



VILLAGE OF MARVIN

10004 New Town Road | Marvin, NC | 28173 | Tel: (704) 843-1680 | Fax: (704) 843-1660 | www.marvinnc.org

VILLAGE OF MARVIN Council Regular Meeting Minutes August 9, 2018 10004 New Town Road, Village Hall

Mayor Pollino called the meeting to order at 6:30 p.m.

Quorum was determined with the following members in attendance: Mayor Joe Pollino, Councilman Robert Epps, Mayor Pro Tem Nick Dispenziere, Councilwoman Kim Vandenberg and Councilwoman Mary Shkut.

The following staff was present:
Barbie Blackwell, Village Clerk
Melanie Cox, Village Attorney
Christina Alphin, Village Administrator

ADOPTION OF AGENDA

Councilwoman Vandenberg requested *item (b) Consider Approval of December 12 and 13, 2017 meeting minutes* in Unfinished Business Items be tabled until the next meeting.

Councilwoman Vandenberg indicated that she had not had a chance to review *(h) "Discussion and Consideration of Attorney Client Privilege, Current Legal Services, Fair Legal Representation for Citizens and Members of Council"*, *(i) "Discussion and Consideration of a Transparent Informal and Formal Village Bid Policy"*; and *(j) Discussion and Consideration of Conflict of Interest Form and Procedures* under New Business. She has requested that those items be tabled until the next meeting as well.

Councilwoman Vandenberg also requested that *item (l) "Consider Adoption of Proclamation for 'Constitution Week'"* under New Business be moved to the Consent Agenda.

Councilman Epps has expressed that the items that are asked to be tabled are important items and really need to be discussed immediately. The items are attorney/client privilege, transparency and conflict of interest.

Councilwoman Vandenberg has indicated that she is still not prepared to talk about those items at this time.

Motion: Councilman Epps made a motion to leave (h), (i) and (j) on the Agenda.

Vote: The motion received a tied vote of 2 yes and 2 nays Mayor Pollino voting in the affirmative to break the tie. Council members

Shkut and Epps voted yes while Mayor Pro Tem Dispenziere and Councilwoman Vandenberg voted no. The motion failed; and therefore, items (h), (i) and (j) were tabled until next meeting.

The council consensually agreed also that item (l) *Consider Adoption of the Proclamation for 'Constitution Week'* of the New Business Items will be tabled until next meeting as well.

Councilwoman Shkut requested the title for item "A" under new business be revised to read "Discussion and Consideration of Resolution of Intent RS-2018-08-02 Amending Village Charter to allow the Mayor to vote on all matters".

ACTION: Council woman Shkut made a motion requesting the title for item "A" under new business to be amended to read "Discussion and Consideration of Resolution of Intent RS-2018-08-02 Amending Village Charter to allow the Mayor to vote on all matters". The motion passed with unanimous consent.

ACTION: Councilman Epps made a motion to add an agenda a new item "A" under new business Discussion and Consideration of Mayor Pollino's accusation that Councilman Epps made an inappropriate act by appointing Mary Shkut to Council.

VOTE: The motion received a tie vote of 2 ayes and 2 nays Mayor Pollino voting in the affirmative to break the tie. Councilmembers Epps and Shkut voted yes while Mayor Pro Tem Dispenziere and Councilwoman Vandenberg voted nay. The motion failed.

ACTION: Councilwoman Vandenberg made a motion to adopt the agenda as amended. The motion passed with unanimous consent.

PLEDGE OF ALLEGIANCE

Council led the Pledge of Allegiance.

PUBLIC COMMENT

There were no public comments.

THALES PRESENTATION

Michael Roach is the Director of Construction and New School Development for Thales Academy. Mr. Roach had two guests with him, Dr. Timothy Hall, who is the Director of Academics for Thales, and a Board Member who is a Marvin resident, Judy Nunnenkamp.

Dr. Hall gave an overview of what Thales is about and what they offer to their consumer base.

Dr. Hall stated that Thales provides what they consider the highest quality education at the most affordable price for their families. He likes to remind people that they are private, but affordable for their families.

In addition, they are focused on the whole student, which means they are focused on developing students to their highest potential from pre-K all the way to the 12th grade.

The zoning process has begun with the Town of Marvin, including a required traffic study through the NCDOT.

DISCUSSION:

Councilman Epps asked if the traffic study would indicate if turning lanes would be required. Ms. Carnow confirmed that if the NCDOT requires a turn lane. Mr. Roach added that if NCDOT feels there needs to be a turn lane, they would require it to be put in.

Mr. Roach went on further to say that the K-5 school is 450 students and the junior high/high school is 650 students. Their start and stop times would be over ½ hour difference between the two schools, thus making the carpool much less. Those numbers are full capacity.

Councilman Epps asked if they allowed room for expansion and the answer was no. The plan for expansion would to just move to a new location for another K-5 and another junior high/high school. The buildings have been designed out for those maximum numbers and they prefer to keep them within those numbers.

Councilwoman Shkut asked if it was in the art district and would it require rezoning. Ms. Carnow confirmed that the property would be rezoned with an educational overlay and associated with a Conditional Use Permit. Councilwoman Shkut asked if the land would be fully cleared? Mr. Roach responded that it would depend upon the engineers lay out, but it would be laid out for traffic safety throughout the school.

Councilwoman Vandenberg has asked if there are any other sites that Thales Academy is contemplating on building. Mr. Roach responded by saying that they like the site that they have chosen and have spent money on researching whether it is a good site. Their job is to find the land, buy the land, design the layout and then they run the school.

Councilman Epps is of the hopes that Ms. Carnow is in full communication with Thales Academy regarding the process. She responded by saying that she has talked to everyone about the process; however, they cannot guarantee zoning, but that's all. There are two public info meetings that the Academy will be subject to.

NCDOT U-5769 WIDENING OF NC16 (PROVIDENCE RD) FROM RAE RD TO WAXHAW PARKWAY

Shawn Epperson is the Division Project Team Lead with the NCDOT. He said, Mr. Presley is the project manager for the project and the primary point of contact through the process.

In widening NC16 from Rae Road to Waxhaw Parkway, they are projecting to get a right of way in fiscal year 2021 with construction in fiscal year 2023. There are two alternatives they are looking at from a traffic analysis standpoint (1) conventional widening; and (2) super street widening.

Benefits of super streets:

- a. Reduction in conflict. With a standard full movement intersection, it has 32 different conflict points. The super street intersection has a reduced conflict point of 14.
- b. In conventional widening, side streets can go through and left; and the main line can go through and left. There is a potential for an 8-phase traffic signal. In a super street configuration, the side streets cannot go straight across the intersection or turn left. This is what causes the reduction of conflict points. The advantage is being able to get through the intersection quicker.
- c. There would be designated pedestrian crossings. They would cross at the main intersection and at the u-turn locations because it is a signalized intersection.
- d. Super streets are developer friendly.

The first highly commercial development area where superstreet configurations have been completed are: Leland, North Carolina on US 17 and Holly Point, North Carolina on NC 55.

Mr. Epperson shared the traffic delay statistics with Council.

A public meeting will be held with the applicants in the late fall, early winter.

MARVIN GARDENS

Tom Kallon, development manager with Publix explained: They are ready to move forward with the approval processes that are left to begin construction. The Publix store building has been improved since they received their original approval. There is a new prototype that is different and exciting. He is confident everyone in Marvin will like it. There are no plans for the new prototype. Mr. Kallon introduced Vanessa who is responsible for the residential component of the project. Mr. Kallon indicated builder, Sausy Burbank, wants to continue as a partner to build some 55 and over housing.

Sausy Burbank needs to solidify their plans via a purchase agreement, which Vanessa will handle. Asa Harris and Carter Cassenbamm, from the Harris Team, are with the development team.

Mr. Harris stated they are working very aggressively with their architecture and engineering on the commercial components. They will submit their plans to the Planning Board/Design Review Board in early October and approval from Council in November.

Mr. Harris was particularly concerned about southbound traffic. Mr. Harris stated he was very familiar with super streets; however, he was concerned about losing southbound customers.

Mr. Kallon explained: There has been a tremendous amount of activity regarding other potential tenants in the Publix center.

ADMINISTRATOR'S REPORT

Christina Alphin presented the engineer's report from the Reasons property. She explained: There were several questions she had from the engineer but she had not been able to respond back to him. She presented an estimated total of \$50,000 to \$70,000 needed for foundation structure changes. some foundational changes needed. She noted that an ADA consultant would be hired next week. She should have some answers back from ADA in the next couple of weeks.

Councilman Epps clarified with Ms. Alphin that the \$50,000 was just for the flooring structure. Ms. Alphin noted she had additional questions for the engineer. Councilman Epps then stated that the engineer's cost estimation was based on what he could see and not necessarily what is in the ground.

Councilman Epps asked Mayor Pollino if the deed restriction had been signed on the Village Hall property. Mayor Pollino noted that he would like to see the property as an open-air park for concerts and open space with food trucks. He would also like to see the space being used as a weekend destination. Mayor Pollino agreed to sign the deed restriction document.

PLANNING BOARD UPDATE

Councilman Epps stated that it was his understanding that the DRB (Design Review Board) process had a streamline. Councilwoman Shkut agreed to work with the DRB and drew up a flow chart and submitted it to the DRB.

Councilman Epps wants to ensure that the tools were in place to keep Publix moving along.

PRG BOARD UPDATE

There was no PRG Board update given. The Chair asked Ms. Alphin to share the proposed joint meeting agenda with Council.

CONSENT ITEMS

Council Approved the following Consent Agenda Items:

- a. Approved Application #18-12125– Final Plat. – Councilwoman Vandenberg pulled the minutes until next meeting. Approved the June Treasury Report.
- b. Approved Adoption for Resolution RS-2018-08-01 Directing the Clerk to investigate the sufficiency of Voluntary Annexation petitions for Weddington Chase Parcels 06-156100, 06-156114, 06-156235, 06-156146, 06-156283, 06-156110, 06-156217, 06-156214, 06-156085, 06-156082, 06-156113, 06-156225, 06-156357, 06-156053
- c. Approved changes to Policy P-2017-09-01 (Visitor Sign-in Policy and Meetings with Village Staff.
- d. Approved Adoption of Budget Ordinance Amendment OR-2018-08-01
- e. Approved Authorization of Finance Director to Enter Amended Audit Contract.

Motion: Mayor Pro Tem Dispenziere moved to adopt the consent agenda as amended.

Vote: The motion carried with a unanimous vote.

UNFINISHED BUSINESS ITEMS

- a. Consider Approval of Village Engineer 4-year Road Project Sample and Staff Report.

Council briefly discussed roads in general. They determine that all roads would be completed within 4 years. No subdivisions would be broken up except for Marvin Creek because of its size. The budget including engineering costs is \$315,000 to \$330,000 per year and does not consider inflation. Ms. Alphin requested approval of the resurfacing schedule from Council.

Motion: Mayor Pollino moved to approve the resurfacing schedule.

Vote: The motion carried with a unanimous vote.

- b. Discussion and Consideration of Village Website.

Councilwoman Vandenberg expressed that the Village website still needs to be reworked, revamped and updated. Ms. Alphin noted that staff has had issues with storage and functionality not just appearance of the website that would need to be addressed. Mayor Pollino agreed that the website needs to be updated. Ms. Blackwell stated by updating the website would help with the functionality, appearance and would give Marvin a new fresh look. Ms. Blackwell also noted the branding can coincide with whatever website is available. Councilwoman Vandenberg requested three quotes for Council to review and discuss at their next meeting.

NEW BUSINESS ITEMS

**A. DISCUSSION AND CONSIDERATION OF RESOLUTION OF INTENT RS-2018-08-02
AMENDING VILLAGE CHARTER TO ALLOW THE MAYOR TO VOTE ON ALL MATTERS
AND SET PUBLIC HEARING FOR AUGUST 30, 2018, 9 AM AT VILLAGE HALL**

Ms. Cox explained: Council discussed this item in February. She stated there is a rule of procedure on how Boards are able to vote for board positions and there were questions about what the role of the Mayor, the voting process and procedures for amending to allow the Mayor to vote, which could be changed through local legislation or amend the Charter. Ms. Cox shared the drafted resolution with Council for review and discussion.

Councilwoman Shkut stated according to Rule 12, items on the Agenda need to be sufficiently worded to enable the public to understand what is being deliberated, voted on or acted on. She agreed that it does not change the mayoral procedure, instead it allows the mayor to vote on all matters. She is requesting that the title should be amended from “to change mayoral procedure” to “to allow the mayor to vote on all matters”.

Motion: A motion was made to change the wording from “to change mayoral procedure” to the words “to allow the mayor to vote on all matters”.

Vote: The motion passed unanimously.

Councilwoman Vandenberg openly stated that transparency amongst the council members does not exist. She believed that in order to be open, they should make the change for the Mayor to have the voting power.

Motion: Councilwoman Vandenberg made a motion to consider Resolution of Intent RS-2018-08-02 Amending Village Charter to Change Mayoral Procedure and Set Public Hearing for August 30, 2018, 9 am at Village Hall.

Vote: The motion carried a tie vote 2-yes and 2-nayes with Mayor Pro Tem Dispenziere and Councilwoman Vandenberg voting yes and Councilmembers Shkut and Epps opposing the motion.

B. CONSIDER RESOLUTION RS-2018-08-03 RELATING TO DEFENSE OF VILLAGE OFFICERS AND EMPLOYEES

Ms. Cox requested this item be placed on the agenda. She explained: She assumed that the Village of Marvin had this Resolution because it appears in the Village’s insurance policy but was determined the Village did not have such a Resolution, she recommended that a resolution be drafted for Council to discuss and consider.

Ms. Cox explained that it is not unusual when statutes change that ordinances also need to be changed to comply with state statute.

Mayor Pollino stated this policy covers all council members, officers and employees. If anyone were to be sued the Village and the insurance company would not provide coverage to those individuals. Speeding tickets and intoxication are excluded from this coverage.

Motion: Councilwoman Vandenberg made a motion to adopt Resolution RS-2018-08-03 Relating to Defense of Village Officers and Employees.

Vote: The motion passed with majority vote.

Councilman Epps requested to amend the motion.

Motion: Councilman Epps made a motion to amend paragraph C of the Resolution to state the officer or employee acts or fails to act, except for emergencies, for the existence of extenuating circumstances directly contrary to instructions from the superior, directly contrary to the advice of the village administrator, village attorney or directly contrary to village regulations and/or policy *and/or state laws*.

Vote: The motion received a tie vote of 2-yeses and 2 noes. Mayor Pollino voting in the affirmative to break the tie. The Motion failed.

Motion: Councilwoman Vandenberg reiterated her motion again to adopt Resolution RS-2018-08-03 Relating to Defense of Village Officers and Employees.

Councilman Epps opposed of the motion stating there is a conflict of interest to the resolution.

Ms. Cox, Village Attorney, assured the Council that there was no conflict of interest. The Statute allows any member to request a policy.

Vote: The motion received a tie vote of 2-yeses and 2-noes. Mayor Pollino voting in the affirmative to break the tie. The motion passed with majority vote.

C. DISCUSSION AND CONSIDERATION OF HIRING OF OUTSIDE LEGAL COUNSEL FOR MARY SHKUT V VILLAGE OF MARVIN, ET AL., 19-CVS-1853.

Councilwoman Shkut stated that felt she should recuse herself from discussion of this agenda item and requested to ask a general question about the item. "Didn't you already hire outside legal counsel?" Ms. Answered, No. Only to consult and what needed to be done.

Village attorney shared following documents: (1) his fee schedules, (2) his website and (3) his biography on the potential outside legal counsel.

Motion: Councilwoman Vandenberg made a motion to hire T.C. Morphis from the Brough Law Firm to defend all named defendants in 18-CVS-1853 with the assistance of village attorney as co-counsel.

Council discussed this item at length.

Discussion:

Councilman Epps expressed his concerns regarding Council spending more money to fight Councilwoman Shkut's appointment.

Mayor Pollino argued that it was Mr. Epps action to cause the whole debacle where the Council had to take legal action.

Councilwoman Shkut stated that the lawsuit that she filed allowed her to restore her seat on the Village Council.

Vote: The motion passed with a two to one vote with Councilman Epps opposing the motion.

D. DISCUSSION AND CONSIDERATION OF I-485 EXPRESS LANES PROJECT

Ms. Alphin asked if Council if they wanted a someone to make presentation and provide more detail on the project. She explained: The video she sent out explains the entire project.

Council with unanimous consent agreed that a presentation was not necessary for the project.

E. STATE TREASURER RESPONSE LETTER – FOR INFORMATION

Mayor Pollino noted the Village is required to comply with passing the budget. He also noted that the Council should formally respond to the State Treasurer regarding the noncompliance to pass a budget. He explained: He will draft a letter for Council to review at their next meeting. Councilwoman Vandenberg suggested reviewing the letter at their September 11, 2018 meeting.

F. DISCUSSION AND CONSIDERATION OF BOW ORDINANCE OR-2018-08-01

Ms. Alphin explained: Ms. Cox, Village Attorney, had some recommendations and will further review the ordinance. Ms. Alphin also noted recommendations from the Planning Board Chair to add language regarding a berm.

Councilman Epps suggested keeping it simple and address the fact that the Villagedoes not have a bow and arrow ordinance and to include these definitions in the firearm ordinance.

Ms. Cox made a recommendation under Section 13.03 (D) "a person discharging a firearm and self-defense of person" to add or "property" and striking language "while occupied". Federal

regulations and statutes specifically control what municipal ordinances can and cannot do. One thing is the Village cannot take away one's ability to defend their property. Council agreed unanimously not add any language regarding berms.

Motion: Councilwoman Shkut made a motion to accept the amendment to Bow Ordinance OR-2018-08-02 as amended in paragraph (A) striking "while occupied" and in paragraph (D) adding "in self-defense of person or property" and including any minor grammatical errors which staff sees. Councilman Epps seconded the motion.

Vote: The motion passed unanimously.

G. DISCUSSION AND CONSIDERATION OF ELECTRONIC VOTING POLICY P-2018-08-01

Ms. Cox presented the electronic voting policy that allows all council members to participate and vote by electronic means. She noted that quorum must be present before a council member could participate electronically on the call. She suggested the following change: "whoever can vote could call in and vote". Councilwoman Shkut suggested limiting the number of board members that could call in to two.

Ms. Cox also added that if the technology is not working or if the audio is not audible, the council may vote to disallow participation, or will automatically excuse the remote member from participating electronically.

Motion: Councilwoman Vandenberg made a motion to adopt P-2018-08-01 remote participation policy for meetings of Marvin Village Council.

Vote: The motion passed unanimously.

H. CONSIDER AMENDMENTS TO VILLAGE HALL TRAIL

Ms. Alphin explained: Toll Brothers offered to go ahead and construct the Village Hall Trail at their cost. They would build the trail to ensure connectivity to their subdivision and survey the property at their cost to ensure that it was built within the current easement. If it is not in the current easement, they will draw it at their expense. They will build the trail according to the Village's ordinance of 4 feet wide; 2 feet on either side with an overhang of 8 feet clearance. Staff would determine exact location and inspect the trail for final approval prior to completion. The Village would take over ownership and maintenance once the trail was completed and request some of the contingencies in a separate agreement.

Ms. Alphin requested that Council include the following contingencies when making their motion:

1. They will survey the property to ensure that the trail is built within the current easement. If not, they will redraw the easement at their cost and file a final plat to dedicate the easement to the Village of Marvin.
2. They will build the trail according the Village's ordinances, which it 4-foot-wide; 2 feet on either side overhang with 8 feet clearance.
3. Staff would approve the exact location of the trail and staff would approve prior to completion.
4. The Village would take over ownership after completion and add it to the Village's trail system and maps.
5. Village would be responsible for maintenance.
6. Trail should be constructed of concrete.

Motion: Councilwoman Shkut made a motion that the proposed revisions offered by Toll Brothers with the conditions listed in the meeting per the Administrator, with the provision that once all improvements and construction are complete, then a new plat is filed delineating all the easements appropriately dedicated.

Vote: The motion passed unanimously.

REVIEW OF ACTION ITEMS

- Find out from the Town of Weddington their process they used to upfit the house for their Town Hall.
- Gather two additional quotes from website companies and research with Brandon Company if they do website design.

COUNCIL COMMENTS

Councilwoman Shkut thanked everyone for allowing her to participate in the meeting. She said she enjoys working with everyone when its productive. She commended the staff for a good job done as well.

Pro Tem Dispenziere thanked the staff for all the work they are doing and keeping them up to date on everything. He also thanked Ms. Cox for her assistance.

Councilwoman Vandenberg agreed with Pro Tem Dispenziere.

Mayor Pollino thanked staff for National Night Out event. Staff did a great job. It was well attended and had a good conversation with Sheriff Caffey. He asked staff to clarify with the Sheriff's Department the times the Officers would be directing traffic on the corner of Marvin Rd and New Town Rd. He also suggested to council members to time stamp when they see them directing traffic. Great format on the agenda. Glad to see the roundabouts moving forward. He clarified and confirmed with NCDOT regarding the barricades that Providence Downs roads are privately owned and they put the barricades up because the gates had not been installed. Thanked everyone for hanging in during the long meeting.

ADJOURNMENT

Motion: Councilwoman Vandenberg made a motion to adjourn.
Vote: The motion passed unanimously.

Adopted: _____

Joseph E. Pollino Jr., Mayor

*Barbara R. Blackwell, NCCMC
Clerk, Village of Marvin*