

DRAFT



Gaithersburg

A CHARACTER COUNTS!

CITY OF GAITHERSBURG
MINUTES OF A REGULAR CITY COUNCIL MEETING
TUESDAY, JANUARY 22, 2008

A meeting of the Mayor and City Council was called to order at 7:30 p.m., Mayor Katz presiding. Council Members present: Ashman, Drzyzgula, Marraffa, Sesma, and Spiegel. Staff present: Acting City Manager Arnoult, Assistant City Managers Felton and Tomasello, Planners Robinson and Marsh, Human Services Director Carr, Parks, Recreation Program Specialist Ludington, and Executive Assistant Stokes. Planning Commission present for the Historic District Commission joint public hearing: Bauer, Kaufman, Lanier, Levy and Winborne.

I. PLEDGE OF ALLEGIANCE

The Pledge was led by Jeannie Pizzonia, 9816 Islandside Drive, Montgomery Village, Maryland.

II. INVOCATION

The invocation was led by the Reverend Phillip Ayers, Covenant United Methodist Church.

III. APPROVAL OF MINUTES

Motion was made by Council Member Sesma, seconded by Council Member Ashman, that the minutes of the Mayor and Council regular meeting held December 17, 2007, be approved.

Vote: 5-0

Motion was made by Council Member Drzyzgula, seconded by Council Member Ashman, that the minutes of the Mayor and Council regular meeting held January 7, 2008, be approved.

Vote: 5-0

Motion was made by Council Member Spiegel, seconded by Council Member Ashman, that the minutes of the Mayor and Council special meeting held January 10, 2008, be approved.

Vote: 4-0-1 (Abstained: Marraffa)

IV. CONSENT ITEMS**1. Resolution for a Renewal of Retention Agreement with Stanley D. Abrams, Esq.**

Assistant City Manager Felton stated that on January 7, 2008, staff brought a resolution before the City Council that would continue Mr. Abrams' hourly rate at \$220/hour; however, based on subsequent conversation, staff is recommending the hourly rate be increased to \$270/hour. He stated that Mr. Abrams is extremely helpful on land use and zoning issues as well as general legal issues. This resolution further authorized the City Manager to negotiate and execute a renewal of a retention agreement with Special Counsel Stanley D. Abrams, Esq., in an amount not to exceed Thirty Thousand Dollars (\$30,000); said funds to be expended from the Operating Budget.

2. Resolution of the Mayor and City Council Authorizing the city Manager to Participate With Montgomery County for the Extension of a Joint Procurement Contract for Electricity With Washington Gas Energy Services

This resolution authorized the City Manager to execute a contract for the supply of electricity with Washington Gas Energy Services; said funds to be expended from the Operating Budget. The original two-year contract term expires in March 2008; however, there are three extension options in the contract. Staff believes that the joint procurement is the best method for ensuring the City receives the most competitive rate for electricity supply.

Motion was made by Council Member Ashman, seconded by, Council Member Sesma, that the Consent Agenda (Resolution Nos. R-6-08 and R-7-08), be approved.

Vote: 5-0

V. PRESENTATIONS**1. Certificates of Recognition**

Mayor Katz was joined at the podium by Coach Jennifer Alvarez to recognize the Montgomery County Division I Cheerleading Champions. On November 17, 2007, the Gaithersburg High School Cheerleading Team took first place in the Montgomery County Public School, Division I, Cheerleading Competition held at Blair High School. The team tied for first place in 2006 and second place in 2005. The 2007 team was led by Coach Alvarez and Assistant Coach Crystal Caballero. The Captains of the team are Allison Baisey, Cassandra Velez, Daniel Vieira, and Nicole Free. Other team members include Kelly Baisey, Petra Clinton, Asmara Clinton, Amanda Chacon, Amanda Berger, Emma Canopies, Caitlyn Copra, Veronica Cain, Dominique Dorsey, Dana Alaska, Mayan Gray, Martha Gutierrez, Ally Hard, Megan Godfrey, Lindsey Kaufmann, Simone Harris, Amber Leister, Justine Hooke, Sara Moses, Nina Nana, Angela Park, Victoria Hayward, Erica Resaving, and Antoinette Smith.

2. Readings and Certificates of Recognition - Dr. Martin Luther King, Jr. Literary Arts Contest

Mayor Katz was joined at the podium by Jim Mannarino, President/Publisher of the *Gazette Newspapers*, Patricia Rogers, Multicultural Affairs Committee, and Human Services Director Carr. The winners of the City of Gaithersburg and *Gazette Newspapers* 17th Annual Martin Luther King Jr. Literary Arts Contest were in attendance and presented their essays at the County Martin Luther King Celebration on January 21, 2008 at the Music Center at Strathmore. The essays were judged and chosen as exceptional by members of the City's Multicultural Affairs Committee. This year the students had to answer the question, "If Martin Luther King Jr. was alive today, what would you like to say to him?" Mayor Katz expressed thanks to over 240 area Gaithersburg students and their teachers that participated in the Contest this year. The 1st place winners were Yvonne Combs, 5th grader, Laytonsville Elementary School, Chantel Le-Shay Broxton, 11th grader, Northwest High School, and Rachel Novosad, 10th grader, Northwest High School.

3. **Proposal for Safety Netting at Kelley Park Ball Fields**

Recreation Program Specialist Ludington gave a PowerPoint presentation stating that at the June 18, 2007 Mayor and City Council meeting, a concern was expressed regarding baseballs landing on the property abutting Kelley Park Field #1. Staff does believe that this is a safety issue that should be addressed. He further stated that potential solutions were explored by conducting site visits to local parks, (City of Rockville's – Dogwood Park, Cabin John Regional Park – Povich Field, two fields in Arlington County and Rockville High School) contacting area golf courses/parks with similar situations, and meeting with vendors specializing in protective netting. Staff also conducted a survey with abutting property owners of Kelley Park in addition to meeting with them and the Gaithersburg Sports Association. Representatives from two companies specializing in ball field netting visited Kelley Park recommending two options:

A. Netting placed 40-60 feet high, 50 feet wide, to be constructed at the top of the hill directly behind the Benitez residence. Cost is \$20,000 to \$30,000+ dependent upon the compaction of the soil;

B. Netting placed 70 feet high, 100 feet wide, to be constructed 20 feet from the third base line of field #1. Cost is \$40,000-\$60,000.

Following further investigation, meetings, and an additional survey conducted with the abutting property owners of Kelley Park Field #1, staff concluded that the issue is with only one house, the Benitez family whose home is in the direct shot of foul balls. Staff recommended Option B, netting which will be most effective and have less of an obstructive view. The transparent netting would be supported by the use of metal poles and provides the project for future expansion, if required, to reduce significantly the number of baseballs entering the adjacent properties. He stated that there is no solution that will guarantee 100 percent elimination of foul balls. The life cycle of the netting is between seven to ten years. Funds for the above will be proposed in the FY'09 budget, CIP-93-2, Ballfields Projects. Until the netting is completed, staff will schedule players 16 years of age and older to alternative fields at Kelley Park or elsewhere in the City. Staff was directed by the Mayor and City Council later in the meeting, following public appearances, to proceed with Option B and include funding in the Capital Improvements Budget.

4. **Presentation on Proposed Amendments to the Crown Farm Annexation Agreement (X-182)**

Assistant City Manager Felton presented the proposed amendments on the above matter. On August 6, 2006, the Mayor and City Council approved the agreement to annex the Crown Farm. Mr. Felton along with Planner Robinson oriented the Mayor and City Council with the site located at the intersection of Sam Eig Highway and Fields Road. Mr. Felton stated that the agreement and the approved sketch plan divided the farm into six Pods. Pods #1, #2, #3 and #5 are to be developed as mixed-use projects. Pod #4 will become a City park, and Pod #6 is the high school site. Mr. Felton gave an overview of what is in the current agreement stating that it gives the developer rights to 320,000 square feet of commercial, primarily retail development and a total of 2,250 dwelling units. He stated that Pod #1 is currently between 820 and 867 dwelling units, as well as 300,000 square feet of commercial, Pod#2 has a range of 310 to 325 dwellings, Pod #3 is 280 to 290 dwellings, and Pod #5 is at the Corridor Cities Transitway (CCT) alignment and Transit Station, and that has currently authorized 768 to 1,010 dwellings plus 20,000 square feet of commercial.

Mr. Felton highlighted the existing agreement stating that: 1) the developer is obligated to 12.5 percent of the dwelling units be Moderately Priced Dwelling Units (MPDU) components; 2) four percent of the units in Pods #1, #2, and #3 will be Work Force Housing Units (WFHU) administered under the City's regulations; 3) the developer is to dedicate 4.2 acres of land for the CCT and the Transit Station; and 4) the developer is obligated to build 250 parking spaces for the CCT Station or at the City's option, contribute \$3 million to the Maryland Transit Administration (MTA) for parking; 5) a detailed traffic analysis be done on the project and as a result, the developer is required to do eleven off-site road improvements; 6) mandate of quality materials prohibiting vinyl siding or similar materials and dwelling must have four-sided architecture; 6) the

clubhouse must be LEED certified and 40 percent of commercial development in Pod #1 must qualify 20 points on the LEED rating system; 7) the developer is required to donate 32.1 acres for a high school site; 8) the developer must contribute \$2 million to the Montgomery County Agricultural Land Preservation Easement Fund; 9) until such time the CCT is in operation, the developer is required to operate a shuttle bus program for a period of 25 years; 10) the developer is required to make a \$5 million contribution to the City (received in late December) for a regional recreational facility; and 11) the developer is required to spend a total of \$200,000 of public art in Pods #1, #2, and #3. Mr. Felton stated that at this point, the schematic development plan for Pods #2 and #3 have been approved. Due to market conditions, the developer is asking for the flexibility to move on with Pod #1. Staff has been working with the development team for approximately six months on proposed amendments to Pod #1. In order to accommodate the plan, staff and the developer believes it is necessary to reallocate 60 residential units from Pod #5 to Pod #1. He stated that the proposed SDP does not impact the overall cap of 2,250 residential units for the entire project. Staff also believes that some office in Pod #5 would be more desirable. Additional negotiations proposed the following amendments to the annexation agreement: 1) due to market conditions, the developer would be relieved from the obligation to put housing over the grocery store in Pod #1; 2) if County Council consent is obtained in the future, the developer could convert up to 400 multi-family residential units in Pod #5 up to 400,000 square feet of office at a conversion rate of one residential unit for each 1,000 square feet of office, noting that the existing agreement calls for a payment of \$2,500 to the City's affordable housing fund for each residential unit in POD #5; 3) the developer will contribute \$1 million for construction of the new senior center or any other recreational amenity upon the issuance of the 51st building permit or June 1, 2010; 4) the developer may require the purchaser to make a 10 percent down payment on WFHUs, capping the down payment at 5 percent; and 5) the developer will reimburse the Washingtonian Towers Condominium Association and the Courtyards at Rio Homeowners Association \$10,000 each in the event these communities install fencing within the next three years.

He stated that if the Mayor and City Council agree with the terms above, staff would recommend that the annexation agreement amendments be approved concurrently with the proposed sketch plan amendments. Staff was asked to review further the five-story restriction with the grocery store and parking requirements.

VI. PUBLIC APPEARANCES

1. *Mr. Benitez, 17 St. Ives Place*, due to safety concerns, he expressed support for the netting height proposed earlier in the meeting during presentations.
2. *Jeannie Pizzonia, 9816 Islandside Drive, Montgomery Village*, expressed support for the Crown Farm development, specifically the developer's contribution of \$1 million for the proposed senior center. She thanked the Mayor and City for their efforts.

VII. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS

Council Member Ashman

1. Announced that the City will host two community meetings to provide residents an opportunity to learn about the federal Community Development Block Grant (CDBG) program and provide input. The meetings are scheduled for January 23, 7 p.m. at the Ed Bohrer Parent Resource Center, and on January 30, 7:30 p.m. at the Activity Center at Bohrer Park. In addition, the Mayor and City Council will conduct a public hearing on Monday, February 4, 7:30 p.m. The meetings are required as part of the City's consolidated planning process of approximately \$425,000 each year to be used primarily to benefit low and moderate income residents. For more information call Louise Kauffmann at 301-258-6310 or via email at kauffmann@gaitthersburgmd.gov.

2. Stated that in January 2006, the City launched Alert Gaithersburg which is an emergency notification system that immediately contacts subscribers during a major crisis or emergency. Alert Gaithersburg can deliver important emergency alerts, notifications and updates to several electronic devices simultaneously, including multiple e-mail accounts (work, home, etc.), cell phones, text pagers, and wireless PDA's. Alert Gaithersburg to receive messages regarding bad weather, traffic, cancellations, etc. He encouraged residents to sign up by visiting <http://alert.gaithersburgmd.gov>
3. Reported that the Mayor and City Council Retreat held to develop a Strategic Plan for the City was extremely productive. He suggested conducting a retreat more than once a year. He thanked staff for their informative presentations.
4. Congratulated the Gaithersburg High School Cheerleading Team and the Dr. Martin Luther King, Jr. Literary Arts Contest winners.

Council Member Spiegel

1. Announced the City will host a reception "Gaithersburg Day" on Thursday, January 31 from 11:30 a.m. to 1 p.m. at the Senate Office Building in Annapolis, to discuss informally with elected officials, the City's legislative initiatives.
2. Echoed congratulations to the Gaithersburg High School Cheerleaders and the three 1st place winners of the Dr. Martin Luther King, Jr. Literary Arts Contest. Stated he, Mayor Katz and Council Members Drzyzgula and Sesma attended the Martin Luther King, Jr. Day of Service and Celebration on Monday, January 21 at the Music Center at Strathmore. He stated that the day allowed the public and particularly elected officials, the opportunity to reflect and dream to better their communities and provide justice for all.
3. Stated the Mayor and City Council's Annual Retreat was a great opportunity for the Mayor and City Council to reach a consensus on important issues the City will face in the coming months and years. He thanked staff for their professionalism and presentations.

Council Vice President Marraffa

1. Echoed congratulations to the youth of Gaithersburg.
2. Stated that he had the opportunity to attend the Mayor and City Council Retreat which was very effective, but also attended the National League of Cities (NLC) Board of Directors annual planning meeting in Florida. The Board decided on their priorities/agenda for 2008 which included economics, immigration, federal funding (CDBG), public safety and the candidates for the upcoming elections. Stated that he and other NLC members will be testifying at various hearings to address issues that cities are facing. Announced that the NLC is looking to adopt National Impact Night which will allow policies to be ratified throughout cities at their City Council meetings and put pressure on Congress to address the issues of local jurisdictions.

Council Member Sesma

Offered congratulations to the youth recognized earlier in the meeting. He congratulated the parents and teachers for the efforts the students are able to demonstrate. He thanked the *Gazette Newspaper* for their partnership over the years. Recognized staff for their involvement with the Dr. Martin Luther King, Jr. celebration and thanked Gaithersburg High School student Joshua Somerville for representing the City during the celebration.

Council Member Drzyzgula

1. Stated it is a pleasure to attend events outside the City and see Gaithersburg youth being recognized.
2. Referred to the County Council meeting presentation on the GE Tech Park. She stated that there was discussion of moving county facilities to the Webb Tract and Landfill site off of Gude Drive. She stated that discussions with the City and concerns raised were not properly expressed at the presentation given to the County Council. She suggested a summary of concerns be prepared by staff and sent to the County Council.
3. Announced that a closed meeting was held by the Mayor and City Council on Monday, December 17, 2007, at approximately 8:44 p.m., pursuant to a motion adopted unanimously at the regular meeting on December 17, 2007. The meeting was closed pursuant to Section 10-508(a)(1)(i), State Government Article, of the Annotated Code of Maryland, to discuss a personnel topic. The topic was the process for hiring a new City Attorney. Present at the meeting were Mayor Katz, Council Members Ashman, Drzyzgula, Marraffa, Sesma, Spiegel and Acting City Manager Arnoult. Upon conclusion of the discussion, the closed meeting was adjourned at approximately 8:50 p.m.

Mayor Katz

1. Requested the following motion:

Motion was made by Council Member Sesma, seconded by Council Member Speigel, to conduct a closed executive session this evening, Tuesday, January 22, 2008, immediately following the scheduled regular meeting of the Mayor and City Council, pursuant to Section 10-508(a)(7), State Government Article, of the Annotated Code of Maryland, to discuss a legal matter. The purpose of the session is to discuss the status of pending litigation.

Vote: 5-0

2. Announced the following meeting schedule:

- no work session on Monday, January 28, 2008, but will hold special meetings that evening and the evening of Tuesday, January 29, 2008 at 6:55 p.m., for the sole purpose of voting to conduct closed executive sessions

The Mayor and City Council of Gaithersburg plan to conduct closed Executive Sessions on Monday, January 28 and Tuesday, January 29, 2008, immediately following the scheduled special meetings of the Mayor and City Council, pursuant to Section 10-508(a)(1)(i), State Government Article, of the Annotated Code of Maryland, to discuss a personnel matter. The purpose of the sessions will be to interview candidates for the position of City Attorney.

- regular meeting on Monday, February 4, 2008

VIII. FROM THE ACTING CITY MANAGER

- Thanked staff for preparing and participating in the Mayor and City Council Annual Retreat. Staff expressed appreciation for the opportunity to talk with the Council Members on an informal basis. He thanked the Mayor and City Council for their feedback and guidance.
- **Update on Status of the City's Request for an Attorney General Opinion on the Constitutionality of the Anti-Solicitation Ordinance**

Staff was directed during the January 7, 2008 Mayor and City Council meeting to prepare a letter for Attorney General Gansler asking for the status of an opinion on the above matter. He stated a response was received on January 15, 2008 stating an opinion will be forthcoming in approximately three weeks.

IX. PUBLIC HEARING

JOINT – Z-310, Crown Village Farm, LLC c/o KB Homes, Applicant Requests Approval of the Amended Sketch Plan, Z-310, Per Amended Annexation X-182, Known as the Crown Property (Parcels 445, 600, 905, 883, & 820) in Gaithersburg, Maryland. The Proposed Plan Includes a Mix of Uses, Including 2,250 Residential Units and 320,000 Square Feet of Future Commercial Uses on Approximately 180 Acres of Land. The Subject Property is Bordered by Fields Road, Sam Eig Highway, and Omega Drive

Planner Robinson stated that the joint public hearing was duly advertised in the *Gaithersburg Gazette* on January 2 and 9, 2008, and the property posted. At the present time there are 29 exhibits in the record file. He introduced Gary Unterberg, Rodgers Consulting, Inc., to review the plan.

Gary Unterberg, Rodgers Consulting, Inc., oriented the Mayor and City Council and the Planning Commission to the property and reiterated that the property was annexed into the City in 2006, the initial schematic development plan for Pods 2 and 3 were approved. He stated that KB Homes, representing the applicant Crown Village Farm, LLC, submitted an amended Sketch Plan (Z-310) application. He reviewed the approved Sketch Plan which established the MXD Zone with the annexation agreement. He stated that the Crown Property will be divided into six (6) neighborhoods based upon the pods shown in the Sketch Plan. He further stated that Neighborhood 2 had been approved for 322 units and Neighborhood 3 had been approved for 288 units, which is a mix of single family residential units, townhouses, and two-over-two stacked townhouses. He stated that the developer will continue to work with staff on the proposed annexation amendments outlined by Assistant City Manager Felton during the presentation earlier in the meeting. As was mentioned, 60 units from Neighborhood 5 will be transferred and implemented into Neighborhood 1. Mr. Unterberg stated that the commercial numbers will not change. He reviewed the new plan showing the number changes in Neighborhoods 1 and 5. He stated that plan is at the sketch plan stage and the architecture, streetscape, parking, and other details will be discussed at the schematic development planning stage.

The developer was asked to address the parking concerns raised by Council Member Sesma sooner rather than later. Mr. Unterberg stated that it is being proposed that additional residential units be over the retail components. He stated that they are not proposing residential over the grocery store. Primarily, the other retail buildings will have residential over top, capped at the five story limit. The mix of family units and three parking garages are being proposed to accommodate the parking for the increased units. In response to Commissioner Levy, Mr. Unterberg stated that due to the current market, the allocation of mixed residential units with the retail is more favorable for Neighborhood 1.

Due to concerns, the developer was asked to pull the walk ability plan between neighborhoods from the Schematic Development Plan and go before the Planning Commission for a recommendation. In response to a question regarding the historic farm structures, Assistant City Felton stated that the City is required from the annexation agreement to designate the England Crown House and Log House as historic. Staff is working with the developer on a plan to move the Heeter House where the England Crown House is located. He stated that details are being worked out, but that it is not a mandated by

the developer. He further stated that the Schematic Development Plan for Pod 2 will have to be amended to accommodate the additional lot for the Heeter House. The developer was asked to ensure that the retail will serve the residents and take into consideration the discussions at the recent Kentlands Charrette with respect to the increase in density and commercial property so that mistakes are not repeated. The developer was also asked to address other concerns such as the retail serving the high school students, cost of fencing for the abutting neighborhoods, pedestrian connections, breakdown of dwelling units in the neighborhoods, conversion of residential units to office in Pod 5 and the effect on affordable housing set aside, and the support of commercial and light rail in Pod 5.

There were no speakers at the hearing.

Motion was made by Commissioner Kaufman, seconded by Commissioner Winborne, that the Planning Commission hold the record on Z-310, open until 5 p.m., Wednesday, February 6, 2008.

Vote: 5-0

Motion was made by Council Member Marraffa, seconded by Council Member Sesma, that the Mayor and City Council hold the record on Z-310, open until 5 p.m., Thursday, February 14, 2008.

Vote: 5-0

RECESSED THE MAYOR AND COUNCIL MEETING AT 9:09 PM FOR A HISTORIC DISTRICT COMMISSION MEETING. THE MAYOR AND COUNCIL MEETING RECONVENED AT 9:10 P.M.

X. ORDINANCES, RESOLUTIONS, AND REGULATIONS

Resolution of the Mayor and City Council of Gaithersburg Authorizing the City Manager to Award a Contract to Provide Executive Search Services for the Position of City Manager

Acting City Manager Arnoult stated that a Request for Proposals were advertised to assist the City with the development, design, and implementation of a customized recruitment process for the above mentioned position. He stated that seven proposals were received. Staff along with Walter Scheiber, representing the International City/County Management Association (ICMA), reviewed the proposals. The top three (Bennett Yarger, the Mercer Group, and Alliance Resource Consulting, LLC) were interviewed by the Mayor and City Council. This resolution authorized the City Manager to award a contract to Alliance Resource Consulting, LLC, One World Trade Center, Suite 1155, Long Beach, California 90831, in the amount of Twenty-Six Thousand Five Hundred Dollars (\$26,500); said funds to be expended from the Operating Budget.

Motion was made by Council Member Sesma, seconded by Council Member Ashman, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL OF GAITHERSBURG AUTHORIZING THE CITY MANAGER TO AWARD A CONTRACT TO PROVIDE EXECUTIVE SEARCH SERVICES FOR THE POSITION OF CITY MANAGER (Resolution No. R-8-08), be approved.

Vote: 5-0

XI. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 9:12 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Executive Assistant