

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

January 7, 2008

CALL TO PODIUM:

Fred Felton
Assistant City Manager

RESPONSIBLE STAFF:

Fred Felton
Assistant City Manager

AGENDA ITEM:

(please check one)

<input type="checkbox"/>	Presentation
<input type="checkbox"/>	Proclamation/Certificate
<input type="checkbox"/>	Appointment
<input type="checkbox"/>	Public Hearing
<input type="checkbox"/>	Historic District
<input type="checkbox"/>	Consent Item
<input type="checkbox"/>	Ordinance
<input checked="" type="checkbox"/>	Resolution
<input type="checkbox"/>	Policy Discussion
<input type="checkbox"/>	Work Session Discussion Item
<input type="checkbox"/>	Other:

PUBLIC HEARING HISTORY:

(Please complete this section if agenda item is a public hearing)

Introduced	
Advertised	
Hearing Date	
Record Held Open	
Policy Discussion	

TITLE:
 Resolution of the Mayor and City Council Providing Preliminary, Conditional Consent for the Housing Opportunities Commission of Montgomery County to Exercise Right of First Refusal to Purchase Orchard Pond Apartments Pursuant to Chapter 53A of the County Code

SUPPORTING BACKGROUND:

JPI Development Services, LP is under contract to purchase Orchard Pond Apartments. Orchard Pond Apartments is a relatively affordable 747 unit complex located at the intersection of Quince Orchard Road and Firstfield Road.

Pursuant to Chapter 53A of the County Code, Montgomery County and the Housing Opportunities Commission (HOC) have the right to exercise the right of first refusal to purchase the property; however, they can not do so without the City's consent because it is located within a municipality.

On December 27, 2007, the City received the attached letter from Scott Minton indicating that, upon initial due diligence, HOC would like to purchase the property and is seeking the City's consent to do so. In order to proceed with due diligence and compile a development plan, HOC needs to submit a contract to purchase the property by January 15, 2008. Accordingly, the only opportunity the Mayor and City Council would have to grant its consent prior to the deadline is this meeting.

In conversations with HOC representatives, staff indicated that we did not believe the Mayor and City Council would take a position on an issue of this magnitude so quickly. As an alternative, we discussed the possibility of the City approving a "contingent resolution" that would permit the City to review and approve the plan prior to granting final approval or denial. This would allow HOC to enter the due diligence phase to see if it can put the financing together to make the project viable from its perspective.

Based on our initial conversations with HOC, it is our understanding that it would like to operate Orchard Pond Apartments as a mixed income community with various levels of

-Continued-

DESIRED OUTCOME:
Vote on Resolution

MAYOR & COUNCIL AGENDA COVER SHEET

Supporting Background Continued:

affordability. In many respects, this acquisition would support the City's inclusive housing goals; however, it would likely result in the loss of significant tax base. Additionally, HOC ownership of this large complex would preclude the opportunity for redevelopment as the adjoining Casey West Town Center is built out. Further, it is noteworthy that this land is very close to an existing MARC station and a future CCT station so higher density development may be desirable at some point in the future.

Staff recently met with representatives of JPI to discuss its goals for the complex. Not surprisingly, JPI is very opposed to HOC taking over the contract and would like to proffer an affordable housing component to its project that would convince the City (and our partners at Montgomery County and HOC) that public acquisition of the property is not necessary to meet affordable housing goals.

Neither HOC nor JPI has fully developed their concept for the project, and staff believes it is not in the City's best interest to take a final position on whether HOC should acquire the property until both concepts are developed further.

Approving the attached resolution would permit HOC to submit a contract on January 15, 2008; however, HOC would not be able to purchase the property without additional action by the Mayor and City Council. HOC officials fully understand that the City will need to give this matter significant consideration, and may ultimately decide that HOC acquisition of Orchard Pond Apartments is not in the City's interest.

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL PROVIDING PRELIMINARY,
CONDITIONAL CONSENT FOR THE HOUSING OPPORTUNITIES
COMMISSION OF MONTGOMERY COUNTY TO EXERCISE
RIGHT OF FIRST REFUSAL TO PURCHASE ORCHARD
POND APARTMENTS PURSUANT TO CHAPTER
53A OF THE COUNTY CODE

WHEREAS, JPI Development Services, LP is under contract to purchase Orchard Pond Apartments; and

WHEREAS, the Housing Opportunities Commission of Montgomery County (HOC) has informed the City that they would like to exercise their right of first refusal to purchase Orchard Pond Apartments pursuant to Chapter 53A of the County Code; and

WHEREAS, HOC can not exercise the right of first refusal without the City's consent; and

WHEREAS, neither HOC nor JPI has fully developed their concept for the project; and

WHEREAS, staff believes it is not in the City's best interest to take a final position on whether HOC should acquire the property until both concepts are developed further; and

WHEREAS, the approval of this contingent resolution will permit HOC to continue its due diligence and compile a development plan; and

WHEREAS, HOC recognizes that this resolution is not final approval but preliminary and conditional, and they may not purchase Orchard Pond Apartments without full consent of the City of Gaithersburg:

NOW, THEREFORE, BE IT RESOLVED by the Mayor and City Council of Gaithersburg, hereby give preliminary conditional approval for the Housing Opportunities Commission of Montgomery County to exercise right of first refusal to purchase Orchard Pond Apartments pursuant to Chapter 53A of the County Code and that final and full consent will only occur by further subsequent resolution of the Mayor and City Council.

ADOPTED by the Mayor and City Council this 7th day of January, 2008.

SIDNEY A. KATZ, MAYOR and
President of the Council

THIS IS TO CERTIFY that the foregoing
Resolution was adopted by the City Council
in public meeting assembled on the 7th day
of January, 2008.

James D. Arnoult, Acting City Manager



**HOUSING
OPPORTUNITIES
COMMISSION**
OF MONTGOMERY COUNTY, MD

10400 Detrick Avenue
Kensington, Maryland 20895-2484
(301) 929-6700

JAN - 2 2008

8002 2-11-07

December 27, 2007

Mr. Fred Felton
Assistant City Manager
31 South Summit Avenue
Gaithersburg, MD 20877

RE: Orchard Pond Apartments
Chapter 53A-3 Montgomery Code
Right of First Refusal to Purchase Multifamily Units

Dear Mr. Felton:

The Housing Opportunities Commission of Montgomery County (HOC) received notice pursuant to Chapter 53A-3 of the Montgomery County Code from Clopper Road Apartments LLC (principal owner) to sell its membership interest for the above mentioned property to JPI Development Service LP (buyer). The Commission has examined the terms and conditions of the Purchase and Sale Agreement. The Commission, upon initial due diligence, would like to exercise its right of first refusal to purchase the property as provided under the Montgomery County Code. I am recommending that the Commission submit a contract to purchase the property for \$108,250,000 by January 15, 2008. Therefore, we are requesting a resolution from the City of Gaithersburg to consent to the purchase of Orchard Pond Apartments by the Commission.

The Commission understands this is short notice and the City of Gaithersburg would require further review of the Commission's intent to reposition the property after acquisition. However, due to the time limit granted under the Montgomery County Code to match the initial Purchase and Sale Agreement, a full detail development plan has not been completed. The Commission is requesting a contingent resolution to be passed by the City of Gaithersburg to consent to the purchase with an option to review and approve the development plan of the Commission before final real estate closing.

Sincerely,

D. Scott Minton
Executive Director

cc: Richard Y. Nelson, Jr.

