

MAYOR & COUNCIL AGENDA COVER SHEET

MEETING DATE:

August 4, 2008

CALL TO PODIUM:

Greg Ossont

RESPONSIBLE STAFF:

Trudy Schwarz, Community Planning Director

Greg Ossont, Director Planning & Code Administration

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 type="checkbox"/>	Resolution
<input checked="" 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	06/27/2008
Hearing Date	07/21/2008
Record Held Open	07/31/2008
Policy Discussion	08/04/2008

TITLE: Policy Discussion
LAND EXCHANGE WASHINGTONIAN NORTH: Review the proposed exchange of two equal parcels of property in and adjacent to Malcolm King Park. The disposition of a 1.46-acre parcel located adjacent to Sam Eig Highway, located within the confines of Malcolm King Park, in exchange for another 1.46-acre parcel from Washingtonian North Associates Limited Partnership.

SUPPORTING BACKGROUND:
On July 21, 2008, the Mayor and City Council conducted a public hearing on the proposal for the exchange of two equal parcels of property in and adjacent to Malcolm King Park. Both properties are currently zoned in the MXD (Mixed Use Development) Zone.
It was noted that this exchange of the land was originally suggested in late 1998 by staff and then during the review of Schematic Development Plan Amendment SDP-W5(A) in order to preserve a stand of specimen trees by the Planning Commission. In addition, the Planning Commission recommended that the exchange would allow the location of Future Garage #1 to be shifted away from Sam Eig Highway. It was also noted that this exchange was contemplated at the time of purchasing the property from MNCPPC. Exhibits were presented showing that the properties were equal in value. There was no public testimony that the exchange would not be in the public interest and would not further the health, safety and welfare of the public. Testimony of support was heard from Scott Wallace and Mark Hackman.
Staff has prepared a draft resolution of approval conditioned in accordance with the recommendations of City Attorney Board.
(In response to comments about the posting of the property, staff reposted the sign the next day. The following day, it was reported that the sign had fallen, so staff again reposted the sign and also posted additional signs.)
<i>Attachments:</i> Draft Resolution Index of Memorandum Transcript of Public Hearing

DESIRED OUTCOME:
Conduct Policy Discussion.
Draft Resolution is attached and ready for Final Action.

RESOLUTION NO. _____

RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE DISPOSITION OF 1.46 ACRES OF LAND LOCATED AT MALCOLM KING PARK BEING UNUSED AND EXCHANGING SAID PROPERTY IN ORDER TO ACQUIRE AN EQUAL 1.46 ACRES OF LAND FROM WASHINGTONIAN NORTH ASSOCIATES LIMITED PARTNERSHIP

**WASHINGTONIAN NORTH/MALCOLM KING PARK
LAND EXCHANGE**

WHEREAS, the Mayor and City Council of Gaithersburg have received a petition requesting the exchange of two equal pieces of property; a 1.46 acres portion of property known Part of Parcel 3, Brighton West, Plat Book 91, Plat Number 9922 of the Land Records of Montgomery County and located in Malcolm King Park under the ownership of the City of Gaithersburg and a 1.46 acre portion of property known on Lot 6, Block D, Washingtonian Center, Plat Number 21856 of the Land Records of Montgomery County; as further described in Exhibits 10, 11 and 19; and

WHEREAS, the City acquired Part of Parcel 3, Brighton West in April of 1999 from the Maryland National Capital Park and Planning Commission in order to expand Malcolm King Park, with the condition that the City would be able to exchange an equal parcel of land to be designated as parkland that would not decrease the amount of land of the park; and

WHEREAS, the Planning Commission approved Schematic Development Plan SDP-W5(A) in May of 2000 and Final Site Plan SP-05-0007 in October of 2005, requiring the applicant to petition the City to exchange the properties in order to preserve a stand of trees and adjust the layout of buildings on the Schematic Development Plan; and

WHEREAS, the disposition and the exchange of these properties have been subject to public hearing on July 21, 2008, after giving due notice as required by State law and the City's property was found not to be needed for any public use and that a benefit would accrue to public by its disposition; and

WHEREAS, the City Council has ascertained based on the Maryland State Department of Assessment and Taxation and the zoning of the property as shown in Exhibit #12 of the public record, that the valuation of both parcels is equal; and

WHEREAS, the City Council have found that the exchange will be in the public interest and further the health, safety and welfare of the public by realigning the boundaries of Malcolm King Park:

NOW, THEREFORE, BE IT RESOLVED, by the Mayor and City Council of the City of Gaithersburg, that:

- (1) The property containing 1.46 acres of land is found to be and is hereby declared to be surplus property, unneeded for future public use and/or purpose;
- (2) The property is to be exchanged for an equal 1.46 acre of property;
- (3) The City Manager is hereby authorized to execute contracts and deeds formalizing the exchange, proceed to settlement and execute all necessary document with respect thereto, subject to the following:
 - (a) Release of the property from the Road Club Agreement by and between Washingtonian Investors Limited Partnership and Montgomery County, Maryland recorded in Liber 8524 at folio 660;
 - (b) Release of the property from terms, provisions, conditions, covenants, reservations and restrictions contained in Instruments recorded in Liber 7144 at folio 287; as supplemented in Liber 9123 at folio 600; as supplemented in Liber 9237 at folio 4; as supplemented in Liber 9268 at folio 504; as supplemented in Liber 14856 at folio 256; and assigned in Liber 14856 at folio 256 and amended and restated in Liber 15215 at folio 288.

ADOPTED by the Mayor and City Council of the City of Gaithersburg this 4th day of August, 2008.

SIDNEY A. KATZ, MAYOR and
President of the City Council

THIS IS TO CERTIFY that the fore-going Resolution was adopted by the City Council of the City of Gaithersburg in a public meeting assembled on the 4th day of August, 2008.

James D. Arnoult, Acting City Manager

INDEX OF MEMORANDA
Surplus Land Hearing
Washingtonian North Land Exchange

No.

- 1) Letter, received October 24, 2007, from Scott Wallace, Linowes and Blocher, requesting Land Exchange in accordance with condition of approval of SDP-W5(A) and SP-05-0007
- 2) Memorandum to the Mayor and City Council, dated June 25, 2008, re: Washingtonian North Land Exchange with attached location map
- 3) Planning Commission Resolution R-4-00, SDP-W5(A) – with condition for land swap (exchange)
- 4) Planning Commission Resolution SP-05-0007 –with condition for land exchange
- 5) Planning Commission Resolution SP-05-0008 –with condition for land exchange
- 6) Planning Commission Resolution SP-00-0018 –with condition for land exchange
- 7) Planning Commission Resolution SP-01-0006 –with condition for land exchange
- 8) City of Gaithersburg 2003 Master Plan Map Designation 26, Discussion on Land exchange
- 9) Washingtonian North Chronology
- 10) Draft Exchange Deed – Part of Lot 6, Block D, Washingtonian Center
- 11) Draft Exchange Deed – Part of the Residue of Parcel 3, Brighton West
- 12) Letter, received October 23, 2007, from Kenneth F. Simmons, Boston Properties, re: Assessed Value of Parcels
- 13) Title Report, dated June 5, 2007, for Part of the Residue of Parcel 3, Brighton West
- 14) Title Report, dated May 22, 2008, Part of Lot 6, Block D, Washingtonian Center
- 15) Letter requesting publication of the Legal Advertisement in the June 25, 2008 edition of the *Gaithersburg Gazette* with attached facsimile transmittal confirmation
- 16) Notice of Public Hearing as sent on June 25, 2008
- 17) List of Parties Notified
- 18) Schematic Development Plan SDP-W5(A)
- 19) Alta/ACSM land Title Survey prepared by Loiederman Soltesz
- 20) Preliminary Forest Conservation Plan for Washingtonian North by Loiederman Soltesz
- 21) 2006 Approved Natural Resource Inventory (Sheets 1 and 2) by Loiederman Soltesz

- 22) Mayor and City Council Cover sheet
- 23) E-mail, dated, July 21, 2008, from Mark Hackman
- 24) Photographs (two) of the public hearing notice sign provided by Mr. Hackman
- 25) **Transcript of the July 21, 2008, Public Hearing**

TRANSCRIPT OF

PUBLIC HEARING

ON

Review the Proposed Exchange of Two Equal Parcels of Property in and Adjacent to Malcolm King Park. The Disposition of a 1.46-Acre Parcel Located Adjacent to Sam Eig Highway Within the Confines of Malcolm King Park, in Exchange for Another 1.46-Acre Parcel From Washingtonian North Associates Limited Partnership, will be Considered. Both Properties are Currently Zoned in the MXD (Mixed Use Development) Zone.

BEFORE THE

CITY OF GAITHERSBURG

MAYOR AND CITY COUNCIL

on

July 21, 2008

Transcribed by
Doris R. Stokes

PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Vice President Marraffa
Council Member Ashman
Council Member Drzyzgula
Council Member Sesma
Council Member Spiegel

STAFF

Community Planning Director Schwarz

SPEAKERS FROM THE PUBLIC

Scott Wallace, Linowes and Blocher, LLP
Mark Hackman, 64 Appleseed Lane

Katz The next item that we have is a public hearing. Tonight we only have one public hearing and I think Trudy Schwarz will be explaining that public hearing to us, please.

Schwarz Good evening. This is a public hearing to review the proposed exchange of two equal parcels of property in and adjacent to Malcolm King Park. The disposition of a 1.46-acre parcel located adjacent to Sam Eig Highway located within the confines of Malcolm King Park, in exchange for another 1.46-acre parcel from the Washingtonian North Associates Limited Partnership, will be considered. Land disposition is governed by Article 23 of the State Code and the requirements of that; this hearing was duly advertised in the *Gaithersburg Gazette* on June 27, 2008. Although not required, the property was posted and notification went to everyone within 200 feet of the subject properties that are to be exchanged. At the present time there are 22 exhibits in the record file and they are referenced in an exhibit list in the file. The individual exhibits can be reviewed on the City's website at www.gaithersburgmd.gov under Mayor and City Council July 21, 2008 agenda or they can be reviewed in the Planning and Code Administration Office during regular business hours. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise they will deem received into evidence.

I would like to locate for you the property. This is an aerial, this is Interstate 270, and this is I-370 which becomes Sam Eig Highway. The property that is proposed to be given to the City is a portion of one of the three parcels of the Washingtonian North property. This was subdivided as part of the schematic development plan into three separate properties plus an out lot for the stormwater management facility. This is the lot and this is the area which is being proposed to be given to the City. The Malcolm King Park is outlined in yellow and in 1999, the City acquired to portion of property from Maryland National Capital Park and Planning to

enlarge the park. As a part of that purchase, there was a condition that would allow the exchange of land which related to this proposal. So the City has been actually considering this since 1998. We discussed it after the property owners went out and did a natural resource inventory, tree inventory at that time, and showed a very nice specimen of trees in this area. The City suggested to the property owner to keep the specimen of trees in exchange for this area which does not have such specimen trees within that area. The Planning Commission in site plan approval for the first building which is located in this portion of the City made that a condition of the site plan for the property owner to approach the City for a land exchange. The City for the last few years has been working with the property owner to discuss any title issues related to the property and City Attorney Board will discuss that in a minute. The purpose of the public hearing is to consider the present use of the City property. Whether it should be declared surplus property? Whether it is needed for any public purpose and be considered for disposition? In addition, the public hearing will consider what public purpose may be fostered by the acquisition of the Washingtonian North 1.46-acre parcel. Both of these properties are located and currently zoned MXD. City staff thinks that this will even out the City park much better. There is actually a pathway that goes within 50 feet of the tip of this property. This is the actual Alta Survey showing the dimensions, the meets and bounds of the property to show that it is equal piece of property of 1.46-acres.

Katz Trudy, can you point out on the first aerial that you are looking at where the actual properties are. In the future, we probably should put one in orange and one in red so we can actually see them.

Schwarz I actually did one in green.

Katz Which is the same.....oh now we can see it closer. That's better, ok.

Schwarz One in green and one in orange and those are the locations.

Sesma Where is the path, can you show us the path?

Schwarz There is a great pathway system in Malcolm King Park and I will note that it was about 20 degrees cooler on Friday morning in Malcolm King Park then outside of the park. The pathway comes off of the cul-de-sac of Westside Drive and then one path goes this way and one path comes here. This path goes around and loops back to the park. Then on this side, the pathway goes up to the tennis courts. Up there you can see that a lot of people already use this area to go to the RIO. There is a definite trail going through the property and across to the bridge.

Katz Any other questions of Trudy? That concludes your part? I know you said that Lynn had something to say.

Board There are two title issues with the parcel that is to be conveyed to the City. One is covenants on the property and those are in process of being released. We just don't have the final signed documents yet. And that property, that parcel that would be conveyed to the City is also obligated with a Road Club agreement with the county. That has gone to the county to release that requirement from that parcel to come to the City. We anticipate that both of those will be resolved in the near future. In the event they aren't by the time you make a final decision on this, we ask that this be a condition of your approval.

Katz Ok. Any other questions? This is the time that the Mayor and Council hear from anyone that would like to speak on this public hearing topic. We ask that you please keep your remarks to no more than three minutes.

Please note that the timer will beep and blink yellow when you have 30 seconds left of your three minutes so that you can begin to finish your statement. The timer will beep and turn red when your three is up. Please note that any additional testimony that you might have can be submitted to the City in written form and will be a part of the record just as your oral testimony. Please state your name and address for the record. Who would like to be the first speaker?

Speakers from the public:

Wallace Good evening Mayor Katz, members of the Council. My name is Scott Wallace with the law firm of Linowes and Blocher. Here today on behalf of Washingtonian North Associates which is the owner of the Washingtonian North parcel. My law firm address is 7200 Wisconsin Avenue, Bethesda, Maryland. We are here today to indicate Washingtonian North Boston Properties support for the land swap. It has been a long time coming. We appreciate staff's efforts to get it to this point. And again, we do support and ask for the Mayor and Council support of the land swap. Thank you.

Katz Thank you very much. Any other speakers please Mark.

Hackman Mark Hackman, 64 Appleseed Lane, and this is just a follow-up to the email that I sent kind of late this afternoon regarding this. Trudy stated that there was an option to post the property about notice to the public about this hearing. The problem is that there was one sign that was posted. I believe I do live within 200 yards of where this property exchange is going to occur. I never received any notice from the City about this, I did read about it in the Gazette and also so it on the City's webpage. And I mentioned that the sign that was posted, was not posted correctly. I have two pictures that I printed out from my computer to save your staff time of going out to see how the picture is posted. I don't know

if your camera can pick on this. Basically, here is the picture of the sign. And if you notice, in the background, there is an up ramp coming from 370 to the Diamond Interchange. And you can see that the sign is posted in the ingress lane which goes then north on Sam Eig Highway towards Great Seneca Highway. I have a second picture here which shows where the cars are coming in the direction of the sign. The sign was set where nobody can read what is on the front of the sign. So I will just deliver this to you guys and save staff time of sending people out. I don't know why the sign was put that way. I have an idea of what occurred, but I don't want to speculate on it. So, I am going to submit my email as well as these pictures to you to keep as part of the record. I am not against the land swap, as long as the land swap does not convey any additional rights to the developer, specifically with the square footage of what can be developed on that piece of land. Yes I agree that there are a specimen of trees of area that is part of the land swap, but also, I believe that since Washingtonian North Association, I believe it is their responsibility to maintain that property until develop occurs. It was a very large tree, probably 36 inches in diameter that is behind our community and is not on our property that came down during one of the major storms a while ago. This tree did not completely snap from its base and we have other trees come down in our community which we did have taken down or prune necessarily so that they wouldn't bother anybody. We had that particular tree cut down since it was hanging from the trunk and it probably weighs about a ton and we didn't want anybody getting hurt, but we do want the tree to be removed. We want the other trees that are back there that are dead to be removed. That is all I have to say. Thank you.

Katz Thank you. Any other speakers please? None appearing. Its been suggested that the Mayor and Council hold their record open until Thursday, July 31, 2008, which is Ten (10) days, with an anticipated policy discussion on Monday, August 4, 2008. I would also like to suggest that I

staff go out so that if anyone who would like to send in anything for the record could do so and post the signs in a more conspicuous way. We probably did not violated any of our ordinance, but the idea of posting signs is to get as much information as we can and I don't know why that would hurt if we did that. So, it has been suggested that the hold the record open for ten (10) days, what is the pleasure of the Council?

Ashman So moved.

Sesma Second.

Katz It's been moved and seconded. All those in favor please say aye?

Council Ayes.

Katz Opposed? That passes unanimously (5-0). Thank you very much and we will post the signs in a couple other spots please.

End of Public Hearing
Washingtonian North Land Exchange