

DRAFT



Gaithersburg

A CHARACTER COUNTS!

CITY OF GAITHERSBURG
MINUTES OF A REGULAR CITY COUNCIL MEETING
MONDAY, JULY 21, 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 7:39 p.m.). Staff present: Acting City Manager Arnout, Assistant City Manager Felton, Planning and Code Administration Director Ossont, Community Planning Director Schwarz, Chief of Police King, Police Officers Thompson, Diamola, Cammack, Paulichen, and Gross, Engineering Services Director Mumpower, Capital Projects /Facilities Director Geiling, Recreation Program Director McGuire, Recreation Program Supervisor Wilde, Community Service Program Manager Herndon, Administrative Assistant III Archer and Klingler, City Attorney Board and Executive Assistant Stokes.

I. PLEDGE OF ALLEGIANCE

The Pledge was led by David Shayt, Gaithersburg, Maryland.

II. INVOCATION

The invocation was led by Dale Eno Shore, Baha'i Faith.

III. APPROVAL OF MINUTES

Motion was made by Council Member Sesma, seconded by Council Member Marraffa, that the minutes of the Mayor and Council regular meeting held June 16, 2008, be approved.

Vote: 4-0

Motion was made by Council Member Marraffa, seconded by Council Member Drzyzgula, that the minutes of the Mayor and Council special meeting held Monday, July 14, 2008, be approved.

Vote: 4-0

IV. CONSENT ITEMS

- 1. Resolution of the Mayor and City Council Authorizing the City Manager to Enter into an Agreement with Capital Party Rentals to Provide Equipment for the Celebrate Gaithersburg Festival for Fiscal Year 2009 with an Option to Renew the Agreement for One (1) Year in Fiscal Year 2010**

This resolution authorized the City Manager to enter into an agreement with Capital Party Rentals, LLC, 44232 Mercure Circle, Dulles, Virginia 20166, in an estimated amount of Twenty-Five Thousand Dollars (\$25,000), or an amount not to exceed Twenty-Five Thousand Dollars (\$25,000) plus an annual increase based on the current Consumer Price Index for FY 2010 with an option to renew the contract for one (1) year; said funds to be expended from the Operating Budget.

2. **Resolution of the Mayor and City Council Authorizing the City Manager to Enter Into a Contract With Guadenzia of Maryland, Inc. to Provide In-Patient Substance Abuse Treatment**

This resolution authorized the City Manager to enter into a contract to provide the above services with Guadenzia of Maryland, Inc., 4615 Park Heights Avenue, Baltimore, Maryland 21215, in an amount not to exceed Fifteen Thousand Dollars (\$15,000), from July 1, 2008 to June 30, 2009; said funds to be expended from the Operating Budget.

3. **Resolution of the Mayor and City Council Authorizing the City Manager to Enter Into a Contract With Mountain Manor Treatment Center to Provide In-Patient Substance Abuse Treatment**

This resolution authorized the City Manager to enter into a contract to provide the above services with Mountain Manor Treatment Center, US Route 15, Emmitsburg, Maryland 21727, in an amount not to exceed Twenty-Four Thousand Dollars (\$24,000), from July 1, 2008 to June 30, 2009; said funds to be expended from the Operating Budget.

Motion was made by Council Member Sesma, seconded by, Council Member Marraffa, that the Consent Agenda (Resolution Nos. R-62-08 through R-64-08), be approved.

Vote: 4-0

V. **PRESENTATIONS**

New Employees

- City Attorney Lynn Board introduced Administrative Assistant III for Legal Services, Lauren Klingler.
- Capital Projects /Facilities Director Geiling introduced Administrative Assistant III for Public Works, Dianne Archer
- Chief of Police King introduced Police Officers Rico Thompson, Edwin Diamola, Everett Cammack, John Paulichen and Jimmy Gross.

VI. **PUBLIC APPEARANCES**

1. *David Shayt, 15 DeSellum Avenue*, retired as Chair of the Olde Towne Advisory Committee as of July 17, 2008. Thanked the Mayor and City Council for allowing him to serve. Mr. Shayt was applauded for his efforts.
2. *Mark Hackman, 64 Appleseed Lane*, questioned light maintenance along the streets in communities. Mentioned he serves on the Animal Control Board and asked if enforcement at parks and signage for picking up after dogs can be improved upon. Asked for an update regarding his request for the traffic studies for Washingtonian Boulevard. Acting City Manager Arnoult responded that if it is a City street, then the City would be responsible to maintain. Other streets are maintained by the county and state. Mayor Katz asked Mr. Hackman to provide a list of the street lights that are out. Engineering Services Director Mumpower responded to the traffic study inquiry stating that the annexation agreement had to be taken into consideration and the City could not hold the developer responsible by right. He added that the City had done traffic studies for any new development. Mayor Katz asked Mr. Mumpower to put the information in writing to Mr. Hackman.

VII. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS**Announcements After Closed Executive Sessions**

- Council Member Sesma announced that a closed executive session was held by the Mayor and City Council at approximately 9:15 p.m. at City Hall on Monday, July 7, 2008, for the purpose of discussing a personnel matter. The closed session was held pursuant to Section 10-508(a)(1)(i), State Government Article of the Annotated Code of Maryland. All members of the City Council were present including Human Resources Director Daily. The closed meeting adjourned at approximately 10:33 p.m.
- Council Member Spiegel announced that a closed executive session was held by the Mayor and City Council at approximately 7:42 p.m. at City Hall on Monday, July 14, 2008, for the purpose of discussing a personnel matter. The closed session was held pursuant to Section 10-508(a)(1)(i), State Government Article of the Annotated Code of Maryland. Present at the meeting were Mayor Katz, Council Members Ashman, Drzyzgula, Marraffa, and Sesma. The following individuals participated in the discussion via conference call at various times; Council Member Spiegel (7:42 p.m.), Human Resources Director Daily (8 p.m.), and Alliance Resource Consulting, Inc. Managing Partner Eric Middleton (8:18 p.m.). The closed meeting was adjourned at approximately 9:10 p.m.

Council Member Drzyzgula

Attended the Beyond Charity Non-Profit Tour on July 9, 2008. She stated that County Executive's Office and the City had formed partnerships with service and charitable organizations. The tour was an opportunity to see how the charitable organizations are working in the community.

Council Member Sesma

1. Welcome the new employees to the City and thanked David Shayt for his leadership and vision on the Olde Towne Advisory Committee.
2. Congratulated the youth that participated in the Montgomery County Swim League competitions throughout the summer.
3. Reported that letters have been received regarding the City's plans for a new aquatic and recreation center. He stated that no final decision had been made on the project, but due to budgetary constraints, the project had been put on hold.

Council Vice President Marraffa

1. Attended the Board of Directors meeting for the Council of Governments (COG) on July 9, 2008. Stated that environmental and foreclosure reports was given for Montgomery County.
2. Attended the National League of Cities (NLC) Board of Directors meeting in Huntsville, Alabama. Plans for the upcoming year were discussed. Reported that a discounted drug program will be introduced in the fall to assist those without health insurance. In addition, cities will have an opportunity on ratification night to endorse a NLC policy, preferably transportation. During his visit, he also toured their space center and new aerospace industrial park. On July 16th, he attended the COG transportation committee meeting.
3. He, Assistant City Manager Tomasello, and Community Services Director Carr met with representatives from Montgomery County to discuss Global Corporate College which offers workforce education with various national companies.
4. Thanked staff for an enjoyable employee picnic.

Council Member Spiegel

1. Reported a system-wide delay on the Metro which caused him to be late this evening.
2. Congratulated and welcomed new employees introduced earlier in the evening and echoed congrats and thanks to the employees who organized the annual employee picnic. Thanked David Shayt for his years of service.
3. Added thoughts to the correspondence received regarding the aquatic center project. He reiterated that the project is in a holding pattern and that no decision had been made to stop the project.
4. Requested updates from staff on the following issues: City efforts to discuss with the County the priorities for state transportation projects; and lamppost in the Lakelands area.

Assistant City Manager Felton responded that every year or two, the County Council and County Executive jointly send a letter to the Montgomery County House and Delegation prioritizing the state transportation projects within the County. He stated that in 2005, the Watkins Mill Road Interchange which includes four ramps and a bridge became project #3 as a result of development approvals. County staff without consulting the City, decided to separate the Interchange from the bridge, with the bridge having a higher priority. Based on staff's recommendation, the City Council expressed concern about splitting the projects. He stated that the projects were separated and the City took the position to make the projects #1 and #2. He reported that unfortunately, the ramps are now #7. City staff has requested a meeting with project teams from State Highway Administration to discuss the facts. He added that County Council President Knapp, Council Members Andrews and Elrich did support the City's position.

Engineering Services Director Mumpower responded that several months ago, lights were reported down in the Lakelands. Following investigations, staff noted some severe and minor cracking on other lights. Staff contacted the manufacturer who is working to investigate the issue. Staff has taken down approximately ten (10) light post and repaired footers. He noted that lights from the same manufacturer in other areas of the City are not experiencing any problems. Other jurisdictions using the same lighting have not experienced any problems. Mr. Mumpower stated that it could be a problem with installation, environmental, or a bad batch of lights received. Staff will continue to investigate the issue and report back.

Council Member Ashman

1. Expressed regrets for missing the annual employee picnic.
2. Reported that Gaithersburg had been recognized nationally by CNN Money Magazine to be the 29th best small city to live in America.
3. He and Council Member Drzyzgula accompanied Acting City Manager Arnoult to observe the installation of a base separator device at the City's Public Works facility. The device filters out garbage and pollutants from the water coming through storm drains and into City streams and eventually into the Potomac River and Chesapeake Bay. He reported that the City will continue to move forward with stream restoration projects throughout the City and control what flows in the streams.
4. Urged citizens to subscribe to Alert Gaithersburg, the free emergency notification system.
5. Announced the Arts Barn had partnered again with the Montgomery County Playhouse to present the 7th Annual One Act Festival. Shows will take place at 8 p.m. on Friday and Saturdays, July 25 through August 2, 2008.

Mayor Katz

1. Mentioned the recognition from Money Magazine and congratulated the City's partners Montgomery County Public Schools and Montgomery County who were part of the award criteria.
2. Requested a motion to conduct an executive session on July 21, 2008 to further discuss information related to the selection of a new City Manager:

Motion was made by Council Member Sesma, seconded by Marraffa, that the Mayor and City Council conduct a closed session immediately following the regular meeting of July 21, 2008, pursuant to Section 10-508(a)(1)(i) State Government Article of the Annotated Code of Maryland for the purpose discussing a personnel matter.

Vote: 5-0

3. Announced the following meeting schedule:
 - work session on Monday, July 28, 2008, receive updates on emergency management and the Beat Plan.
 - next regular meeting on Monday, August 4, 2008.

VIII. FROM THE ACTING CITY MANAGER

Thanked all employees that planned and coordinated the annual employee picnic. Reported that the team (Fleet Maintenance) and employee (Isabel Salgado) of the year award winners were announced. Mayor Katz noted the applause Acting City Manager Arnoult received from City employees during the recognition at the picnic.

IX. PUBLIC HEARING

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

Community Planning Director Schwarz stated that the disposition of a 1.46-acre parcel located adjacent to Sam Eig Highway is located within the confines of Malcolm King Park, in exchange for another 1.46-acre parcel from the Washingtonian North Associates Limited Partnership, is being considered. Land disposition is governed by Article 23 of the State Code. The hearing was advertised in the *Gaithersburg Gazette* on June 27, 2008. Although not required, the property was posted and notifications went out. The property proposed to be given to the City is a portion of one of the three parcels of the Washingtonian North property. The property was subdivided as part of the schematic development plan into three separate properties plus an out lot for the stormwater management facility. She stated that during the purchase, there was a condition that would allow the exchange of land which related to the proposal. The City had been considering the exchange since 1998. Following discussions, the property owners went out and did a natural resource inventory. Specimens of trees were discovered and the City suggested that the property owner keep the specimen of trees in exchange for land. In addition, the Planning Commission during site plan approval for the first building, made a condition that the property owner consider a land exchange with the City. In closing, she stated that the purpose of the public hearing is to consider the present use of the City property and whether it should be declared surplus property? Whether it is needed for any public purpose and be considered for disposition? In addition, consider what public purpose may be fostered by the acquisition of the Washingtonian North 1.46-acre parcel. Both properties are located and currently zoned MXD.

City Attorney Board stated that there are two title issues with the parcel that is to be conveyed to the City. She reported that there are covenants on the property that are in process of being released. She reported that final documents have not been signed yet and that the parcel that would be conveyed to the City is also obligated with a Road Club agreement with the county. Staff anticipates both issues to be resolved in the near future. City Attorney Board stated that in the event both issues are not resolved before final decision, that this be a condition of approval.

Speakers from the public:

1. *Scott Wallace, Linowes and Blocher*, on behalf of Washingtonian North Associates, indicated support for the land swap. Expressed appreciation of staff's efforts to get it to this point.
2. *Mark Hackman, 64 Appleseed Lane*, stated that sign posting for the public hearing was posted incorrectly. He stated that he lives within 200 feet of the proposed property exchange but never received any notice from the City. He mentioned that he did read it in the *Gazette and* on the City's webpage. He submitted an email as well as pictures of the improper posting for the record. Stated he is 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 said piece of land.

Motion was made by Council Member Ashman, seconded by Council Member Sesma, that the Mayor and City Council hold the above record open until July 31, 2008.

Vote: 5-0

X. ORDINANCES, RESOLUTIONS, AND REGULATIONS

1. Resolution Kentlands Mansion Metal Roof Replacement and Brick Tuck Pointing Project

This resolution authorized the City Manager to enter into a contract for construction services for the above project with Atlantic Company of America, Inc., 626 King Street, Alexandria, Virginia 22314, in the estimated amount of One Hundred Sixty-One Thousand Seven Hundred Dollars (\$161,700); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Drzyzgula, seconded by, Council Member Spiegel, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT FOR KENTLANDS MANSION METAL ROOF REPLACEMENT AND BRICK TUCK POINTING PROJECT (Resolution No. R-65-08), be approved.

Vote: 5-0

2. Resolution to Extend the 2008 Street Resurfacing Contract

This resolution authorized the City Manager to extend the above contract to mill and resurface Russell Avenue to NZI Construction Corporation, 11601 Spruce Avenue, Beltsville, Maryland 20705, in the estimated amount of One Hundred Fifty-Nine Thousand Two Hundred Dollars (\$159,200); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Sesma, seconded by, Council Member Marraffa, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXTEND THE 2008 STREET RESURFACING CONTRACT (Resolution No. R-66-08), be approved.

Vote: 5-0

3. Resolution to Extend the 2008 Street Reconstruction Contract

This resolution authorized the City Manager to extend the above contract to narrow Russell Avenue to Olney Masonry Corporation. 11343 Maryland Avenue, Beltsville, Maryland 20705, in the estimated amount of Two Hundred Forty-Two Thousand Seventy Dollars (\$242,070); said funds to be expended from the Capital Improvements Budget.

Motion was made by Council Member Ashman, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXTEND THE 2008 STREET RECONSTRUCTION CONTRACT (Resolution No. R-67-08), be approved.

Vote: 5-0

4. Resolution to Negotiate and Execute a Third Amendment to the Annexation Agreement (X-161)

This resolution authorized the City Manager to negotiate and execute a Third Amendment to the Annexation Agreement (X-161) with Wells Reit II-Gaithersburg, MD LLC, Monument Corporate Center LLC, Monument Corporate Center II LLC, Monument Corporate Center 3 LLC, Council of Unit Owners of Monument Corporate Center, Condominium, Inc. He stated that in 2003, one million square feet of office was approved at the site. Subsequently, in 2004, the Second Amendment to the Annexation that reduced the overall density to 750,000 square feet. The first 200,000 square feet building had been completed Monument can proceed with the second building at anytime. He stated that staff has had discussions with Monument concerning the desire to have a hotel at the location. Staff concurs with Monument Reality that the addition of a hotel would attract a signature tenant for the vacant building. He added that Special Counsel Stanley Abrams assisted in the negotiations and had approved the agreement.

Council Member Sesma expressed concern with the impact of the project moving forward at the above site due to issues of the Interchange. Council Member Spiegel asked for clarification of the site plan process. Assistant City Manager Felton responded that it would go before the Planning Commission on August 6, 2008.

Motion was made by Council Member Drzyzgula, seconded by, Council Member Ashman, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO NEGOTIATE AND EXECUTE A THIRD AMENDMENT TO THE ANNEXATION AGREEMENT (X-161) WITH MR 270 NMD I, LLC, AND WELLS CAPITAL, INC. (Resolution No. R-68-08), be approved.

Vote: 5-0

XI. POLICY DISCUSSION

1. **T-387, An Ordinance to Amend Chapter 24 of the City Code (City Zoning Ordinance), Article XVI, Entitled "Affordable Housing Requirements" §24-255 Entitled "Affordable Housing Requirements for Developments in the Olde Towne Central Business District," so as to Preclude the Application of the Affordable Housing Requirements to any Enterprise Zone Established Pursuant to State Law**

During the June 16, 2008 Policy Discussion on Z-308(o), a majority of the City Council stated they were in favor of rezoning certain properties on Water Street into the Olde Towne Central Business District (CBD); however, they indicated they were not supportive of allowing the proposed redevelopment of these properties to be exempt from the City's normal Affordable Housing Requirements. Following discussions, it was determined that the easiest way to do that was to make the exemption apply to the Enterprise Zone rather than the CBD. Therefore, the CBD could be expanded in a rezoning without exempting the newly expanded areas from the Affordable Housing requirements. On July 16, 2008, the Planning Commission recommended approval of the Ordinance.

Motion was made by Council Member Sesma, seconded by, Council Member Ashman, that **T-387, AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE XVI, ENTITLED "AFFORDABLE HOUSING REQUIREMENTS" §24-255 ENTITLED "AFFORDABLE HOUSING REQUIREMENTS FOR DEVELOPMENTS IN THE OLDE TOWNE CENTRAL BUSINESS DISTRICT," SO AS TO PRECLUDE THE APPLICATION OF THE AFFORDABLE HOUSING REQUIREMENTS TO ANY ENTERPRISE ZONE ESTABLISHED PURSUANT TO STATE LAW (Ordinance No. O-7-08),** be approved.

Vote: 5-0

2. **T-386, An Ordinance to Amend Chapter 24 of the City Code, Entitled "Zoning," Article III, Entitled "Regulations Applicable to Particular Zones," Division 21 Entitled "CBD Zone, Central Business District," Section 24-160F.3 Entitled "Minimum Locational Requirements," to Modify Section 24-160F.3. to Expand the Boundaries of the Central Business District Zone**

Planning and Code Administration Director Ossont stated a joint public hearing was held on July 7, 2008 and the Planning Commission gave a favorable recommendation on July 16, 2008. The Mayor and City Council record was held open until July 17, 2008. During Policy Discussion on June 16, 2008, the Mayor and City Council on the zoning application Z-308(o), decided that it was appropriate to expand the CBD Zone to include the subject 2.14 acres.

Motion was made by Council Member Ashman, seconded by, Council Member Marraffa, that **T-386, AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE, ENTITLED "ZONING," ARTICLE III, ENTITLED "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 21 ENTITLED "CBD ZONE, CENTRAL BUSINESS DISTRICT," SECTION 24-160F.3 ENTITLED "MINIMUM LOCATIONAL REQUIREMENTS," TO MODIFY SECTION 24-160F.3. TO EXPAND THE BOUNDARIES OF THE CENTRAL BUSINESS DISTRICT ZONE (Ordinance No. O-8-08),** be approved.

Vote: 5-0

3. **Z-308(o), An Ordinance of the Mayor and Council of the City of Gaithersburg Granting Approval for 2.14 Acres of Land Known as Parcels 184 & 185, and Part of Patent Certificate 476 Apparent Residue of the Land Patented to John T. & Sarah Ann DeSillum, to be Rezoned From R-20 (Medium Density Residential) to CBD (Central Business District) in Accordance With §24-196 (Map Amendments) and §24-198 (Optional Method) of the City Code**

Planning and Code Administration Director Ossont stated the application above request a rezoning of 2.14 acres of land from the R-20 to the CBD. The Planning Commission provided a favorable recommendation at their June 4, 2008 meeting with eight conditions. The Mayor and City Council record closed at 5 p.m. on June 6, 2008.

Motion was made by Council Member Marraffa, seconded by, Council Member Spiegel, that **Z-308(o)**, AN ORDINANCE OF THE MAYOR AND COUNCIL OF THE CITY OF GAITHERSBURG GRANTING APPROVAL FOR 2.14 ACRES OF LAND KNOWN AS PARCELS 184 & 185, AND PART OF PATENT CERTIFICATE 476 APPARENT RESIDUE OF THE LAND PATENTED TO JOHN T. & SARAH ANN DESELLUM, TO BE REZONED FROM R-20 (MEDIUM DENSITY RESIDENTIAL) TO CBD (CENTRAL BUSINESS DISTRICT) IN ACCORDANCE WITH §24-196 (MAP AMENDMENTS) AND §24-198 (OPTIONAL METHOD) OF THE CITY CODE (Ordinance No. O-9-08), be approved with nine conditions and a correction to condition #7.

Vote: 5-0

XII. FROM THE ASSISTANT CITY MANAGERS, CITY ATTORNEY AND OTHER STAFF

- Assistant City Manager Felton gave an update on the Montgomery County Public Works and Transportation Phase I Facility Planning Study for the Longdraft Road project. The City testified before the Planning Board with the position of supporting spot improvements to improve the functionality of intersections and improve pedestrian safety, but did not support the concept of widening Longdraft Road. Longdraft Road serves local neighborhoods and two lanes adequately serves current and future traffic needs. Staff recommended further supporting the Longdraft Road Coalition proposal; however, the City would like the County to explore the concept of sidewalks on both sides as long as they are not placed in such a manner that allows Longdraft Road to be widened to four-lanes in the future.

Motion was made by Council Member Ashman, seconded by, Council Member Sesma, to move forward with staff's recommendation as suggested.

Vote: 5-0

- Assistant City Manager Felton gave an update on the Ad Hoc Senior Center Committee application process. He stated that due to the lack of letters of interest received in June, the Council agreed to extend the deadline. He reported that a number of letters of interest have now been received and staff requested that appointments be made at the August 4, 2008 Mayor and City Council meeting.

XIII. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 8:58 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Executive Assistant