nothing was discussed under **2. Public Safety** and **3. Public Works**.

Ordinance 109 amendments: Clerk Harper explained that this draft of the amended Ordinance merges all amendments made to date into the old Ordinance, where an old struck-through section is followed by a new, or substantially revised section all in caps. In addition, there are several new provisions, highlighted in yellow, the Council has not yet reviewed. They include several definitions in Section 3, and a table specifying the contents of the Statement of Election Results for both machine vote and paper ballot vote.

Mayor Kulpa-Eddy said that she would prefer to introduce the Ordinance at this week's Town meeting without the newest additions, since the Council has not yet discussed them. However, they will be discussed at the next worksession on September 21. MPT Rasmussen said that the Council may want to add a section on the vacancy appointment process, as suggested by Mr. Jewitt. The question was raised whether the Election Ordinance, the Town Charter or the Council Rules would be the best way to address the issue. TA Cowles was asked to consult the Town attorney for advice. It was agreed to introduce the Ordinance without the latest changes.

The meeting was adjourned at 9:30 p.m.