
STAFF COMMENTS FOR PLANNING COMMISSION

MEETING DATE: May 7, 2008

TEXT AMENDMENT: **T-384**

TITLE: AMEND § 24-167B, ENTITLED, "BED AND BREAKFAST," TO AMEND §§ 24-167B(4) AND 24-167B(7) TO ALLOW SERVING MEALS OTHER THAN BREAKFAST AND HOSTING BUSINESS MEETINGS OR RECEPTIONS FOR NON-GUESTS BY SPECIAL EXCEPTION

REQUEST: **RECOMMENDATION TO M&CC**

ADDRESS: N/A

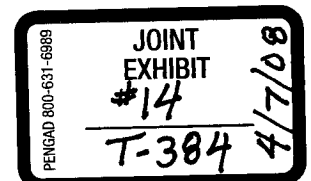
ZONE: N/A

APPLICANT/REPRESENTATIVE/ATTORNEY/DEVELOPER: (as applicable)

STAFF PERSON: Greg Ossont, Director
Planning and Code Administration

Enclosures:

Staff Comments
Index of Memorandum and Exhibits (In **Bold**)



STAFF COMMENTS

Staff received a request to review the section of the zoning ordinance that applies to Bed and Breakfast establishments. Specifically to review the time restrictions for serving meals [§ 24-167B(7)] as well as potential ancillary uses under the Bed and Breakfast use. Upon review, staff noted that permitting events or functions such as afternoon teas or similar gatherings would necessitate a text amendment to the existing code. At the March 3, 2008, meeting, the Mayor and City Council directed staff to prepare a text amendment and schedule a public hearing.

A joint public hearing, on T-384, was held on April 7, 2008. The Planning Commission record was held open until April 25, 2008, and it is now closed. There are 13 exhibits in the record including background material from the joint public hearing. Enclosed are the list of exhibits, the Draft Ordinance (see Exhibit #10) and the transcript of the public hearing (see Exhibit #13.)

This is a proposal to amend Chapter 24 of the City Code (City Zoning Ordinance), entitled "Zoning," Article IV, entitled, "Supplementary Zone Regulations," §24-167B, entitled, "Bed and Breakfast," to amend §§ 24-167B(4) and 24-167B(7) so as to allow the serving of meals other than breakfast and the hosting of business meetings or receptions for non-guests by Special Exception. Currently, the City has one Bed and Breakfast in operation.

These proposed ancillary uses for the Bed and Breakfast convert the review of this use for use and occupancy permit from Residential Building Codes to Commercial Building Codes. Both the Commercial Plans Reviewer and the Fire Marshal have inspected the current Bed and Breakfast and have noted minor changes that would have to be made to allow a Use and Occupancy Permit for the proposed uses.

Special Exception Process – A petition under this proposed regulation would follow the current procedures for a special exception found in §§ 24-187(b), 24-188, and 24-189 of the City of Gaithersburg Code. The applicant would work with staff to ensure that the petition is complete. As part of the petition process, staff would advise the applicant to meet with both the Commercial Plans Reviewer and the Fire Marshal to learn the code requirements and evaluate the costs of compliance with the code prior to applying for the special exception. Once the petition is considered complete, staff would schedule a Planning Commission recommendation meeting and a Board of Appeals public hearing. Notification of both of these meetings would be sent to all abutting and confronting property owners and the property would be posted with the date of the Board of Appeals meeting. The Board of Appeals may grant approval subject to conditions related to items such as: the number of participants, the days and hours of operation.

Parking Review Process – Currently, the parking for the Bed and Breakfast is regulated by § 24-167B(9), which gives authority to the City Manager or his designee or the Board of Appeals to review. The parking calculation utilized by the City for Bed and Breakfasts is the same as the parking requirement for rooming houses as stated in the

Parking Ordinance (one space per bedroom and one space per 400 feet of assembly area.) On-street parking is allowed to be used subject to the conditions of § 24-167B(9). Evaluation of the parking would be a part of the special exception process and the Planning Commission would have the opportunity to review this on the date of their recommendation. The petitioner would be required to submit appropriate evidence, parking surveys and counts, to support the request. Staff would advise both the applicant and the Commission as to whether or not the request has sufficient evidence to support the parking needs. This would be done as part of the review of the petition by staff prior to scheduling the reviews by the Planning Commission and the Board of Appeals.

This item is on your agenda for a transmittal of a recommendation to the Mayor and Council.

INDEX OF MEMORANDA

T-384

1. Application
2. Draft Ordinance
3. Mayor and City Council Cover sheet- Staff Guidance- March 3, 2008
4. Memorandum with attachments, dated February 27, 2008, from Greg Ossont, Director of Planning and Code Administration to the Mayor and City Council re: Proposed Text Amendment
5. Letter to *Gaithersburg Gazette* dated March 13, 2008, requesting a Legal Ad for March 19 and 26, 2008, issues. Fax and email printed communications are same
6. Notice of April 7, 2008, joint public hearing to interested parties on March 20, 2008. Labels for parties notified
7. Certified copy of the Notice of Public Hearing as it appeared in the March 19 and 26, 2008, issues of the Gaithersburg Gazette
8. Memorandum, dated April 2, 2008, from Greg Ossont, Director of Planning and Code Administration to the Mayor and City Council & Planning Commission re: Proposed Text Amendment
9. Mayor and Council Cover Sheet for April 7, 2008, Joint Public Hearing
10. **Revised Ordinance per April 7, 2008, Joint Public Hearing Discussion**
11. **Letter, received April 8, 2008, from Joan Berkowitz, 14 Park Avenue, supporting the text amendment**
12. **Minutes of the March 3, 2008, Mayor & City Council Meeting**
13. **Transcript of the April 7, 2008 Joint Public Hearing**
14. **Planning Commission Cover Sheet**

Ordinance No. _____

AN ORDINANCE TO AMEND CHAPTER 24 OF THE CITY CODE,
ENTITLED, "ZONING," ARTICLE IV, ENTITLED, "SUPPLEMENTARY ZONE
REGULATIONS," §24-167B, ENTITLED, "BED AND BREAKFAST,"
TO AMEND §§ 24-167B(4) AND 24-167B(7) SO AS TO ALLOW
SERVING MEALS OTHER THAN BREAKFAST AND
HOST BUSINESS MEETINGS OR RECEPTIONS
FOR NONGUESTS BY SPECIAL EXCEPTION

Text Amendment T-384

BE IT ORDAINED, by the Mayor and City Council of the City of Gaithersburg, Maryland, in public meeting assembled, that Chapter 24 of the City Code (City Zoning Ordinance), Article IV, § 24-167B is amended as follows:

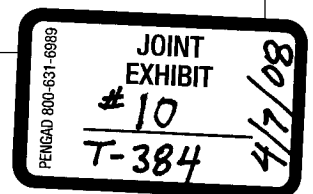
Sec. 24-167B. Bed and breakfast.

A bed and breakfast use may be established in any single-family detached dwelling units in any zoning district, subject to the following requirements:

- (1) The building containing such use must either be designated as a historic site or located within a historic district and/or listed on the city's inventory of historic resources. Additions or changes to the exterior which are not detrimental to the historic character or appearance of a building or its appurtenances or streetscape may be approved by the historic district commission.
- (2) The minimum area of the lot or parcel must be nine thousand (9,000) square feet, but not less than the minimum lot or parcel area of the zone.
- (3) Where the use contains not more than two (2) guest bedrooms, the use shall be deemed a home occupation, subject to the standards and requirements in Article X of this chapter, with the exception that signage shall conform to paragraph (8) below, and either consent shall be evidenced from all abutting and confronting property owners, or where such consent cannot be obtained, the use may be established as a special exception pursuant to subsection (4) of this section.
- (4) Where the use contains [more than] two (2) or more guest bedrooms, and serves light meals, coffees or teas past 12:00 p.m., and/or hosts small gatherings such as business meetings or receptions for non-guests, the

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Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by Amendment.
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.



use shall be established as a special exception, subject to approval by the city board of appeals pursuant to the procedures and requirements contained in Article VII of this chapter relating to special exceptions. Provided, however, where no exterior building modifications are proposed and only minor external site modifications are requested, the board or its designee may waive the requirements for filing of a site plan and/or exterior elevation drawings. Fees for this special exception shall be established by resolution of the city council. All applicable building and fire code requirements shall apply.

- (5) A guest must not remain in a bed and breakfast lodging for more than fourteen (14) days within a thirty-day period. In order to preclude adverse neighborhood impact, the city manager or his designee, in the case of a home occupation use, or the board of appeals in the case of a special exception use, may limit the number of guests who may be accommodated at any one time or the number of visits in any one-month period.
- (6) The owner of the premises must maintain a register of all guests, listing the guests' names, dates of arrival and departure, room number and number of occupants per room. If requested, this register must be made available to appropriate city officials.
- (7) Breakfast is the only meal that may be served to a guest, and it must not be served later than 12:00 noon, and it must not be served to any other nonresident of the premises, except as approved by special exception. Food service shall, where applicable, be subject to health regulations and inspection. No separate cooking areas or appliances shall be maintained other than in the main kitchen.
- (8) One nonilluminated sign, not exceeding three (3) square feet in size, may be placed on the property. Limited indirect lighting must be approved by the city manager or his designee. Signs in excess of three (3) square feet may only be approved by the commission. No window signs shall be permitted.
- (9) Off-street parking must be provided in accordance with the requirements of section 24-219; provided, however, in the case of a home occupation or special exception, the city manager or the board of appeals, as the case may be, may allow the use of on-street parking upon finding that:
 - (a) Such on-street parking will not have an adverse impact on neighboring residents; and

Boldface	<i>Heading or defined term.</i>
<u>Underlining</u>	<i>Added to existing law by original bill.</i>
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<u>Double underlining</u>	<i>Added by Amendment.</i>
[[Double boldface brackets]]	<i>Deleted from existing law or the bill by amendment.</i>
***	<i>Existing law unaffected by bill.</i>

- (b) The creation of required off-street parking would be detrimental to the historic character of the residential building, its environmental appurtenances, or the historic district.

ADOPTED, this ___ day of _____, 2008, by the City Council of Gaithersburg, Maryland.

_____, Mayor and
President of the Council

DELIVERED to the Mayor of the City of Gaithersburg, Maryland, this ___ day of _____, 2008. Approved by the Mayor of the City of Gaithersburg this ___ day of _____, 2008.

SIDNEY A. KATZ, Mayor

THIS IS TO CERTIFY that the foregoing ordinance was adopted by the City Council of Gaithersburg, in public meeting assembled, on the ___ day of _____, 2008, and that the same was approved by the Mayor of the City of Gaithersburg on the ___ day of _____, 2008. This Ordinance will become effective on the ___ day of _____, 2008.

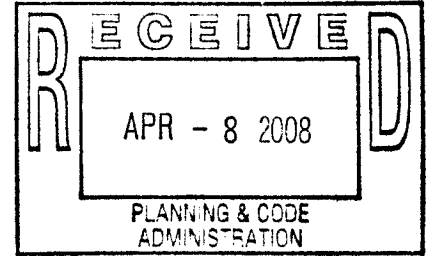
JAMES D. ARNOULT, Acting City Manager

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Heading or defined term.
Added to existing law by original bill.
Deleted from existing law by original bill.
Added by Amendment.
Deleted from existing law or the bill by amendment.
Existing law unaffected by bill.

Joan Berkowitz

14 Park Ave
Gaithersburg, MD 20877



April 7, 2008

City of Gaithersburg
Mayor and City Council
Planning Commission
31 S. Summit Ave
Gaithersburg, MD 20877

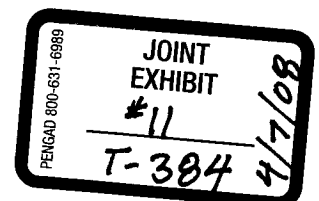
Dear Members:

I would like to voice my support in favor of permitting the Gaithersburg Inn on Russell Avenue to open a tea room. I think the nature of this small business would be an asset to the community and directly in keeping with the nature of a historic district.

Sincerely,

A handwritten signature in cursive script that reads "Joan Berkowitz".

Joan Berkowitz



X. POLICY DISCUSSION**Z-310, Granting Approval for Amendment to Previously Approved Sketch Plan Application X-182 and Approving New Sketch Plan Application Z-310 for Land, Known as the Crown Farm**

Planner Robinson stated that the application reflects the density changes defined in the amended X-182 Annexation Agreement discussed above. The proposed plan retains a mix of uses divided into six neighborhoods which proposes up to 320,000 square feet of future commercial uses with height restrictions based upon the original X-182 Sketch Plan and a maximum 2,250 residential units. A public hearing was held January 22, 2008. The Planning Commission closed its record at 5 p.m. on February 6, 2008 and recommended approval on February 13, 2008 with the following one (1) condition:

1. Applicant and City shall record the Amendment to Annexation Agreement X-182 before approval of any future schematic development plan or amendment to schematic development plan applications.

Motion was made by Council Member Ashman, seconded by, Council Member Marraffa, that **Z-310, AN ORDINANCE OF THE MAYOR AND CITY COUNCIL OF THE CITY OF GAITHERSBURG GRANTING APPROVAL FOR AMENDMENT TO PREVIOUSLY APPROVED SKETCH PLAN APPLICATION X-182 AND APPROVING A NEW SKETCH PLAN IDENTIFIED AS APPLICATION Z-310 FOR LAND, KNOWN AS THE CROWN FARM, LOCATED AT THE SOUTHWEST SIDE OF FIELDS ROAD, BOUNDED BY SAM EIG HIGHWAY TO THE NORTHWEST AND OMEGA DRIVE TO THE SOUTHEAST CONTAINING APPROXIMATELY 178 ACRES OF PROPERTY ZONED MIXED USE DEVELOPMENT (MXD)(Ordinance No. O-1-08)**, be approved.

Vote: 5-0

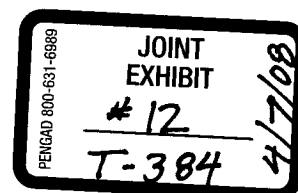
XI. FROM THE ASSISTANT CITY MANAGERS, CITY ATTORNEY AND OTHER STAFF**Planning and Code Administration Director Ossont**

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- **Guidance on a Memorandum Dated February 27, 2008, Proposed Text Amendment, Section 24-167B of the City Code**

Staff was asked to review the code as it relates to the time restrictions for serving meals as well as potential ancillary uses under the bed and breakfast use. Staff noted that permitting events or functions such as afternoon teas or similar gatherings would necessitate a text amendment under the current code. Staff sought guidance to prepare a text amendment to advertise for joint public hearing with the Planning Commission on Monday, April 7, 2008. The Mayor and City Council directed staff to move forward.

Assistant City Manager Felton

- Reported that the \$1 Million Bond Bill request from the State for Senior Center funding is scheduled to be heard in the Senate on Saturday, March 8, 2008, 10 a.m. and in the House at 1 p.m. Based on a suggestion from a member of the Senior Council, the City has agreed to sponsor a bus for interested seniors. Mayor Katz is scheduled to testify at the hearings.



TRANSCRIPT OF

JOINT PUBLIC HEARING

ON

T-384

Application Requests an Amendment to Chapter 24 of the City Code (City Zoning Ordinance), Entitled, "Zoning," Article IV, Entitled, "Supplementary Zone Regulations," § 24-167b, Entitled "Bed and Breakfast," to Amend §§ 24-167B(4) and 24-167B(7) so as to Allow Serving Meals Other Than Breakfast and Host Business Meetings or Receptions for Non-Guests by Special Exception

BEFORE THE

CITY OF GAITHERSBURG

MAYOR AND CITY COUNCIL

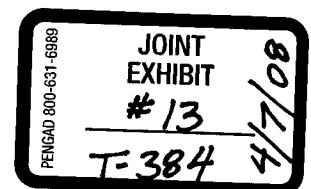
and

PLANNING COMMISSION

on

April 7, 2008

Transcribed by
Doris R. Stokes



PARTICIPANTS

CITY COUNCIL

Mayor Katz
Council Member Ashman
Council Member Drzyzgula
Council Member Sesma
Council Member Spiegel

PLANNING COMMISSION

Chair Bauer
Commissioner Kaufman
Commissioner Lanier (Alt.)
Commissioner Winborne

STAFF

Planning and Code Administration Director Ossont

SPEAKERS FROM THE PUBLIC

Eydie Searles, 18 Walker Avenue
Clark Day, 26 Walker Avenue
Richard Arkin, 121 Selby Street
Chris Kirtz, Owner of The Gaithersburg Inn, 104 Russell Avenue

Katz The next public hearing is from Mr. Greg Ossont.

Ossont Thank you Mr. Mayor. This is a joint public hearing on T-384, an ordinance to amend Chapter 24 of the City Code, Entitled, "Zoning," Article IV, Entitled, "Supplementary Zone Regulations," § 24-167b, Entitled "Bed and Breakfast," to Amend §§ 24-167B(4) and 24-167B(7) so as to Allow Serving Meals Other Than Breakfast and Host Business Meetings or Receptions for Non-Guests by Special Exception. The hearing was also duly advertised on March 19 and 26, 2008, in the *Gaithersburg Gazette*. At the present time, there are nine exhibits in the record file. They are available for reviewed. Any objections to the receipt of any exhibit should be noted prior to the closing of the record; otherwise they will be deemed received into evidence. Staff received a request to review this section of the zoning ordinance that applies to Bed and Breakfast establishments. Specifically staff was asked to review the time restrictions for serving meals as well as potential ancillary uses under the Bed and Breakfast use. Staff noted that permitting events or functions such as afternoon teas or similar gatherings would necessitate a text amendment.

If I could refer you to, I'll walk through what the actual changes are. First under paragraph three, this section is not changing, but basically states "Where the uses contains not more than two (2) guest bedrooms, the use shall be deemed a home occupation," and that is not being proposed to be changing, but that is the threshold for home occupation. If I could steer your attention to paragraph four, "Where the use contains more than two (2) guest bedrooms, and serves light meals, coffees or teas past 12:00 p.m., and/or hosts small gatherings such as business meetings or receptions for nonguests, the use shall be established by special exemption." Focusing on the phrase "more than two," I believe for our formatting, we created an unintended distinction between more than two and two or more. That phrase should actually read "two or more" so that two bedrooms rather than three will be the threshold. So to read it into the

record fully, "Where the use contains two or more guest bedrooms and serve light meals, coffees or teas past 12:00 p.m., and/or hosts small gatherings such as business meetings or receptions for nonguests, the use shall be established by special exemption." I will be happy to answer any questions.

Katz Any questions of Greg? Thank you very much. I have a feeling we have somebody that might want to speak on this topic? Do we have anyone that would like to speak on it?

Searles Eydie Searles, 18 Walker Avenue. We have a treasure in Olde Towne that is in addition to my neighbors and that is The Gaithersburg Inn. Chris and Terry Kirtz are a couple of courageous business people pioneering the bed and breakfast niche here in Gaithersburg and I applaud their efforts. They have poured resources into their property and turned a wonderful historic property into an alternative use that respects the neighborhood and has greatly improved their physical structures. We need to do what we can to allow them to conduct a viable business while safeguarding the City's to consider possible future request individually. I think that this special exemption or exemption clauses takes care of that. Further, as a business owner in the City of Gaithersburg, I would love to see another venue for business meetings and celebrations. We have actually spoken with Chris and Terry about doing so and while the facilities that they have are adequate, refreshments are a necessity. I want to be able to do my meetings other than breakfast. So I would encourage you to approve this change which would allow tea parties to come to Olde Towne which would be an appropriate use for The Gaithersburg Inn. My hat and gloves are ready and I plan to attend them often. Thank you.

Katz Thank you. Clark please.

Day My name is Clark Day, 26 Walker Avenue and I am making sure I have enough fingers to keep track of all the bed and breakfast in Gaithersburg. I am fully in favor of modifying the ordinance to enable the owners of The Gaithersburg Inn to better utilize their property. I think that at the time its sitting there idle way to much and I know that from my experience on some City committees, I know that when we were kicked out of the police building for the Chief's Advisory Group, Chris Kirtz graciously offered the Inn and we didn't take him up on it. Now I see why, because we meet in the evening and it's not allowable. It would have been a great place to go for a meeting. I hope that this change in the ordinance is permitted. (inaudible) some discussion about the possibility of this change and there has been some discussion about parking issues if this is permitted. I understand that there is a maximum number of guests at such a meeting and that there wouldn't not be that many vehicles coming into the neighborhood. There really wouldn't be a parking issue. I understand that people of Lee Street don't necessarily want to have that little short block clogged up with cars and I'm sure that that would be something that Chris and Terry could address with their clientele. And I know that I live right around the corner about a one and half minute walk and if want to have valet parking, I have space for seven cars in my driveway. Thank you.

Katz Thank you very much. Mr. Arkin please.

Arkin I thought I would go for a hat trick. Richard Arkin, 121 Selby Street. I support this proposed text amendment. I would point out to those who are concerned about (inaudible) usage that a very easy process to go through as a special exemption is to come back for periodic reviews. That would ensure that the use is not burdensome. That is already in the zoning ordinance that would ensure that the use is not burdensome on the community does not become a nuisance. So there is an opportunity for a safeguard. The Gaithersburg Inn is beautiful certainly from the outside. I

still have not be inside, but I have been invited many times, but I still have not been inside. I think a perfect example of adaptive use of a historic resource in the community. Not only that, it is also perhaps an excellent example of the potential that Gaithersburg, our Gaithersburg and our Olde Towne has for heritage tourism. So I would encourage this use, with change and I would hope that the Mayor and Council would take a more expansive look after we see how this one works at a more expansive look towards the virtues if heritage tourisms as a way to stimulate the economy of this City while keeping its uniqueness. Thank you.

Katz Thank you. Any other speakers please? Chris.

Kirtz I can't restrain myself. First I'm touched deeply about what you all said. It has been a labor of love since the beginning for us and the partnership with the town. In everything that you all said at the State of the City Dinner is true. What a pleasure to work with Cathy and Richard and people on HPAC. To work with all the City Planners and the building folks, it's amazing. Secondly, thank you. We have put our heart and soul and pocketbook into it and it has been a labor of love. This will allow us to have win-win. We could do more things and every time we have people in there, we are feeder for the City. Our guest rolled in tonight and asked where could I go to eat and Terry is up on Diamond some where or back home now. Particularly for the teas which is something that has been my lovely brides' heart and desire. We get people of a certain age and they will be coming in the afternoon, well where are they going to roll up to on a nice day into Olde Towne, into the antique shops and so forth. The other special events let us local florist, photographers, everybody sells. We really think it's a win-win. We have been a part of heritage days for the last four years running teas on Saturdays and Sundays and giving all the proceeds to Heritage Montgomery. With regard to Lee Street, it's exceptionally easy for us to make clear to people, please do not park up

there. We were simply not aware until we got the email on that. So that would be addressed. So thanks.

Katz Anybody else please?

Bauer Two quick things and I am jumping ahead to the probability of a discussion. Two things to bring to our meeting if you would. One is, just some details about the special exemption process. As part of our discussion we might be discussing whether or not that (inaudible) to a small person versus (inaudible). We can discuss that and also how a parking waiver plays out within that process to, if it exist. I now how it works in a site plan role, it's relatively something that we can work through, but just help us understand it in that special exemption context. That's all. Staff is recommending that the Planning Commission hold their record open until 5 p.m. on April 25, 2008, that's 18 days, with anticipated recommendation on May 7, 2008. Is there a motion please?

Kaufman So moved.

Winborne Second.

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

Commission Ayes.

Bauer Opposed? That passes unanimously (4-0).

Katz Thank you very much. I didn't mean to cut anyone off. Did anyone else want to speak?

Drzyzgula I just wanted to make one comment and I don't know if it would be appropriate at the hearing, but I talk to two of the three neighbors on Lee

Street and its clear that there are some parking issues, but they aren't particularly tied to the use of the Inn. I think it tends to do with the (inaudible) of the street and we can probably have staff look at that and find a solution that would satisfy the problems everywhere.

Katz I think that is fair. Anybody else, if not is there a motion?

Sesma Move to hold the record open on T-384 until 5 p.m. on May 9, 2008 with anticipated policy discussion on Monday, May 19, 2008.

Spiegel Second.

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

Council Ayes.

Katz Opposed? That carries unanimously (5-0). Thank you very much.

End of Joint Public Hearing

T-384