

**COMMISSIONERS OF POOLESVILLE
MEETING OF OCTOBER 19, 2009**

PRESENT: LINK HOEWING, JERRY KLOBUKOWSKI, JIM BROWN, LORI GRUBER AND EDDIE KUHLMAN. ALSO PRESENT WAS TOWN MANAGER, WADE YOST AND TOWN ATTORNEY, ALAN WRIGHT.

Call to Order

Mr. Kuhlman: Good evening ladies and gentlemen we will call the October 19, 2009 Commissioners Meeting to order. For the record all Commissioners are present except for Mr. Brown. Also present are Town Manager Wade Yost and Town Attorney Alan Wright. First order of business will be the Pledge of Allegiance, Mr. Vice President.

Pledge of Allegiance

All: I pledge allegiance to the flag of the United States of America and to the republic for which it stands one nation, under God, indivisible with liberty and justice for all.

Announcements

Mr. Kuhlman: Thank you very much. Any announcements? Hearing none I do have one the Town received an award the other night at the Maryland Municipal League Chapter Meeting for our Banner City designation which bestows formal recognition each year to those cities and towns that have demonstrated an outstanding commitment to MML programs and activities through the involvement of their elected and appointed officials, we got a nice plaque and a flag to fly. All right anybody else have any other announcements?

Approval of Minutes

Mr. Kuhlman: All right move on to the approval of minutes of October, oh wait a minute also you all should have gotten in your box this fax sheet from Mr. O'Malley that was given out the other night at the meeting Wade made copies or the Staff made copies for you all. Approval of the minutes of October 5th is there a motion for approval?

Mr. Hoewing: So moved.

Mr. Kuhlman: Is there a second.

Mr. Klobukowski: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Open Forum & Citizens Comments on Agenda Items

Mr. Kuhlman: Open forum and citizens comments anybody on open forum just on anything general. All right yes Ma'am.

Ms. Barnes: Linda Barnes I live at 19735 Selby Avenue and I just have a couple of questions that I wanted to ask. What was the outcome of Resolution 007-09 --- the Maryland Municipal League?

Mr. Kuhlman: The outcome by the Board of Directors at their October meeting was they were going to wait because they feel we'll prevail with ease at the first hearing so they are going to wait and make sure it goes that way if it doesn't go that way then they will reconsider and probably join us.

Ms. Barnes: Should there be an appeal you mean...

Mr. Kuhlman: I can't hear you Ma'am.

Ms. Barnes: Should there be an appeal of the Special Court of Appeals you mean?

Mr. Kuhlman: I guess so.

Ms. Barnes: So you will take it that far?

Mr. Kuhlman: No I figure we are going to win on the first shot around.

Ms. Barnes: Ok so what reasons...

Mr. Kuhlman: As contrary to what has been reported we are appealing this case.

Ms. Barnes: Yes you are so what reasons do you think we have for not filing for Covenant Violation, Breach of Contract and or trespass by our neighbors.

Mr. Kuhlman: I'm sorry can't hear you Ma'am.

Ms. Barnes: What reasons do you think we have for not filing for Covenant violations, Breach of Contract or trespass with our neighbors?

Mr. Kuhlman: You are free to do whatever you want if I understand your question. My personal feeling has been since day one that you and your husband should be filing a suit against your neighbor in a court under the Covenants. To me and to our legal Council that is the correct avenue that you all should be following. The Town still maintains that it has no right or jurisdiction to enforce Covenants that is a private deal between property owners.

Ms. Barnes: Though we are not asking you to enforce the Covenants so I just wanted to clarify in the process of what is going on from our point of view and that right now is when the decision was made and then 3 months later the written decision came out we had 10 days from that date of written decision to appeal the Board of Zoning Appeals decision, had that 10 days gone by we could never appeal the Board of Zoning Appeals decision which we believe for a lot of reasons the Board just made a bad decision, not necessarily just regarding the Covenants.

Mr. Kuhlman: Well I mean I am not going to sit here and get into in depth conversations because it is ongoing litigation.

Ms. Barnes: Absolutely. Ok my next question is what do you think the purpose of advertising is for Poolesville Vision and Contact Lens Service?

Mr. Kuhlman: Purpose of what?

Ms. Barnes: Of advertising.

Mr. Kuhlman: Advertising what?

Ms. Barnes: Poolesville Vision and Contact Lens Service.

Mr. Kuhlman: I have no comment.

Ms. Barnes: Ok well I just wanted to point out to you the kind of advertising that they are doing which includes our driveway. Now they can take government employee health insurance which is open worldwide, just pointing out that there is a lot of advertising going on and that is our driveway not just theirs and by Poolesville agreeing to the Special Exception you have included our property as part of the Special Exception when we didn't apply for it. The next question I have is what do you think the business could be like in a year, 5 years, 10 years.

Mr. Kuhlman: Ma'am again its ongoing litigation I am not getting into discussion.

Ms. Barnes: But I bet that you would believe that the business will grow, every business owner hopes for their business to grow.

Mr. Kuhlman: I'm sure they hope it does.

Ms. Barnes: So since the business conveys with the property its possible that Karen Williams son could be buying that house and continuing with that business on our property. Are you aware of the violations that we have submitted to Poolesville?

Mr. Kuhlman: We are copied on everything that you submit to the Town.

Ms. Barnes: Ok pointing that out these are the violations that we've submitted so far, every page represents a different violation and I have copies of that for you.

Mr. Kuhlman: They are your alleged violations yes Ma'am.

Ms. Barnes: We could dispute it, we would like to first have a chance to do it. There have been actually 17 violations and we've received response for learning of them in 3 letters, just want to point out to Poolesville how costly this is becoming for them. The next thing is according to the Zoning Code on page 50 it says the Board shall also have the authority to revoke any Special Exception after giving notice and the opportunity for a public hearing to all parties concerned upon the finding that any of the terms of conditions of the grant on the Special Exception have been violated, now even if there is a dispute on some of these that we have complained about which your Council has written us letters about, there is a whole lot of others that he can't argue because he knows that they are violations of the Special Exception so would you please consider writing in advisory opinion to the Board of Zoning Appeals for a public hearing to address those violations?

Mr. Kuhlman: Without having time to consult with my colleagues the answer I would give you is the Town is prepared to sit in neutral at this minute and wait for the outcome of this litigation.

Ms. Barnes: Even though there is violations going on.

Mr. Kuhlman: There is alleged violations in your mind yes Ma'am.

Ms. Barnes: Thank you.

Mr. Kuhlman: You are welcome. Anybody else have anything just in general. All right seeing no hands our new business tonight is a quarterly financial report from the Town Manager is there any questions or comments on that. All right seeing no hands Mr. Yost our quarterly report and for the record Mr. Brown is present.

Mr. Brown: Thank you.

New Business

Mr. Yost: Ok this is our first annual --- of our first quarterly report ending September 30. And we will start out with the General Revenue so far we have received \$556,176.00 of the full year projection of \$2,294,000.00 and that is adjusted for the monies that we will receive from the cutbacks in the State Highway revenue. Talking about State Highway revenue we actually received \$52,000.00 so far this year and they told us they were only going to give us \$22,000.00, the initial payment that came in July they didn't count towards that because they had sent it out on June 30 we didn't receive it until July 7 or whatever so it goes into our books in this fiscal year where it came out of theirs last fiscal year. So this is all that we should receive at this time, they are still not certain on this we called the Transportation Office and they've not received exact notification and instructions to what to do to next months payment from the State so they are kind of waiting to get their marching orders and see if we are going to get more money or not but right now that is what it equates to but still they cut back from the \$250,000.00 that we initially budgeted for. And typically this is where we want to be overall revenue and so I put in adjusted the budget with the new numbers from the State Highway Fund and right

now if everything else goes as projected the revenue strain will have a balance of \$45,000.00 in the black at the end of the year. On the expenditures side of the General Fund the operation accounts which include the Town administration, Committees, the Poolesville Day stuff, Community Goodwill, salaries, all the park maintenance, engineering, attorney fees, the trash contract and debt service we have spent about \$443,000.00 out of the budgeted \$1.7 million so far and again that is right where we should expect there is not any large expenditures going out nothing out of the ordinary at all.

Mr. Hoewing: Wade this isn't directly related to the expenditures you are looking at but it does --- I got a letter from the County about they are now going to expand the kinds of things we take for recycling, do we automatically change our policies when they do, now they are going to take for example...

Mr. Yost: The co-mingles together.

Mr. Hoewing: Yeah.

Mr. Yost: And that is exactly what that is, we --- with Buck Fowler on that yep we sure will. On the water and wastewater revenue side we have only received \$194,000.00 out of the budget estimate of \$877,000.00 and again usage has remained low and the new rates that we put in place we are just now starting to collect those. If you recall they became effective on July 1 that means we don't start collecting that money until 3 months down the road after the cycling of bills have gone through, so we are just now beginning to see that.

Mr. Klobukowski: We don't have any ideas as to whether 10% more, 15% more from last year.

Mr. Yost: Yeah it was at least a 10% revenue increase overall. On the expenditure side of the water and wastewater side and that does include the operations of all the facilities, electricity, chemicals, communications, salaries and insurance, as of September 30 we have spent \$211,000.00 of the budget estimate of \$981,000.00 so we had budgeted that we were going to be behind slightly and as you see we still are slightly behind now. I am actually going to set some rescheduling to reduce overtime in the water and wastewater employee salaries. Right now they do get overtime on weekends because they have to check the wells and the plant and everything every single day and either give a Thursday and Friday off and they work the weekend duty instead of having overtime on the weekends and try to cut back a little bit that way. And we are also having a meeting with all the Staff members on how we can cut back in different accounts throughout all the operations on parks as well as the water and wastewater side and we will probably come back with suggestions for that. In other funds other accounts we do, Restricted Funds we have only received 2 impact fees and of course part of that money goes back to the developer for the development of the wells and the parks portion of it and the public facilities goes into restricted accounts for right now. The CIP General Fund accounts we have spent \$166,000.00 and that is just for the ongoing development of the projects with the Bandshell, Parcel 840, Skatepark, we did purchase a truck and we did construct a Wootton Tot Lot. On the water and sewer side we spent \$59,000.00 there in capital projects that is basically for ENR upgrade which we should be starting soon the State has all the contracts in hand they get to choose the contractor and just for the well monitoring and the I&I monitoring and the reports that we are putting together.

Mr. Klobukowski: Ok are you saying the State is the one who led the contract, bid it out?

Mr. Yost: No we had to bid it all out, it was mostly just formalities and then we just give it to them and they get to choose the contractor to make sure that since they are paying for it.

Mr. Klobukowski: Paying for it from our decisions basically.

Mr. Yost: Yes. So basically overall cash assets in the General Fund we had \$86,000.00 this is a snapshot of September 30 what we were looking at. In the water and wastewater account we had \$11,000.00 and the Montgomery County Investment Fund we had 4.1 million so total cash on hand a little over 4.2 million dollars and of that total cash on hand \$1,156,000.00 remains in unrestricted cash reserves. So that is it any questions?

Mr. Kuhlman: Questions for Wade? All right thank you Sir. There is no old business on the agenda.

Committee Reports

Mr. Kuhlman: Committee reports, Planning Commission.

Mr. Coakley: We had a joint session last Wednesday.

Mr. Kuhlman: Yeah there was a joint work session between the Commissioners and the Planning Commission on the alternative energy recommendations. All right Parks Board.

Mr. Brown: Mr. Yost is going to give the report on that.

Mr. Yost: The report is they did not have a quorum because people didn't show up.

Mr. Kuhlman: Oh.

Mr. Brown: I was out of town. So no official business was conducted.

Mr. Kuhlman: All right CEDC.

Ms. Gruber: We meet next week.

Town Manager's Report

Mr. Kuhlman: Ok Town Manager's Report.

Mr. Yost: Just to update you on where we are with some of these projects, this Friday we will have the bid opening for the band shell and the Parcel 840 proposals. Any questions on those two? Ok 60 day pump down test is going on as I reported last time all indications that the wells outside the area are not going to be significantly impacted, there was a slight draw down on some of them, the rates are pumping higher than the average rate right now, we are pumping at the maximum permitted capacity on both of the wells and they are not even, you know they are down to about 150 foot, typically we draw down to 220 with a lot of our wells where our major water bearing fractures are so the water levels just sitting there and just pumping away and everything looks fine right now.

Mr. Brown: When did we start?

Mr. Yost: We started that 3 weeks ago.

Mr. Hoewing: Wow. When you do a draw down test what happens to that water?

Mr. Yost: While there was such a large volume of water if you add all we had from, we had to run 2, 5, 3, and 4 and 7 is running with the pilot program all run 24 hours also and I couldn't put anymore water into the system so we had to run them 1000 feet out and away from the wellhead and discharge them into the creek so they are adjacent to those properties.

Mr. Hoewing: Ok so they go back in the watershed ok.

Mr. Yost: Yep and far enough away that it doesn't cause an influence of a recharge on the test itself.

Mr. Hoewing: Ok.

Mr. Yost: I've been also working with Eddie brought it up last time the Maryland Energy Department grants and they are working through the process right now. It is federal money that has trickled down to the Maryland Energy Department and what's happened is whatever we do to increase or improve anything as far as efficiency of any equipment has to be 100% American made, every single piece of it, which they are finding difficulties right now with some of the projects people are submitting because even a start up electronic electrode whatever is in it everything has to be American made, also you have to use its very difficult...

Mr. Klobukowski: All your computer circuit boards.

Mr. Yost: And the second thing they are finding difficulty with is they have to pay --- wages on any project that you contract out to have equipment installed so those two things are --- and see how they can maybe bend the rules a little bit, not for sure how they can do it so far so we don't have a project yet they said they can come out and do an assessment of the wastewater plant they liked that idea, its not really a real in depth energy audit it is more of an assessment to get some ideas of things you can look at, they can take one of our facilities and do that. They liked the idea of the wastewater plant so I am trying to connect with them and get that set up they are just now getting the ball rolling themselves we received our first letter of notification last week to get a point of contact so but I already called them before that so I am working on that to see what we can get out of it.

Mr. Hoewing: Is there a level of grants that is available?

Mr. Yost: \$32,000.00.

Mr. Hoewing: That is the one you sent the email about right.

Mr. Kuhlman: All right any questions for Wade? All right why don't you give a little explanation of what is going on tomorrow in here with the school.

Mr. Yost: Oh it is on Wednesday at 1:35.

Mr. Kuhlman: Oh Wednesday?

Mr. Yost: Yes the architectural design group or whatever the class is but it is young engineers basically or architects that are going out and they want to come here and take a look at Parcel 840 and the year end project is going to be for the students to develop something on that property, so they are going to come in they want to find out exactly what should they look for, what kind of codes, how do you go through the process of developing a plan for a property such as this so John and I have a presentation put together and we are just going to outline exactly what you do you know put in what the zoning is what is allowed, what are the setbacks, the requirements for reforestation, stormwater management, so we are going to walk them through all those processes.

Citizen Forum

Mr. Kuhlman: Any questions. All right citizens forum anybody have anything, Mr. Barnes.

Mr. Barnes: My name is Don Barnes I live at 19735 Selby Avenue. With respect to alternative energy I ask that the Commissioners be mindful of water and energy conservation and efficiency as well. As we all know the Town has little control over electrical energy we don't produce any here, we do have some control over water and sewage, I can only imagine if everyone in town had water restrictors or their faucets and low flush toilets and low energy use washers that are washing machines, how much water we could be saving in town and the stress off of our sewer system so I think it is

something to consider when you are looking at alternative energy as a whole picture, the whole package, it is just not about energy, it would be nice if we had a nice little nuclear reactor here and we could produce our own energy but I don't think that is going to happen.

Mr. Kuhlman: No that is not going to happen. Anybody else? Seeing no hands I entertain a motion to adjourn to a work session to discuss the Alternative Energy Ordinance.

Adjournment

Ms. Gruber: I motion to adjourn to the work session for that Alternative Energy Ordinance.

Mr. Kuhlman: Is there a second.

Mr. Klobukowski: Second.

Mr. Kuhlman: All in favor?

All: Aye.

Mr. Kuhlman: We are adjourned to a work session.