



Gaithersburg

A CHARACTER COUNTS!

CITY OF GAITHERSBURG
MINUTES OF A REGULAR CITY COUNCIL MEETING
MONDAY, JUNE 1, 2009

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, Sesma and Spiegel. Council Member Absent: Marraffa. Staff present: City Manager Jones, Assistant City Managers Felton and Tomasello, Finance and Administration Director Belton, Planning and Code Administration Director Ossont, Planners Marsh and Robinson, Public Works Operations Director DeBord, Emergency Management Coordinator Lanham, Human Resources Director Daily, Community Services Director Carr, City Attorney Board and Executive Assistant Stokes.

I. PLEDGE OF ALLEGIANCE

The Pledge was led by Gaithersburg's 2009 Junior Mayor Jazmine Yambo, Washington Grove Elementary School.

II. INVOCATION

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

III. ANNOUNCEMENT

Mayor Katz announced that the RCN Cable Services Franchise public hearing has been deferred until June 15, 2009.

IV. APPROVAL OF MINUTES

Motion was made by Council Member Ashman, seconded by Council Member Sesma, that the minutes of the Mayor and Council regular meeting held May 4, 2009, be approved.

Vote: 4-0

Motion was made by Council Member Drzyzgula, seconded by Council Member Sesma, that the minutes of the Mayor and Council budget work session held May 5, 2009, be approved.

Vote: 4-0

Motion was made by Council Member Drzyzgula, seconded by Council Member Sesma, that the minutes of the Mayor and Council budget work session held May 7, 2009, be approved.

Vote: 4-0

V. APPOINTMENTS**A. Resolution Confirming Appointments and Reappointments**

This resolution confirmed the following: **Art in Public Places Committee**, Nora Caplan (reappointment), 17350 Quaker Lane, Sandy Spring, Maryland 20860, two-year term; **Board of Supervisors of Elections**, Wilson Faris (appointment), 711 Hope Lane, 20878, four-year term; **Education Committee**, Mike Bucci (reappointment), 114 Woodland Road, 20877, Elie Eldredge (reappointment), 3 Thornburn Place, 20878, Eileen Shea (reappointment), 209 West Deer Park Road, 20877, and Teresa Wright (reappointment), 20081 Doolittle Street, Montgomery Village, Maryland 20886, two-year terms; **Gaithersburg Senior Council**, Lila Jacob (appointment), 19232 Walters Avenue, Poolesville, Maryland 20837 and Jean Mitchell (appointment), 12308 Bradbury Drive, 20878, two-year terms; and the **Police Chief's Advisory Council**, Clark Day (reappointment), 26 Walker Avenue, 20877 and James Stevens (reappointment), 344 Alfandre Street, 20878, two-year terms.

Motion was made by Council Member Ashman, seconded by, Council Member Sesma, that a RESOLUTION OF THE CITY COUNCIL CONFIRMING APPOINTMENTS AND REAPPOINTMENTS BY THE MAYOR TO THE ART IN PUBLIC PLACES COMMITTEE, BOARD OF SUPERVISORS OF ELECTIONS, EDUCATION COMMITTEE, GAITHERSBURG SENIOR COUNCIL AND POLICE CHIEF'S ADVISORY COUNCIL (Resolution No. R-30-09), be approved.

Vote: 4-0

VI. PRESENTATION**A. Gaithersburg's 2009 Junior Mayor Contest Winner**

Fourth graders in the City of Gaithersburg were encouraged to share what they would do if they were Mayor in a statewide essay contest sponsored by the Maryland Municipal League (MML) and the Maryland Mayors' Association. *This year's theme was:* If you were Mayor, how would you encourage your citizens to get on board and "Go Green"? What programs could you put in place to encourage your citizens to preserve our natural resources?

MML selected one winning essay from each of its 11 regional districts for the statewide contest. This year's winner of the City of Gaithersburg's 2009 Junior Mayor Contest was Jazmine Yambo, from Ms. Haddad's 4th grade class at Washington Grove Elementary School. As the winner, she will have the opportunity to participate with Mayor Sidney Katz at City events throughout the year, and have her essay published on the City's website and in its quarterly newsletter, the Communiqué. The City officially recognized Jazmine for her achievement at the May 4th Mayor and City Council meeting and welcomed her back to read her essay to the public.

VII. PUBLIC APPEARANCES

1. *Dick Lindstrom, 421 Gaither Street*, expressed concern with traffic in Olde Towne Gaithersburg at the intersection of Summit and Diamond Avenues. Suggested prohibiting parking eastbound in Olde Towne; permit right turns on red from W. Diamond onto Summit Avenue; CSX re-engineer the railway crossing; and have a professional engineer re-evaluate the traffic signal timings and pavement markings.
2. *Beth Junium, Board of Directors, Saybrooke HOA*, stated vehicles are not stopping at 4-way stop sign at the intersections of Saybrooke Oaks Boulevard, Bristol Downs Drive and Victory Farm Road in the Saybrooke community. Concern with busy intersections and pedestrian safety. Requested a meeting with staff to discuss further.

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

1. Wished the public a belated Happy Memorial Day and recognized those that serve our country.
2. Announced that the Mayor and City Council of Gaithersburg plan to conduct a closed executive session at City Hall, Monday, June 8, 2009, immediately following the scheduled work session in the Council Chambers. The meeting is proposed to be closed pursuant to Section 10-508(a)(1)(ii), (7) and (8), State Government Article of the Annotated Code of Maryland, to discuss a personnel matter; consult with counsel to obtain legal advice; and to consult with staff about pending or potential litigation. The closed executive session will be conducted pursuant to a motion properly adopted during the session of the Mayor and City Council on Monday, June 8, 2009.

Council Member Ashman

Announced vacancies on the various City Boards, Commissions and Committees. Encouraged citizens to volunteer their services and submit a letter of interest/resume 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 Vice President Sesma

1. Reported the City held a Memorial Day Ceremony on May 30 and stated that it is a time set aside to pay respect to those that serve and their families.
2. Congratulated the upcoming graduates and recognized the parents that helped them along the way.
3. Thanked the City's 2009 Junior Mayor Jazmine Yambo for serving.
4. Congratulated Nancy Navarro on her election to the Montgomery County Council District 4.
5. Announced the ON STAGE summer entertainment series for the City of Gaithersburg. A complete listing is available at www.gaithersburgmd.gov/onstage.

Council Member Drzyzgula

1. Expressed concern with approved projects requesting construction permit extensions. Asked staff to investigate options to promote moving development forward to avoid the negative impact on funds associated with schools, roads and public facilities. Mayor Katz concurred and requested a work session to discuss further.
2. Mentioned the Memorial Day Celebration at Christman Park on May 30.
3. Acknowledged and welcomed Board of Appeals member Richard Knoebel back to the Mayor and City Council meetings. Mr. Knoebel had been ill and unable to attend several meetings.
4. Reported that Amber Commons on West Deer Park Road has agreed to reduce its minimum income for the Moderately Priced Dwelling Unit Program from 60% to 50% of Area Median Income. Those displaced from West Deer Park, Ty Gwynn, Deer Park or Diamond courts Apartments will have first priority for the reduced rate. For more information contact Lousie Kauffmann at 301-258-6310.

Mayor Katz

1. Reported that a statement was read at the City's Memorial Day Ceremony from Senator Ben Cardin and the City later received a statement from Senator Barbara Mikulski. Mayor Katz asked that the statements be available online for the public to read.
2. Announced the following meeting schedule:
 - Animal Control Board interviews on June 8, 2009, beginning at 6:30 p.m.
 - work session, June 8, 2009, to receive a briefing on the I-270 Multi-Modal Corridor Study (including the Corridor Cities Transitway) by representatives of the State Highway Administration and the Maryland Transit Administration.
 - next regular meeting June 15, 2009.

MAYOR KATZ RECESSED THE MAYOR AND COUNCIL MEETING AT 7:59 P.M.
FOR A HISTORIC DISTRICT COMMISSION MEETING. THE MAYOR AND
COUNCIL MEETING RECONVENED AT 8 P.M.

IX. ORDINANCES, RESOLUTIONS, AND REGULATIONS**A. An Ordinance to Adopt the City Budget for the Fiscal Year 2010**

City Manager Jones stated that on Monday, May 4, 2009, a public hearing was held by the Mayor and City Council for the above and a motion was made to close the record on May 22, 2009. Budget work sessions were held May 5 and 7, 2009, and all reported changes have been incorporated into the document. A subsequent event document was presented to the City Council. The ordinance establishes the City budget, which provides a complete financial plan, including anticipated revenues and proposed expenditures for the Fiscal Year 2009-2010. The ordinance also institutes an ad valorem tax on all assessable property within the City of Gaithersburg, Maryland. The ad valorem tax is set at a rate of \$.212 on each \$100 of assessed value of real property and \$.53 on each \$100 of assessed value of personal property. Staff was applauded for preparing the City budget.

Motion was made by Council Member Drzyzgula, seconded by, Council Member Sesma, that AN ORDINANCE TO ADOPT THE CITY BUDGET FOR THE FISCAL YEAR JULY 1, 2009 THROUGH JUNE 30, 2010 AND LEVYING AN AD VALOREM TAX ON ALL ASSESSABLE PROPERTY WITHIN THE CITY OF GAITHERSBURG, MARYLAND (Ordinance No. O-5-09), be approved.

Vote: 4-0

B. Establishing a Constant Yield Tax Rate for the City of Gaithersburg for the Fiscal Year July 1, 2009 through June 30, 2010

In order to comply with state law, a public hearing is required if the tax rate proposed for the fiscal year exceeds the Constant Yield Tax Rate. From year to year, the City's assessable tax base increases, causing the amount of revenue to increase. The City must hold a public hearing to inform citizens of that increase. As projected by the State Department of Assessments and Taxation, the City's assessable base will increase by 2.8 percent in FY 2010. As the City's assessments increase, the tax rate needed to generate the amount of revenue for the prior year decreases. This Constant Yield Tax would ensure that the City's tax revenue would remain flat from FY 2009 to 2010.

Finance and Administration Director Belton stated that the City of Gaithersburg is proposing a tax rate of \$.212, which will exceed the \$.206 Constant Yield Tax Rate. A public hearing was held on May 4, 2009. During the public hearing, the Mayor and City Council voted to close the record on May 22, 2009. Staff requested the Mayor and City Council vote to set the Constant Yield Tax Rate at \$.212 to become effective July 1, 2009.

Motion was made by Council Member Ashman, seconded by, Council Member Drzyzgula, that the CITY COUNCIL VOTE TO SET THE CONSTANT YIELD TAX RATE AT \$.212, TO BECOME EFFECTIVE JULY 1, 2009.

Vote: 4-0

C. Resolution to Purchase Two (2) 2009 One Ton Dump Trucks

This resolution authorized the City Manager to enter into a contract to purchase two (2) 2009 Chevrolet One Ton Dump Trucks from Criswell Chevrolet, 503 Quince Orchard Road, Gaithersburg, Maryland 20878, in the amount of One Hundred Twelve Thousand Two Hundred Forty Dollars (\$112,240); said funds to be expended from the Vehicle and Equipment Replacement Fund and the FY 09 Operating Budget.

Motion was made by Council Member Sesma, seconded by, Council Member Spiegel, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT TO PURCHASE TWO (2) 2009 ONE TON DUMP TRUCKS (Resolution No. R-31-09), be approved.

Vote: 4-0

D. Resolution to Purchase One (1) 2009 Hook Loader Truck

This resolution authorized the City Manager to enter into a contract to purchase one (1) 2009 Chevrolet Hook Loader Truck from Criswell Chevrolet, 503 Quince Orchard Road, Gaithersburg, Maryland 20878, in the amount of One Hundred Twenty-Four Thousand Eight Hundred Forty-Nine Dollars (\$124,849); said funds to be expended from the Vehicle and Equipment Replacement Fund.

Motion was made by Council Member Sesma, seconded by, Council Member Ashman, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO ENTER INTO A CONTRACT TO PURCHASE ONE (1) 2009 HOOK LOADER TRUCK (Resolution No. R-32-09), be approved.

Vote: 4-0

E. Resolution to Purchase and Install Playground Equipment for Green Park

The existing playgrounds equipment at Green Park is approximately sixteen years old. The playground equipment needs to be replaced due to its age and to bring it into compliance with the current guidelines set forth by the Consumer Product Safety Commission and the standards developed by the American Society for Testing and Materials.

This resolution authorized the City Manager to enter into a contract to purchase and install playground equipment for Green Park with Playground Specialists Inc., 17352 North Seton Avenue, Emmitsburg, Maryland 21727, in an amount not to exceed One Hundred Fifty Thousand Dollars (\$150,000); said funds to be expended from the playground equipment replacement fund.

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 ENTER INTO A CONTRACT TO PURCHASE AND INSTALL PLAYGROUND EQUIPMENT FOR GREEN PARK (Resolution No. R-33-09), be approved.

Vote: 4-0

F. Introduction of the Personnel Rules & Regulations for the City of Gaithersburg

Following the recent adoption of amendments to the City Charter and Personnel Ordinance by the Mayor and City Council on May 4, 2009 (to be effective July 1, 2009), Personnel Rules & Regulations governing the employees of the City were developed at the direction of the City Manager. The Personnel Rules & Regulations, entitled "City of Gaithersburg Personnel Rules & Regulations Manual," are set forth in Attachment A to the Resolution. The rules, regulations, policies, and procedures contained in the Manual replace and supersede all previous versions of the same. A draft of the Manual was made available to City staff on Friday, May 15, 2009; and staff comments were taken into consideration in preparing the document presented for introduction.

Section 59 of the City Charter provides that the Mayor and Council have the power to adopt personnel regulations. Additionally, pursuant to Section 2-10 of the City Code, which sets forth procedures regarding adoption of regulations, staff is requesting introduction of the resolution and publication of the resolution and Rules & Regulations on the City's website with an opportunity for public comment until 5 p.m. on Monday, June 8, 2009.

Staff anticipates final action on the Resolution and Rules & Regulations by the Mayor and City Council on June 15, 2009, with the Personnel Rules & Regulations to be effective on July 1, 2009, concurrent with the amended Personnel Ordinance and Fiscal Year 2010.

Motion was made by Council Member Ashman, seconded by, Council Member Spiegel, that RESOLUTION OF THE MAYOR AND CITY COUNCIL ADOPTING THE PERSONNEL RULES & REGULATIONS OF THE CITY OF GAITHERSBURG, be introduced.

Vote: 4-0

G. Resolution for Contractual Support to Develop Continuity of Operations Plans

The Metropolitan Washington Council of Governments (COG) offered FY2007 Urban Area Security Initiative (UASI) funds from the U.S Department of Homeland Security to local governments for emergency preparedness, response and recovery. The Gaithersburg Police Department received \$250,000 to be used for contractual services. The University of Maryland, Baltimore, Center for Health and Homeland Security (UM-CHHS) will be contracted to develop Continuity of Operations Plans (COOP) for Gaithersburg, Rockville, Takoma Park, Chevy Chase Village and the Montgomery County Division of the Maryland-National Capital Park & Planning Commission (M-NCPPC).

The UM-CHHS is currently under contract with Montgomery County and is developing their COOP. This will ensure the efficient integration of the municipal COOP's with the plan for Montgomery County. These plans will ensure continuous performance of essential functions across a wide range of potential emergencies and will coordinate with COOP plans for Montgomery County government agencies and other stakeholders. The UM-CHHS, while working with the respective jurisdictions and M-NCPPC, will also conduct tabletop exercises to validate the plans and write after action reports based on the results of those exercises. The use of UM-CHHS will also ensure completion of the project within the limited timeframe. This funding comes from the end of the cycle resources and must be spent by December 31, 2009.

Emergency Management Coordinator Lanham explained the difference between the plans for the next agenda items. The Emergency Operations Plan (EOP) is basically how the City government functions in an emergency and the Continuity of Operations Plan (COOP) is what the City needs to do to continue to provide those services to functions in such emergency.

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 EXECUTE A CONTRACT ACCEPTING A METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS GRANT FOR CONTRACTUAL SUPPORT TO DEVELOP CONTINUITY OF OPERATIONS PLANS (Resolution No. R-34-09), be approved.

Vote: 4-0

H. Resolution to Execute a Contract for Continuity of Operations Plans Development

This resolution authorized the City Manager to execute a contract with the University of Maryland, Baltimore, Center for Health and Homeland Security for contractual support to develop Continuity of Operations Plans, in the amount of Two Hundred Forty-Two Thousand Nine Hundred Thirteen Dollars (\$242,913); said funds to be expended from the FY 09 Contingency Fund. Council

Council Vice President Sesma requested a timeline schedule from staff for the COOP and EOP to meet the spending deadline of December 1, 2009.

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 EXECUTE A CONTRACT WITH THE UNIVERSITY OF MARYLAND, BALTIMORE, CENTER FOR HEALTH & HOMELAND SECURITY (UM-CHHS) FOR CONTINUITY OF OPERATIONS PLANS DEVELOPMENT (Resolution No. R-35-09), be approved.

Vote: 4-0

I. Resolution to Execute a Memorandum of Understanding for Continuity of Operations Plan Development

The Memorandum of Understanding (MOU) will ensure that all work is completed and consistent with the terms of the COG grant.

Motion was made by Council Member Spiegel, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN GAITHERSBURG, ROCKVILLE, TAKOMA PARK, CHEVY CHASE VILLAGE AND THE MARYLAND-NATIONAL CAPITOL PARK & PLANNING COMMISSION FOR CONTINUITY OF OPERATIONS PLAN DEVELOPMENT (Resolution No. R-36-09), be approved.

Vote: 4-0

J. Resolution Accepting a Metropolitan Washington Council of Governments Grant for Contractual Support to Develop Emergency Operations Plans

This resolution authorized the City Manager to execute a contract with the Metropolitan Washington Council of Governments to accept emergency planning grant funds in the amount of Two Hundred Twenty-Five Thousand Four Hundred Two Dollars (\$225,402), for contractual support to develop Emergency Operations Plans.

Motion was made by Council Member Sesma, seconded by, Council Member Drzyzgula, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT ACCEPTING A METROPOLITAN WASHINGTON COUNCIL OF GOVERNMENTS GRANT FOR CONTRACTUAL SUPPORT TO DEVELOP EMERGENCY OPERATIONS PLANS (Resolution No. R-37-09), be approved.

Vote: 4-0

K. Resolution to Execute a Contract with Dewberry & Davis, LLC. for Emergency Operations Plan Development

This resolution authorized the City Manager to execute a contract with Dewberry & Davis, LLC. for contractual support to develop Emergency Operations Plans, in the amount of Two Hundred Twenty-Five Thousand Four Hundred Two Dollars (\$225,402); said funds to be expended from the FY 09 Contingency Fund.

Motion was made by Council Member Ashman, seconded by, Council Member Drzyzgula, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A CONTRACT WITH DEWBERRY & DAVIS, LLC. FOR EMERGENCY OPERATIONS PLAN DEVELOPMENT (Resolution No. R-38-09), be approved.

Vote: 4-0

L. Resolution to Execute a Memorandum of Understanding Between Gaithersburg, Rockville, Takoma Park and Chevy Chase Village for Emergency Operations Plan Development

Motion was made by Council Member Spiegel, seconded by, Council Member Sesma, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL AUTHORIZING THE CITY MANAGER TO EXECUTE A MEMORANDUM OF UNDERSTANDING BETWEEN GAITHERSBURG, ROCKVILLE, TAKOMA PARK AND CHEVY CHASE VILLAGE FOR EMERGENCY OPERATIONS PLAN DEVELOPMENT (Resolution No. R-39-09), be approved.

Vote: 4-0

M. Resolution Codifying and Updating a Schedule of Fees, Charges, Fines and Expenses as Provided for in the Ordinances of the City of Gaithersburg

Planning and Code Administration Director Ossont stated that during this year's annual review, staff noted several fees associated with residential and commercial plan review and building permits were not comparable to the adjoining jurisdictions of Rockville and Montgomery County. As such, staff proposed the following increases to bring the City in line with the above mentioned jurisdictions:

- Multi-Family Rental Licenses
- Fee for Non-Resident Dog Exercise Area Membership
- New Residential/Commercial Plan Review and Building Permit Fees
- Zoning Fees for Schematic Development Plans
- Fire Protection Review and Inspection Fees

Mayor Katz asked staff to ensure that the City's Budget reflect the new fees.

Motion was made by Council Member Ashman, seconded by, Council Member Drzyzgula, that a RESOLUTION CODIFYING AND UPDATING A SCHEDULE OF FEES, CHARGES, FINES AND EXPENSES AS PROVIDED FOR IN THE ORDINANCES OF THE CITY OF GAITHERSBURG (Resolution No. R-40-09), be approved.

Vote: 4-0

X. PUBLIC HEARING

A. An Emergency Ordinance to Amend Chapter 6C Entitled "Elections" of the City Code

Assistant City Manager Felton stated that on May 19, 2008 the Mayor and City Council appointed the Ad Hoc Elections Ordinance Review Committee with the charge to review the City's election ordinance and to provide recommendations to improve our elections process. On April 27, 2009, the staff presented the Ad Hoc Committee's report. During the work session the Mayor and City Council concurred with the committee's recommendations and directed staff to bring an ordinance forward for introduction. The City Council voted to introduce this ordinance on May 18, 2009 Mayor and City Council meeting.

Staff was asked to correct and complete the sentence to Section 6C-10, Failure to file report. Also, the section referred to candidates but not the reporting of committees. Mr. Felton stated that the reporting of committees is referred to in Section 6C-19, Violations. Other questions which were given to the City Attorney to address regarding bank accounts and co-mingling of funds set up by candidates. City Attorney Board stated that no requirement is proposed in the above ordinance. Additional language to amend the ordinance would require another public hearing. Other issues discussed were the definition of an election cycle and an established

monetary cap for donors; transferring of funds from municipal election accounts to another candidate, possibly other levels of government; regulations for the usage of campaign funds; and the report of violations, appeal period, continuance of operation plan, conviction by the court of law, and the removal from office.

Speaker from the public:

Jeremy Colbert, 23 Cedar Avenue, Sunlight Foundation, expressed support for the ordinance. He suggested ways to improve the expenditure reporting, filing and contribution sections of the ordinance.

There were no other speakers from the public.

Motion was made by Council Member Ashman, seconded by, Council Member Spiegel, that An Emergency Ordinance to Amend Chapter 6C Entitled "Elections" of the City Code, be held open until 5 p.m. on June 10, 2009.

Vote: 4-0

XI. POLICY DISCUSSION AND STAFF GUIDANCE

- A. Z-309 – An Ordinance to Rezone 3.6859 Acres of Land, Currently Known as 12-26 South Frederick Avenue That Includes Parcels N323 & N271, Known as Executive Gardens Apartments, in the City of Gaithersburg, From the Existing R-20 (Medium Density Residential) Zone to the CD (Corridor Development) Zone, in Accordance With §24-196 (Map Amendments) and §24-160G.6 (Procedure for Application and Approval) of the City Code**
- B. SDP-08-005 - Resolution of the Mayor and City Council Granting Approval of Schematic Development Plan SDP-08-005, Known as Suites 355, for Approximately 3.6859 Acres of Property Zoned Corridor Development (CD)**
- C. Resolution of the Mayor and City Council Granting Approval of a Height Waiver as Part of Schematic Development Plan SDP-08-005, Known as Suites 355, for Approximately 3.6859 Acres of Property Zoned Corridor Development (CD)**

Planner Marsh stated that staff has consolidated the policy discussion on the above applications, including a height waiver. The applicant, Keystone REI, represented by Mr. Jody Kline of Miller, Miller and Canby, requests the rezoning of property located at the intersection of South Frederick Avenue (MD 355) and the State Highway Administration (SHA) service ramp, from the R-20 (Medium Density Residential) Zone to the CD (Corridor Development) Zone.

A requested map amendment to the CD zone requires the concurrent submission of either a concept plan or schematic development plan per §24-160G.6 (Procedure for application and approval) of the City Code, in conjunction with rezoning application Z-309. The subject site lies within the Fairgrounds Commercial District of the Frederick Avenue Corridor Special Study Area Master Plan. The Master Plan states that, "Owners of properties not comprehensively rezoned are encouraged to apply for rezoning to the CD Zone in order to meet the goals and objectives of the Frederick Avenue Corridor Master Plan." The applicant proposed to redevelop 85 garden style apartments. The proposed plan would include a 263-unit multiple family building with underground parking. A joint public hearing was held on March 16, 2009. The Planning Commission recommended approval of Z-309 with no conditions and the approval of SDP-08-005 with 11 conditions at their meeting of May 6, 2009. The Council's record closed at 5:00 pm May 15, 2009.

As part of the proposed application, the applicant is seeking a height waiver for the multiple-family complex not to exceed five (5) stories or sixty (60') feet, in accordance with §24-160G.5(a)(2) of

the City Code. Within the CD zone, height waivers may only be granted when providing amenities to further enhance the CD zone, when the additional height is necessary to implement the master plan, and the additional height will be compatible with the existing and proposed land uses. The waiver must be granted concurrently with any schematic development plan approval.

Improvements to the project were noted; however, concern was expressed with the lack of parking, allocation of parking spaces, request for any parking waiver, the impact on the neighborhood, building footprint, type housing, number of housing units, and access to the site. Support was expressed for the project and the flexibility of available parking. Due to the concerns, it was suggested to reopen the record on the above applications. It was reiterated that staff had been working with the applicant for years and is comfortable with the parking and moving forward to final site plan to work out details. The suggestion was made to place time limit on granting a waiver for both parking and height. City Attorney Board stated that a recommendation of a five (5) year time limit can be made on the parking waiver, but the Planning Commission would make the final decision. A strong recommendation was made by the Mayor and City Council to place five (5) year time limits on the parking and height waivers.

Motion was made by Council Member Ashman, seconded by, Council Member Sesma, that Z-309, ORDINANCE TO REZONE 3.6859 ACRES OF LAND, CURRENTLY KNOWN AS 12-26 SOUTH FREDERICK AVENUE THAT INCLUDES PARCELS N323 & N271, KNOWN AS EXECUTIVE GARDENS APARTMENTS, IN THE CITY OF GAITHERSBURG, FROM THE EXISTING R-20 (MEDIUM DENSITY RESIDENTIAL) ZONE TO THE CD (CORRIDOR DEVELOPMENT) ZONE, IN ACCORDANCE WITH §24-196 (MAP AMENDMENTS) AND §24-160G.6 (PROCEDURE FOR APPLICATION AND APPROVAL) OF THE CITY CODE (Ordinance No. O-6-09), be approved.

Vote: 4-0

Motion was made by Council Member Speigel, seconded by, Council Member Drzyzgula, that SDP-08-005, RESOLUTION OF THE MAYOR AND CITY COUNCIL GRANTING APPROVAL OF SCHEMATIC DEVELOPMENT PLAN SDP-08-005, KNOWN AS SUITES 355, FOR APPROXIMATELY 3.6859 ACRES OF PROPERTY ZONED CORRIDOR DEVELOPMENT (CD) (Resolution No. R-41-09), be approved with the eleven (11) conditions as drafted with an additional recommendation that the Planning Commission consider at site plan, that the parking waiver be have a five (5) year time limit.

Vote: 3-1 (Ashman)

Motion was made by Council Member Sesma, seconded by, Council Member Ashman, that a RESOLUTION OF THE MAYOR AND CITY COUNCIL GRANTING APPROVAL OF A HEIGHT WAIVER AS PART OF SCHEMATIC DEVELOPMENT PLAN SDP-08-005, KNOWN AS SUITES 355, FOR APPROXIMATELY 3.6859 ACRES OF PROPERTY ZONED CORRIDOR DEVELOPMENT (CD) (Resolution No. R-42-09), be approved with the recommendation of a five (5) year time limit with the condition that the height waiver shall be valid for any structure constructed within five (5) years from the date of adoption.

Vote: 4-0

- D. Z-311 - An Ordinance to Rezone 1.2167 Acres of Land, Currently Known as Parcels P 387; P 388; & P 424, the Wilson Properties, in the City of Gaithersburg, From the Existing R-90 (Medium Density Residential) Zone to the CD (Corridor Development) Zone, in Accordance With §24-196 (Map Amendments) and §24-160G.6 (Procedure for Application and Approval) of the City Code**
- E. CSP-09-001 - Resolution of the Mayor and City Council Granting Approval of Concept Site Plan CSP-09-001, Known as the Wilson Properties, for Approximately 2.71 Acres of Property Zoned Corridor Development (CD)**

Planner Robinson stated that staff has consolidated the policy discussion on the above applications. Application Z-311 is requesting to rezone 1.2 acres of land from the R-90 (Medium Density Residential) Zone to the CD (Corridor Development) Zone. Application CSP-09-001 is requesting a redevelopment of 2.71 acres of land. The proposed plan includes the construction of a two-story office building and the conversion of two buildings from residential to office uses. The properties lie within the Fairgrounds Commercial District of the Frederick Avenue Corridor Special Study Area Master Plan. A consolidated joint public hearing was held April 6, 2009, with the City Council record closing at 5 p.m. on May 11, 2009. The Planning Commission gave a recommendation of approval on Z-311 at their May 6, 2009 meeting, with no conditions. A recommendation of approval was also given on CSP-09-001, with eight conditions and further recommended that the applicant be allowed to proceed to the Planning Commission with a preliminary site plan rather than submit a schematic development plan. Since the Planning Commission recommendation, staff has continued to work with the applicant to explore all opportunities in regards to the existing structures. As a result, an additional condition had been added and was read into the record as follows:

- Should the Historic District Commission determine that 206 South Frederick Avenue is historically significant and should be relocated to 13 DeSellum Avenue finding the structure at 13 DeSellum Avenue not significant, the applicant shall withdraw any application for designation with the existing structure at 13 DeSellum. Submit an application to demolish such structure at 13 DeSellum prior to the subsequent submission of either a schematic development plan or preliminary/final site plan. Submit a future historic area work permit for the relocation of the original structure located at 206 South Frederick Avenue to 13 DeSellum.

Several Council members agreed with the rezoning, but expressed concern with voting on the concept site plan without the review of the house at 13 DeSellum Avenue going through the necessary procedures for historic designation by the Historic Preservation Advisory Committee (HPAC), Planning Commission and Historic District Commission. It was suggested that the record be reopened to consider the historic aspects of the site and not make a decision based on the information submitted. Staff stated that the rezoning and concept site plan would have to be done together; the applicant would have to receive all the determination from the historic designation process before moving on to the next step of schematic development plan or final site plan.

Dr. Robert Wilson, Jr., 9 DeSellum Avenue, stated the project will remain essentially the same if condition #3 is adopted with the Fulks House and the house at 13 DeSellum Avenue both needing to be renovated. He stated that demolishing 13 and relocating 206 to 13 is feasible.

It was stated that the fate of the homes should not be decided under the rezoning and concept site plan process and that the application is incomplete because it was not addressed in the plan. An attempt to address the existing resources should be made rather than speculating. Staff suggested revising condition #3 rather than reopening the record.

City Attorney Board stated that the Mayor and Council should make their determination not by the recommendation of the HPAC, but what is contained in the Master Plan and how it ties into the

subject property.

Jody Kline, Miller, Miller and Canby, on behalf of the applicant proposed that the City Council defer action on the above applications, reopened the record, allow the applicant to go before HPAC, and return to the Mayor and City Council to provide complete information.

Motion was made by Council Member Sesma, seconded by, Council Member Drzyzgula, that record on both Z-311 and CSP-09-001, be reopened and held open indefinitely.

Vote: 4-0

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

A. Guidance on a Proposed Amendment of Chapter 24 of the City Code (City Zoning Ordinance), Article XVI, Entitled "Affordable Housing Requirements", to Modify the Income Restrictions for Participation in the Program

Assistant City Manager Felton stated that the City's Affordable Housing Ordinance was adopted in 2006, and eligibility for MPDUs was set for incomes between 60 percent and 80 percent of Area Median Income (AMI). Eligibility for Work Force Housing Units (WFHUs) is limited to incomes between 80 percent and 120 percent AMI. The City's first rental MPDUs are now available for occupancy at Amber Commons and staff is finding that the income limits for market-based units are actually lower than the income units for MPDUs. Staff is recommending that the City lower the minimum income for a rental MPDU to 50 percent of AMI. Lowering the minimum income would require both an amendment to the above mentioned ordinance and Affordable Housing Regulations. Staff was given guidance to proceed and schedule the text amendment for public hearing.

B. Guidance on Proposed Amendments to Section 32 of the City Charter Entitled "Election Places; Ballots or Voting Machines; Hours of Polls"

Assistant City Manager Felton stated that on May 19, 2008, the Mayor and City Council appointed an Ad Hoc Elections Review Committee to review and provide recommendations on changes to the City's Elections Ordinance. The majority of the Committee's recommendations were related to campaign finance issues; however, the Committee had one recommendation that requires a Charter Amendment. The amendment would give the Board of Supervisors of Elections the authority to extend the hours the polls are open in the event of extraordinary circumstances on Election Day. Staff was given guidance to proceed and schedule the charter amendment for public hearing.

XIII. ADJOURNMENT

There being no further business to come before this session of the City Council, the meeting was duly adjourned at 10:20 p.m.

Respectfully submitted,

Doris R. Stokes

Doris R. Stokes
Executive Assistant