

**Town of Somerset**

**4510 Cumberland Avenue, Chevy Chase, MD 20815**

**Minutes for Council Meeting on**

**Monday, November 4, 2019**

**Council Members Present:** Marnie Shaul; Barbara Zeughauser; Steve Surko; Franny Peale; Morris Panner; **Mayor:** Jeffrey Slavin; **Town Manager:** Matthew Trollinger; **Town Administrative Assistant:** Linda Williams; **Building Administrator:** Doug Lohmeyer; **Town Arborist:** Dr. Tolbert Feather; **Town Hall Renovation Project Manager:** Lou Balodemas; **Residents and other attendees:** Miguel Tejblum (Essex Ave.); Joy Lanum (Sandy Spring Builders); Meredith Wade (Essex Ave.); David Kathan (Dorset Ave.); Sarah Morse (Dorset Ave.); Steve Friedman (Essex Ave.); Jonathan Medalia (Surrey St.) Sharon Stoliaroff (Dorset Ave.); Carol Barsha (Essex Ave.); Carol Manning (Essex Ave.); Jack Frink (Cumberland Ave.); Jossine Josz (Falstone Ave.); Mary Dock (Falstone Ave.); Patty Friedman (Grantham Ave.); Carrie Wofford (Essex Ave.); Lucy Freeman (Dorset Ave.); Julie Greenberg (Falstone Ave.); George Wyeth (Falstone Ave.); Jeremiah Helm (Dorset Ave.); Maryam Mokhtarzadeh (Dorset Ave.); Robin Barr (Essex Ave.); Deborah Shulman (Falstone Ave.); Paige Whitley (Cumberland Ave.); Susannah Goodman (Cumberland Ave.); Kristen Khanna (Uppingham St.); Tami Watkins (PEPCO); Ed Mulheron (Mulheron Tree Experts)

7:00 p.m. Council Work Session

The Mayor appointed Council members Peale and Surko to lead an unofficial sub-committee tasked with making recommendations for Town Code section relating to the Building Code.

Town Attorney Ron Bolt recommended the Town approve an investment policy at the December Council meeting. He will draft a policy for the Town.

The Council discussed the Environmental Committee's recommendation that the Town switch from gas-powered lawn equipment to electrical equipment. Council member Shaul recommended the Committee re-circulate materials. Council member Surko volunteered to work with the Environmental Committee to produce fact sheets and figures for the Council to review. The Council may reevaluate at a later meeting, or later during budget discussions in part depending on the costs.

The Council discussed stray cats and County provisions that require cats be leashed similar to dogs. Mayor Slavin offered to schedule a talk-back with an official at the County if it becomes more of an issue. He recommended the Town include the County law in weekly announcements.

The Council recommended that Town Manager Trollinger touch base with the de Marne & Day crew currently doing Town Hall renovations to get recommendations on pool bridge repairs.

7:33 p.m. Council Meeting Convenes

Mayor Slavin called the meeting to order and opened the floor for public comments. He thanked Tami Watkins, the Government Affairs representative from Pepco, for coming to the Council meeting to answer resident questions about Pepco construction on River Road and Little Falls Parkway.

Steve Friedman (Essex Ave.) requested that the Town reevaluate its tree removal protocol. He expressed concerns about a fence that was installed on his neighbor's property. He also requested the Town's help in tracking down a separate neighbor who has a tree that is causing damage to his fence. He also requested more advanced notice be given to residents if a tree is being taken out near their home.

Deborah Shulman (Falstone Ave.) asked for clarification on what was considered *ex parte* discussions with the Council. She expressed concerns about the proposed tree removals at 4917 Essex Ave.

Carried Wofford (Essex Ave.) asked that the Council consider the cumulative effect of tree removals on a property.

Paige Whitley (Cumberland Ave.) asked whether applicants were required to get signatures from their neighbors before submitted plans to the Town. Miguel Tejblum (Essex Ave.) followed up to ask why signatures are required. Town Attorney Bolt answered that signatures were required from neighbors, but only for notification of proposed work, not approval.

Susannah Goodman asked if the Council would act on small cells at this meeting. Mayor Slavin said that the Council would consider Ms. Goodman's drafted letter for approval.

Council member Peale asked Tami Watkins (PEPCO) why the Greystone/River Rd. intersection is blocked off even when it appears no one is working. Ms. Watkins gave a brief overview of the work, explaining that some of it is underground, and that continually opening and closing the entrances to the worksite would have been a safety issue, and lengthened the timeframe of the project.

Jossine Josz (Falstone Ave.) recommended signage that indicates there are two lanes on River Road. Council member Shaul asked whether concrete islands at the Greystone/River Rd. intersection would be replaced. Ms. Watkins said Pepco would prefer they not be replaced because it makes access to the manholes more difficult.

Mary Dock (Falstone Ave.) told the Council she had concerns about the number of trees that are being removed at 4917 Essex and the water management plan on the site.

8:17 p.m. Consent Agenda: To approve minutes from Council meeting held on October 7, 2019; approve donation of Town piano to Bethesda-Chevy Chase High School, and payment of moving costs totaling \$385; and approve Resolution declaring November as Municipal Works Month.

Councilmember Shaul motioned to approve the consent agenda; Councilmember Peale seconded; all in favor.

8:18 p.m. Public Hearing/Motion: To consider award of Town Snow Removal Contract to Mulheron Tree Experts.

Council member Shaul reminded Ed Mulheron to be mindful of the amount of salt used Council member Peale asked for Mr. Mulheron's observations about the Town Pool bridge.

Council member Shaul motioned to approve the contract with Mulheron Tree Experts; Council member Zeughauser seconded; all in favor.

8:21 p.m. Public Hearing/Motion: To consider approval of payment to American Pool Enterprises in the amount of \$26,829.99 for main pool filter system replacement, wading pool filter replacement, filter media upgrade, pool heater replacement, and chemical automation package installation.

Town Manager Trollinger noted that American Pool representatives were not present, but reviewed the recommendations, which came in consultation with American Pool, and the ad hoc Pool Management Committee, consisting of the Town Manager, Mayor, Council President Shaul, and the Pool Committee Chair Matt Zaft.

Council member Shaul motioned to approve; Council member Zeughauser seconded; all in favor.

8:26 p.m. Motion: To consider Town adopt language opposing County ZTA 19-07 relating to small cells

Mayor Slavin asked Susannah Goodman ( for a recap of the small cell issue in Somerset. Ms. Goodman had drafted a letter to the County Council in opposition to ZTA 19-07, which would allow new poles to be installed for small cells.

Council member Shaul moved to approve Ms. Goodman's letter, and to have Mayor Slavin sign it on behalf of the Town of Somerset. Council member Peale seconded; all in favor.

8:30 p.m. Public Hearing/Motion: To discuss Town Hall construction project and consider approval of payment to Balodemas Architects for Town Hall Renovation Project Management in the amount of \$16,523.86; approval of carpeting and change orders totaling \$11,179.77 for Town Hall renovations; and approval of payment to construction contractor de Marne & Day in the amount of \$87,377.19 for completed work to date.

Town Hall Construction Project Manager Lou Balodemas reported that the meeting room work had been completed, and the following week the crew will spray insulation in the building, requiring the Town Hall to be closed on Thursday November 7 and Friday November 8.

Jack Frink (Cumberland Ave.) asked for the total spent on the project.

Council member Zeughauser motioned to approve the above expenses; Council member Peale seconded; all in favor.

8:38 p.m. Building Permit Administrator Report

Town Building Administrator Doug Lohmeyer gave his report. Council member Peale asked Mr. Lohmeyer to follow up on the issues raised by Steve Friedman (Essex Ave.) during the public comments period.

8:44 p.m. Motion: To discuss and consider introduction of building permit fee schedule

The Council discussed the proposed building permit fees. The Council instructed the Town Manager to include the fees in the December Town Journal, and gave recommendations on how to present the information more clearly.

Council member Shaul motioned to introduce the fees; Council member Zeughauser seconded; all in favor.

8:59 p.m. Public Hearing/Motion: To consider resident's appeal of tree removal permit denial at 4608 Dorset Ave.

Town Manager Trollinger relayed to the Council that the residents at 4608 Dorset Ave., Jeremiah Helm and Maryam Mokhtarzadeh, had applied for a tree removal permit to remove two trees on their property. The Town's Arborist, Dr. Tolbert Feather, had examined the trees on October 8 and written a report which identified the trees as healthy and therefore did not recommend removal. The Town Manager had followed Dr. Feather's recommendations.

The applicants explained to the Council that they were concerned about one of the Tulip Poplar trees because a pool of water forms when it rains, causing leaking in the basement and issues with their retaining wall. The other tree was growing close to the house and was causing bowing.

Dr. Feather agreed to look again at the larger 40" Poplar near the basement entrance to look at the roots more carefully and see if they were responsible for the flooding.

Council member Zeughauser suggested the applicants bring further documentation attesting that the trees are causing the damages.

Deborah Shulman (Flastone Ave.) expressed sympathy for the applicants. Jonathan Medalia (Surrey St.) suggested the Council approve the application pending documentation from an expert confirming the applicants' concerns. Miguel Tejblum (Essex Ave.) noted the Council had not visited the site, and suggested that should be a requirement for every hearing. Carrie Wofford (Essex Ave.) suggested the water leaking could be caused by something other than the trees.

Council member Peale motioned to reverse the decision denying the permit under the condition that prior to the issuance of the Town tree removal permit, the applicants must provide to the Town Manager confirmation from a home inspector or other professional confirming that the damage to the house is being caused by the trees. Council member Shaul seconded, all in favor. The Council instructed Town Attorney Ron Bolt to draft a written decision.

9:44 p.m.          Public Hearing/Motion: To consider extension of building permit at 5800 Deal Place

The Council noted that the applicant was not present at the meeting. Patty Friedman (Grantham Ave.) inquired about the cost of permit extensions. Manager Trollinger explained that the fee is 50% of the original permit fee.

The Council discussed the applications and Building Administrator Lohmeyer's recommendation.

Council member Shaul motioned to approve a four-month extension of the building permit; Council member Surko seconded; all in favor.

9:48 p.m. To consider amendment to permit at 4917 Essex Avenue including fence, retaining wall, pool and pool deck, and removal of two tulip poplar trees

Dr. Feather noted the trees cannot be protected if the pool is built. The Council discussed the distance of the trees from the pool, and whether there were any ways to move tree protection plan.

Joy Lanum (Sandy Spring Builders) explained that the tree protection plan the Council has is based on the old site plan.

Meredith Wade (4917 Essex Ave. homeowner) read from her written testimony that explained their process working with Sandy Spring Builders on the design of their home, and the steps they have taken to work with neighbors to try and mitigate their concerns. She expressed that she and her family have been looking forward to moving into and living in Somerset but have felt personally attacked at the Council hearings by some of the residents. She asked the Council to consider their rights as homeowners and to approve the permit.

Council member Surko asked if the applicant has taken any additional steps to address stormwater on site. Joy Lanum replied that they have looked into permeable driveway materials and water management in the back yard.

Council member Peale noted that if the air conditioners have been moved to the back yard, the applicant must submit a new plan reflecting the new location of the A.C. units.

Council member Panner asked Dr. Feather for further explanation of the reforestation plan, and clarification on how stormwater is measured. Dr. Feather explained that the reforestation plan already accounted for the two proposed trees up for discussion; the reforestation plan increases the number of canopy trees onsite from five to 6.

Miguel Tejblum (Essex Ave.) thanked the Wades for being amenable to his suggestions, especially moving the air conditioning units.

Paige Whitley (Cumberland Ave.) asked the homeowner to reconsider building the pool. Julie Greenberg (Falstone Ave.) agreed, asking the residents to consider waiting a year before putting in a pool and to try using the Town Pool. George Wyeth (Falstone Ave.) also suggested the applicants should wait before taking out the trees. Several residents asked for the Council to clarify whether they regulated pools, and how they would make the determination whether to allow the applicants to take out trees for a pool or not.

Council member Zeughauer explained that the Town must apply the Code as written and must have compelling reason(s) to deny a tree permit; she surmised that if the Town were to deny tree permits for new construction it may harm home values.

Sarah Morse (Dorset Ave.) opined that the Council has the authority to deny this permit.

Robin Barr (Essex Ave.) noted that tulip poplars are native trees and listed benefits of native trees.

Deborah Shulman (Falstone Ave.) expressed that the Council was being unfair to existing homeowners and did not apply the same standard to builders and incoming residents.

Kristen Khanna (Uppingham St.), Chair of the Parks and Natural Resources Committee, said that her Committee would review the Town's tree policies.

Council member Surko expressed concerns about stormwater management, and that he did not believe the applicants had not taken steps to address concerns since the November Council meeting. He suggested that he would not approve the permit.

Council member Shaul suggested that the County's definition of lot coverage may not accurately reflect how much of the lot is affected by the plans, as, for example, the pool does not count as an impervious surface. She said that stormwater is an issue on Essex and believed that the proposed house and pool may exacerbate existing issues.

Council member Peale noted that the Town has been considering Code amendments for about seven years. She suggested the Town would need to get a clear consensus if the Council were to enact policies that significantly diminished buildable lot coverage because it may negatively affect home values. She also pointed out that the County-approved stormwater management plan had taken the two trees up for discussion under consideration.

Council member Panner said that he strongly believes the Town should protect the environment, and that he believes by and large residents – and these applicants in particular – do that. He pointed out that the applicant went beyond Dr. Feather's tree reforestation recommendations. He said he disagreed with the notion that they were clearcutting the lot, and said he believed that the tone of the meeting had been negative.

Council member Zeughauser motioned to approve the amendment to permit at 4917 Essex Avenue including fence, retaining wall, pool and pool deck, and removal of two tulip poplar trees. Council member Panner seconded. Council members Shaul and Surko opposed; the permit amendment passed 3-2. The Council directed Town Attorney Bolt to draft a written decision. The permit will become final 30 days after the decision has been issued if no appeal is filed with the Montgomery County Circuit Court.

10:55 p.m.      Public Hearing/Motion: To consider Town Fall Tree Planting Schedule:

- a. 2 Forest Pansy Redbuds at 4900 Cumberland Ave.
- b. 2 Forest Pansy Redbuds at 4607 Dorset Ave.
- c. 1 Serviceberry at 4909 Falstone Ave.
- d. 2 Yellowwoods at 5501 Surrey St.

- e. 1 Forest Pansy Redbud at 5820 Surrey St.
- f. 1 American Beech at 4715 Trent Ct.
- g. 2 Yoshino Cherry at 5415 Trent St.
- h. 1 Yoshino Cherry at 5510 Trent St.
- i. 2 Serviceberry at 5522 Warwick Pl.
- j. 1 Swamp White Oak at 5545 Warwick Pl.
- k. 1 October Glory Red Maple at 5603 Warwick Pl.
- l. 1 Black Gum (provided by WSSC) at 5611 Warwick Pl.– 9:00 p.m.

The Council announced that because of the late hour, they would skip the Town Manager report and Mayor report. Council member Peale reminded the Mayor and Town Manager of Steve Friedman's earlier complaints when planting the new trees. Patty Friedman (Grantham Ave.) said that there are many benefits to canopy trees.

Town Manager Trollinger noted a resident had asked the proposed trees at 4900 Cumberland not be planted to leave room in case the Town elected to install a sidewalk on that side of the road. Additionally, the residents at 5603 Warwick asked that the Council reconsider planting an October Red Glory in front of the property, and instead suggested a Redbud. The residents at 5415 Trent St. had offered to pay for the purchase and installation of larger trees in front of their home.

The Council noted that a Redbud is not a canopy tree, and that the Town had traditionally planted canopy trees on the side of the road that do not have electrical and telecom wires.

Council member Zeughauser approved the planting list, but placing the Redbuds in front of 4900 Cumberland deeper in the right-of-way to leave room for a potential sidewalk, informing the residents at 5603 Warwick of the reasoning behind a canopy tree, and to allow the larger trees to be planted at 5415 Trent St. at the residents' expense. Council member Shaul seconded; all in favor.

11:07 p.m. Meeting Adjourned

Mayor Slavin adjourned the meeting and asked for a motion. Council member Zeughauser motioned to adjourn; Council member Shaul seconded; all in favor.