



Gaithersburg

A CHARACTER COUNTS!

CITY OF GAITHERSBURG
MINUTES OF A REGULAR CITY COUNCIL MEETING
MONDAY, APRIL 6, 2009

A meeting of the Mayor and City Council was called to order at 7:30 p.m., Mayor Katz presiding. Council Members present: Drzyzgula, Marraffa, Sesma and Spiegel. Staff present: City Manager Jones, Assistant City Managers Felton and Tomasello, Planning and Code Administration Direction Ossont, Planners Robinson, Eby and Voigt, Public Works Director Arnoult, Engineering Services Director Mumpower and Executive Assistant Stokes. Planning Commissioners present for the consolidated joint public hearing: Bauer, Hopkins and Kaufman.

I. PLEDGE OF ALLEGIANCE

The Pledge was led by John Bauer, Planning Commission.

II. INVOCATION

The invocation was led by Rick Price, First Church of Christ, Scientist.

III. APPROVAL OF MINUTES

Motion was made by Council Member Sesma, seconded by Council Member Marraffa, that the minutes of the Mayor and Council work session held March 9, 2009, be approved.

Vote: 4-0

IV. APPOINTMENTS

A. Resolution of the City Council Confirming Appointments and Reappointments

This resolution established and confirmed the following appointments and reappointments: **Art in Public Places**, Sigrid McCutcheon (reappointment), 142 Lake Street, 20878, two-year term; **Community Advisory Board**, Sabrina Rivers (reappointment), 405 Whitcliff Court, 20878, two-year term; **Environmental Affairs Committee**, Lisa de Lima (appointment), 201 Hutton Street, 20877 and Jeffrey Ferrell (appointment), 227 Rolling Road, 20877, two-year terms; **Market Square Advisory**, Dennis Stiles, DDS (appointment), 333 Main Street, 20878, two-year term; **Personnel Review Board**, Ginny Gong (reappointment), 122 Upshire Circle, 20878 and Michael Stevenson, Jr. (reappointment), 410 Watch Hill Lane, 20878, three-year terms; and the **Technology & Innovations Committee**, Robin Cook (reappointment), 337 Winter Walk Drive, 20878, two-year term.

Motion was made by Council Member Sesma, seconded by, Council Member Marraffa, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING APPOINTMENTS AND REAPPOINTMENTS BY THE MAYOR TO THE ART IN PUBLIC PLACES COMMITTEE, COMMUNITY ADVISORY COMMITTEE, ENVIRONMENTAL AFFAIRS COMMITTEE, MARKET SQUARE ADVISORY COMMITTEE, PERSONNEL REVIEW BOARD, AND

TECHNOLOGY & INNOVATIONS COMMITTEE (Resolution No. R-16-09), be approved.

Vote: 4-0

Mayor Katz took a moment to recognize the above individuals volunteering their service and the presence of Ken Reichard from U.S. Senator Ben Cardin's Office.

V. PRESENTATIONS

A. Certificate of Recognition

Mayor Katz presented a Certificate of Recognition to Dake Williams, wrestler at Quince Orchard High School. Mr. Williams was sidelined for most of the season due to a foot injury, but wrestled his way back to win a state title during the Class 4A/3A State Wrestling Championship Finals.

VI. PUBLIC APPEARANCES

Rachel Henderson Hammoudeh, 109 Tree Haven Street, thanked the Mayor and City Council for their recent request to the County Council to cease funding the County's Smart Growth Initiative until there is a binding agreement between the County and the City regarding the GE Tech Park. She expressed concern with the impact on taxpayers and use of the mentioned parcels and asked for an update. City Manager Jones stated a letter is expected to be forthcoming from Council President Phil Andrews.

VII. FROM THE MAYOR AND CITY COUNCIL/ANNOUNCEMENTS

Council Vice President Sesma

1. Wished all a Happy Spring, Easter, and Passover.
2. Announced Gaithersburg's popular spring recreation classes to include Algebra 101, dog obedience, Argentine Tango, and how to prune your shrubs and trees. Online registration available at www.gaithersburgmd.gov.
3. Reported the City received an Energy Efficiency Conservation Block Grant in the approximate amount of \$578,000. Thanked Congressman Van Hollen for his efforts.
4. Announced the Kentlands Day Celebration, May 2, 10 a.m. to 5 p.m., Mayor Katz and City Manager Jones will serve as judges for the floats participating in the parade.
5. Extended congratulations to Quince Orchard High School student Dake Williams.

Council Member Drzyzgula

1. Attended the Annual Senior Center Volunteer Appreciation Dinner and thanked the volunteers.
2. Chesapeake Bay and Water Quality Policy Committee of the Metropolitan Washington Council of Governments met to address the issue of plastic bags and trash in the region. Local bills are pending in many jurisdictions. The Committee agreed that there is a problem, but could not get a consensus establishing a fee on the use of bags that would encourage consumers to choose reusable shopping bags. The matter is scheduled to go before the Board of Directors to vote on the resolution to research further.
3. Announced vacancies on the various City Boards, Commissions and Committees. Encouraged citizens to submit letters of interest to the Mayor and City Council, 31 South Summit Avenue, Gaithersburg, Maryland 20877. For more information contact Executive Assistant to the City Manager Marie Best at 301-258-6310.

Council Member Spiegel

1. Echoed Happy Spring, Easter and Passover wishes to the public.
2. Further responded to the request from Ms. Hammoudeh. He added that the County Council has scheduled a public hearing for April 21, 7:30 p.m. to consider special legislation to allocate funding for the County's use and purchase of the GE Tech Park property. Staff was directed to put the County public hearing on the City's website. To testify call 240-777-7931.
3. Reported that the Market Square Advisory Committee met to discuss specific art projects and other upgrades to the Plaza. In addition, the Committee discussed broadening their mission to become a greater Kentlands advisory committee to focus on business and community issues. The Committee also discussed signage and suggested a short term resolution to address the issues.
4. Mentioned the Bank on Gaithersburg program which brings together nonprofit organizations, local banks and local credit to expand financial literacy for the residents of Gaithersburg. As part of the effort, the City applied for a technical assistance grant from the National League of Cities.
5. Reported a visit from the Governor to the Universities at Shady Grove where he announced that the State had selected the Universities as its home for the new Maryland Clean Energy Center.
6. Announced the Green Week activities beginning Friday, April 17. To learn more visit the City's website at www.gaithersburgmd.gov/environment, or call 301-258-6310. Volunteers are welcomed to help clean up parks, streams and neighborhoods.

Council Member Marraffa

1. Encouraged the public to watch out for the kids and practice pedestrian safety especially while school is out.
2. Announced the following:

Notice to the general public is hereby given that the Mayor and City Council of Gaithersburg plan to conduct a closed Executive Session at City Hall, Monday, April 13, 2009, immediately following the scheduled special meeting of the Mayor and City Council, pursuant to Section 10-508(a)(8), State Government Article of the Annotated Code of Maryland to discuss pending or potential litigation. The purpose of the session is to consult with counsel, staff, and other individuals about pending or potential litigation. The closed executive session will be conducted pursuant to a motion properly adopted during the meeting of the Mayor and City Council on Monday, April 13, 2009.

Mayor Katz

1. Announced the following meeting schedule:
 - work session, Monday, April 13, 2009, to discuss the proposed amendments to Section 59 of the City Charter entitled "Personnel Regulations; Merit System; Classified and Unclassified Service May be Established," and Section 60 of the City Charter entitled "Composition of Classified and Unclassified Service" and to discuss an Ordinance to repeal and reenact with amendments to Chapter 17 of the City Code entitled "Personnel."
 - special meeting at City Hall, Monday, April 13, 2009, immediately following the scheduled work session, solely to vote to introduce and notify the public that a public hearing will be held on Monday, May 4, 2009, to discuss the proposed amendments to Section 59 of the City Charter Entitled "Personnel Regulations; Merit System; Classified and Unclassified Service May be Established," and Section 60 of the City Charter Entitled "Composition Of Classified And Unclassified Service" and to discuss an Ordinance to Repeal and Reenact with Amendments to Chapter 17 of the City Code Entitled "Personnel." The special meeting will

be conducted pursuant to a motion properly adopted during the meeting of the Mayor and City Council on Monday, April 13, 2009.

- next regular meeting April 20, 2009.

VIII. FROM THE CITY MANAGER

- Reported that staff held a meeting on March 25, 2009 with developers to discuss the Olde Towne Enterprise Zone. A series of discussions will be held with developers to get ideas in regards to barriers that may present problems to development. From the meeting, developers stated that more foot traffic during the day would offer support to the restaurants, parking ordinance may be outdated, and banks asked for a higher return on investments for new projects as well as additional equity from developers. Staff will keep the Mayor and City Council updated.
- Reported staff held a meeting on April 2, 2009 with Franklin Jackson Partnership Specialist with the U.S. Census Bureau to discuss the upcoming 2010 Census regarding verifying addresses over the next several weeks. The Bureau is seeking to hire temporary workers.
- Staff will contact Montgomery County and City of Rockville to explore forming a joint complete count committee. The committee will have representatives from the community, school districts and other sources with the intent to identify the low count areas. Low counts from persons not documented, will cost jurisdictions in Federal grants and other monies that could be allocated to those communities.

IX. CONSOLIDATED JOINT PUBLIC HEARINGS

- A. Z-311, Application Requests a Map Amendment to Rezone 1.2 Acres of Land From R-90 (Medium Density Residential) to CD (Corridor Development) in Accordance With §24-160G.6.(a) (Procedure for Application and Approval) of the City Code. The Properties are Located at or Near 11 and 13 DeSellum Avenue, (Parcels 387, 388 & 442)**
- B. CSP-09-001, Application Requests the Redevelopment of 2.71 Acres of Land, Currently Known as Parcels 368, 387, 388, 390, and 442 Located at the Intersection of MD 355 (South Frederick Avenue) and DeSellum Avenue in the City of Gaithersburg. The Proposed Plan Includes the Construction of a Two-Story Office Building and the Conversion of Two Buildings From Residential to Office Uses**

Planner Robinson stated the consolidated joint public hearing applications Z-311 and CSP-09-001, will require individual motions by the Planning Commission and the City Council. The hearings were advertised in the Gaithersburg Gazette on March 18 and 25, 2009 and the property posted. At the present time, there are nineteen (19) exhibits in the record file for Z-311 and 40 exhibits in the record file for CSP-09-001.

Jody Kline, Miller, Miller & Canby, representing the applicants, Wilson family, stated that the family is proposing to rezone land from the R-90 Zone to CD classification and create a comprehensive development that would integrate both the design use and function of the property as recommended by the City's Master Plan. He asked the Council and Commission to take a look at the goals and the purposes of the CD Zone and how the proposed would increase the economic vitality of the Corridor. The applicants are seeking to take buildings that are under utilized on the site and create development that would allow for professional office use. Both in the form of a new building, plus adapted reuse for two historic structures. He mentioned that the architects have picked up some of the architectural design of the area. He added that the applicant is not asking for any parking waivers, height waivers, or greenspace waivers. He reported that the traffic study is well within the limits of the City's standards for service.

Dr. Robert J. Wilson, Jr. gave a brief history of the property and presented the concept plan. The family is seeking to make the property very attractive along the 355 Corridor. He mentioned that it is important that he is able to operate his dental practice out of the current building while the new

building is being built. The plan calls for the development to be put out front and be limited to two stories so not to be higher than the historic Fulks House. The development would be done in phasing which is two-fold. The renovation would include adaptive reuse of some buildings. The plan calls for energy efficiency, a new stormwater management plan, and reforestation.

Robert Loveless, Loveless & Porter Architects, oriented the Council and Commission with the property, 355, the Fulks House, plaza, gazebo, existing and proposed buildings, streetscape requirements, architect and elevations.

Charles Joch, CHA III Architects, spoke on the LEED certification level of the project that was reviewed with staff. He stated that LEED certified covers all aspects of the built environment such as energy, materials, resources, reviews, adaptive reuse, stormwater management, environmental and air quality. He further stated that the applicant is proposing adaptive reuse of the old structures, but bringing them up to code and to the quality they once had.

Jim Crawford, Dewberry, formerly called Dewberry & Davis, stated the design requires rezoning of three lower parcels, dedicating an additional five feet of land for the street, removing the four foot sidewalk and replacing it with an eight foot wide planning strip, a six foot wide sidewalk and trees. He explained how the stormwater management system would work on the property.

Speakers from the public:

1. *Robert Durst, 21 DeSellum Avenue*, expressed support for the project to improve the neighborhood, but expressed concern traffic patterns, the existing sewage problems on DeSellum Avenue, and the location of the dumpster.
2. *Suzanne Shayt, 15 DeSellum Avenue*, expressed concern with the proposed large parking lot, location of the dumpster, accountability for maintaining the property, parking spaces required and what is proposed, and the proposed conservation near the rear of her property. She asked to make recommendations for the landscape buffer between her fence line and the proposed parking. Expressed appreciation for the intent to improve the quality of the homes, but asked that the quality of life be kept. The applicant was asked to sit down with Mrs. Shayt.
3. *Michael Cavanaugh, 6 George Street*, express support for the concept plan asked that the plan move forward.
4. *Bob Drzyzgula, 16 Walker Avenue*, questioned whether the house attached to the existing office would go through the historic preservation process before any demolition permit is granted.

There were no other speakers.

The Mayor and City Council and Planning Commissioners questioned the proposed phasing, number of parking space, existing structures on the property and building not shown on the concept plan, façade along 355, traffic study and patterns in relationship to pending projects nearby, and height of the proposed development.

Concerns were expressed not for the rezoning but for taking action on the concept plan before considering any historic structures. It was explained that the CD Zone and other zones does not recognize that the City has historic resources that need to be surveyed, verified, and designated before the concept plan. There were concurrence that the process is not as efficient as it needs to be and asked that it be addressed. Staff concluded that the concept plan is a requirement so that the Mayor and City Council and Planning Commission at a conceptual level can get an idea of the rezoning and what will entailed. In addition, the issues raised can be addressed with conditions in place. Staff also added that the applicant without knowing whether a concept plan or rezoning is agreeable and go through the historic review process can be expensive. The plan had already gone to the Historic Preservation Advisory Committee as a courtesy review.

Dr. Wilson, Jr. concluded by assuring the public that they intent to be good neighbors.

Motion was made by Commissioner Kaufman, seconded by Commissioner Hopkins, that the Planning Commission hold the record on Z-311, open until 5 p.m., Monday, April 27, 2009.

Vote: 3-0

Motion was made by Council Member Marraffa, seconded by Council Member Spiegel, that the Mayor and City Council hold the record on Z-311, open until 5 p.m., Monday, May 11, 2009.

Vote: 4-0

Motion was made by Commissioner Kaufman, seconded by Commissioner Hopkins, that the Planning Commission hold the record on CSP-09-001, open until 5 p.m., Monday, April 27, 2009.

Vote: 3-0

Motion was made by Council Member Marraffa, seconded by Council Member Spiegel, that the Mayor and City Council hold the record on CSP-09-001, open until 5 p.m., Monday, May 11, 2009.

Vote: 3-1 (Opposed: Drzyzgula)

MAYOR KATZ RECESSED THE MAYOR AND COUNCIL MEETING AT 9:10 P.M.
FOR A HISTORIC DISTRICT COMMISSION MEETING. THE MAYOR AND
COUNCIL MEETING RECONVENED AT 9:12 P.M.

X. ORDINANCES, RESOLUTIONS, AND REGULATIONS

A. Resolution for the Residential Collection of Recyclables

This resolution authorized the City Manager to award a contract for the residential collection of recyclables in the City of Gaithersburg in accordance with the bid documents to Unity Disposal & Recycling, LLC., 14862 Old Gunpowder Road, Laurel, Maryland 20707, in the amount of Five Hundred Eighty Thousand Dollars (\$580,000); said funds to be expended from the Operating Budget. This contract will not begin until July 1, 2009.

Motion was made by Council Member Marraffa, seconded by, Council Member Spiegel, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO AWARD A CONTRACT FOR THE RESIDENTIAL COLLECTION OF RECYCLABLES IN THE CITY OF GAITHERSBURG EFFECTIVE JULY 1, 2009 (Resolution No. R-22 -09), be approved.

Vote: 4-0

B. Introduction of an Ordinance to Award a Cable Franchise to Verizon Maryland, Inc.

Assistant City Manager Tomasello stated that the City Code provides that a cable system may not be installed or operated in the City without obtaining a cable franchise from the Council. Verizon Maryland, Inc. requested that the City award a franchise to it in accordance with the terms and conditions of a Cable Franchise Agreement. The proposed Cable Franchise Agreement with Verizon grants a cable franchise on a nonexclusive basis as required by Section 6-4 of the City Code and is similar to the existing cable franchises approved by the City in terms of costs and services. Staff recommended the Mayor and City Council conduct a public hearing on April 20, 2009.

Motion was made by Council Member Spiegel, seconded by, Council Member Sesma, that AN ORDINANCE TO AWARD A CABLE FRANCHISE TO VERIZON MARYLAND, INC., PURSUANT TO SECTION 6-4 OF THE CITY CODE, be introduced.

Vote: 4-0

XI. POLICY DISCUSSION**A. T-389**

Planner Robinson stated that the proposed amendment would provide an additional development standard in the R-90 zone to limit the amount of impervious area found the front yard. A joint public hearing for T-389 was held on July 7, 2008. Modified language had been incorporated per the direction of the Council and Commission. The amendment provides two methodologies depending on the size of the lot and would not apply to those properties reviewed under a Historic Area Work Permit. The purpose for the two methodologies is to address the atypical lot size scenarios found within the R-90 Zone and minimize both the physical and visual impacts of any impervious areas. The Planning Commission recommended adoption during its March 4, 2009 meeting and the Council record closed at 5 p.m. on March 11, 2009. Staff was thanked for their efforts.

Motion was made by Council Member Sesma, seconded by, Council Member Drzyzgula, that **T-389**, AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE (CITY ZONING ORDINANCE), ARTICLE III, ENTITLED, "REGULATIONS APPLICABLE TO PARTICULAR ZONES," DIVISION 2, ENTITLED, "R-90 ZONE, MEDIUM DENSITY RESIDENTIAL," § 24-32, ENTITLED, "DIMENSIONAL RESTRICTIONS," TO MODIFY SUBSECTION (D) TO ESTABLISH NEW STANDARDS FOR IMPERVIOUS AREAS IN FRONT AND SIDE YARDS (Ordinance No. O-2-09), be approved.

Vote: 4-0

B. MP-2-08, Municipal Growth Element, an Amendment to the 2003 Master Plan

Planner Robinson stated that the Municipal Growth Element will serve as the framework and projector of future growth rates and needs over the next 20-30 years. Specific land use, zoning, and infrastructure needs will continue to be addressed in the Land Use and Community Facilities Elements. The Municipal Growth Element will support the policies and principles of the City, as well as the other Master Plan Elements.

The draft Municipal Growth Element was made available to the public and distributed to the Mayor and City Council and Planning Commission prior to the joint public hearing on December 1, 2008. A joint work session was held on February 9, 2009. The Planning Commission recommended approval for MP-2-08 on March 4, 2009 by resolution PCR-1-09. The Mayor and

City Council record closed on March 20, 2009. During the joint work session staff received guidance regarding the growth areas, maximum expansion limits, density multipliers and adding a preamble statement to address the purpose and intent of the revised document incorporating the changes made.

Concerns were expressed with the high density reflected and the housing unit type percentage breakdown for various growth areas. Planner Robinson stated that there are areas that have a higher percentage ratio for future housing in Gaithersburg, but that would be addressed at the Municipal Growth level. It was stated that the Municipal Growth Element is not endorsing or committing the City to any particular density or housing policy, but gives the City flexibility in the future. Planning Director Ossont stated that there are time constraints and suggested omitting the subsection on housing unit type breakdown and bring it back at a later date. He added that the Element is not designed to be a guide, Master Plan or Land Use Element, but simply for future projections. Staff was asked to show existing City boundaries as bold as potential areas. Staff was directed to put the housing policy at the front of the list when a new land use element comes back.

Motion was made by Council Member Marraffa seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL ADOPTING THE MUNICIPAL GROWTH ELEMENT AMENDMENT TO THE GENERAL PLAN FOR THE CITY OF GAITHERSBURG (Resolution No. R-23-09), be approved.

Vote: 4-0

XII. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 9:44 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Executive Assistant