

THE FOUR HUNDRED AND TWENTY THIRD SESSION OF THE BOARD OF
ALDERMAN
VILLAGE OF ALAMANCE
AUGUST 26, 2013 – 7:00 PM

Present: Mayor Pro Tem Sharpe, Alderman Clemmons, Alderman Tichy, Alderman Crouse, Alderman Slaughter, Alderman Gregory and Clerk York.

Mayor Pro Tem Sharpe presided over the meeting in the absence of Mayor Bundren.

Alderman Clemmons gave the invocation.

Alderman Tichy moved to approve the July 22, 2013 meeting minutes. Alderman Crouse seconded the motion. The motion passed unanimously.

OLD BUSINESS

Plaid Day

This item was tabled for another meeting.

Report on Cabin Pump Station Project

Mark Reich reported that they have met with the Corps of Engineers and received concurring approval on the findings of ECS. They also concurred with ECS that the additional wetlands, delineated by NC DOT, were not valid. Everything on the north side of the road is not considered “wetlands.” There is one stream from the wetlands on the south side, near the pump station, that will be avoided. Instead of using the manhole at the pump station, they will go upstream about 40 feet, perpendicular across the stream, and then return to the point as originally designed. Mr. Reich informed that they are able to avoid all the wetlands, and will permit the one stream under a nationwide permit, with no problems. They will be able to meet all of those thresholds and will be “good to go” with all of the permits. They are now moving forward with the design. Also, they have had additional conversations with the sub-consultant at ECS about the rock. They now have an alignment and will do the borings as discussed. Mr. Reich has good elevations now, regarding how deep the bores need to be. Weather permitting, they should be able to get started. Rain will throw everything behind schedule. The design should move forward. Mr. Reich has talked with Arnold Allred. There are some things he would like to incorporate down at the pump station. Mr. Reich will start to pull all of this together too. Hopefully soon, they will be able to identify the easements so that Mr. Bateman can work on the process for the easements, for the acquisitions. Mr. Reich asked if the Board had any questions. There were no questions. Mayor Pro Tem Sharpe thanked Mr. Reich for his report.

ORC Report

Arnold Allred reported that everything is running well with the collections system. Rusty Saxon has been mowing the right-of-way and it is looking good. Regarding the distribution system, there was a bacteria test in July. The THM test has been completed for this month, but the results have not yet been received. They have exercised a few more valves. Mr. Allred met with the Mayor a couple of weeks ago about the leak at Jr. Frye’s property. They put the sump pump in, and put it up off the ground. There is still a concern that there is a possible leak there. Mr. Allred

has spoken with Mr. Reich and they are unsure of the direction to take. Shutting valves off and trying to find the leak is the strategy now. The Mayor is concerned about trying to find the leak. Alderman Crouse stated that many old structures were built over wells. He questioned whether the old well could be the issue. Mr. Allred responded that the sump pump was in the building when it was constructed. Clerk York reported that Mr. Frye brought him a bill for \$180.00, for piping the sump pump into the sewer line. Mr. Frye has asked the Village to pay for the costs that were incurred. It is the Board's decision as to whether the Village should pay this bill. Clerk York pointed out that if the Board agreed to pay the bill, it would be accepting the responsibility for the problem that Mr. Frye has; Clerk York stated that this was his opinion, not a legal opinion. He has not discussed this issue with Attorney Bateman. Clerk York summarized that paying the bill is accepting some kind of responsibility. Alderman Crouse noted that at one time it was piped into the sewer system, and someone took it out. Mr. Allred said that another sump pump, not this one, was already piped into the system years ago. Alderman Crouse said the evidence was there. Mr. Frye has called Alderman Crouse, asking if the Board has pursued this leak. Until they start opening and closing some valves, he doesn't know what else they can do. Mr. Reich commented that they have looked at trying to isolate a couple of valves. The only way to tell anything would be to see if there was any water coming through the meter. If someone used water between the meter and the valve, for instance, going to the bathroom, there would be water going through. If valves were closed off at Rob Shepard, there is still water coming from the Alamance Creek side. If something was done at night, it could be coordinated with the City, with permission to get into their gate, and read the meter. Then, you could see if it was using water or not. The only way to tell, for sure, that there is not a leak, is if no water was going through either of the two meters at the same time. Clerk York stated that it does not seem to be a very big leak. He asked if it would still register on the meter, if only a small amount of water was going through. Mr. Reich informed that the meter has a "low flow"; they should be able to tell. If nothing was going through, they would be in a good position to say a leak is ruled out. Mr. Reich stated that another option would involve a geologist, to do what is done similarly at gas stations or sites with contamination. Samples could be pulled periodically. He also wondered if the water needed to be tested again. They could have had a bad sample. Mr. Allred noted they only checked one sample. Clerk York said they only ran fluoride on one sample. Mr. Reich asked about the container used for the sample. Clerk York said, in both cases, the container was provided by the person taking the sample. Initially, a sample was tested for chlorine—nothing was found. The second sample was tested for fluoride. In both cases, the owner of the property provided the container. Mr. Reich observed that a rinsed container could pick up a trace of fluoride. He suggested that the City of Burlington could do another re-sample, having someone on their staff collect the sample. They will use sterile procedures to obtain the sample of water. Mr. Allred agreed this was the first thing they need to do. Mr. Reich said that, after that, a couple of monitoring wells could be placed between Cabin Road and Mr. Frye's building and the Hwy. 62 pump station. Mr. Allred addressed the gas tank monitoring. Alderman Crouse stated the option was worth looking into; otherwise, the possibility is that there is an underground spring coming to a head after all the rain. Mr. Reich commented that the ground water tables are up. The water is coming into the basement of the building, next to the wall. Usually, 99 times out of 100, a water line leak will show up in the pavement somewhere. Clerk York asked what would happen if it was determined that the leak was Village water. The consensus was that the leak would have to be isolated. Alderman Tichy noted that the water was coming out with some pressure, behind the wall. He suggested the test be done with Burlington, to be absolutely sure it is city water. He said that he doesn't think it is city water. Alderman Tichy and Mr. Reich agreed that the sample should be taken right where the water is coming through the wall. Alderman Crouse asked about chlorine that would show up in city water. Mr. Reich responded that chlorine will dissipate. Mayor Pro Tem Sharpe returned the discussion to the payment of the

bill. She expressed concern about setting a precedent. The consensus of the Board was to table the discussion about the bill for now.

NEW BUSINESS

Annexation of 2708 Birch Lane

Clerk York reviewed that Mr. Barrett had addressed the Board at the last meeting, requesting to connect onto water services. The Board informed Mr. Barrett of his options, including the costs. Mr. Barrett is in the process of considering what he wishes to do. He has not presented a letter, nor has he made a decision about connecting to water. Mayor Pro Tem Sharpe summarized that the Board would wait to hear back from Mr. Barrett.

Liberty Drive Paving

Clerk York informed the Board that he had received an email earlier this month, from Brett Jacobus about paving the final section of Liberty Drive. This issue has come up before. There is a point, when you pass over Cornerstone Drive, where there is only the first coat of paving. There is a little dip, which is a concern. A resident has put some asphalt and mud in the dip, to fill it. The residents would like to know if this will be paved at some point. Liberty Drive was part of the fourth phase of Heritage Glen. The developer should be the one responsible for the second coat of paving. Looking back at previous minutes, (from 2011, the last time this issue was discussed), a deal was struck that they would wait until half of the houses in that section were built, to do the second coat of paving. Alderman Clemmons asked how long ago this was decided. Clerk York did not know, only that it was last discussed in 2011. Alderman Gregory asked if there was anything in writing, regarding the deal. Clerk York responded that he has looked through the files on Heritage Glen, and does not find any letters of credit. Typically, there would be a letter of credit, if some part of a job was not completed. This would guarantee the Village that the developer would finish what was not yet complete. Clerk York has letters of credit for Phase 1 and Phase 2 of Heritage Glen. He hasn't found anything for the other phases of Heritage Glen. Clerk York has spoken with the developer, Mr. Faircloth. He says he doesn't have the money to do it. The question now is what the Board wants to do, moving forward. Does the Village do the paving or try to get the developer to do it?

Alderman Crouse stated that it is solely the developer's responsibility. Clerk York agreed. Attorney Charles Bateman said that, under state law, the Village could not have approved a plat for recording unless improvements were bonded. He has seen instances where there have been slips, and letters of credit have expired. It is not uncommon to have top-coat held for a while, during the time that houses are built. Since the Village has allowed this to happen, the Village will have to pave that street. By recording the plat, the Village has guaranteed those residents that build there, that those improvements will be "in." Mr. Bateman has also, in the past, gone in and revoked the plat for any unsold lots. This prevents getting the building permit for future lots. This will catch their attention pretty quickly. Alderman Crouse said this was like putting a lien against their property. Attorney Bateman said this is what he would rather do, in this case. Alderman Clemmons asked Clerk York about the agreement again. Clerk York responded that, from the minutes, there is a reason why the paving hasn't been done and why the Village allowed this to happen. Mr. Reich said this is standard practice, around the state, to not put the final coat on, until the houses are built. Alderman Clemmons said that if there had been a letter of credit, it would not have been into perpetuity. Attorney Bateman explained that if a bond had been done, which he doubted, it would be different. Alderman Clemmons commented that a bond would have been pretty expensive. If a bank gives a letter of credit, they are basically making a credit

decision. If the municipality called it, the bank will put the money out there, and a loan will start with the customer. Most banks will want to revisit it yearly, to see the developer's financial situation; also, to see if any work has been done, so the letter of credit is less. He doubts very seriously that there is an active letter of credit out there, in this situation. Alderman Clemmons added he didn't know which bank had the letter of credit. Alderman Crouse reminded that this section of street had been discussed, related to snow removal. The manholes have been raised up and the snow removal crews have been dodging them for a couple of years. The question has been raised about damages to the valves and manholes and whether these costs will be placed on the developer. Alderman Clemmons stated the situation needed to be fixed, one way or another. Alderman Crouse said he felt sorry for the residents.

The President of the Heritage Glen Homeowners' Association, Dan Tichy, addressed the Board. The problem with Liberty Drive really became an issue just recently when someone was trying to sell their house. One of the neighbors tried to patch it himself and make a ramp. It worked temporarily, but it is breaking apart. Brett Jacobus and Dan Tichy asked Clerk York to make this an agenda item, in order to get an update. They are looking for information to take back to the residents. Alderman Clemmons restated that this needs to be fixed, one way or the other. He asked Alderman Crouse about seasonal limits on paving. Alderman Crouse replied that December 15-March 15 is normally the cutoff time for asphalt plants. This time usually involves cold and foul weather. Alderman Tichy asked how long it would take to revoke the plat for the lots. Attorney Bateman replied that it would take 15-20 minutes. There is an official party to those plats. He doesn't know of anyone who will buy a lot on a revoked plat. Alderman Clemmons asked if they were sure the agreement was out there. Randy and Doug have been good. Mr. Bateman said there was no reason for that plat to be recorded without the letter of credit. The only understanding that might have been held was to go ahead and approve the plat, put up the line of credit, and do the paving after so many houses have been built. This has been done routinely, as Mr. Reich said. At this point, Clerk York referred to the October 2011 meeting minutes. Dan said he wasn't sure about how many lots the builders own. There are only 4 lots left. Clerk York referred to the Alamance GIS online to determine that there are 8 lots that are not "built" yet. Alderman Tichy asked about the number of lots available for building on Serenity, noting it would affect these also. Clerk York answered there are 3 lots not yet built on Serenity.

Alderman Clemmons stated that the problem needed to be fixed, and not be put off any more than it has to. The situation should be addressed as amicably as possible. The developers have not been bad; they have built a good subdivision that benefits the Village in many ways. Alderman Clemmons suggested the Board needed to reach out to the developers. Attorney Bateman commented that if the developers didn't have the money they would have to go to a bank. If the bank discovers the liens on the lots, in unsalable condition, the problem will be fixed. Clerk York asked Mr. Bateman to describe the process.

Mr. Bateman would complete the form, Revocation of Plat, and file it at the Register of Deeds Office. Developers and lenders will complain, because of the loan on the lots. Normally, they will lend them enough money to get the paving done. Odds are pretty good that the problem will be solved. It is what should be done. Alderman Clemmons asked Clerk York about the last time he spoke with Randy Faircloth. Clerk York replied it was last week or the week before. Randy does not dispute that they have to do it; he just says he doesn't have the money to do it. He doesn't say he is not going to do it, or dispute his responsibility. Alderman Clemmons asked if the Village could do the work and then collect from the developer, when he has the money, or sells lots. Attorney Bateman said the only thing that could be done is make the developer sign a note in deed of trust as a condition of doing the work. This is really not worth anything.

Alderman Tichy asked about requiring the developer to post a bond. Attorney Bateman responded that if the developer can't pave, he can't post a bond. Alderman Clemmons said he is pretty sure there is no lien on the developer. Attorney Bateman said if there is no lien on him, the Village could take a personal mortgage on the developer. Either way, the Village would get the money, because he couldn't sell lots then without paying the Village. Alderman Clemmons observed that they would want the developers to control the paving. The Village would offer to fund it, but let them control paving it. Attorney Bateman said this would set a bad precedent. He suggested that the Village say, okay, you haven't done the paving. We can do it one of two ways—either work with you, or go the other way with it. Clerk York summarized that the Village could do the paving and have the developer give the Village a note in deed of trust. Mr. Bateman added that, as the lots are sold, the developer will pay the Village. If the developer chooses not to do this, the Village could revoke the plat. Mr. Bateman indicated this was the only option the Village has. Alderman Tichy asked who should speak to Mr. Faircloth. Mr. Bateman suggested that both Clerk York and he, himself, speak with the developer. Mr. Bateman said that Powell Bill funds could be used to do the paving. Alderman Clemmons said the Village shouldn't be in the business of doing this, but these are different times. Clerk York added that doing it this way is not the same as loaning someone money. Clerk York had a question about the money once it is paid back—is it Powell bill money or Village money? Attorney Bateman answered that he would put it back in Powell Bill funds. Alderman Clemmons asked about an idea of cost for the paving. Mr. Reich estimated that the project would take 300 tons of asphalt, at the cost of \$120.00 per ton. At this point, Clerk York used the Alamance GIS online to measure the length of the road in question. Calculations of cost were addressed. Alderman Tichy made the motion that Mr. Bateman and Clerk York talk with Randy Faircloth; in the meantime put out a formal request for bid on the paving project. Alderman Crouse seconded. The motion passed unanimously.

Illicit Discharge Ordinance

Clerk York referred to the copies before the Board members. The Illicit Discharge Ordinance prevents residents from putting things in storm drains that they shouldn't be putting in them. This was put together by Josh Johnson, as part of the Jordan Lake Rules, in the New Development Ordinance. The New Development Ordinance, in the Jordan Lake Rules, has been put on hold. This section has been pulled out for the Board to consider, because a couple of residents in Heritage Glen have called about a neighbor dumping the contents of a Rainbow vacuum cleaner in the storm drain. One of the neighbors has put a note on the storm drain, to ask the individual not to do this again. The neighbors wish to remain anonymous. The dumping into the storm drain should not be done, but there is nothing to address the problem. Alderman Clemmons commented that there is a lot to the ordinance, to address this particular problem. His worry is that they would be approving something they don't understand. Alderman Crouse added there is a lot of gray area. Alderman Tichy asked, if the Jordan Lake Rules become active again, would the Village have to approve something like this, or something similar. He did not see anything objectionable after reading the ordinance. If the Village would have to do something eventually, he doesn't mind tabling it for next month. Attorney Bateman said something would have to be done, sooner or later. Alderman Clemmons addressed storm water retention; this was some of the worry when the Jordan Lake Rules first came out. Alderman Tichy referred to the definitions and indicated he would have no problem with leaving that part out. Alderman Clemmons suggested they spend some more time on this and come back to it. This item was tabled. Mr. Reich suggested that Josh Johnson could attend a future meeting to answer questions.

Finance Report/Bank Account Options 111379.84

Clerk York reported on the \$110,826.06 CD purchased from Carter Bank in August 2012. Now with a value of \$111,379.64, it has earned \$553.58 in interest. It was renewed. It is earning .4%. Alderman Clemmons referred to the earlier information provided by Clerk York about changes Wells Fargo has made to the account. He understands they don't wish to take action at this meeting. He has suggested observing this for a month, to see how the changes, for example, in earnings credits, happen before making any decisions. Clerk York stated that the earnings credit has increased from .05% to .25%. This was made retroactive, back to January. From January through June, Wells Fargo has adjusted off the fees. They will also eliminate the account maintenance fees and returned check fees.

OTHER BUSINESS

There was no other business.

PUBLIC COMMENT

Peggy May addressed the Board. The lot beside of her property is not in the Village. Mr. Clapp owns it, and it has tall weeds. He did have someone to mow it, but another neighbor has been informed that Mr. Clapp told him not to mow it any more. She knows the Village can't do anything about it, but wishes that they could. Clerk York said he will contact Mr. Clapp. Mrs. May also pointed out a concern with the corner of Ashe Drive and Cedar Lane. The road is breaking off and it is a mud hole. The school buses make it worse. Mr. Reich suggested that DOT could look at this. Clerk York looked at the Powell Bill map. Mr. Reich said that all of Cedar Lane is a DOT road. All of Ashe Drive is also a DOT Road. Clerk York stated that he would contact DOT regarding the concern. Mrs. May also questioned why some properties are part of the Village and others are not. Clerk York pointed out that Mrs. May's property is right on the end.

There was no other public comment.

Alderman Crouse moved to adjourn and Alderman Gregory seconded. The motion passed unanimously and the meeting was adjourned.

Cathera R. Bundren, Mayor

Ben York, Village Clerk