

**DRAFT**



**Gaithersburg**

*A CHARACTER COUNTS!*

CITY OF GAITHERSBURG  
MINUTES OF A REGULAR CITY COUNCIL MEETING  
TUESDAY, SEPTEMBER 2, 2008

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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, Capital Projects/Facilities Director Geiling, Community Planning Director Schwarz, Environmental Services Director Shingara, Community Services Director Carr, Wells/Robertson House Evening Counselor Johnson, City Attorney Board, and Executive Assistant Stokes.

**I. PLEDGE OF ALLEGIANCE**

The Pledge was led by Jr. Mayor Andy Sanchez.

**II. INVOCATION**

In lieu of an invocation, Mayor Katz called for a moment of silence.

**III. APPROVAL OF MINUTES**

Motion was made by Council Member Ashman, seconded by Council Member Marraffa, that the minutes of the Mayor and Council regular meeting held August 18, 2008, be approved.

Vote: 5-0

**IV. CONSENT ITEMS**

**1. Resolution of the Mayor and City Council Authorizing the City Manager to Award a Contract for the City Hall Fire Egress Project**

This resolution authorized the City Manager to award a contract for construction services for the above project to Hascon, LLC, 10440 Little Patuxent Parkway, No. 300, Columbia, Maryland 21044, in the estimated amount of Thirty-Nine Thousand Seven Hundred Dollars (\$39,700); with a twenty percent contingency of Seven Thousand Nine Hundred Forty Dollars (\$7,940); said funds to be expended from the Capital Improvements 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 PEPCO Energy Services**

The City desired to execute an extension of the Montgomery County joint procurement for electricity supply contract. This resolution authorized the City Manager to execute a contract for the supply of electricity with PEPCO Energy Services on a Nunc pro Tunc basis; said funds to be expended from the Operating Budget.

Motion was made by Council Member Marraffa, seconded by, Council Member Sesma, that the Consent Agenda (Resolution Nos. R-78-08 and R-79-08), be approved.

Vote: 5-0

V. **APPOINTMENT**

1. **Resolution Confirming a Reappointment to the Historic District Commission**

This resolution confirmed the following reappointment: Sidney A. Katz, 811 Pointer Ridge Drive, 20878, three-year term.

Motion was made by Council Member Ashman, seconded by, Council Member Marraffa, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING A REAPPOINTMENT BY THE MAYOR TO THE HISTORIC DISTRICT COMMISSION (Resolution No. R-80-08), be approved.

Vote: 5-0

2. **Resolution Confirming an Appointment and Reappointments by the Mayor**

This resolution confirmed the following appointment and reappointments: **Economic Development Committee**, Don Fatzie (appointment), 19522 Club House Road, Montgomery Village, Maryland, 20886 and Kent Howard (reappointment), 7 Gibson Place, 20878, three-year terms; **Market Square Advisory Committee**, Dee Aronson (reappointment) and Joel Aronson (reappointment), 106 Midtown Road, 20878, three-year terms; and the **Police Chief's Advisory Council**, Sigrid McCutcheon (reappointment), 142 Lake Street, 20878, two-year term.

Motion was made by Council Member Marraffa, seconded by, Council Member Sesma, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING AN APPOINTMENT AND REAPPOINTMENTS BY THE MAYOR TO THE ECONOMIC DEVELOPMENT COMMITTEE, MARKET SQUARE ADVISORY COMMITTEE, AND THE POLICE CHIEF'S ADVISORY COUNCIL (Resolution No. R-81-08), be approved.

Vote: 5-0

**VI. PRESENTATIONS****Mayor Katz presented the following Certificate and Proclamations**

- Certificate of Recognition was presented to Sikandar Porter-Gill, Gaithersburg High School senior. He won a national Davidson Fellowship and was the recipient of a scholarship for developing a process to clean wastewater and produce methane for use as an alternative form of energy.
- Proclamation designating September, 2008, as "*National Alcohol and Drug Addiction Recovery Month*" in the City of Gaithersburg. Evening Counselor Johnson and Manuel Madrid, current resident of the Wells/Robertson House Program, accepted the proclamation. In conjunction with the Proclamation, the City will celebrate the month with several planned activities. The City of Gaithersburg is proud to own and operate the Wells/Robertson House, a transitional housing program providing services to men and women who are homeless and in recovery from chemical addiction.
- Council Member Sesma and Jr. Mayor Sanchez joined the Mayor to present the Proclamation designating September 15 – October 15, 2008, as "*National Hispanic Heritage Month*" in the City of Gaithersburg. The City's Multicultural Affairs Committee hosted a reception featuring a presentation by Liberty's Promise, an organization that supports young immigrants in need while encouraging them to be active and conscientious American citizens. Jr. Mayor Andy Sanchez accepted the Proclamation which recognizes the Hispanic Community and celebrates its achievements and its contributions to the life of the larger community.

**VII. PUBLIC APPEARANCES**

1. *Toni Hudson, 214 Tulip Drive*, expressed opposition to the City shifting federal grant funds from the Rolling Stock (train engine and caboose) Restoration project to the Capital Improvements Budget for the Wells/Robertson House and other projects. Asked that the City preserve the trains.
2. *Darline Bell-Zuccarelli, Gaithersburg resident*, received a call from her parents concern with the City "switching federal funds" from the train project to the Wells/Robertson House project. She expressed concern with the language "switching" used by the City.

Acting City Manager Arnoult responded that the Rolling Stock Project is still funded, but when using Federal funds, a timetable is set to spend the money or the funds become subject to be recapture. The City decided to use the funds for another project that is moving along faster, but still intend to proceed with funding the Rolling Stock Project which is taking longer than expected.

**VIII. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS****Council Member Drzyzgula**

1. Attended Gaithersburg's Kentlands/Lakelands 5K Run with other members of the Council on Saturday, August 30, 2008. In addition, he attended Gaithersburg's 70<sup>th</sup> Annual Labor Day Parade in Olde Towne.
2. Asked the City to have supplemental information to assist citizens with understanding legal notices and requirements under various programs. She asked the City to make an effort to ensure that when City projects are delayed or a change is made, that the citizens are informed, information is available, and that project completions are followed-up.
3. Announced vacancies on various City committees and urged citizens to volunteer their services.

**Council Member Sesma**

1. Congratulated Sikandar Porter-Gill on his academic and research accomplishment mentioned earlier in the meeting.
2. Thanked the City's Multicultural Affairs Committee for their efforts and activities to commemorate Hispanic Heritage Month.
3. Stated he participated in the 5K Run mentioned above. Noted for the record that he finished the race before the other Council participant. He thanked City staff, the Kentlands Community Foundation, and volunteers for coordinating a great event.
4. Attended the Labor Day Parade which was a tremendous event.
5. Announced that several cities in partnership with Montgomery County will host a Housing Fair and Financial Fitness Day on Saturday, September 27, 2008, 10 a.m. to 3 p.m. at Bohrer Park, Summit Hall Farm, 506 South Frederick Avenue, Gaithersburg, Maryland.

**Council Vice President Marraffa**

1. Thanked staff on a wonderful Labor Day Parade.
2. Announced and invited the community to join the City on Sunday, September 21 for Celebrate Gaithersburg in Olde Towne. A day filled with music, arts, food, and fun is planned for the 27<sup>th</sup> annual event. Complete details are available on the City's website at [www.gaithersburgmd.gov/celebrate](http://www.gaithersburgmd.gov/celebrate) or call 301-258-6350. Reported that a public introduction of new City Manager Angel Jones is planned during the Welcome Ceremony at noon at the City Hall Concert Pavilion.

**Council Member Spiegel**

1. Echoed thanks and congratulations to the participants and volunteers for the 5K Run and Labor Day Parade. Reported that over \$60,000 for charity was raised. Special thanks was expressed to Parks, Recreation and Culture Director Michele Potter.
2. Congratulated and recognized City youths for their accomplishments. He thanked the youth from Liberty Promise, and recognized those involved with Identity, and educators that work with the Gaithersburg youth. Echoed thanks to the Multicultural Affairs Committee for a wonderful event to highlight the multicultural aspects of the City. He congratulated Andy Sanchez for being a great Jr. Mayor and Sikandar for his accomplishments.
3. Best wishes to those observing Ramandan.
4. Expressed words of support to those effected by Hurricane Gustav and encouraged citizens to donate to the Red Cross and other groups to assist with various areas of the country.
5. Expressed regrets for not attending the Labor Day Parade due to the passing of his grandfather. He commemorated his grandfather with the following statement on his accomplishments:

"Robert Suchman was a great family man, a father who lived in the Boston area. He was a WWII Veteran. Signed up for the U.S. Navy on his 18th birthday in 1943 and was stationed on the aircraft carrier Bon Homme Richard (CV-31). He was a Navigator on a Navy bomber. Legend has it in his family that during one of his missions, his aircraft was shot down, radio badly damaged and as the plane was going down, the engineer was able to rewire it in mid-air to call for a SOS and notify the Navy of the location of the aircraft. Many folks on the plane were rescued including his grandfather, but was badly injured. He spent about a year in traction recovering and earned the Purple Heart and several other military commendations. Later, he was an engineer for NASA on the Apollo spacecraft. Many years before environmentalist was popular, he help design

a infra red telescope on the Apollo ship that helped detect crop disease patterns from space. Four years ago, on his 80th birthday, I was proud to accompany him on his first pilgrimage to the WWII Memorial in Washington, D.C. Earlier this year my grandparents celebrated their 60th Anniversary”.

6. Encouraged the public to come out to the Celebrate Gaithersburg Festival event.

**Council Member Ashman**

1. Stated the Kentlands/Lakelands 5K Run and Labor Day Parade are two Stella events for the City of Gaithersburg. He recognized the many volunteers who help make the events great.
2. Confirmed that he and Council Member Sesma ran in the 5K Run and trash talking did occur. He challenged other colleagues to run in the event next year. He congratulated Council Member Sesma on his five second win over him.
3. Wished the youth a healthy, safe, successful school year.
4. Urged citizens to subscribe to the City's Alert Gaithersburg emergency notification system.

**Mayor Katz**

1. Mayor Katz requested the following motion to conduct a closed executive session on September 2, 2008:

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 September 2, 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

2. Announced the following meeting schedule:
  - no work session, Monday, September 8, 2008.
  - next regular meeting on Monday, September 15, 2008.

**IX. FROM ACTING CITY MANAGER ARNOULT**

1. Reported a record attendance of 1,580 participants at the 5K Run. Stated that the Delores Swoyer Camp Scholarship Fund will benefit from the money raised and encouraged citizens to give to such a worthy fund.
2. Announced that the Montgomery County Board of Elections is seeking volunteer judges. If interested, contact the Board at [www.777vote.org](http://www.777vote.org) to download a 2008 election judge questionnaire or call at 240-777-8533. He stated that 4,000 volunteers are needed.

**X. PUBLIC HEARINGS**

1. **CSP-04-001, Application Requests Approval of a Concept Site Plan (CSP), Proposing an Addition to an Existing Apartment Building on a .91-Acre Property, Known as Flowers Apartments, at 511 North Frederick Avenue in Gaithersburg, Maryland. The Proposed Plan is for a Nine (9)-Unit Addition to an Existing 23-Unit Building on Approximately 39,679 Square Feet of Land. The Subject Property is Located in the Corridor Development (C-D) Zone**

Community Planning Director Schwarz stated the public hearing was advertised in the *Gaithersburg Gazette* on August 15 and 20, 2008. She stated that the concept plan is required for development in the CD Zone. The owner of the subject property had been working with the City for a number of years concerning the requested addition to the existing building. The proposal was incorporated in the City's Frederick Avenue Corridor Master Plan. Mrs. Schwarz oriented the Mayor and City Council to the site and introduced Vania Apraricio of AB Architectural Design representing the applicant.

*Vania Apraricio, AB Architectural Design*, showed the existing three story building with a brick venue. She stated that the proposed addition of 3,400 square feet would include nine apartments between the existing building and South Frederick Avenue. The parking lot is proposed to provide 18 additional parking spaces to have a total of 60 spaces which is the minimum that is required for the entire building. The building is set back from the property line approximately 12 feet in order to accommodate a ten-foot wide Public Utility Easement. The applicant is requesting a 13-foot waiver of the 20-foot setback for off-street parking from behind the front building line. The applicant is also proposing to rebuild the existing retaining wall near the southeast property line. She stated that the proposed addition with the same roof, windows, and floor levels as the existing building. In addition, the applicant is requesting a five feet six inches height waiver to allow the roof line to be at the same level of the existing building.

There were no speakers from the public.

Staff was directed to work with the applicant to enhance the front architectural façade facing South Frederick Avenue. Staff was also asked to correct the site address of South Frederick on all documents and the website.

Motion was made by Council Member Ashman, seconded by Council Member Marraffa, that the Mayor and City Council hold the record open for ten (10) days.

Vote: 5-0

2. **An Ordinance to Amend Chapter 5 of the City Code, Entitled "Buildings," to Include in Article I, Entitled "The International Building Code (2003)," Section 5-3, Entitled "Same—Modifications to the International Building Code 2003," a New Section 3110, Entitled "Green Building Requirements"**

Assistant City Manager Felton stated that the ordinance was introduced on August 18, 2008 and advertised for public hearing on August 20, 2008 in the *Gaithersburg Gazette*. In October 2007, the Mayor and City Council adopted the City's Residential Green Building Code. He stated that the code only technically applies to single family homes and townhomes; however, the developers of the last three multi-family projects approved agreed to voluntarily comply with the code. He further stated that there is a national standard for commercial green building which is the US Green Building Council's (USGBC) Leadership in Energy and Environmental Design (LEED) rating system which a number of jurisdictions have adopted various levels. During the January 2008 Strategic Planning Retreat, the Mayor and City Council directed staff to move forward with the proposed commercial green building ordinance. He noted that the larger a project is, the easier it is to achieve LEED rating. Staff recommended on commercial that projects below 10,000 square feet not be required to comply. Between 10,000 and 99,999 be required to

achieve certification by the USGBC. Anything over 100,000 square feet would be required to obtain a LEED Silver rating. He mentioned that the Monument Office Park building did achieve Silver certification from the USGBC and a building under construction at Washingtonian South is expected to receive Gold certification from the USGBC. The proposed ordinance would make the previously adopted Residential Green Building Ordinance mandatory for four story residential multi-family structures. He added that the ordinance does permit the Planning Commission to waive or modify the Green building requirements based on the recommendation by the City Manager or his designee; however, a waiver must be based upon a finding that unique physical characteristics of the property or the project make strict compliance of the code impractical. Economic hardship in its own right is not a valid excuse.

In response to a question, Mr. Felton clarified that substantial improved structures include renovations or reconstruction of existing buildings with at least 10,000 square feet of gross floor area (GFA) that alter more than 50% of the GFA or if the addition double the building's footprint or add at least 10,000 square feet of GFA.

Environmental Services Director Shingara added that the 10,000 square foot minimum was modeled after Montgomery County. She stated that the City's Youth Center on the west side was done to serve as a model for the community, but renovating smaller buildings could be costly to make them LEED certified. Mr. Felton stated that general advice would be offered to accomplish the proposed objectives. It was suggested that the City provide data and examples to educate the public.

There were no speakers from the public.

Motion was made by Council Member Drzyzgula, seconded by Council Member Sesma, that the Mayor and City Council hold the record open on the above public hearing until Wednesday, September 10, 2008, 5 p.m.

Vote: 5-0

## **XI. ORDINANCES, RESOLUTIONS, AND REGULATIONS**

### **1. Resolution to Reject all Bids for the Olde Towne Youth Center Project and to Negotiate With the Lowest Responsive and Responsible Bidder**

Capital Projects/Facilities Director Geiling stated that the project was bid out on June 23, 2008. On August 18, 2008, the City received ten bids, two were automatically deemed unresponsive due to lateness and required forms not completed. In addition, four of the firms did not submit the required LEED qualifications requested in the bid. Staff recommended that all the bids be rejected because they were above the City's construction budget. Staff believes the bids came in high because of the increase in material costs between February and August. He further stated that estimating firms are not familiar with LEED requirements and the cost factor were not accurately reflected in the construction estimates. He stated that many firms lack LEED experience to submit responsive bids. He stated that staff has researched and discussed over the weeks ways to reduce future risks and recommended putting a negotiated bid process in place to work with firms. Staff was asked to provide a list of criteria to guide firms with estimating the extra cost for green buildings.

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 REJECT ALL BIDS FOR THE OLDE TOWNE YOUTH CENTER PROJECT AND TO NEGOTIATE WITH THE LOWEST RESPONSIVE AND RESPONSIBLE BIDDER (Resolution No. R-82-08), be approved.

Vote: 5-0

**2. An Ordinance to Create a New Chapter 3A Entitled "Hotel Rental Tax" so as to Levy and Impose a Hotel Rental Tax**

Assistant City Manager Felton stated a public hearing was held on August 18, 2008 with a total of six speakers at the hearing. Eight letters in opposition to the ordinance were received from representatives of the hotel industry. He stated that staff had not seen evidence that the 2% hotel/motel tax would have an adverse effect on the Gaithersburg market. He stated that the average per night tax would be \$1.50. The record closed on August 27, 2008 at 5 p.m. Council Vice President Marraffa noted on the record his opposition to imposing the 2% tax on hotel guests and putting a burden on City businesses due to the slow economy. During the public hearing, staff was directed to get historical data on Montgomery County's total hotel tax revenue over the past five years. The data showed Montgomery County receiving an increase in revenue. Several Council Members concurred that the 2% tax would not be a hardship on the hotel and their occupancy rate. It was stated that it is unfair for the City to incur expenses and not benefit from revenue sharing.

Motion was made by Council Member Sesma, seconded by, Council Member Ashman, that AN ORDINANCE TO CREATE A NEW CHAPTER 3A ENTITLED "HOTEL RENTAL TAX" SO AS TO LEVY AND IMPOSE A HOTEL RENTAL TAX AS AUTHORIZED UNDER CHAPTER 24, SECTION 9-608 OF THE ANNOTATED CODE OF MARYLAND OF TWO PERCENT (2%) OF THE TOTAL AMOUNT PAID FOR ROOM RENTAL BY OR FOR A TRANSIENT FOR SLEEPING ACCOMMODATIONS (Ordinance No. O-10-08), be approved.

Vote: 4-1 (Opposed: Marraffa)

**3. Resolution Awarding Matching Grants**

This resolution awards matching grants to Brighton West I Condominiums for landscaping (\$3,857); Gateway Commons HOA for landscaping (\$1,327); Kentlands Condominium I for landscaping and walkway (\$1,342); Kentlands Condominium II for sidewalk and entry improvements (\$3,575); Kentlands Condominium IV for landscaping and walkway improvements (\$1,609); Lakelands Ridge HOA for landscaping (\$5,000); and Park Summit HOA for landscaping), upon determining that the projects are completed as proposed, in the total amount of Twenty-One Thousand Seven Hundred Ten Dollars (\$21,710); said funds to be expended from the Operating Budget.

Mr. Felton stated that \$50,000 was budgeted for the City's Neighborhood Matching Grant Program. If the resolution is approved, the City's program will close for fiscal year 2009. He further stated that over the last few fiscal years, funds were depleted by October. The Mayor and City Council concurred to increase funding in the next budget and suggested changes to the program to include criteria and community eligibility.

Motion was made by Council Member Marraffa, seconded by, Council Member Drzyzgula, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AWARDED MATCHING GRANTS TO BRIGHTON WEST I CONDOMINIUMS, GATEWAY COMMONS HOA, KENTLANDS CONDOMINIUM I, KENTLANDS CONDOMINIUM II, KENTLANDS CONDOMINIUM IV, LAKELANDS RIDGE, AND PARK SUMMIT HOA (Resolution No. R-83-08), be approved.

Vote: 5-0

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

- Guidance on a Memorandum Dated August 28, 2008 Concerning the Greater Historic District

Assistant City Manager Felton stated the City held a community improvement charrette in 2000. He stated that many improvement projects were completed such as street lights, narrowing of streets, and raised crosswalks. During the charrette, the neighborhood requested additional street trees. He stated that with the exception of Russell Avenue, there are not adequate right-of-ways to plant trees in the neighborhood. The City made a proposal to the homeowners that would allow the City to plant a selected list of front yard street trees. Council Member Drzyzgula expressed support, but had concern with the moderate height tree selection. She asked for an accommodation for taller trees for some, if appropriate and reasonable.

**XIII. ADJOURNMENT**

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 9:20 p.m.

Respectfully submitted,

*Doris R. Stokes*

Doris R. Stokes  
Executive Assistant