

**Village of Mariemont  
Regular Council Meeting  
May 27, 2020**

Mayor Brown called the meeting to order at 6:35 PM. Present were Mr. Bartlett, Mrs. Graves, Dr. Lewis, Ms. Palazzolo, Mrs. Rankin, Mr. Stelzer and Fiscal Officer Borgerding. They were virtually connected due to the COVID-19 pandemic.

Mr. Bartlett asked that the minutes for April 27, 2020 be amended to reflect that he was present. In addition, he said his response regarding the levy was in response to Mrs. Rankin's question if a levy was something Council needs to discuss. Dr. Lewis moved, seconded by Mrs. Rankin to accept the minutes as amended for April 27, 2020. On roll call; six ayes, no nays.

Mayor Brown read the following communications:

From Assistant Fiscal Officer Wendler: April Monthly Expenses and Revenue Reports

Mayor Brown said he received an email From Joan Donnelly regarding the easement on their property. Solicitor McTigue said the courthouse is planning to open June 1, 2020 with limited access. Mayor Brown said he will send Mrs. Donnelly an email with the update.

Mayor Brown said he received an email from Jennifer Manzler with additional information regarding the 5G installation. He submitted a copy for inclusion in the permanent minutes:

- 5G high frequency pulsed millimeter wave **direct beam** technology has **NEVER BEEN SAFETY TESTED** for biological health effects. Studies have cited the potential for eye damage, skin burning, physical pain, heart rate changes, and immune system damage.
- The only safety testing the wireless industry has done on our current 4G system is for the thermal effects of the wireless radiation (the ability to heat up the human body).
- In addition to these direct beam pulsed frequencies, 5G also includes **bringing 4G cell antennas onto your street that will sweep homes with 24/7 wireless frequencies at close range causing 100X more radiation exposure than the 4G cell tower a mile away.**
- Hundreds of peer reviewed scientific studies have demonstrated serious adverse biological health effects from our current 4G system including infertility and hormonal damages; neurological effects like anxiety, depression, Alzheimer's, and MS; oxidative stress and cellular DNA damage; cardiac effects like heart arrhythmias and sudden cardiac death; immune system damage and dysfunction; and even cancer.
- Switzerland, Brussels, and the Netherlands have all put a halt to the roll out of 5G until safety studies have been conducted.
- Real estate association studies show **property values drop 20% on homes near cell phone towers.** Would you buy a home with a mini cell phone tower in your front yard?
- Because we don't know the health effects of 5G, we must adopt the Precautionary Principle and keep these small cells and their 24/7 radiation away from people's homes.
- Because of the 2018 FCC Ruling, we may not be able to completely stop these small cell facilities from coming to the village but **we CAN control the location and configuration.**
- U.S. municipalities are successfully using local ordinances to restrict locations of small cell facilities and setting minimum distance requirements from residential dwellings.
- **Any requirements imposed on providers must be made available publicly before applications are submitted, so we must act NOW to pass an Urgency Ordinance immediately before any in person meetings are accepted or applications submitted.**
- Americans for Responsible Technology has given us a sample ordinance that is a compilation of all code that has been successfully used by other municipalities to restrict the quantity, appearance, and locations of small cell facilities in addition to other important legal requirements like repairs, maintenance, damages, bodily injuries, etc.

- If we use this sample ordinance from Americans for Responsible Technology and adapt it to our needs, it is possible that compliance issues would prompt any providers to look for another community to build their 5G infrastructure. This would buy us time until the proper safety studies are conducted on 5G.

Mayor Brown said Ms. Manzler also sent to him an Ordinance from the City of Mason regarding action they have taken to try to have some say over the placement of the pole, especially, in residential areas. He asked the Solicitor to review it to see if it something the Village can use and does it withstand legal muster. Solicitor McTigue said he was surprised that Mason did this as he does not believe it trumps federal law. He will look into it but if the utility company pushes back on the Village we will probably have to cave in.

Mr. Bartlett suggested reaching out to Frost Brown Todd, LLC given the number of municipalities they represent may be able to present real life examples. Solicitor McTigue said he would take a stab at it. The only issue he was asked to review was relative to the placement of the documents. If the issue is now what other municipalities have done with this and whether or not they have been challenged he can certainly look into that. Mr. Bartlett and Mrs. Graves said their understanding from the last meeting was that Solicitor McTigue was already planning on doing that.

Mayor Brown said he talked with Building Administrator Keyes about this issue and as it stands right now Peaknet (installers of the poles) is on hold for the moment. He believes we have a little bit of interim time to explore our options. Mrs. Graves said it is important to find out when the “clock starts”. Whether or not they want to wait until the fall it is still concerning to her as paperwork has been submitted to the Village regarding placement etc. She is concerned about what time does that clock start. She believes Solicitor McTigue needs to look at what Mr. Keyes has so Council has a clear picture. If the 120 days started when they first submitted paperwork the time clock is about to run out. Mayor Brown believes that Mr. Keyes has only had conversations with Peaknet over the phone. He does not believe the shot clock has been set yet as a formal application has not yet been made. Mrs. Graves said she is not so sure because there were official documents submitted with placement of the poles. Mayor Brown’s understanding is Peaknet has not formally made notification to get paperwork to start the work and was hoping to start discussion on the project in the fall.

Mr. Stelzer said there does seem to be a lot of concern about the 5G towers and the rights they have and the rights that municipalities have. Our legal rights to keep the towers from going in a place the Village does not like are probably limited based upon what the FCC has said. Clearly the ORC seems to give the telecommunications companies a lot of power to put these towers wherever they want in the public right-of ways. It might not be a bad idea to go parallel on this and have the Solicitor do his research and also involve Frost Brown Todd. He does not believe it will be that expensive and will get the benefit of their knowledge of municipality law. We could always have a cap on the amount we would spend with them. It is a big issue with the residents and seems reasonable to incur the cost now to know what we are dealing with. Mrs. Graves said many residents may be concerned but we have only heard from three. Mayor Brown said there will be those who are concerned with safety and those who are concerned with the aesthetics and placement.

Solicitor McTigue said he does not have a concern with hiring another firm to take a look at this. We talked a year and a half ago about how the Village was going to handle engaging other counsel besides himself. It was decided that Council would engage outside counsel if the work was outside his experience or level of expertise. At this stage he just heard the words 5G two weeks ago. He was asked to take a look at it- which he did- now issues are being brought up that may or may not be relevant. He would like before Council goes to another law firm to give him an opportunity to see if he can answer these questions before the Village, who is so very concerned about money these days, incurs the substantial extra cost. He has always tried to be fair and reasonable and if it is out of his knowledge – he will be the first one to admit it. He does not agree with the comment that it will not cost that much. Mr. Stelzer said in his dealings with law firms over the years he has found that if you find the right lawyers who have the experience they can get the answer quicker than one who has to spend time on research. Mr. Bartlett said the question can be do you have any lawyers representing municipalities who put these kind of laws on the books and have they ever been challenged. He does not believe we will

have to pay any money to simply ask the questions. Mr. Bartlett said he will email Frost Brown Todd and ask the questions and copy all of Council.

Mr. Bartlett moved, seconded by Mrs. Rankin to pay the bills as approved by the Mayor, Fiscal Officer and Chairman of the Finance Committee. Mrs. Rankin asked about the street light globe costs. Mayor Brown said he believes those are for the historic district but will check with Superintendent Scherpenberg. Mr. Bartlett asked about the real estate tax roll back to MariElders. Fiscal Officer Borgerding said the Village is a pass through for them. We receive the funds and then distribute to them. Mayor Brown said that the Mariemont Civic Association will pay for half of the cost for shred day. On roll call; six ayes, no nays.

#### Miscellaneous:

Village Offices will be closed Friday July 3, 2020 in Observation of Independence Day

The Budget Hearing will be Monday July 13, 2020 at 5:30 p.m. Council agreed to the time change due to the proposed change to the start of Council meetings at 6:30 p.m. Mrs. Graves asked when Council plans to meet back in Council Chambers. Mayor Brown said he is still waiting to hear additional information from the state regarding loosening up the guidelines to how many people can be in attendance. He would like to get back to in person Council meetings soon. Mrs. Graves said she believes Council needs to have a discussion prior to coming back as she would not feel comfortable if people were not wearing masks and said it should be a requirement. In addition, there should only be enough chairs to allow proper distancing and no more. Ms. Palazzolo said for now we need to be sensitive to people wearing masks and see how the data comes in after things open back up.

Mayor Brown stated that the upcoming Mayor's Court was going to be held in the Fire Bay.

Mayor Brown thanked Mr. Hlad and Chief Hines who did an excellent job getting together the vehicle parade for Memorial Day. There was an exceptional turn out.

Mr. Stelzer said he has tried to keep Council updated on the status of the pool. He has learned over the past few weeks what a prized and cherished treasure the pool is to the community. Over the last 20 years the pool has been neglected not due to the pool manager or the pool employees but more from a lack of financial capital. One thing that has been done is the reformation of the Pool Commission. Over the years the Pool Commission had degraded to only addressing social events and per the code that is not what their role is supposed to be for the Village. The role is to oversee, planning and making recommendations to the Pool Manager regarding capital operations and daily needs. Four members resigned due to time commitments and new members are being appointed. Several volunteers have stepped up and the amount of work they accomplished was incredible. Facilities Manager Mr. Beck has indicated that he is uncomfortable coming and working at the pool this summer due to Covid-19 concerns. Ben James, a member of our Service Department, has stepped up and will be learning the infrastructure of running the pool. We are trying to communicate to the residents that the pool experience is not going to be the same pool experience as in past years. There are guidelines and rules that must be in place in order for it to open safely. This process has identified that we need to find a communication system that will address the citizens quickly. Mrs. Rankin said the new website does offer the residents a tool to sign up for news and alert emails. Mrs. Rankin and Dr. Lewis said they will work together to help form better mass communication. It can be assigned to a formal committee after more information is gathered.

Discussion revolved around the costs to operate the pool. Mr. Stelzer estimates the cost this year to be \$80,000. To date there have been \$40,000 in registrations that have come in so far which is approximately half of what was done in previous years. Several residents have indicated they would like to make a donation to the pool but the Village does not have a 501(C)(3) to operate under for a tax deduction. He is working on it which may help get additional financial contributions but it is something the Village needs to address. At this time we are not factoring in the concession stand. We will address that after it is determined if the pool will open. Volunteers, led by Mr. Hlad, are willing to create and distribute Village wide a flyer with a pool application in order to help reach the numbers needed to open the pool. The goal would be to give residents another week to respond. If favorable, it is possible to open mid-June as the pool would need to be filled, chlorinated and inspected prior to opening. Council agreed to hold a Special Meeting on Thursday June 4, 2020 at 6:30 p.m. to further discuss the pool opening.

Mrs. Graves asked if the Pool Task Force finalized their recommendations. Mr. Stelzer said they got caught by COVID-19 and have not finalized their report. At this point, this would not be the year to implement the recommendations they may recommend.

Council discussed what financial income it would take to open the pool. Mr. Bartlett said he would not want to operate and lose more money than we did last year which was approximately \$60,000. His thought is with the money to date we would need \$20,000 more whatever the means. Mayor Brown was concerned that was setting the bar too low. Mr. Bartlett said the majority of the income came in June. He believes there may be those who do not buy memberships but come down on day passes once they see what the experience is going to be. Dr. Lewis suggested pro-rated memberships in July should things with COVID-19 slow down. Mrs. Graves said that might be an option but a lot of sentiment she is getting is that may not be the case. Mr. Stelzer said the expense projection is very rough. He does not have an enormous amount of comfort saying \$40,000 will cover it. There are still things we are trying to figure out such as how many employees do we need working – do we need people working to make sure the social distancing guidelines are being met. Due to the rules governing opening the lifeguards cannot be tasked with enforcing social distancing. Perhaps volunteers will help. Mr. Bartlett said it is only fair to give the Pool Board a number that Council needs in order to open the pool. We need to establish a number that the Village can afford to absorb. Mr. Stelzer said that is hard to do as Council does not know how much room we have in the budget as we watch the revenue month to month. Council agreed that an additional \$25,000 was needed to be raised by June 4, 2020. It would close the gap to an acceptable level. It was recommended that daily updates be given publicly. Mayor Brown asked that Solicitor McTigue review the waiver form to make sure all the state requirements are met. Notices will need to be posted at the pool. Mr. Stelzer said Hamilton County Board of Health will also be able to help us with the guidelines.

#### Resolutions:

“To Appoint Mandy Pouder as a Member of the Pool Commission to Fill the Unexpired Term of Maria Borgerding for the Calendar Year 2020; and To Declare Emergency” had a first reading. Mr. Stelzer said that Ms. Pouder asked to go by her married name of Rohal. Mrs. Van Pelt will make the change on the legislation. Mrs. Rankin moved, seconded by Dr. Lewis to suspend the rules to allow for the second and third readings. On roll call; six ayes, no nays. The Resolution had a second and third reading. Mrs. Rankin moved, seconded by Dr. Lewis to adopt the Resolution. On roll call; six ayes, no nays. Mr. Bartlett moved, seconded by Mrs. Graves to invoke the emergency clause. On roll call; six ayes, no nays. Resolution No. R-9-20 was adopted.

“To Appoint Terry Donovan as a Member of the Pool Commission to Fill the Unexpired Term of Rhonda Materese for the Calendar Year 2020; and To Declare Emergency” had a first reading. Mrs. Rankin moved, seconded by Dr. Lewis to suspend the rules to allow for the second and third readings. On roll call; six ayes, no nays. The Resolution had a second and third reading. Mrs. Rankin moved, seconded by Dr. Lewis to adopt the Resolution. On roll call; six ayes, no nays. Mr. Bartlett moved, seconded by Mrs. Graves to invoke the emergency clause. On roll call; six ayes, no nays. Resolution No. R-10-20 was adopted.

“To Appoint Leesa Blanding as a Member of the Pool Commission to Fill the Unexpired Term of Jill Mehl for the Calendar Year 2020; and To Declare Emergency” had a first reading. Mrs. Rankin moved, seconded by Dr. Lewis to suspend the rules to allow for the second and third readings. On roll call; six ayes, no nays. The Resolution had a second and third reading. Mrs. Rankin moved, seconded by Dr. Lewis to adopt the Resolution. On roll call; six ayes, no nays. Mr. Bartlett moved, seconded by Mrs. Graves to invoke the emergency clause. On roll call; six ayes, no nays. Resolution No. R-11-20 was adopted.

“To Appoint Lorne Hlad as a Member of the Pool Commission for the Calendar Year 2020 and 2021; and To Declare Emergency” had a first reading. Mrs. Rankin moved, seconded by Dr. Lewis to suspend the rules to allow for the second and third readings. On roll call; six ayes, no nays. The Resolution had a second and third reading. Mrs. Rankin moved, seconded by Dr. Lewis to adopt the Resolution. On roll call; six ayes, no nays. Mr. Bartlett moved, seconded by Mrs. Graves to invoke the emergency clause. On roll call; six ayes, no nays. Resolution No. R-12-20 was adopted.

#### Ordinances:

“To Amend Ordinance O-11-20 of the Mariemont Code of Ordinances to Increase Payment for Employees; And To Effect Changes to Full-Time Employee Health Care Plans” had a second reading.

Mayor Brown said going forward if there is new business for Council to address he asked that it be sent to the office by Thursday prior to Council so it may be added to the agenda. He will email Council his thoughts on creating a new line item for New Business. Items to be discussed should be shared with the public prior to the public meeting per the Ohio Open Meetings Act. We cannot continue to have round robin type discussions regarding issues that the public has had no opportunity to know it is going to be discussed.

The meeting adjourned at 7:45 p.m.

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William A. Brown, Mayor

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Anthony J. Borgerding, Fiscal Officer