

DRAFT



Gaithersburg

A CHARACTER COUNTS!

CITY OF GAITHERSBURG
MINUTES OF A REGULAR CITY COUNCIL MEETING
MONDAY, MARCH 3, 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 (arrived 7:38 p.m.). Staff present: Acting City Manager Arnoult, Assistant City Managers Felton and Tomasello, Planning and Code Administration Director Ossont, Planner Robinson, and Executive Assistant Stokes.

I. PLEDGE OF ALLEGIANCE

The Pledge was led by the Quince Orchard High School Boys Indoor Track 4A State Champions.

II. INVOCATION

The invocation was led by the Reverend Roger Goodwin, Jr., Unity Christ Church.

III. CONSENT ITEMS

1. Resolution of the Mayor and City Council Authorizing the City Manager to Purchase Ramp Structures for the Skate Park

This resolution authorized the City Manager to purchase the above from American Ramp Company, Inc., 601 McKinley Avenue, Joplin, Missouri 64801, in the amount of Seventy-Two Thousand Four Hundred Fourteen Dollars (\$72,414); said funds to be expended from the Capital Improvements Budget.

2. Resolution of the Mayor and City Council Authorizing the City Manager to Award a Contract for the B&O Station Brick Repair and Tuck Pointing Project

This resolution authorized the City Manager to award a contract for the above services to Jones Masonry Restoration Corporation, 1370 Howard Street, Harrisburg, Pennsylvania 17104, in the estimated amount of Forty-Eight Thousand Eight Hundred Dollars (\$48,800), plus an additional Sixteen Thousand Two Hundred Dollars (\$16,200) contingency for unexpected expense, in the total amount of Sixty-Five Thousand Dollars (\$65,000); said funds to be expended from the Capital Improvements Budget.

3. Resolution of the Mayor and City Council Authorizing the City Attorney to Prosecute Municipal Infractions on Behalf of the City

The Maryland Annotated Code, Article 23A Section 3, provides that the State's Attorney of any county is authorized to prosecute municipal infractions and that a municipality may designate an attorney to prosecute any municipal infraction in the same manner as the State's Attorney. This resolution designated City Attorney Lynn Board to prosecute municipal infractions on behalf of the City of Gaithersburg.

Motion was made by Council Member Ashman, seconded by, Council Member Marraffa, that the Consent Agenda (Resolution Nos. R-15-08 through R-17-08), be approved.

Vote: 4-0

IV. APPOINTMENTS**Resolution Confirming Appointments and Reappointments**

This resolution confirmed the following: **Communications Committee**, Bruce Goldensohn (appointment), 11504 Golden Post Lane, 20878, two-year term; **Community Advisory Board**, Brett Cosor (appointment), 306 Alfandre Street, 20878, two-year term; **Cultural Arts Advisory Committee**, Blanche Keller (reappointment), 911 Wild Forest Drive, 20879 and Michael Griffin Kane (reappointment), 120 Hutton Street, 20877, two-year terms; **Education Committee**, Commander James Simpson (reappointment), 1349 Carlsbad Drive, 20879, two-year term; **Environmental Affairs Committee**, Commander James Simpson (reappointment), 1349 Carlsbad Drive, 20879, two-year term; **Ethics Commission**, Dr. James Jacobs (reappointment), One Central Avenue, 20877, two-year term; **Gaithersburg Senior Council**, Blanche Keller (reappointment), 911 Wild Forest Drive 20879, two-year term; and the **Multicultural Affairs Committee**, Samira Hussein (appointment), 46 Brian Court, 20877, two-year term.

Motion was made by Council Member Sesma, seconded by, Council Member Ashman, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING APPOINTMENTS AND REAPPOINTMENTS BY THE MAYOR TO THE COMMUNICATIONS COMMITTEE, COMMUNITY ADVISORY BOARD, CULTURAL ARTS ADVISORY COMMITTEE, EDUCATION COMMITTEE, ENVIRONMENTAL AFFAIRS COMMITTEE, ETHICS COMMISSION, GAITHERSBURG SENIOR COUNCIL, AND MULTICULTURAL AFFAIRS COMMITTEE (Resolution No. R-18-08), be approved.

Vote: 4-0

V. PRESENTATIONS**Certificates of Recognition**

Mayor Katz was joined by Principal Carole Working to present Certificates of Recognition to the Quince Orchard High School (QOHS) Boys Indoor Track 4A State Champions. The QOHS Boys Indoor Track Team made school history, winning the Maryland 4A State Championship title for the first time. In addition to the state title, the team celebrated the win of four (4) new individual or relay state championships. The team was led by Coaches Seann Pelkey and Steve Majkrzak. Team members consist of: Neal Darmody (12th grade), Caleb Malone (12th grade), Josh Joson (12th grade), Kris Lasko (12th grade), David Laratta (12th grade), Marcus Brown (11th grade), Wayne Bartholomew (11th grade). The team and coaches are under the leadership of John Lubenetski, Athletic Director.

VI. PUBLIC APPEARANCES

Mike Stumborg, 104 Brookes Avenue, expressed disappointment with opinion of the Board of Supervisors of Elections concerning complaints filed regarding the City's November 6, 2007 elections and disappointment with the delay of the anti-solicitation ordinance. He suggested the City amend the election laws before the next election in November 2009. Stated that he received no response to his suggestion to license the activity for day laborers. Again, expressed concern with public safety.

VII. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS**Council Vice President Marraffa**

Congratulated the QOHS Boys Indoor Track team on winning the championship title.

Council Member Spiegel

1. Apologized for arriving late due to the much need improvements on public transportation.
2. Announced that the registration deadline for youth spring sports have been extended to Thursday, March 6, 2008.
3. Commented on the Board of Supervisors of Elections (BOSE) opinion stating that the final opinion of the Board was that there were no violations of any City Election Code. He proposed the City put in place a voluntary public campaign financing system. He further stated that the BOSE did not find enough evidence to warrant a public hearing.

Mayor Katz suggested forming a citizens committee and directed staff to draft charges for said committee and report back to the City Council. In regards to the opinion of the BOSE, he received complaints that the public did not have an opportunity to give input during the investigation. Council Vice President Marraffa expressed concern with taking the public out of the process. He expressed support for forming a citizens committee. Council Member Sesma agreed that the process should be public, a committee should make the decisions, and the City's election laws should be reformed. He stated that candidates should be responsible for the running of their campaigns. Council Member Drzyzgula thanked the BOSE members for their time and efforts. She stated that the process of hearing from the public should be addressed for future elections. Council Member Ashman clarified that the opinion did not state that all the complaints filed were unfounded, but that the evidence fell short of conducting a public hearing.

Council Member Ashman

1. Congratulated the QOHS Boys Indoor Track team on their championship win and commended the school for a winning 2007-2008 school year.
2. Asked that staff remind the County to do a better job of keeping City Officials and staff in the loop of their plans and meetings for the GE Tech property.

Mayor Katz added that the County did meet with the Kentlands community, but have not met with Lakelands. He suggested the City schedule a work session after the County has met with the Lakelands community to develop the City's official statement for the GE site.

3. He and Council Member Sesma attend the Parks, Recreation and Culture presentation on a possible skate spot in the Diamond Farms Park. He reported that the attendees were able to reach a positive consensus. He commended staff for doing an excellent job with the community.
4. He had the pleasure of reading at Jones Lane Elementary School as part of their Read Aloud Day festivities and thanked the school for the opportunity to participate.
5. Reminded citizens to subscribe to the City's Alert Gaithersburg emergency notification system.

Council Member Sesma

1. Echoed congrats to the QOHS Boys Indoor Track team.
2. Announced the 8th Annual Gaithersburg St. Patrick's Day Parade scheduled for Saturday, March 15, 2008. The parade will begin at 10 a.m. along Grand Corner Avenue at the Washingtonian Center.
3. Reminded the public that daylight savings time begins on Sunday.

Council Member Drzyzgula

1. Reported that she forwarded an article and asked staff to investigate further the suggestion of regulating employment for day laborers and that the City is looking into a number of options. She and Chief King recently met with State's Attorney John McCarthy to discuss issues associated with solicitation. Mr. McCarthy agreed to work closely together to use the ordinances in place to address trespassing citations already issued and the prosecution of trespass cases.
2. Announced vacancies on various City committees and urged citizens to volunteer their services.

Mayor Katz

Announced the following meeting schedule:

- Wednesday, March 5, 2008, the City will conduct two interviews for an Animal Control Board member. Public are invited, but will not be able to participate.
- no work session on Monday, March 10, 2008
- next regular meeting on Monday, March 17, 2008.

VIII. FROM THE ACTING CITY MANAGER**• Update on the Attorney General's Opinion on the Anti-Solicitation Ordinance**

Acting City Manager Arnoult provided an update stating that on February 27, 2008, the City received the long awaited opinion from the State's Attorney General Office on the City's anti-solicitation ordinance. In their opinion, the ordinance would not survive a constitutional challenge. The opinion states that "the Gaithersburg ordinance is preempted in part by the Maryland Vehicle Law. The surviving provisions of the ordinance concern speech in a traditional public forum, where the government may enforce time, place, and manner regulation. While the ordinance is content neutral and is addressed to the substantial governmental interest in public safety and traffic flow, it is not narrowly tailored to serve that purpose. Accordingly, it would not survive scrutiny under First Amendment jurisprudence."

He stated that staff met with City Attorney Board and has asked her to review and investigate other additional legislated avenues that may be available to the City. He further stated that a number of City Council members had indicated that maybe the City should readopt the old solicitation ordinance, but staff believes it would have the same problem with preemption by the Maryland Vehicle Law. In conclusion, he stated that that the current ordinance is scheduled to go into effect this evening and is on the agenda for a vote later in the meeting.

Staff was asked to continue educating the workers on location of the day laborer center and unacceptable behavior on the streets of Gaithersburg. It was agreed that there are laws that the City can and should continue to address public safety concerns and enforce laws under state law to protect City neighborhoods. It was stated that the City will have to rely on the City's Attorney for guidance.

IX. ORDINANCES, RESOLUTIONS, AND REGULATIONS

MAYOR KATZ RECUSED HIMSELF FROM THE MEETING AT 8:24 P.M. DUE TO A CONFLICT WITH THE NEXT AGENDA ITEM. COUNCIL VICE PRESIDENT MARRAFFA PRESIDED OVER THE MEETING.

1. Resolution Relating to Designation of Areas Within the Olde Towne Central Business District as a State of Maryland Enterprise Zone

This resolution authorized the City Manager to submit an application to the Maryland Department of Business and Economic Development relating to the designation of areas within the Olde Towne Central Business District as a State of Maryland Enterprise Zone. The required public hearing was held on February 19, 2008 and the record closed on February 29, 2008.

Motion was made by Council Member Sesma, seconded by, Council Member Spiegel, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO SUBMIT AN APPLICATION TO THE MARYLAND DEPARTMENT OF BUSINESS AND ECONOMIC DEVELOPMENT RELATING TO DESIGNATION OF AREAS WITHIN THE OLDE TOWNE CENTRAL BUSINESS DISTRICT AS A STATE OF MARYLAND ENTERPRISE ZONE (Resolution No. R-19-08), be approved.

Vote: 5-0

MAYOR KATZ RETURNED TO PRESIDE OVER THE MEETING AT 8:25 P.M.
TO PRESIDE OVER THE MAYOR AND COUNCIL MEETING

2. Resolution Changing the Effective Date of Ordinance No. O-7-07 (Anti-Solicitation) Adopting Section 15-9, and Providing for Future Changes to the Effective Date by Resolution

Assistant City Manager Felton stated that the Attorney General's Office provided an opinion ruling the City's laws are unconstitutional to enforce. The Ordinance provided that any future changes to the effective date could be implemented by resolution. Staff recommended changing the effective date of May 31, 2008 to amend and reenact the current ordinance so as to not duplicate state law.

Motion was made by Council Member Sesma, seconded by, Council Member Ashman, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL CHANGING THE EFFECTIVE DATE OF ORDINANCE NO. O-7-07 (ANTI-SOLICITATION) ADOPTING SECTION 15-9, AND PROVIDING FOR FUTURE CHANGES TO THE EFFECTIVE DATE BY RESOLUTION (Resolution No. R-20-08), be approved.

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

3. Resolution to Negotiate and Execute a First Amendment to the Annexation Agreement With Crown Farm Village, LLC (X-182)

Staff negotiated an agreement with the development team on the proposed amendments to the annexation agreement with the following key provisions:

1. A total of 60 residential units will be reallocated from Pod #5 to Pod #1.
2. The developer would no longer be required to build multi-family dwellings above the proposed grocery store in Pod #1.
3. If they obtain County Council consent in the future, the developer could convert up to 400 multi-family residential units in Pod #5 to up to 400,000 square feet of office at a conversion rate of one residential unit for each 1,000 square feet of office. Please note that the existing agreement calls for a payment of \$2,500 to our affordable housing fund for each residential unit in POD #5. The proposed amendment would call for a \$2,500 contribution for each 1,000 square feet of office in POD #5 in addition to the payment for residential units.
4. If the City obtains County Council consent in the future, the 12.5 % MPDU component on the project will be administered under the City MPDU regulations rather than the County MPDU regulations.
5. 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.
6. Under the current agreement, the developer may require the purchaser to make a 10% down payment on Work Force Housing Units. The proposed amendment would cap the down payment at 5%.
7. 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.

Motion was made by Council Member Marraffa, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE ACTING CITY MANAGER TO NEGOTIATE AND EXECUTE A FIRST AMENDMENT TO THE ANNEXATION AGREEMENT WITH CROWN FARM VILLAGE, LLC (X-182) (Resolution No. R-21-08), be approved.

Vote: 5-0

X. POLICY DISCUSSION**Z-310, Granting Approval for Amendment to Previously Approved Sketch Plan Application X-182 and Approving New Sketch Plan Application Z-310 for Land, Known as the Crown Farm**

Planner Robinson stated that the application reflects the density changes defined in the amended X-182 Annexation Agreement discussed above. The proposed plan retains a mix of uses divided into six neighborhoods which proposes up to 320,000 square feet of future commercial uses with height restrictions based upon the original X-182 Sketch Plan and a maximum 2,250 residential units. A public hearing was held January 22, 2008. The Planning Commission closed its record at 5 p.m. on February 6, 2008 and recommended approval on February 13, 2008 with the following one (1) condition:

1. Applicant and City shall record the Amendment to Annexation Agreement X-182 before approval of any future schematic development plan or amendment to schematic development plan applications.

Motion was made by Council Member Ashman, seconded by, Council Member Marraffa, that **Z-310**, AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF GAITHERSBURG GRANTING APPROVAL FOR AMENDMENT TO PREVIOUSLY APPROVED SKETCH PLAN APPLICATION X-182 AND APPROVING A NEW SKETCH PLAN IDENTIFIED AS APPLICATION Z-310 FOR LAND, KNOWN AS THE CROWN FARM, LOCATED AT THE SOUTHWEST SIDE OF FIELDS ROAD, BOUNDED BY SAM EIG HIGHWAY TO THE NORTHWEST AND OMEGA DRIVE TO THE SOUTHEAST CONTAINING APPROXIMATELY 178 ACRES OF PROPERTY ZONED MIXED USE DEVELOPMENT (MXD)(Ordinance No. O-1-08), be approved.

Vote: 5-0

XI. FROM THE ASSISTANT CITY MANAGERS, CITY ATTORNEY AND OTHER STAFF**Planning and Code Administration Director Ossont**

- **Guidance on a Memorandum Dated February 27, 2008, Proposed Text Amendment, Section 24-167B of the City Code**

Staff was asked to review the code as it relates to the time restrictions for serving meals as well as potential ancillary uses under the bed and breakfast use. Staff noted that permitting events or functions such as afternoon teas or similar gatherings would necessitate a text amendment under the current code. Staff sought guidance to prepare a text amendment to advertise for joint public hearing with the Planning Commission on Monday, April 7, 2008. The Mayor and City Council directed staff to move forward.

Assistant City Manager Felton

- Reported that the \$1 Million Bond Bill request from the State for Senior Center funding is scheduled to be heard in the Senate on Saturday, March 8, 2008, 10 a.m. and in the House at 1 p.m. Based on a suggestion from a member of the Senior Council, the City has agreed to sponsor a bus for interested seniors. Mayor Katz is scheduled to testify at the hearings.

XII. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 8:40 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Executive Assistant