

Council Minutes
Regular Meeting of the Somerset Town Council
May 02.2011 7:30pm

The Somerset Town Council met in regular session on May 02 2011 at 7:30 pm in the Somerset Town Hall.

Mayor and Council Present

Mayor Jeffery Slavin
Council Vice President, Marnie Shaul
Council Members: Barbara Zeughauser, Alan Proctor, and Bill Farley

Staff Present

Norman Knopf, Town Attorney
Jerry M. Schiro, Acting Clerk/Treasurer
Larry Plummer, Town Building Official and Engineer
Dr. Tolbert Feather, Town Arborist

Professional Consultants

Lou Balodemas, Project Manager, Somerset Pool House Project
Julie Heine, McInturff AIA, Pool Furniture Consultant

Press

Laura L. Thornton, Patch

Residents signed in as attending

Barbara Condos, 4706 Falstone Avenue
Robin Wilder, 5535 Warwick Place
Lila Snow, 4816 Essex Avenue
Abe and Joan Krash, 4911 Essex Avenue
Rob Satloff, 4902 Essex Avenue
Kathy Schwartz, 4904 Essex Avenue
James Berry, 4900 Essex Avenue
Adrienne Maman, 5528 Greystone Street
Dana Gibson, 5603 Surrey Street

Mayor Slavin administered the Oath of Office to re-elected Council Vice President Marnie Shaul.

Approval of Council Minutes

Council approved the minutes of the April 4 2011 meeting, with suggested changes by Council Vice President, Marnie Shaul, minutes of the April 14 Special meeting, and notifications of two executive session meetings held on April 11 and April 26. The approved minutes are submitted to record.

Financial Report

The acting Clerk/Treasurer referred to the submitted report stating that revenues and expenditures are on track for the current fiscal year. Requested Council action on the following: 1.) permission to cash checks that have been held in the Town Office since February 2011 for generator deposits and establish an escrow account to hold the funds 2.) permission to make line item adjustments to the current operating budget, transferring funds from the salaried and hourly employee funds to the contract employee funds to cover the contract Clerk/Treasurer's position. The requests were approved by Council.

Approve Fiscal Year 2012 Budget

Mayor Slavin introduced the budget as previously presented. Council Vice President Marnie Shaul moved for approval of the budget as presented at the last meeting. Council Member Barbara Zeughauser, seconded the motion. Discussion: Council Vice President Marnie Shaul introduced a number of amendments to the budget as a result of recently amended revenue projections. The proposed changes totaling approximately \$18,000 were discussed. The Council did not approve an approval to increase the Police budget by \$5K, but did agree to a \$2K increase. There was also a proposal to decrease the funding for snow removal. Council decided to leave the snow removal budget as proposed. The amendments include additional funding to increase the hourly rate of the Town Building Official and Engineer from thirty-five (\$35) to forty (\$40) dollars per hour. The Operating Budget for Fiscal-Year 2012 was passed with the amendments incorporated. The Total Operating Budget was approved at \$980,252 and the Capital Budget at \$423,698. A copy is included in the record.

Update on Pool House Project

Project Manager Lou Balodemas and Furniture Consultant Julie Heine addressed the Council. Ms. Heine presented samples of various pool chair designs and pricing. The various styles and manufactures were discussed along with pros and cons of each. Quantities of chairs, tables and umbrellas were discussed. Council authorized the project manager to work back from the appropriated \$15k budget and adjust quantities to accommodate the budget.

Council approved project Change order 46 for the construction of stairs to the basement, and project change order 47 regarding the bio retention pond plant revisions

Suggestions from Residents

Barbara Condos, 4706 Falstone Avenue, expressed concerns about installing stop signs at the 5400 mid-block of Trent Street. She suggested the desired result might better achieved with the installation of speed bumps.

Hearing Decisions from the April 04 2011 meeting

Council considered draft decisions regarding building permits for 4815 and 4817 Essex Avenue. These hearings were conducted at the April 14 2011 regular Council Meeting. At that time the Town Attorney was instructed to draft decisions reflecting the Council's action. Council Vice President Marnie Shaul moved the decision regarding 4815 Essex Avenue be approved as drafted by legal counsel and included in the record, the motion was seconded by Council Member Barbara Zeughauser. Motion passed. Council Member Barbara Zeughauser moved the decision regarding 4817 Essex be approved as drafted by legal counsel and included in the record. Council Vice President Marnie Shaul seconded, the motion passed. Town Attorney Norman Knopf clarified that the permits would not be issued until the applicant has obtained a valid County Permit.

Introduction of ordinances to amend the Somerset Town Code

The following ordinances were introduced to amend the Somerset Town Code:

- Council VP Marnie Shaul introduced an ordinance to amend Chapter 6 Section 6-710 of the Town Code to require a deposit for a wall permit.
- Council Member Barbara Zeughauser introduced an ordinance to amend Chapter 3 Section 3-102 of the Town Code regarding curb cuts. The amendment has been covered in the Journal.
- Council Member Barbara Zeughauser, on behalf of Council Member Pickar, introduced an ordinance to amend Chapter 9 Section 9-106 of the Town Code to install stop signs at the 5400 block of Trent Street at the curve. The proposed amendment has been covered in the Journal. Council Vice President Marnie Shaul suggested the ordinance sunset in a year. She will write another article in the Journal.

4909 Essex Avenue

The Council heard an application from Mitch Narins, 4909 Essex Avenue, for a three-month extension to a previously approved building permit. This is the second request for an extension. The current permit expires June 2 2011. The applicant was present.

The Code Enforcement Officer, Larry Plummer, reported on the application and gave an overview of existing conditions. Generally the project site is under major construction including rough grading. There is no front door on the house. Mr. Plummer reported that the construction was of a type that could have been completed in the time period now covered and stated that the construction should have been completed in 18 months at the most. He reported that in his opinion the reason the work is taking so long is inactivity on the part of the contractor. Mr. Plummer submitted a written report for the record.

The applicant responded stating the reasons for delay includes problems with **integrating** the new construction with the old. Structural engineers were brought in to identify issues. The applicant agreed with Mr. Plummer's assessment of the project

conditions. The applicant told the Council he has had serious discussions with the contractor regarding the schedule. The applicant presented a revised construction schedule provided by the contractor showing the project will be completed within approximately three (3) months. The schedule is submitted to the record.

Mayor Slavin asked the applicant for a date certain to complete the exterior work. The applicant referred to the revised schedule submitted to record. Therein, the exterior work is shown as complete on May 19.

The hearing was opened for public comment. The following residents participated: Pat Malone, 4901 Essex, Rob Satloff, 4902 Essex, Catherine Schwartz, 4904 Essex, James Berry, 4900 Essex, Lila Snow, 4816 Essex. Residents generally noted a lack activity on the building site, negligence in cleaning the site and the prolonged poor condition of the exterior of the house. Speakers asked that the front of the property be cleaned up, put the front door on the house, seed the grass, take down the construction fences, and remove building debris from the front yard. The neighbors reported they have been living with the project for two years. There are resulting parking issues from construction trucks left on the site. A portable toilet is visible to the neighborhood. They would like to see good will and an effort on the part of the applicant to complete the exterior of the house.

It was the consensus of the Council to continue the hearing on this matter until the next scheduled Council meeting on May 16 at 6:45 pm. At that time the applicant should be prepared to give a status report on the progress made on the project, with emphasis on the items related to the front yard and house façade. In the interim the applicant is asked to discuss the schedule in greater detail with the contractor and provide a confirmed date for completion.

5522 Uppingham Street

The Council heard an appeal from Richard and Kira Fortune, 5522 Uppingham Street. The applicants are appealing the decision to remove their application for a Town of Somerset building permit from this agenda. The item was removed because there was no approved Montgomery County building permit submitted with the application. Kira Fortune and the project architect Carmel Greer were present.

Mayor Slavin provided background on the appeal stating that the Town Code requires an approved Montgomery County Building permit as part of the submission package for a Town of Somerset building permit. He further explained that the Council in the past, to accommodate the residents, has approved Town building permits conditioned upon a County permit subsequently being approved. Upon advice from the Town Attorney this practice will stop. The current applicants do not have a County Building permit and were notified that the fact-finding hearing would be removed from the agenda pending the submission of an approved permit. The Town Attorney elaborated on the issues associated with approvals independent of an approved County Building Permit.

The applicant informed the Council that the architectural and structural reviews have been completed by the County and they expect the County permit to be issued within

a few days. The applicant also stated that they had worked diligently to get the necessary paperwork for the submission in by the deadline of the April 15 to make the agenda for this meeting. Furthermore, they relied on the information on the Town website, which states the Town building permits may be issued conditionally if the County review is not complete.

Council Member Bill Farley moved to accept the appeal, Council Member Barbara Zeughauser seconded the motion. The motion passed.

The Council began a fact finding hearing to approve a building permit to construct a two story addition to the rear of the applicants home at 5522 Uppingham Street, construct a foyer addition on the front of the house, and add a second heat pump beside an existing heat pump. The applicant presented the plans.

The Building Code Official covered a report he submitted for the record on his review of the application. The arborist covered a tree protection plan submitted for the record on this project. Both recommended approval. The applicants had no comments on either report. There were no public comments.

The Town Attorney asked the Arborist if the applicant had agreed to the tree protection plan, and if the proposed work complies with all other applicable Town ordinances regarding the protection of trees. The Arborist replied in the affirmative.

The Town Attorney asked the Building Code Official if the application is complete and conforms to the requirements of the Town Building Code, he replied it does with the exception of the County building permit, which has been nearly completed. The Official stated that in his opinion the project complies with the Montgomery County Code, as it pertains to the Town Building Code.

The Town Attorney inquired if the proposed work complies with all applicable subdivision and zoning requirements, the Official he replied that in his opinion it does.

The Town Attorney asked the Building Code Official if he noted anything in reviewing the project plans that might cause an undue and adverse effect on the health and safety of adjoining or confronting property owners and residents, or the enjoyment of their property, or the health, safety and general welfare of the Town, its property, and its residents. He replied he did not. Council questioned the applicant regarding the project.

Council Vice President Marnie Shaul moved conditional approval of a Town building permit for the project based upon the issuance of Montgomery County building permit substantially conforming to the plans before the Somerset Town Council. If the County's approvals require substantial changes to the plans as submitted to the Town, the applicants must bring those plans back to the Town. Barbara Zeughauser seconded the motion. The motion passed.

Staff was instructed to change the website to reflect current policies regarding the submission of building permit applications absent the approved Montgomery County permits.

4509 Dorset Avenue

The Council conducted a fact finding hearing on an application for a waiver permit submitted by Giovanni Nicolacci, 4509 Dorset Avenue, to construct 22 meters of single- sided fence with the finished side on the interior. The applicant was not present.

The Building Code Official explained the application. The waiver is requested in order to preserve existing landscaping on the adjacent property owner. The neighbor supports the application. The Building Code Official recommends approval.

Council Member Bill Farley moved to approve the waiver. The motion failed for lack o a second.

The Town Attorney was asked to explain the requirements for waiver. He stated Section 6-706 requires the finish side of the fence face the neighbor. This will require construction from the neighbor's side of the fence and result in damage to existing landscaping along the property line. A letter from the neighbor is submitted for the record requesting the waiver be supported. Council Member Bill Farley moved to grant the waiver, finding unnecessary hardship in that the code requirement will damage mature landscaping on the neighbor's property. Council Member Barbara Zeughauser seconded the motion. The motion passed.

4728 Dorset Avenue

The Council, convened as the Historic Preservation Local Advisory Panel (LAP), reviewed an application from Brian Graham and Torie Clark, 4728 Dorset Avenue, to enlarge the first floor and add new openings to an existing bay window on the east side of the house, remove a side deck and a replace it with a wooden stair stoop, construct a masonry patio with two doors on the rear, renovate the existing pool house and construct an in ground pool with landscaping at that location. Remove one 16" pear tree, one 20" pear tree, and an 18" dogwood tree. Construct a fence and install a generator.

The applicant, Brian Graham, and the project architect presented an overview of the project. The applicant pointed out that contrary to the summary outlining the scope of work, they do not intend to enlarge the first floor. The plans were revised earlier in the County Historic Preservation review and the expansion was eliminated in order to comply with earlier staff recommendations.

Council Member Bill Farley moved that the Somerset LAP recommend approval of the Historic Area Work Permit for 4728 Dorset Avenue as explained in the review. Barbara Zeughauser seconded the motion. The motion passed.

There was discussion regarding the pool house, which is currently a non-conforming structure. The proposed renovation to the structure will increase the non-conformity and will not meet required setbacks set forth in the Town Building Code.

The Town Attorney recommended that when the letter is forwarded to the County Historic Preservation staff, the non-conformity should be mentioned to protect future actions of the Council when acting on this application. There was discussion as to if this should be mentioned.

5528 Greystone Street

The Council held a fact-finding hearing on an application from Adrienne Maman, 5528 Greystone Street to remove and reconstruct a front wall and door to her residence.

The Applicant was present and presented the application as submitted in the record. The applicant presented the Montgomery Building Permit. The Building Code Official requested that the applicant provide him with a copy of the stamped approved drawings, the applicant agreed to do so.

The Building Code Official covered a report that is submitted for the record recommending his approval. The Arborist reported on his recommended Tree Protection Plan and submitted the same to record. Council discussed the application with the applicant. The applicant agreed to comply with the plan.

The Town Attorney asked the Arborist if the submitted report will be made a condition of the Tree Removal approval. He replied it would. The Town Attorney asked the Building Code Official if the application meets the requirements of the Montgomery County Building Code, he replied he believes it does but will need to review the submitted stamped drawings. Does the work comply with the subdivision and zoning code and all applicable Town Ordinances? He replied it does. The Town Attorney asked if the Building Code Official is aware of anything associated with the project that would affect any of the adjoining or abutting property owners that would effect the enjoyment of their property or the general health, safety, welfare of the Town, its property or its residents? The answer was no.

Council Member Bill Farley moved to approve the application conditional on the final determination of the Town Building Code Official that it meets the requirements of the Montgomery County Building Code and the County approved permits are substantially consistent with the plans as the submitted and are before the Council and that the approval is subject to the tree protection plan submitted by the Town Arborist. Seconded by Council Vice President Marnie Shaul. The motion passed. The applicant was instructed that if the County approvals change the original submission significantly, the application is required to return to Council at the May 16th special Council meeting. The applicant agreed.

Requests for Tree Removal

The Council acted on a request for the Washington Suburban Sanitation Commission (WSSC) to remove two street trees on Cumberland Avenue. The Town Arborist was present and covered a report submitted for the record recommending approval of the removal of street trees numbered 39 and 60 at 4715 and 4718 Cumberland Avenue respectively. The Arborist presented a report recommending the removal of additional

street trees numbered 100 (at 4902 Cumberland Avenue), 803 (5811 Warwick Place), 28 and 26 (4509 Cumberland Avenue), 647 (5511 Trent Street), and 285 (4717 Essex Avenue).

The Town Arborist covered the submitted requests and identified the justification for the removal. The Council questioned the Arborist on his recommendations.

Council Member Bill Farley moved that the request to remove street tree numbers 39 and 60 as submitted by WSSC be approved, the motion was seconded by Council Vice President Marnie Shaul. Discussion ensued. It was pointed out that the work WSSC is performing is a result of sewer backups in this area of the Town. The motion passed.

Council Member Bill Farley moved that the request to remove Town street trees numbered 100, 803, 28, 26, 647 and 285 based on the Town Arborist's recommendation and the fact that the trees are dying and represent a potential hazard. Council Vice President Marnie Shaul seconded the motion. The motion passed.

Generator installation 5603 Surrey Street

The Council heard an application from Dana Gibson, 5603 Surrey Street, to install a generator. The applicant was present. The Building Code Official submitted a report on his review and recommended approval based on his suggestion to relocate the original planned location. The Council discussed the application with the applicant and pointed out that it has been in the situation before where, although approved, it knew the generator would likely not meet the decibel limitations. It hopes the applicant will come up with an effective method of achieving that requirement.

Council Barbara Zeughauser moved approval contingent on the applicant submitting a sound mitigation plan for the Town staff to review and that there be a reasonable expectation that the plan will meet the County's night time decibel level requirements at the nearest property line. The Town will require the installation of sound mitigation measures to include, but not limited to fencing and landscaping. The Town will retain the required \$2,000 deposit until such time as the noise levels as stated in Section 11-301 of the Town Code are met. Council Vice President Marnie Shaul seconded the motion. Discussion ensued. The motion passed.

Georgetown Prep Tennis Program

Council acted on a draft agreement with Georgetown Prep to use the Town tennis courts for the school's summer tennis program. Mr. John Adams, Georgetown Prep Tennis Club, was present and explained that some of the parents of children in the Town requested the program be expanded to include additional programs. The program has been ongoing for numerous years at the Town tennis courts. After much discussion, the Council felt there was no need for an agreement since all participants are Town residents. Mr. Adams informed the Council that there are people using the Town's courts on a regular basis in a teaching capacity without permission from the Town. The Council felt that the Tennis Committee should come with policies for the Council's consideration regarding the use of the tennis courts and informed Mr.

Adams to proceed with his program so long as he is teaching exclusively to Town residents.

Camp Summerset

Council acted on a draft License Agreement for Camp Summerset 2011 to use the Towns' swimming facility in the upcoming season. Council Vice President Marnie Shaul moved to approve the agreement subject to approval by the Town Attorney to include conditions to reflect the possible delay in the completion of the pool renovation. Council Member Bill Farley seconded the motion, the motion passed.

Personnel Handbook

The Council acted on the amended draft Personnel Handbook. The Council recognized the hard work of the Town Attorney and Mollie on the revisions. Council Vice President Marnie Shaul moved for approval. Council Member Barbara Zeughauser seconded the motion. The motion passed.

Street Sweeping

The Council acted on a bid from East Coast Sweeping, Inc. to provide street sweeping services for the Town at a cost \$950. Council Member Barbara Zeughauser moved to approve. Council Member Bill Farley seconded the motion. The motion was amended to include the requirement of a favorable reference check to be obtained by the Clerk/Treasurer. The motion passed.

Tennis Court Buffering

The Council considered authorization for spending not to exceed \$8,000 to remove the existing Leyland Cyprus at the western edge of the tennis court and replace them with Foster Hollies pursuant to a buffer agreement entered between the Town and the adjacent property owner. The Clerk explained the work performed will be under the recently approved contract with Ed Mulheron. This will include removal of the existing trees and the stump grinding. The Foster Hollies will be purchased independently by the Town. The Town Arborist reported that there may be some restoration of the storm water swale required. Council Member Bill Farley moved to approve. Barbara Zeughauser seconded the motion. The motion passed.

Mayor's Report

The Mayor informed the Council his report was distributed prior to the meeting.

Adjournment

Council Member Bill Farley moved to adjourn. Council Member Barbara Zeughauser seconded the motion. The motion passed.

The meeting adjourned at approximately 11:30pm

Minutes submitted by Jerry M. Schiro, Acting Town Clerk.