

Approved:

Attest: _____

MAYOR AND COUNCIL
ROCKVILLE, MARYLAND
May 7, 2012
Meeting No. 18-12
7:00 p.m.

Re: Executive Session pursuant to Section 10-508 (a)(7) of the State Government Article of the Annotated Code of Maryland to consult with counsel to obtain legal advice regarding the King Farm Farmstead.

The Mayor and Council met in Executive Session on May 7, 2012 at 6:07 p.m., in the Diamondback Terrapin Conference Room in Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland.

Councilmember Moore made the motion to convene in Executive Session and it was seconded by Councilmember Newton and unanimously passed.

Present at the Executive Session were Mayor Phyllis Marcuccio, Councilmembers John F. Hall, Jr., Councilmember Tom Moore, Councilmember Bridget Donnell Newton, and Councilmember Mark Pierzchala. Also present were Acting City Manager Jenny Kimball, City Clerk/Treasurer Doug Barber, Acting City Clerk Brenda Bean, City Attorney Debra Daniel, and Director of Recreation and Parks Burt Hall.

The topic of discussion was the possible leasing of the Homestead Property at King Farm.

The Mayor and council adjourned the Executive Session at 6:36 p.m.

PRESENT:

Mayor Phyllis Marcuccio, Councilmember John F. Hall, Jr., Councilmember Tom Moore, Councilmember Bridget Donnell Newton, and Councilmember Mark Pierzchala

STAFF PRESENT:

Acting City Manager Jenny Kimball, City Clerk Doug Barber, Acting City Clerk Brenda Bean and City Attorney Debra Daniel.

1. Convene

The Mayor and Council met on May 7, 2012, in Mayor and Council Chambers, Rockville City Hall, 111 Maryland Avenue, Rockville, Maryland 20850.

2. Pledge of Allegiance

Mayor Marcuccio led the Pledge of Allegiance.

3. Agenda Review

City Clerk Doug Barber reported that there were no changes to the agenda.

4. City Manager's Report

Acting City Manager Jenny Kimball reported:

- The Farmer's Market is scheduled to open on Saturday, May 12 from 9:00 am to 1:00 p.m.
- The Summer Recreation Guide is available and can be either picked up at any Rockville facility or viewed online.
- Mayor Marcuccio announced that the City had retained the Law Firm of Saul Ewing to conduct an internal investigation on complaints and allegations by Rockville employees.

5. Citizen's Forum

| Citizen | Issue |
|----------------|---|
| Trish Evans | Information and activities concerning Potomac Valley Health Care Facility and Collingswood Nursing Home in Rockville. |

6. Mayor and Council's Response to Citizen's Forum and Announcements

| | |
|----------------------|---|
| Councilmember Newton | Thanked Ms. Evans for the update; participated in the Avon 39 Mile Breast Cancer Walk; pleased to announce that the Walk raised \$5 million dollars |
| Mayor Marcuccio | Thanked Ms. Evans for her remarks; has been to both facilities and is impressed with them. |

7. Announcements of Vacancies

Mayor Marcuccio announced that there are vacancies to the following City Boards and Commissions: Compensation Commission, Environment Commission, Human Rights Commission, Landlord Tenant Affairs Commission, Planning Commission, Senior Citizens Commission, and the Sign Review Board. Additionally, Mayor Marcuccio announced the formation of a Charter Review Commission and urged residents to apply before the deadline of June 4, 2012.

8. Recognition of Terrific Bike Program Awardees

Mayor Marcuccio described the program and said that the children who received awards demonstrated positive characteristics reflective of the "TERRIFIC" acronym: Trustworthy, Earnest, Respectful, Responsible, Involved, Fair, Industrious, and Caring. Jon McLaren, Recreation Manager, described the accomplishments of the awardees and Mayor Marcuccio called each one up and presented them with a Certificate of Accomplishment.

9. Proclamation declaring May 2012 as Rockville Bicycle Awareness Month

Councilmember Pierzchala read the proclamation and presented it to Nancy Breen, Chair of the Rockville Bicycle Advisory Committee who thanked the Mayor and Council for their efforts in promoting bicycling in Rockville.

Motion: to proclaim May 2012, as Rockville Bicycle Awareness Month

Moved by Councilmember Newton, seconded by Councilmember Moore and unanimously approved.

10. Proclamation declaring Saturday, May 19, 2012, as National Kids to Parks Day in Rockville

Councilmember Moore read the proclamation and presented it to Kate Savage, Chair of the Recreation and Parks Board. Ms. Savage described events that would be taking place at the Croydon Creek Nature Center on May 19, 2012, to commemorate Kids to Parks Day.

Motion: to proclaim Saturday, May 19, 2012, as National Kids to Parks Day in Rockville. Moved by Councilmember Hall, seconded by Councilmember Pierzchala and unanimously approved.

11. Proclamation declaring the week of May 13-19, 2012, as National Police Week in Rockville

Councilmember Hall read the proclamation and presented it to various members of the Rockville City Police Department.

Motion: to proclaim the week of May 13-19, 2012, as National Police Week in Rockville.

Moved by Councilmember Newton, seconded by Councilmember Pierzchala and unanimously approved.

12. Proclamation declaring May 28, 2012, Memorial Day, as Poppy Day in Rockville.

Mayor Marcuccio read the proclamation and presented it to Marilyn Rykoskey, President of the American Legion Auxiliary Post 86, and Madeleine Klanssek, the 2012 Poppy Girl.

Motion: to proclaim May 28, 2012, Memorial Day, as Poppy Day in Rockville

Moved by Councilmember Hall, seconded by Councilmember Newton and unanimously approved.

13. Public Hearing Final general budget public hearing on the Fiscal Year 2013 Proposed Operating Budget and Capital Improvements Program.

The Mayor and Council heard from 21 speakers after which Mayor Marcuccio declared the public hearing closed and said that the record would remain open until, May 17, 2012, the date of budget adoption. A full transcript of the proceedings can be found in the office of the City Clerk.

14. Consent Agenda

- a) Award of State of Maryland Rider Contract #001B2400381, Assorted Sized Pick-up Trucks, in the Amount of \$307,277
- b) Award of Natural Gas Supply Contract

Motion: to approve Consent Agenda.

Moved by Councilmember Hall, seconded by Councilmember Moore and unanimously approved.

The Mayor and Council took a break at 9:08 p.m. and returned at 9:22 p.m.

15. Discussion and Instructions to staff regarding the FY13 Proposed Operating and Capital Improvements Program Budgets.

Acting City Manager Kimball presented the background of this item and discussed several proposed adjustments since the last iteration of the document. Ms. Kimball noted that both Councilmember Pierzchala and Councilmember Hall provided analyses that would be considered and they would present them shortly.

Mayor Marcuccio suggested tackling the items in accordance to the importance. Based on the number of speakers at public hearing this evening and the magnitude of information that came in late, Councilmember Pierzchala suggested holding off Discussion and Instruction for another week to absorb the information. Because of time constrains, Councilmember Moore said that the D&I could be pushed back from one week, but not any longer because it had to be adopted by May 21, 2012.

Councilmembers Pierzchala and Hall presented their analyses to the Mayor and Council. Councilmember Pierzchala discussed: a savings of at least \$2.5 million from the last budget to this one; and known challenges and risks. Councilmember Hall discussed the \$100 tax rebate and other priorities; why to even consider a tax rebate; tax rebate blueprint principles; tax rebate plan revenue adjustments; and things to consider instead of a rebate.

Councilmember Moore thanked both Councilmembers Hall and Pierzchala for their analyses and said that the City is in pretty good shape. His emphasis this year and next will be to maintain the sustainability of City operations; to invest in the infrastructure by putting enough in the CIP to not leave critical items unfunded. He expressed concerns on the \$2 million property tax drop expected in FY 2014 and said that Rockville's rates are at historically low levels. Next year, this will need to really be examined. Councilmember Moore said that he is struck by how much effort goes into preparing a budget that takes account of 365 days of government. A lot of cities are going towards biennial budgeting and he would like to consider moving in that direction.

The Mayor and Council commended staff for the outstanding job on the budget document.

Mayor Marcuccio thanked Councilmembers Hall and Pierzchala for their reports and said they had outlined what is important to the City and to the City's future. This is the best deliberation of a budget that she has ever participated in and again thanked her colleagues.

Councilmember Pierzchala asked staff to come back with more information on the REAP program.

There was discussion some on the amount in reserves and utilizing those funds, perhaps towards a large capital project.

Ms. Kimball updated the Mayor and Council on the Richard Montgomery Elementary School #5 regarding the MCPS CIP and said that staff will draft a letter in support of keeping that school on the current Board of Education Schedule.

16. Review and Comment Third Quarter FY 2012 Financial Report.

Mary Sue Martin, Management and Budget Analyst, provided the staff report. Mayor Marcuccio asked for clarification on the \$1 million expense for litigation and Director of Finance Gavin Cohen, responded that the City will be expensing all legal fees associated with the current garage litigation. Mr. Cohen estimates that it will cost somewhere between \$1 million and \$1.5 million. This will be done by a budget amendment in May, and will be funded from savings in debt service and depreciation. Mr. Cohen said that this does not include funding for any potential adverse settlement.

Councilmember Newton said that assumptions under the General Fund always end up being exactly what Mayor and Council receive and Mr. Cohen gave the reason for this. Councilmember Newton said it would be nice to have clearer information to know exactly where the Mayor and Council are. She said that revenues may come in later, but you should be able to forecast your expenses. Mr. Simoneau added that even the most predictable enterprise fund can have a lot of very unpredictable pieces to it. There was discussion on depreciation amounts for which appropriations go against; a cash balance in the refuse fund and spending down that fund balance over the next five years. Councilmember Newton asked Mr. Cohen if there was any other information the Mayor and Council need now, such as surplus or deficit information if known. Mr. Cohen responded that he will not know of a surplus until September when the City closes its books. Councilmember Moore said that we know that we are going to have a certain amount of money leftover over the worst case scenario and that is part of good budgeting. Mr. Cohen said that he is reluctant to make adjustments downward during the year on the expenditure side because we do not know until we get to the year end. Councilmember Pierzchala said that he has participated in three budgets and has watched three others unfold. He said that these conservative budget principles have come to the aid of the Mayor and Council year after year. Councilmember Pierzchala said that if we knew about a surplus ahead of time, then we could put off some of the spending decisions into the next fiscal year. Mr. Cohen responded that he is reluctant for the Mayor and Council to spend, or commit to spending, when we don't actually have the money in hand. That is why he prefers to get to the end of the year, close the year out and if there is money available, then the Mayor and Council can determine how to allocate it. Councilmember Moore referenced the need to put adequate money into the CIP to make sure the City's infrastructure does not decay. With this conservative budgeting approach, surplus can be used for those projects and spent on things that we really need to do

17. Adoption of ordinance to approve zoning text amendment TXT2012-00233 - To delete Sec. 25.08.05.d of the Zoning Ordinance, the provision allowing the expansion of off-street parking in connection with a nonconforming use; Mayor and Council of Rockville, applicants.

Planner Deane Mellander presented the background on this item stating that this text amendment would delete a section of the Zoning Ordinance that was added on December 13,

2010, to allow the expansion of off-street parking for a nonconforming use that had been in existence since before August 3, 1932.

In discussion, Councilmember Pierzchala said that he has studied this item for many hours and participated in the process at the Planning Commission level, as well as attending many other meetings on the subject. Councilmember Pierzchala strongly disagrees with reversing the decision of the previous Mayor and Council and said the parking lot at Pumphrey's could have worked very well.

Councilmember Moore said that there are excellent arguments on both sides of the issue. He said it was a hard call to make. The decision by the last Mayor and Council was made properly and legally and he is disappointed that three of his colleagues are choosing to overturn the matter just because they can. Councilmember Moore said he will vote against this and work hard to bring divided neighbors back together again and move forward.

Councilmember Hall said that Pumphrey's is a valued Rockville institution. None of us can deny that this is a nonconforming commercial use according to the City's Zoning Ordinance. No other non-conforming commercial use has ever been granted such preferential treatment while all others are obliged to live within the law. It has fallen upon this Mayor and Council to correct the error of the previous Mayor and Council. Councilmember Hall said that he has consistently supported the growth of business in Rockville and his record demonstrates that. He hopes the assertions of "anti-business" will cease from all corners and that we will move forward, cooperatively, to further realize business opportunities in the future of our City.

Councilmember Newton said that while she supports this text amendment, she realizes there is much work to be done to mitigate the traffic along West Montgomery Avenue. The decision of the previous council to grant this sent the wrong message to the business community and all of Rockville. She said that the decision of this governing body will right that wrong.

Councilmember Newton looks forward to continuing her efforts to support business in Rockville as well as neighborhoods and citizens.

Motion: to adopt ordinance to approve zoning text amendment TXT2012-00233 - To delete Sec. 25.08.05.d of the Zoning Ordinance, the provision allowing the expansion of off-street parking in connection with a nonconforming use; Mayor and Council of Rockville, applicants.

Moved by Councilmember Newton, seconded by Councilmember Hall, with Mayor Marcuccio and Councilmembers Hall and Newton approving, and Councilmembers Moore and Pierzchala opposing. Motion: carries 3-2.

18. Review and Comment Mayor and Council Action Report

Councilmember Newton asked about the status of traffic mitigation for West Montgomery Avenue/Route 28. Acting City Manager said that materials were assembled and emailed a few days ago. Councilmember Pierzchala said that he has seen some of the suggested solutions and none of those would work. Councilmember Newton spoke of one option that has not been tried, namely valet parking. She would like to explore other incentives for Pumphrey's and believes it is time to get the State involved. Mayor Marcuccio mentioned the success of the pedestrian traffic signals throughout the City and said that West Montgomery at Pumphrey's could certainly benefit from such a device. Councilmember Moore asked that the issue of License Plate cameras be added to the action log.

19. Review and Comment Future Agendas

Councilmember Pierzchala asked about the status of the Debt Limit discussion that he requested be placed on an upcoming agenda. Acting City Manager Kimball responded that it was placed under the "to be determined" category until a firm date was decided upon. Councilmember Pierzchala asked that the other items he had requested for discussion (budget process, employee benefits) also be listed under future agendas. Councilmember Moore asked that a discussion on biennial budgeting also be listed. Mayor Marcuccio mentioned that the Mayor and Council of Gaithersburg would attend the meeting next week and although a large part of that discussion would be the Adequate Public Facilities Ordinance, she would also like to bring up the proposed Sears annexation.

Planner David Levy provided the Mayor and Council with a status report on the application of Sears to annex into the City of Gaithersburg and disseminated pertinent information from the County, the City of Rockville staff report, the City of Gaithersburg staff report, as well as maps of the site.

20. Mayor and Council Liaisons to Boards and Commissions Report

Councilmember Pierzchala said that he and Mayor Marcuccio had attended the NAACP Freedom Fund Dinner and found it to be inspirational. He had also participated in the Rockville Bicycle Advisory Board's 6.8 mile bike ride on Saturday.

Mayor Marcuccio attended the Senior Center Bazaar on Saturday and said that even though it was not well publicized, it was a very well attended event. Mayor Marcuccio also mentioned that she and the Council are still meeting with potential City Manager candidates and looks forward to making a selection soon. She and Councilmember Newton met with County Councilmembers earlier in the week and discussed tax duplication issues. Mayor Marcuccio mentioned the County Council Public Hearing with respect to the Ambulance Fee and wants to be sure that Rockville provides testimony. Ms. Kimball said that staff would draft a letter.

21. Old/New Business

Mayor Marcuccio mentioned the County Council Public Hearing with respect to the Ambulance Fee legislation and wants to be sure that Rockville provides testimony. Ms. Kimball said that staff would draft testimony and circulate it to the Mayor and Council for approval.

Mayor Marcuccio mentioned several inquiries from citizens who are concerned with fluoride in the water. She said that Rockville's policy is based on the guidelines of the Maryland Department of the Environment and provided information on the levels used and statistics.

Councilmember Newton mentioned that Acting City Manager Kimball is no longer able to be the staff liaison for the Rockville Summit and suggested holding off on Summit activities until a new City Manager is on board. Good opportunity to step back on the process to afford the new City Manager an opportunity to have input. Councilmember Pierzchala said that there is a summit planning committee that is planning to meet soon. He has spoken with the Committee members and there is reluctance to delay the process. The phase we are in currently is a working group phase that is research based. Does not want to delay the process. Suggested that Councilmember Newton attend the meeting next week and be part of the

discussion. Acting City Manager Kimball said that there is a need for two community liaisons and staff is working on getting those replacements.

Councilmember Pierzchala referenced that the Budget Book needs to contain the Mayor and Council Vision and asked that a process be put into place to arrive at a vision. He suggested that staff prepare something for the Mayor and Council to react to, perhaps in open session.

22. Adjournment

There being no further business, the meeting adjourned at 11:38 p.m.

Motion: to adjourn.

Moved by Councilmember Hall, seconded by Councilmember Newton and unanimously approved.