

Public Hearing, Regular Meeting, Worksession, and Executive Session
of the City Council

Monday, September 13, 1993

CITY OFFICIALS PRESENT:

Mayor Sharp	City Administrator Habada
Councilmember Elrich	City Clerk Sartoph
Councilmember Hamilton	
Councilmember Johnson	
Councilmember Leary	
Councilmember Porter	
Councilmember Prensky	

The City Council convened at 7:38 p.m. on Monday, September 13, 1993, in the Council Chamber at 7500 Maple Avenue.

Following the Pledge of Allegiance, the following remarks were made.

MAYOR AND COUNCIL COMMENTS

Mr. Sharp noted that the B.F. Gilbert Citizens Association held a block party on Saturday evening that was well attended by the neighborhood children. He commented that on Sunday morning, Columbia Union College re-dedicated their softball field that was being used as a temporary parking lot, and that the lot was reconverted to a regulation softball field, and the event was celebrated with a pancake breakfast and other ceremonial events. Mr. Sharp stated that the Takoma Park Folk Festival was held on Sunday, September 12, and complimented by perfect weather. He said that the Washington Adventist Hospital's donation of veggi burgers was very successful, and that the burgers were sold out by 2:30 p.m. He remarked that there was a lot of fun activities taking place around the community over the weekend.

Mr. Prensky spoke on behalf of Mr. Buddy Daniels to thank the Councilmembers and concerned citizens of Takoma Park and elsewhere who made donations to the flood relief collection that were being accepted at the Takoma Park Folk Festival. Persons are encouraged to contact Mr. Daniels if they would like to make donations. Mr. Daniels is researching communities in the mid-West that would be the beneficiaries of the City's collection, and will be present on September 27th to update the Council on the status of the fundraising during the citizen comment period.

Mr. Sharp noted that the Maryland Municipal League (MML) is also involved in coordinating relief donations from Maryland municipalities, and that the mid-West cities affected by municipalities, and that the mid-west cities affected by the flood waters will need assistance for some time.

Mr. Prensky stated that the National League of Cities has also been attempting to create city-to-city relationships to channel relief.

Mr. Hamilton commented that the Fire Departments will be participating in relief efforts.

Mr. Johnson noted that this evening the Council will set the City's Nominating Caucus for September 28th and City Election for November 2nd, and announced that he will not be a candidate for election to the City Council from Ward 6. He said that he makes this decision because he cannot effectively serve the residents of Ward 6 and at the same time, (1) meet his responsibilities as a husband, father, and soon to be grandfather, (2) to affectively prosecute allegations of child abuse, sexual assaults, and other serious violent crimes as an Assistant States Attorney for Prince George's County, and (3) enjoy the essential goodness and beauty of the City and Country. He commented on some of the challenges that the City faces looking forward to the twenty-first century, and stated that he will continue to serve Ward 6 as a private citizen, speaking out on private issues, possibly endorse a candidate for the Fall election, and maybe, seek public office in the indefinite future.

ADOPTION OF MINUTES. Moved by Mr. Hamilton; seconded by Mr. Johnson. The minutes from 6/21/93, 7/6/93 and 7/12/93 were adopted unanimously.

Mr. Sharp announced that it is possible that the Council will deliberate on the Tree Commission appeal this evening, and that the Council has the option of holding such deliberations in executive session, as authorized under the State Code. However, the Council may chose to deliberate in open session.

CITIZEN COMMENT.

Bill Mihuc, 8101 Hammond Avenue reported that in reference to the Council's recent decision regarding 1021 University Boulevard, that there have been no changes since the decision. The conditions have gotten worse: garbage is accumulating from both the residents and businesses, legal parking spaces are being exceeded, and the provision for a buffer between residential and commercial spaces is not in place and is not being maintained.

Mr. Sharp asked the City Administrator to have staff investigate the conditions at 1021 University Boulevard and pursue immediate remedial steps to resolve the problems of noise, trash, and excessive parking at this address.

Ray Altevogt, 7049 Eastern Avenue said that he is an active supporter of Residents Against Government Excess (R.A.G.E.), and that he has been objecting to the excessive inspection procedures and actions of the Housing Department a year ago last August. He stated that he has received three actions from the Department in less than two months. He thanked Mary Rodriguez, his neighbor, for her assistance in helping him to put up R.A.G.E. posters around the City and prepare several floats for the Independence Day Parade. He asked whether the City is serving the citizens or whether it is an entity playing the games of a few people. Mr. Altevogt recounted the events of September 2nd when three Housing Inspectors and three Police Officers came to his home with a search warrant in response to a tenant's complaint about fleas. He said that he has had a dog for ten years and that it has fleas every summer. He explained that he does not have a flea problem in his home, however. Mr. Altevogt explained that his home was to be inspected today, but that the inspectors did not show up and that he has been unable to reach Ms. Nance-Sims regarding the inspection.

PUBLIC HEARING

Appeal of Tree Commission Decision (Appeal No.93-1). Mr. Sharp explained that the Tree Commission hears appeals of decisions made by the Director of the Public Works Department, and that Council is hearing an appeal of the decision made by the Tree Commission. He noted that the Council has been given a copy of the denial letter from Mr. Knauf to Mr. Adler of his request for tree removal, and a package of material that was presented at the Tree Commission hearing.

Mr. Johnson said that this is a hearing on the record and that no evidence in addition to that which was submitted to the Tree Commission should be submitted to the Council unless the appellant sets forth in writing with particularity in advance of the date of the appeal. He said that the only way that the Council can reverse or modify the ruling of the commission is if it is in violation of constitutional provisions, in excess of the statutory authority or jurisdiction of the Commission, made upon unlawful procedure, affected by error or law, not supported by competent material or substantial evidence in view of the entire record, or arbitrary or capricious. He asked that if this is a hearing of the record, then how will the Council control that whatever is said this evening was presented before the Tree Commission.

Mr. Sharp said that the Council is not here to hear the facts of the case and that whether a person agrees or disagrees with the decision is not the point of this evening's discussion. The Council is to only determine whether one of the six provisions read by Mr. Johnson has been violated in the process that the Tree Commission took. Mr. Sharp said that Mr. Adler will be provided the opportunity to address these items and explain to the Council how one or more of the provisions have been violated. No new information can be received by the Council this evening. After comments from Mr. Adler, members of the Tree Commission and citizens who participated in the hearing

will be given the opportunity to respond. Mr. Sharp stated that Mr. Adler will again be given the opportunity to respond to their comments, and that the procedure will continue in this fashion for a reasonable amount of time.

Mr. Hamilton clarified that persons who come to the microphone to speak should be addressing one of the six provisions.

Mr. Sharp confirmed Mr. Hamilton's statement and stated that following Mr. Adler's remarks, people should address only what Mr. Adler states.

Mr. Adler said that in order to address the six provisions that he must first inform the Council that the basic premise upon which the Public Works Department and the Tree Commission's Decision based their decisions to deny him a tree permit for Lot 12 (7419 Hancock Avenue), is erroneous. The premise is legally erroneous because of the fact that the adjoining lot (Lot 13) can be built on. He referred to a letter dated April 26th which was submitted and accepted into the Tree Commission's record which states that various structures (expansion of existing house known as 19 Lee Avenue, attached/detached garage, workshop, art studio, swimming pool) can be built on Lot 13.

Mr. Sharp identified the letter and summarized that it is a letter from Mr. Adler to Mr. Niblock, Department of Zoning, indicating that if Mr. Niblock agrees with the statement in the letter, then he is to sign and return the letter to Mr. Adler. Mr. Sharp read the letter (attached), and noted that Mr. Niblock signed the letter and dated it 4/27/93.

Mr. Adler stated that the lot is a buildable lot, and said that he will address where he thinks there were mistakes in judgement or errors of fact that may have confused this specific point which actually serves as the key basis for the permit denial decisions. He explained that he currently holds a building permit on lot 13 and 14 (19 Lee Avenue) in order to build a garage and art studio, and that he received this permit on Friday. He said that since he received the permit so recently that he was unable to meet the required notification time frame for requesting that additional material be allowed for the record, and asked if the Council would accept this recent permit to the record.

Mr. Sharp said that this would not be in order and that Mr. Adler presented the April 26, 1993, letter making the same point.

Mr. Adler said that he respects this decision, and asked whether the Council would accept for the record a letter that just arrived today from the Montgomery County Board of Appeals which relates to the variance and shows that the lot is a buildable lot. He said that a single family home cannot be built on the lot, but that the lot is buildable. This is an important distinction. He recalled that he initially applied for a variance to build a single family home on the lot, and was denied the request, but that the denial does not mean that the lot is not buildable.

Mr. Sharp stated that again, the letter from April 26th seems to make the same point as the letter that Mr. Adler is now describing, and that again, it is too late for additional information to be submitted for the record.

Mr. Adler stated that he is not referring to the building permit that he holds, but to the letter from Mr. Niblock.

Mr. Sharp pointed out that Mr. Adler had just stated that he was referring to a letter that he just received today.

Mr. Adler realized the confusion that he had caused. The letter he was actually referring to was the one from Mr. Niblock, dated April 26th.

Mr. Adler noted that he has a building permit to build a house on lot 12, 7419 Hancock Avenue, and that he needs a tree permit in order to make use of the property. The existing house at 19 Lee Avenue which was built in the early 1920's is legally positioned on two lots (Lot 13 and 14), and the remainder of Lot 13 is the yard of 19 Lee Avenue. He said that 19 Lee Avenue is going to be his residence in the next 4-6 weeks.

Mr. Adler read from the Takoma Park Tree Commission's, Findings of Fact and Conclusions of Law and Order, page 2 "...the application was tentatively approved pending completion of 15 day posting period...within the posting period the request was then denied on the grounds that certain information was not supplied with the application...when Mr. Knauf discovered that the adjacent lot (Lot 13) which is also owned by Mr. Adler, is an unbuildable lot, Mr. Knauf concluded that Mr. Adler has not considered all available options selecting the site and his proposed construction nor has he made all pertinent information available to the Department of Public Works." Therefore, the Department of Public Works revoked a permit which they had originally approved. Given the density of the trees, the urban forest, and other factors, the reason Public Works revoked their decision was because of this erroneous information regarding an "unbuildable" lot.

Mr. Sharp clarified that the original application for a tree removal permit gives as a reason for the tree removal, new home construction. On basis of that, Public Works denied the permit. Both the Director of Public Works and the Tree Commission heard the discussion in terms of a new home, as reflected in the application.

Mr. Adler said that he made application for the tree permit in order to build a new home on Lot 12, and that he never applied for a tree permit for Lot 13. He stated that he is only applying for a tree permit for Lot 12 which is a lot that he has a building permit for, in hand, from Montgomery County to build a single family detached dwelling. Lot 13 is not involved with respect to the original permit application, although it has importance in this discussion given that in the past history of this whole matter, it was suggested that since Lot 13 was unbuildable, the house sited for Lot 12 could be moved over, avoiding removal of trees.

Mr. Sharp repeated that Mr. Adler is stating that Public Works and the Tree Commission are erroneous in that they found that there could not be anything built on lot 13, which might fall under provision #4 ("affected by other error").

Mr. Adler stated that the desire of Public Works, the Tree Commission, and neighbors is for him to resubdivide his properties, essentially taking over half of his back yard, and that in this way, no trees would have to be removed. Mr. Adler said that it is his understanding that one tree would still have to be removed, although it is not a significant tree in terms of size.

Mr. Prenskey verified that when Mr. Adler refers to his back yard at 19 Lee Avenue, he is referring to the separate lot (Lot 13) that his current house crosses over onto.

Mr. Adler said that the house at 19 Lee Avenue legally sits on Lots 13 and 14, and that he would like to build a garage and art studio on Lot 13.

Mr. Adler commented that he has addressed provision #4. He said that in regards to provision #5, the people that were against his obtaining a tree permit did not support information that they had stated by competent material or substantial evidence. They did not give any evidence of the basic premise upon which they denied the permit--Lot 13 cannot be built on. Mr. Adler addressed provision #6, and said that the Tree Commission's decision completely ignored the factual information that he submitted to them. He referred to the letter from Mr. Niblock agreeing that Lot 13 is buildable. He said that the record only states that he submitted into the record some additional information, but that it never says what the information was. He commented that he believes this to be "arbitrary" (provision #6). In regards to provision #1, denying a property owner the right to use his property as he is legally able to do within the confines of the law is unconstitutional. He said that he is not being forced not to use his property, however, that he is in a catch-22, because the only alternative is for him to re-subdivide.

Mr. Johnson asked Mr. Adler if he believes that the Tree Ordinance is unconstitutional, or is it the outcome of the process that was provided for in the ordinance, that Mr. Adler believes to be unconstitutional.

Mr. Sharp summarized that Mr. Adler is saying that there may be some 5th or 14th Amendment violations here because he is not being allowed to use his property the way he wants to use it.

Mr. Adler stated that he wants to obey and work within the confines of the law, and that he wants to be able to use his back yard to put an addition on his home.

Patricia Hill, Chair of the Takoma Park Tree Commission said that she believes from listening to Mr. Adler that he focused on four points, all of which she disagrees with. In response to Mr. Adler's point that the commission was in violation of "other error" as he related to the statements contained in the letter dated April 26th, it is made clear in the commission's record that "unbuildable" refers to unbuildable for a house. She said that this was a topic of considerable discussion the night of the hearing, and that the commission makes a point of leaving the record open for a considerable period of time to allow for additional material to be submitted. Mr. Adler followed up with the April 26th letter that confirms that he can build a garage, art studio, or other structure, but not another house on Lot 13. Lot 12 is the lot that is in question in relation to the tree permit. She said that after the record is kept open for additional material to be submitted, the record then stays open for another week to ten days for any person interested to review it. She stated that when the commission writes the summary, it does not include everything that is in the record word-for-word on the theory that most people want to see a summary of the record. She called attention to the April 26th letter that makes reference to whether a house could or could not be built on the lot, and said that Mr. Adler was aware that the commission was discussing a house and not other buildings. She stated that she does not believe there was a matter of confusion, and therefore his point about "other errors" is not correct in this case.

Mr. Prensky asked whether Mr. Adler talked about building a garage and a studio for the house at 19 Lee Avenue during the course of the commission hearing?

Ms. Hill said that the original plan of his company was to build two new houses on Lots 12 and 13, and renovate the house on Lot 14. She said that with regard to Mr. Adler's reference to provision #6, about how the commission ignored factual information and made an arbitrary decision, and she disagrees. On page five of the tree commission decision it is stated that all the evidence and material was considered. She stated that the commission determined that the critical issue for the case was the fact that if indeed there was any financial hardship for Mr. Adler by not granting him the tree permit, it was self-imposed, and that the commission rejected this argument. In light of the other information presented, the commission decided to uphold the decision made by the Public Works Director.

Mr. Sharp asked for citizen comments.

Jim Douglas, 18 Sherman Avenue said that his property abuts part of Lot 12, and that he was the person who objected to the tree permit to the Public Works Director and was also a party to the hearing that the Commission held in April. He stated that he believes that the Commission hearing was fair and thorough, and that if the applicant disagreed with any of the points that were raised at the hearing, he could have addressed them in the period the record remained open for additional information. He said that Mr. Adler argues that the basic premise has to do with the question of buildability, but that from the Commission's opinion, what they felt to be the critical issue was the "undue financial hardship". Buildability was not the basis for the Commission's decision. The information on page two of the opinion is a summary and not a finding on the part of the commission that lot 13 is buildable; on that alone, there cannot be found an error of fact. He confirmed Ms. Hill's point that what was buildable focused on a single family home. Mr. Douglas stated that the arguments at the hearing had more to do with whether Mr. Adler had the flexibility to use some or all of the property on Lot 13 to mitigate the effects of building a new house on Lot 12. The argument had to do with whether he had access to the property. Mr. Douglas stated that the alternative of building an art studio or garage on the property was not raised. He said that there is substantial evidence in the

record that indicates that on January 21st, the Board of Appeals denied Mr. Adler's request for a minimum lot size variance, and that the lot was not buildable for a single family house. The notion that the Tree Commission ignored factual information that was submitted to them was addressed well by Ms. Hill, and that he sees no problem with the decision in this regard. The constitutional argument is interesting. The spirit, if not the letter, of Section 12-26(c) addresses new evidence and would apply to the introduction of new lines of reasoning. The arguments of the hearing revolve around the possibility to resubdivide the lot and not whether all of the lot should be included in a package with Lot 12; the notion of whether he could use some of the property at Lot 13 to enhance 19 Lee Avenue was not raised, and is beyond the bounds of this evening's discussion. Mr. Douglas stated that he is not convinced that any of the provisions were violated and that the Tree Commission did a fine job of dealing with a complicated factual situation.

Larry Hodes, 7418 Hancock Avenue (S.S. Carroll Citizens Association) said that the Tree Commission conducted a well reasoned decision process, and that the new line of reasoning being introduced by Mr. Adler this evening regarding the garage and art studio, should not be allowed.

Alan Adler, 7419 Hancock Avenue responded to Ms. Hill's statement about "...if there was a hardship, it was self-imposed", and said that the house located at 19 Lee Avenue has for 60 years been sitting on two lots. He stated that with respect to the hardship, he does not understand how he is creating it himself. He noted that they had discussed his inability to go ahead and resubdivide the property, and that he submitted to the record information indicating that in order for him to resubdivide the property he would have to get sign-offs from the people who own it and parties who have legal interest in the property. Mr. Adler explained how he financed the purchase of the property and stated that the note holders on the property would not sign-off on the resubdivision.

Mr. Prensky asked Mr. Adler whether he ever asked the note holders in a direct fashion with sincerity and intent, that it was his desire to resubdivide, if he could have their permission? Or was the question asked as a hypothetical?

Mr. Adler said that he asked if they would sign-off and approve a resubdivision of the property, but that he never had a desire to resubdivide. By resubdividing, he would be taking substantial value away from 19 Lee Avenue, because a house without a back yard reduces the property value and potential for expansion. He stressed that in terms of a financial hardship, there are other types of hardships that you cannot attach value to, and that it is hard for a person to put a price on giving up a back yard. Mr. Adler stated that he was not aware of any decision by the Board of Appeals that was final until the decision he received today, that he mentioned at the beginning of this hearing. He asked Mr. Douglas to supply him with any information regarding a decision. He noted that on page 46 of the Tree Commission's minutes, there is a discussion about the date that the Board of Appeals rendered a decision and that the Board's decision made building on the lot uneconomic in its current configuration. If the lot was buildable, then the nature of the argument this evening would be a lot different. Mr. Adler said that Mr. Douglas was saying that the Commission was dealing with a property that a new home could not be built on and that the property has no value. Mr. Adler said that Mr. Hodes said that there is a "zero back yard" and that the property only has value when it is reconfigured with other properties.

Mr. Hamilton asked Mr. Adler what January 21st means to him.

Mr. Adler said that on January 21st he was hoping that he would be able to get a variance to build a single family home on Lot 13, that hope based on the original approval of him being able to build a single family home on that property as is evidenced in letters from Park and Planning, and others. He stated that there was a Board of Appeals hearing on January 21st, but that to his understanding there was no decision given on that date, although it seemed very much like the permit was being denied. There was no formal decision.

Mr. Hamilton asked if the record was left open or closed at the end of the hearing?

Mr. Adler commented that he did not know, but that in terms of a decision by the Montgomery County Board of Appeals, it was only three days ago that he received a letter stating the decision of the Board.

Mr. Hamilton asked in reference to the "hardship", what happens to him at this point in time if the decision is upheld?

Mr. Adler responded that he will be in a bind, and that the hardship will be if the tree permit is denied, a property that he purchased, has obtained a building permit for (Lot 12), will not be developed.

Mr. Prenskey said that Mr. Adler cannot execute the building permit without permission to cut the trees, which he has not received. The building permit is contingent upon the decision of the Public Works Director, the Tree Commission, and the pending decision of the Council.

Mr. Hamilton commented that his concern is that Mr. Adler is saying that he has a legitimate permit that would allow him to build on the property tomorrow.

Mr. Adler confirmed this statement.

Mr. Elrich said that Lot 12 is a buildable lot, and asked whether Mr. Adler is arguing that he cannot site a house on the lot that will not require the cutting down of the trees and is therefore, being faced with the forced resubdivision of Lot 13 in order to acquire a buildable space that does not require the cutting down of the trees.

Mr. Adler confirmed this statement.

Mr. Elrich commented that Lot 13 does not have the value of a single family lot and that it has the value of the square footage in excess of the buildable minimum. There are different material values, and Mr. Adler is not in danger of losing anything because regardless of what lot the property got appended to (subdivision), the assessed value will stay the same. It may or may not stay the same depending on how people view the back yards that are created and the aesthetic value. He asked Mr. Adler and the commission if they are absolutely certain that there is no way to site a house on the buildable lot without forcing resubdivision?

Mr. Adler stated that Lot 12 is a narrow lot and that the trees that he wants to take down are in the middle of the lot. Regardless of where he were to site the house, trees would have to be removed.

Mr. Elrich said that, hypothetically, if Mr. Adler were to add on the extension to the house at Lee Avenue, he could go within so many feet of the lot line of Lot 12 and then be constrained, again, by this decision not to grant the tree permit and banned from developing Lot 12. Mr. Elrich asked if anyone on the commission would differ with this interpretation?

Ms. Hill stated that there is a whole series of new facts that Mr. Adler is introducing this evening: all reference to the expansion to the house on Lot 14, the art studio and garage, the discussion of expanding Lot 14 to encompass the out-buildings. Financial hardship is a criteria that is listed in the ordinance, and the commission does look at this carefully.

Mr. Elrich asked Ms. Hill whether the commission's decision renders Lot 12--a buildable lot--unbuildable except by Mr. Adler resubdividing into another lot. He expressed his concern.

Ms. Hill said that Lot 12 is acceptable and a very steep and heavily treed lot. In order for Mr. Adler to build the house he proposed, he would have to take out two or three very large old trees that are located in the center of the lot. She stated that the commission upheld Mr. Knauf's decision because Mr. Adler omitted in his application the fact that he owned all three of the lots. She said that there is a note on two of those lots and that Mr. Adler purchased the three lots knowing that Lot 13 was unbuildable.

Mr. Elrich asked whether Ms. Hill would agree that he purchased the lots knowing that Lot 12 was buildable?

Ms. Hill responded that he assumed that Lot 12 was buildable.

Mr. Elrich asked why Mr. Adler's ownership of Lot 13 relevant to how the commission treats Lot 12?

Ms. Hill said that there is the sense that there are not large trees immediately adjacent on that edge of Lot 13 and that the house could be shifted in some way thereby retaining what is one of the finer selections of urban forest that still remains standing in Takoma Park.

Mr. Sharp noted that an objection has been raised to the nature of the discussion at this point, as going beyond the statutory criteria. He agreed that this is true, but that this discussion is establishing a basic factual orientation that the Council will need to have in making the decision.

Mr. Elrich said that he feels a need to talk with Corporation Counsel.

Ms. Hill stated that the other criteria that the Commission considered had to do with the extent to which tree clearing is necessary to achieve proposed development or land use. In order to build the house that Mr. Adler proposed, the commission would basically have had to agree with his taking away all the large trees that stand on the property.

Mr. Hamilton asked Ms. Hill whether the lot is buildable for any type of a house, preserving the existing trees?

Ms. Hill reiterated that she is not an architect but that the lot is narrow and the house that Mr. Adler proposed would have filled the majority of the lot. It is hard to imagine how a person could locate what is thought of as a traditional house on the lot without removing the trees.

Mr. Douglas said that he is concerned about some of the recent discussion and its relation to the procedure in the law. The argument about what if something different was done with 19 Lee Avenue, and how would that affect the middle lot, and therefore, Lot 12, brings forth interesting questions. Unfortunately, Mr. Adler chose not to bring those issues to the table at the Tree Commission hearing or while the record remained open. He submitted that the Council's job this evening is to focus on whether the conclusions of the commission are supported by competent material and substantial evidence. Mr. Douglas stated that the Montgomery County Board of Appeals did, in fact, reach a decision on January 21st, and that the record was not left open. He said that he has called their office numerous times requesting that the Board issue a written decision to Mr. Adler. The importance of this fact is that it makes Mr. Adler's purchase of the properties a self-imposed hardship. It is indisputable that Mr. Adler was aware of the situation having to do with the configuration problems associated with these lots and chose to acquire the property, regardless. Mr. Douglas addressed Mr. Hamilton and Mr. Elrich saying that if a different set of facts came before the commission in terms of what was on those three lots and the proposal for development, the decision might be different. However, the set of facts that was presented at the commission hearing as supplemented by the material for the record is different.

Mr. Sharp stated that the commission did not have in front of it the alternative of building other things on the properties.

Mr. Douglas said that the commission had in front of it the alternative of dividing up Lot 13 for other purposes--putting some property with Lot 12 and 14. It was dismissed by Mr. Adler as impossible, not feasible, and something that he stated he would refuse to do. Mr. Douglas said that this was a decision that Mr. Adler and his partners (note holders in his financial transaction) chose to make. He said that he does not feel that the Commission and Council should be held accountable for or black-mailed by their business decisions on the protection of the urban forest.

Mr. Leary asked Mr. Douglas to comment on whether the City has the authority to require Mr. Adler to use an adjacent lot in the way that has been suggested.

Mr. Douglas suggested that the question is more difficult in the case that Lot 13 were buildable, but that since it is not buildable, no hardship is being imposed upon the applicant by asking him to use part of that lot to go with Lot 12 and the remnant with Lot 14, or otherwise. He does not have a building permit to build a single family house on Lot 13 and had full knowledge that the property was unbuildable when he acquired the property. Based on these facts, suggesting that he use Lot 13 to supplement Lot 12 is a reasonable measure to protect the urban forest. The Commission evaluated the quality of the forest, Mr. Adler hired an arborist to inventory the forest who essentially agreed that the forest is old, valuable and unusual in its configuration. He stated that he supports the Commission's line of reasoning.

Mr. Hodes stated that the hardship/loss in value was created when the Board of Appeals denied the variance for Lot 13. That reduced the value of the land and security for the note holders. He said that Mr. Adler can get a lot more value for the note holders by making a good business decision and resubdividing and developing, and that it seems unlikely that his business partners would actually deny him the ability to develop by denying him the right to resubdivide. In regards to the aesthetic hardship, Mr. Adler had originally planned to move into the bungalow at 19 Lee Avenue and there was no mention of an art studio or garage.

Mr. Johnson commented that the hearing has gone far beyond the statutory authority that the Council has, and that he hopes that the Council can quickly move into some deliberations on this matter, preferably in open session.

Mr. Sharp responded that there is a refreshing of people's memories about some of the particular facts of the case, and that people need to feel that there has been a fair hearing in front of the Council this evening. This is a goal that he always tries to attain.

Mr. Elrich asked Ms. Hill when the Commission was suggesting the solution of resubdividing Lot 13, did the Commission invest any energy in an examination of Lot 12 to determine whether or not this was the one and only siting possible for the house?

Mr. Leary said that this is not part of the record, and that their answer to the question is "no".

Mr. Johnson said that it is a "yes" or "no" question.

Ms. Hill said that the commission was very familiar with the property and what Mr. Adler was attempting to do, and that they concluded that would destroy the urban forest that is there.

Mr. Sharp commented that it sounds as if Ms. Hill is answering "no".

Ms. Hill stated that she objected earlier and still objects that Mr. Adler has introduced a whole series of new facts that he has brought forth this evening that are not part of the record.

Mr. Adler said that one of the "new facts" according to Ms. Hill is that he is suggesting the expansion of the house at 19 Lee Avenue, and that he submitted that option into the record and it was accepted into the record. It is not a new fact. He commented on Mr. Douglas' remarks about "new facts", and noted that the supposed new facts are in the record.

Mr. Prenskey asked what lot 19 Lee Avenue is built on?

Mr. Adler responded that it is built on Lots 13 and 14. He stated that he disagrees with Mr. Douglas' characterization of his note holders as "partners", and that if they were partners, their names would be on the deed for the properties. In response to Mr. Hodes' comments, Mr. Adler said that the property would be far more valuable if three homes could be built on the

properties, and that he looked at different options for development, including asking Mr. Douglas if he would sell a portion of his property for resubdivision.

Mr. Sharp asked the Council to consider the facts in light of the six provisions. He said that perhaps the Commission's decision is in excess of the statutory authority of the Commission, considering the fact that Mr. Adler has legally obtained a Montgomery County building permit.

Mr. Prensky said that no one has required of Mr. Adler to resubdivide the property, but that he has the ability to decide how he uses the three contiguous properties that he purchased after he knew that he could not build a single family home as he had intended to, on the middle lot. Given those circumstances, he was not denied anything, but was provided the opportunity to make economic decisions that are in his and his note holders self interests.

Mr. Leary stated that the decision states in effect that the applicant may not build a house on his buildable lot unless he also subdivides an adjacent lot, and questioned whether the City has the legal authority to tell him that. He said that he would like to be reassured that the Council has the legal authority to reach that conclusion.

Mr. Hamilton pointed out that Mr. Prensky was at the Commission's hearing and that he should not be here this evening defending the decision of the Tree Commission. He asked that Mr. Prensky allow the rest of the Council to make a decision based on the facts that have been presented, and said that he has the same question as Mr. Leary.

Ms. Porter said that there seems to be a legitimate question about the building permit and the lot, and noted that she does not feel that if the Tree Commission's decision is upheld, the City will be prohibiting Mr. Adler from building on his lot. She commented that based on the provisions that Council is supposed to be considering this evening, it does not appear that there was a violation of any provisions, and that she does not see a reason to overturn the decision of the commission.

Mr. Johnson moved that the Council affirm the decision of the Tree Commission. Mr. Prensky seconded the motion.

Mr. Elrich stated that he will abstain if asked to vote on this motion, will then ask for the matter to be tabled, and look forward to reconsidering the decision after consulting with Corporation Counsel regarding the matter of the building permit. He said that he does not see grounds for overturning the commission's decision, but that he would like an answer to the question that has been raised.

Mr. Sharp said that he agrees with Mr. Elrich and would like to get an opinion from Corporation Counsel. It is not an unreasonable piece of information to get as part of the Council's decision making. He said that he is not disposed to overturning the Tree Commission's decision.

Mr. Prensky reminded the Council that the Tree Commission has the charge of protecting the urban forest within the bounds of allowing people the full and proper development of their property. He stated that he believes the commission met its responsibilities, and that the Commission did not deny anyone their development rights.

Ms. Porter stated that she continues to see no reason not to affirm the decision of the Tree Commission, but that if there are members of the Council who want additional legal information from Corporation Counsel, she would not object to continuing this discussion for a couple more weeks.

Mr. Sharp noted that there is not an economic deprivation in this case and that if the lot were to be subdivided, nothing is being detracted from the applicant and it is not outside the statutory authority of the Commission to take this into account. The Commission did take this into account. Mr. Elrich's point is that he would like to be sure about the legal validity of that. He said that he supports coming back to this after getting legal advice.

Mr. Leary moved to table the discussion. Mr. Elrich seconded the motion. The motion to table the decision carried by a vote of 5 to 2 (NAY: Johnson, Prensky).

Mr. Sharp stated that the Council will return to the decision on September 27th.

Mr. Douglas asked how the opinion of Corporation Counsel will be entered into the record as part of the Council's procedure. He said that his concern is if Ms. Silber is asked a question out of context, there is danger that her answer will be made out of context.

Mr. Hamilton stated that there is a basic legal question that will be asked of Corporation Counsel.

Ms. Hill stated that the Commission has denied other County building permits, and that the reason there is a City ordinance, is because the City has additional requirements in order to protect the urban forest. All Tree Commission decisions are reviewed by Corporation Counsel before they are published.

#2 Sligo Creek Citizens Advisory Committee. Mr. Sharp explained that the resolution is expressing appreciation to the members of the Sligo Creek CAC that goes back over ten years, and that the CAC is continuing to play a role in monitoring the Sligo Creek project.

Moved by Ms. Porter; seconded by Mr. Leary.

Ms. Porter noted that a number of the members of the CAC have been involved with this issue for more than a decade and certainly deserve much more recognition and thanks than the City Council can extend in a single resolution.

The resolution was adopted unanimously.

RESOLUTION #1993-82
(Attached)

#3 2nd Reading Ordinance Setting Forth the 1993 Takoma Park City Nominating Caucus and Election. Mr. Sharp asked Ms. Sartoph which section is it that needs to be amended.

Ms. Sartoph responded that in Section 6, "into" needs to be changed to "with".

Mr. Sharp explained that the reason for the change is that there is a concern expressed by the Counties, Prince George's County in particular, that if the City alters the voting lists in any way that are used by election judges, the lists will not be considered certified. The registrations that are done separately by the City will be on a different list.

Mr. Sharp proposed an amendment to Section 1, that addresses the order of the nominating caucus and the time at which the notification of the order will be publicized--Section 1(a) "One week before the Caucus, the City Clerk shall select by random drawing, ward numbers one through six and Mayor to determine the order in which nominations are received." and delete Section 1(b). Mr. Johnson seconded the motion.

Mr. Prensky asked how the results would be publicized?

Mr. Sharp said that it could be announced as part of the Council meeting on September 27th or at the Worksession on the 20th.

Mr. Leary stated that he does not see why the nomination for Mayor should not precede the nominations for councilmembers, they are not equal, and that it is appropriate for people to expect the most important business will take place first.

Ms. Porter said that she agrees with Mr. Leary, and that it is likely that there are people who will want to know when the Mayoral nominations will be accepted at the Nominating Caucus.

Mr. Sharp recounted the history of the order of business at previous nominating caucuses, and said that the practice has been not to announce the ward drawings the night of the election. There is some value for people knowing approximately when their candidates may be up for nomination.

Ms. Porter stated that she agreed with this point and with the idea of having the ward drawing done ahead of time. However, she stated that she felt the Council should set the time for Mayoral nominations at a time prior to ward nominations. She proposed an amendment to the amendment: to leave the wording for (a) as Mr. Sharp suggested it except deleting "Mayor" from the nominations and to leave (b) as it stands. Mr. Leary seconded the motion. Ms. Porter also agreed to the change of replacing "One week before" with "On September 20, 1993". Mr. Leary seconded this change.

Mr. Prenskey noted that this sets an ordinance that will always happen on September 20th, and that he sees no value in encouraging people to show up for the mayoral nominations and then leave prior to the councilmember nominations. He said that he is against the amendments, and that the drawing should be done the night of the caucus.

The amendment carried by a vote of 6 to 1 (NAY: Prenskey).

Jack Mitton, 501 Philadelphia Avenue stated that since the adoption of the Charter amendment allowing non-U.S. Citizens to vote in City election, he has been awaiting the adoption of rules and regulations necessary to implement the registration process. He also noted that the City's Non-U.S. Citizen Voter Registration Application only requires that the applicant (1) reside within the corporate limits of Takoma Park, and (2) be at least 18 years old by the next City Election, and provides a line for the applicant's signature. Nowhere on the form is there any indication of what the registrant is certifying by signing the form. In contrast, the official registration application for Federal, State, and Municipal elections in Maryland requires a citizen to state "under penalty of perjury" that "...The information set forth hereon about my place of residence, name, place of birth, criminal offenses, qualifications as a voter and my right to register and vote under the laws of the State is true." Another requirement is that a citizen is "not under guardianship for mental disability." Mr. Mitton urged the Council to remedy the discrepancy between City registration applications and those of the counties.

Mr. Elrich said that it does not make sense that the City's registration is a departure from the registration that applies to citizens of this Country, and that the Council should look at making an adjustment to the registration form to assure that every voter meets the same standards.

Mr. Leary stated that he agrees and asked if the Council can enact some legislation that will affirm that those requirements will apply for the upcoming election. He said that he does not know what the legal complications and implications would be in applying retroactive requirements. The requirements for non-U.S. citizens to vote should not be less stringent than for U.S. citizens.

Mr. Elrich commented that he cannot imagine why anyone would have an objection to requiring equal qualifications, and that the Council should be able to make this decision.

Mr. Prenskey said that he feels that the registrations that have been filed to date should not be invalidated.

Mr. Leary said that an alternative would be that the persons who have already registered will be notified that they will be required to sign the equivalent of the certification that should appear on all future versions of the application form.

Mr. Prenskey commented that a new application should be mailed by certified mail to those who have registered.

Mr. Mitton stated that if the Council adopts this ordinance this evening, they will be authorizing the non-U.S. citizens to be merged with the list of U.S. citizens, and that he believes that this is not lawful.

Mr. Sharp responded that the amendment addresses this issue, and that there will be a separate list.

Mr. Mitton asked if the votes cast by non-U.S. citizens will be kept separate?

Mr. Sharp responded that there will be no way to identify how non-U.S. citizens vote.

Mr. Mitton said that the election will be illegal, because the non-U.S. citizens have not met the requirements of the law.

The Ordinance was adopted unanimously at second reading (ABSENT: Johnson).

Mr. Prensky pointed out that there is a cut-off date of thirty days prior to the election, close of business on October 4th, for persons wishing to vote in the November 2nd election, and that there are a number of organizations that are providing the opportunity for non-U.S. citizens to register to vote and that these registrations will only be accepted until October 4th.

Mr. Hamilton asked if the Council's decision to have all meetings at 7:30 p.m. should affect the 8:00 p.m. time for the special meeting of the Council to receive the election results on November 3rd?

Mr. Sharp stated that the November 3rd meeting is scheduled for 8:00 p.m.

Ms. Habada verified that the registration form will be corrected and that a new form will be mailed to persons who have registered to date by certified mail.

Moved by Mr. Hamilton; seconded by Ms. Porter. The Council adjourned to Executive Session to discuss the City Administrator's evaluation at 10:35 p.m.

ORDINANCE #1993-29
(Attached)

Introduced By: Councilmember Porter

ADOPTED: September 13, 1993

Resolution No. 1993- 82

A resolution recognizing the members of the Sligo Creek Citizens' Advisory Committee and expressing appreciation for their service to the City of Takoma Park

WHEREAS, the City Council established the Committee to represent the community's interests to the Washington Suburban Sanitary Commission in the development of the Sligo Creek Sewer Rehabilitation and Hiker/Biker Trail Project and to prepare a report for Council consideration prior to its taking any official action; and

WHEREAS, the Committee prepared a report and recommendations for the guidance of Council in determining its position on this extensive project; and

WHEREAS, the Committee will continue to play a role in representing the community's interest at pre-construction meetings and monthly construction monitoring meetings; and

WHEREAS, the members of the Committee generously volunteered their time and knowledge over an extended period of time, and have performed a valuable service for the community;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT the City Council formally expresses its appreciation to the members of the Sligo Creek Citizens' Advisory Committee, listed below, and commends them for their service to the City of Takoma Park.

Janice Martin	1319 Elson Place
Larlane Brown	805 Colby Avenue
Mary Thorpe	126 Ritchie Avenue
Jim DiLuigi	7106 13th Avenue
Ruth Harwood	706 Sligo Creek Parkway
John d'Eustachio	7213 15th Avenue
Drake Cutini	8022 Maple Avenue
Dan Robinson	120 Grant Avenue
Phil Vogel	7117 Garland Avenue
Robert Guldin	7309 Willow Avenue
Bill Easterly	7111 Garland Avenue

ADOPTED THIS 13th DAY OF September, 1993.

Introduced by: Mayor Sharp
(Drafted by: C. Sartoph)

1st Reading: 9/07/93
2nd Reading: 9/13/93
Effective: 9/13/93

ORDINANCE #1993 - 29

SETTING FORTH THE 1993 TAKOMA PARK CITY ELECTION

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF TAKOMA PARK, MARYLAND:

SECTION 1. THAT the City Clerk shall call a Nominating Caucus of the citizens for the nomination of candidates for Mayor and Councilmembers on Tuesday, September 28, 1993 at 8:00 PM in the Council Chamber at the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland; the said Nominating Caucus shall be conducted as follows:

- a. On September 20, 1993, the City Clerk shall select by random drawing, ward numbers one through six to determine the order in which Ward nominations are received.
- b. Nominations for Mayor shall immediately precede all six ward nominations.

SECTION 2. THAT a City Election shall be held at the Municipal Building on Tuesday, November 2, 1993, between the hours of 7:00 AM and 8:00 PM for the purpose of electing a Mayor and six Councilmembers. The Mayor shall be elected at large, and one Councilmember from each ward shall be elected by the voters of that ward only. The election shall be conducted by voting machines and, as nearly as practicable, all laws and regulations governing the use of voting machines in Prince George's County elections shall apply. Absentee voting shall be available as set forth by City Ordinance; AND

SECTION 3. THAT the City Clerk shall arrange with the Supervisors of Elections of Prince George's County for the use of seven voting machines at the said election, with a separate machine for the exclusive use of each of the six wards, and a seventh for the use only in the event of malfunction. The City Clerk shall place the names of the candidates nominated for Councilmember at the Citizens' Meeting on separate ward voting machines, with each machine displaying the names of candidates for one ward only, and shall place the names of persons nominated for the office of Mayor on all voting machines; all of the names of candidates nominated at the Citizen's Meeting shall be so placed, except any who within three days thereafter may have filed in writing with the City Clerk a declination; AND

SECTION 4. THAT the City Clerk shall arrange for a space on the voting machines for write-in votes for the names of those qualified persons who have registered with the City Clerk as write-in candidates at least seven (7) days before the election; AND

SECTION 5. THAT notice of the Citizens' Meeting and the City Election to be inserted at least once in the Montgomery County Journal and the Prince George's County Journal during the two weeks prior to September 28, 1993. In addition, the Clerk shall have inserted in the Montgomery County Journal and the Prince George's County Journal, during the week preceding the election, a facsimile of the arrangements of the names and wards which will appear on the voting machines; AND

SECTION 6. THAT voter authority cards and lists shall be prepared for each ward separately, bearing the names, addresses and election wards of all eligible voters as certified by the Boards of Supervisors of Election for Prince George's and Montgomery Counties, and supplied to the Judges of Election on election day. The voter registration information for all eligible non-U.S. Citizens (names, addresses, and election wards) who have registered with the City Clerk's office to vote in Takoma Park municipal elections will be incorporated ~~into~~ with the respective County/ward lists, and a voter authority card will be prepared for each eligible non-U.S. Citizen voter and interfiled with the respective County voter authority cards, and supplied to the Judges of Election on election day; AND

SECTION 7. THAT the City Clerk shall recommend to the City Council the names of persons for designation by the Council as Judges of Election on election day; AND

SECTION 8. THAT the Judges of Election shall meet in the Municipal building as a Board of Election at 7:00 PM, Wednesday, November 3, 1993, and shall determine and certify the results of the election, as provided in the City Charter; AND

SECTION 9. THAT the City Council shall meet in Special Session at 8:00 PM, Wednesday, November 3, 1993, to receive the certification of election from the Judges; AND

SECTION 10. THAT this Ordinance becomes effective upon adoption.

Adopted this 13th day of September, 1993 by Roll Call Vote as Follows:

AYE: Elrich, Hamilton, Leary, Porter, Prensky, Sharp

NAY: None

ABSTAINED: None

ABSENT: Johnson

Public Hearing, Regular Meeting and Worksession of the City Council

September 27, 1993

CITY OFFICIALS PRESENT:

Mayor Sharp

Councilmember Elrich

Councilmember Porter

Councilmember Prensky

City Administrator Habada

Assistant City Administrator Hobbs

City Clerk Sartoph

Deputy City Clerk Espinosa

Corporation Counsel Silber

CITY OFFICIALS ABSENT:

Councilmember Hamilton

Councilmember Johnson

Councilmember Leary

The City Council convened at 7:50 p.m. on Monday, September 27, 1993, in the Council Chamber at 7500 Maple Avenue.

Following the Pledge of Allegiance, the following remarks were made.

MAYOR AND COUNCIL COMMENTS

Mayor Sharp read a Proclamation recognizing the 10th Anniversary of the Adventist Community Services and thanked them for their dedication to outreach efforts in the community.

ADOPTION OF MINUTES

Moved by Ms. Porter; seconded by Mr. Prensky. The Council meeting minutes from 7/26/93 were adopted unanimously.

CITIZEN COMMENTS

Buddy Daniels, 19 Sherman Avenue thanked the City Council and the City staff for their support in the mid-West flood relief fundraising efforts. He commented that at the Folk Festival \$85.50 was raised toward a relief fund and thanked members of his family for their assistance at this festival. He noted that the September 18th Flood Relief Dance was canceled because of the conflict in scheduling with the retirement party for long-time City employee Kenny Jones. Mr. Daniels said that he has contacted Denise Baker of the National League of Cities who has provided him with information regarding a number of mid-West cities that could use the relief monies.

Mr. Sharp noted that the Maryland Municipal League (MML) has been doing some coordinating and asked the City Administrator to contact the MML regarding efforts to connect cities in Maryland to needy cities in the flood areas.

Mr. Daniels said that he is not sure that the Flood Relief Dance can be re-coordinated between now and the November 2nd City Election, but that he would like to continue relief efforts.

Ralph Coleman, 7611 Maple Avenue said that he is commenting as a citizen and a person who volunteered his services working with the cable station. He stated that he was the municipal coordinator for the station and commented that he had written several memos, the last dated August 30th, to the City Administrator regarding some of the problems and issues going on in the Cable Department. Mr. Coleman said that Channel 54 had problems before he came to work at the station and that he and other cable staff were working on straightening out some of those problems. He stated that in the end, they were prohibited from correcting the problems. He read the first memo addressed to Mr. Hobbs regarding municipal productions. Mr. Coleman commented on equipment that has been constantly moved from room to room, locks that have been changed without providing cable staff with new keys, and equipment that has been removed from the building or stolen. He

said that he tried to complete the projects that were assigned to him but that he was unable to complete projects because of the equipment that has been moved, locked-up, or removed from the building. He stated that the production of City Council meetings for the past eight months have been done by himself and others he could get to help him. He said that he has tried working with the cable staff but that they were inexperienced or family and friends of the station manager. Mr. Coleman said that he wants access to the station. He said that the people who are in the administrative positions do not have the ability to administrate a cable station. He said that there must be a change in administration for the station to go forward. He suggested that an intern staff be put in place to operate the station. In closing he stated that he does not want the Council or citizens of the City to think that he was part of the problems that led to the termination of the cable contract. Mr. Coleman said that the channel can be run for the City, and that he hopes the current contract is going in that direction. He noted that he will continue to produce his sports show, but that he will not be a part of any activities that he feels are wrong.

Willie Young, 242 New Hampshire said that he is speaking in regards to the dismissal of the cable contract. He said that he believes the station needs to open communication with the community. He commented that he is currently teaching a class, but that he and the students have no idea where the station is going from this point. He said that he thinks that the removal of the contract was a good move, and that this is the time to open the doors to the community and let them know that the cable contract has been changed. Mr. Young stated that the equipment that has been removed has hampered the station productions. Music equipment has been moved to the Kensington station.

Mr. Elrich requested a copy of the station audit done by Montgomery Cable, and stated that he would like to know where all the equipment is and where it is supposed to be. He said that he is disturbed with what is going on.

Mr. Sharp said that the City Administrator has been aware of the problems and the disagreements within the TPCT, which are the reasons that the contract has been canceled, and asked Ms. Habada to comment on the new organizational structure that is being proposed.

Ms. Habada said that there is currently a consultant to manage the station for the next 90 days, with the thought of doing a Request for Proposals for someone more permanent to manage the station, and to redirect the focus on municipal programming directed towards benefiting the citizens of Takoma Park. She stated that this redirection may make some people unhappy because in the past there have been some community access producers doing some good programs. The City will take a look at programs that have been on and will make a judgement regarding which programs will be grandfathered-in, or otherwise kept, and those that will be redirected to other community access channels. She stated that there was an inventory done by Montgomery Community Television that included an itemization of equipment that is currently in the building and equipment that was on the original inventory list that are no longer here. Mr. Herb Wilson has been asked to review the list and account for items.

Mr. Elrich stated that the proposed re-direction of the cable station seems to be a departure from the original intention for the station. He said that there is merit in holding a public discussion regarding the direction of the station to receive citizen input as opposed to the change being administratively enacted.

Kay Dellinger, Hampshire Towers said that she is very concerned about everything that has happened, and that Ms. Habada was right to cancel the contract. She said that TPCT existed before being incorporated into the former Cable station staff and that the Board of TPCT gave Ralph and Willie a letter removing them from the Board. She stated that they were never advised that they were going to be removed from the Board, and asked if board members can be removed in this manner without scheduling a meeting. She asked for a list of persons that constitute the Board. Ms. Dellinger commented that the bylaws and actions of the board members of TPCT are undemocratic, and that even though TPCT may not be running the station,

they are still involved with the station. The station is known in the community as Greg Hamilton's cable station because Mr. Hamilton has been running the station ever since he became involved with it. She said that no member of the City Council should ever be involved with the cable station, much less running it. She noted that with the redirection of programming, persons have never been told in advance that their programs were being removed from the air. Ms. Dellinger stated that on August 27, 1993, Montgomery County did an inventory of the cable station equipment and found 64 of 178 items unaccounted for. The value of these items is approximately \$20,000. She requested a complete list of all equipment that is missing and the price paid for each item. She commented on the equipment transfers to Kensington and that every piece of equipment is vital to the City's cable station.

Mr. Sharp asked Ms. Dellinger to conclude her comments and said that he will schedule a Worksession to discuss this matter. Mr. Sharp said that there is no longer a contract, and that the City is looking at a different structure for running the station.

Ms. Dellinger said that there needs to be community programming on the station. The community needs to be involved in the cable station.

Mr. Young asked whether the Worksession will be scheduled before the Election and whether he will be informed of the scheduling.

Mr. Sharp stated that it would be scheduled before the election and that agendas are public information.

PUBLIC HEARING

#1 Request for the Closure of Section of Alley off Boyd Avenue. Ms. Habada noted that there are several options for the Council to consider that were outlined by Corporation Counsel, and that the Fire Chief is present for this evening's discussion.

Mr. Sharp stated that there has been a beginning discussion of this issue in Worksession and that since the Worksession, there has been a cost estimate of the closure, a statement from the Fire Department regarding the alley, and other comments submitted. He called the public hearing to order and reminded citizens that there are sign-up sheets for persons wishing to comment.

Richard Spiezman, 319 Boyd Avenue stated that he and his wife are the owners of 319 Boyd Avenue and that they are requesting that the City abandon the alley and deed the same to them. Historically, the alley was designed to be a continuous U-shaped alley serving a number of homes of Boyd Avenue, Carroll Avenue and Manor Circle; in 1956, the Council granted the property owners of 317 and 319 Boyd Avenue exclusive use of the portion of the alley adjacent to properties at 317 and 319 Boyd Avenue, subject to the City's right to reopen the alley. Over the years, the alley has fallen in poor repair. He said that he and his wife are petitioning the Council to permanently close the alley because they would like to improve the alley and make it safe for their regular use. He commented that they are willing to pay for the improvements. However, before spending the necessary money, they seek assurance from the City Council that their money will not be wasted. Mr. Spiezman said that they would like to formalize the arrangement that has existed for almost 40 years and have the City officially abandon the alley. He stated that the City will be relieved of its liabilities (financial and legal), that he will pay property taxes on the alley, and that the alley will be made usable. He commented that last week the Fire Chief inspected the alley and adjacent properties, and filed a report with the City. Mr. Spiezman quoted from the Chief's memo that "he sees no problem with closing the alley and that closing the alley would not interfere in any way with Fire Department operations." He noted that he knows that citizens from the open side of the alley may testify this evening as to the poor condition of their side of the alley, but that he does not believe that the problems on the other side of the alley should be linked to the petition before the Council.

Michael Israel, 260 North Manor Circle said that the lower level of his apartment is on Boyd Avenue. Mr. Isreal introduced six pictures and explained each (photocopies attached). He stated that Mr. Spiezman had installed a pipe from the gutter on his house that drained water over a stone wall into a neighbor's yard. The pipe has been moved to run the water into the wall, and the water has washed the wall down. Mr. Isreal said that Mr. Spiezman was notified about this problem and that he corrected it by placing the hose so that the water runs out toward the City wall. Mr. Isreal commented that he has informed his landlord of these problems in hopes that his landlord would make a formal complaint regarding Mr. Spiezman, but that the landlord will not file a complaint and is trying to evict him because he makes constant complaints to DHCD regarding his landlord. Mr. Israel commented that there is a purple berry tree on Mr. Spiezman's property that has branches extending over where he parks his car, and that the bird droppings are all over his car. He said that Mr. Spiezman would not cut the branches when asked, and that recently Mr. Spiezman cut down the tree and let it fall into a neighbor's yard where it took out several pepper plants. He said that he is concerned about whether Mr. Spiezman's intentions to improve the alley are genuine considering the examples of neglect that he has presented.

Ramone Lopez, 307 Boyd Avenue commented on the document and petition that was presented this evening to the Council by the Boyd-Carroll Neighborhood Association, and stated that he wishes that the information made available in the agenda item package had been made available to the area neighbors prior to this evening's meeting. He said that his initial impression of the request is that there really is not too much of a problem in closing-off that section of the alley because it has not been used for several years, however, that the alley should not simply be deeded to the applicant. He urged the Council to investigate the option of a mutually agreed upon price for the property.

Ellen Lopez, 307 Boyd Avenue said that she lives at the other entrance of the alley, and asked whether the Council received the Boyd-Carroll Neighborhood Association letter that was delivered this afternoon. She asked that the Council delay the decision and consider selling the alley property to the applicant. She said that she is concerned about the precedent that this presents, and that future requests for pieces of the alley may arise. She stated that in looking over the agenda item package, there are some items that the citizens are not in agreement with and that the information appears to address the entire alley instead of the section in question. Ms. Lopez asked for some information about what it would cost to repair only the section of alley in question. She stated that she is concerned about safety issues and that she would like to see access to the alley maintained.

John Howard, 318 Boyd Avenue said that he supports the option of the section of alley being deeded over to the applicant in some agreement. He noted that the applicants have already made considerable improvements to the land and that he and other residents have basically the same mirror-image situation with the alley located across the street, on the other side of Boyd Avenue. He commented that his end of the alley is open but in poor repair, and that there needs to be a discussion about how City alleys can be maintained and repaired.

Cynthia Carter, 240 Manor Circle said that she has seen the information contained in the agenda item package for the first time this evening, and that her chief concern is whether this request includes the portion of the alley that runs behind 317 Boyd Avenue.

Rob Valente, 7409 Carroll Avenue said that she is a member of the Boyd-Carroll Neighborhood Association, and that she would like to have time to respond to the information that has been made available this evening. She asked that the Council delay its decision on this matter. She commented on the exclusive use agreement granted to Ms. Bennett in 1956 and its relationship to the "commercial business" that existed at 317 Boyd Avenue at the time. She questioned what will be the legal grounds for the decision in regards to the current request. She pointed out that this matter will set a precedent, and that there needs to be a cost-benefit analysis, to include an analysis of what it would cost to repair only the

section of the alley. She stated that if you get value for something, you should pay that value for it, and that the City can make money by selling the land. One of the questions that is a concern of the area residents is if the property is deeded over to the applicants, what insurance is there that the rest of the alley will not eventually be closed (Domino Effect)? She said that the trend begins with Ms. Bennett's property, and that it is moving in the direction of the open portion of the alley. She commented that she believes that the alley should be opened. It fosters a sense of community, is a place where the children can play, provides increased safety because citizens can park behind their homes and neighbors can keep a watch on other properties. If the alley were open, the traffic could be distributed more evenly. She said that there is currently no way to turn around in the alley, and that people use her parking area as a turn-around. She noted that snow and ice have been a problem for the alley and that the open alley is City property and should be maintained. She stated that the City has not considered all options, and suggested that the Council consider opening the alley for public access.

Paul Huebner, 7405 Carroll Avenue stated that he talked to two people who are residents of Manor Circle who stated that they were not notified of this matter coming before the Council for discussion. He stated that Ms. Bennett took over more than the portion of the alley that was granted for exclusive use. He said that it is impossible for people to use the alley because Ms. Bennett has it fenced off, and that he is appalled that the City is even considering deeding over the property. He observed that there is a person on the other side of Boyd Avenue who would also like to have a section of the alley deeded to him. Mr. Hurbner said that a cost analysis should be limited to the section of the alley in question, and that Ms. Bennet should be asked to remove her fence, at her own cost. The alley has been unused because of Ms. Bennett's fence and the subsequent trash that has been dumped back in that area of the alley. If paving of this section were paid for by the City, all persons could use the alley. He questioned what exclusive use will entail, and said that he would be willing to help improve this section of the alley so that all persons could access and use the alley. He commented that he thinks that the area residents should work together and improve the alley for public access.

Kathy Phillip, 7405 Carroll Avenue said that the matter should be delayed because there are a lot of facts that are in question, not only costs, but the benefits of options. She stated that if the alley were open, everyone will have the ability to use the alley and the applicants will still be able to access their garage.

Steve Milkey, 309 Boyd Avenue stated that he is concerned about the precedent that would be set if the section of alley is closed. He said that properties that are locked into the alley do not have any on-street driveways and that he is worried that if the entire alley is closed off in the future, there will be no space to park.

Faith Horowitz, 319 Boyd Avenue noted that the initial request was submitted in early August and that at the request of the City Administrator, they resubmitted their letter with a later date in order to accommodate the scheduling of the Council. She stated that the Code lists rules and regulations governing the time that the Council has to consider a request of this kind, and that there is a deadline the Council needs to meet.

Mr. Sharp noted that the initial request was submitted at the beginning of a month long Council recess.

Jim Douglas, 18 Sherman Avenue said that a lot of important issues have been raised this evening and that he considers the applicants' request as beneficial to the neighborhood. He stated that he cannot see how this request will adversely affect the residents along the open portion of the alley, and that the City should take action to repair the open portion of the alley. Mr. Douglas commented that as a tax payer, he is concerned that the City is considering paying \$25,000 to open the alley, that the Fire Chief and Public Works Director do not oppose closing. He said that he can see no reason not to close the alley and that he is additionally concerned about three large oak trees that will be adversely affected by public use

of the alley. He stated that he feels it is reasonable to grant the applicants their request and to take immediate action on the concerns of the other neighbors in regards to the open portion of the alley.

Michael Isreal, 260 North Manor Circle commented on the broken wall, long weeds, and overgrown grass in Mr. Spiezman's yard, and said that he questions whether Mr. Spiezman will really improve the alley.

Rob Valente read the criteria from the City Code that must be met to close a right-of-way, and said that the Council needs to address the criteria.

Cynthia Carter, 240 Manor Circle said that she lives right next to the area that is being discussed and that there has been a lot of building in this area. She expressed her hope that whatever is decided is done with a great deal of attention and care given to the wildlife that lives in the area.

Mr. Sharp closed the public hearing at 9:09 p.m.

Mr. Prensky said that he represents virtually all of the persons who have spoken this evening. He noted that he is not running for re-election, and that he does not have anyone's individual interest at heart but all of theirs. He said that there is a rats nest of issues that have been broached in this discussion. He stated that the simplest of issues is not one that he has a lot of question about--whether it would make sense to at least continue exclusive use of the section of alley between 317 and 319 Boyd Avenue. He proposed that the Council not come to a conclusion on this issue this evening. Mr. Prensky said that the City needs to determine the cost for an appraisal of the section of alley, a survey to properly identify the right-of-way and location of the trees, the legal fees (Corporation Counsel) involved in the potential granting of the land back to the petitioners, the taxes that the City would receive, and the incremental costs of opening the "section" of the alley. Mr. Prensky noted that there have been precedents to deeding property to citizens, formerly called vacating public property. He said that it is important that a discussion be scheduled with the neighborhood and that he will be a facilitator in this process. In regards to traffic and safety, all the residents of Walnut Avenue would love to have a situation where the street is difficult to drive on, to discourage traffic; creating a thru-street will increase the safety risks. Mr. Prensky stated that he will meet with the neighborhood prior to the October 18th Worksession.

Mr. Sharp said that this matter will be scheduled for further discussion on October 18th in Worksession.

Ms. Porter requested that the Council review the process, procedures, and standards for deeding property to residents. She proposed that the Council look at the cost and benefits to the City for deeding the property to the applicants, and look at questions of public access that would be effected by any such transfers.

#2 Ritchie Avenue Pre-Preliminary Subdivision Plan (#7-93044). Ms. Schwartz noted that there have been no changes to the plan since the Council's last Worksession discussion.

Mr. Sharp noted that the fourth item regarding the sprinklers has been deleted from the resolved clause.

Moved by Mr. Elrich, seconded by Ms. Porter. The resolution was adopted unanimously.

RESOLUTION #1993-83
(Attached)

#3 Community Development Block Grant (CDBG) Recommendations for PY20. Mr. Sharp explained that the resolution adopts the recommendations made by the Citizens Advisory Committee.

Moved by Mr. Elrich; seconded by Ms. Porter.

Mr. Elrich noted that if the Prince George's County funds are granted for the Merchant Organizer program, he hopes that the City will refuse the money or find another program to apply it to. He said that he feels this is a waste of money.

Ms. Habada asked whether the Council would like to advise Ms. Porter on the Council's position in regards to Mr. Elrich's comments, since Ms. Porter will be sitting on the Advisory Committee.

Ms. Porter stated that it is highly unlikely that this proposal will be accepted.

The resolution was adopted unanimously.

RESOLUTION #1993-84
(Attached)

Ms. Habada asked Mr. Sharp whether there was a quorum for the vote on the resolution.

Mr. Sharp said that there is a quorum unless there is a request for a quorum call.

#4 CDBG Citizens Advisory Committee. Moved by Ms. Porter; Seconded by Mr. Prensky.

Mr. Sharp commented that he believes that the City has always been served well by the CAC and that this year is absolutely no exception to the rule. He thanked the committee members for their efforts.

The resolution was adopted unanimously.

RESOLUTION #1993-85
(Attached)

#5 Takoma Junction Project - CDBG Funds. Mr. Sharp explained that the resolution will reprogram approximately \$140,000 of Community Development Block Grant funds for the Takoma Junction Project.

Moved by Mr. Prensky; seconded by Ms. Porter.

Mr. Elrich asked how much money this will give the City, in total, toward this project?

Ms. Habada responded, \$315,000.

Mr. Elrich said that he is concerned about using this money that is being taken away from the Tenant Awareness Program, something which is genuinely meant to benefit low and moderate income people as opposed to something which is meant for wealthy people. He asked whether the City Administrator is any closer to knowing whether this money will actually be used this way or is the City going through a step that could equally well result in a second request to Montgomery County within the next few months to use the money for something else.

Ms. Habada said that it is hard to predict real estate transactions, but that she is hopeful to have this project move forward--the development of the Takoma Junction site being the desired end result.

Mr. Elrich said that he is concerned about there being a need for multiple reprogrammings.

Mr. Prensky said that community real estate projects are long and complicated processes that often require multiple reprogramming of funds, commitments, deals, ownership and good sense. He said that he doesn't think that this issue is any different, and that there will be a long and complex series of decisions and discussions on the Council and in the community before any results are reached. He said that he feels it is

unfair to characterize the potential use of CDBG funds as benefiting rich people, when the project has not been completed yet.

Ms. Porter noted that the resolution is making money available for a range of possibilities in conjunction with this project. She urged people to get involved in the discussions, to learn about it, and to express their interests for this property.

Jim Douglas, 18 Sherman Avenue stated that he thinks that the Council is doing the right thing in putting the City in an active role in participating in the development of the site.

Mr. Sharp said that he agrees with Mr. Elrich's concern about the Tenant Awareness Program and that should a project come along, he wants to make sure that there is money available to fund the program.

The resolution was adopted unanimously.

RESOLUTION #1993-86
(Attached)

#6 Appeal of Tree Commission Decision (7419 Hancock Avenue). Mr. Sharp explained that the council is reconvening its discussion of this item and not reopening the hearing or accepting new testimony.

Mr. Elrich said that the Council has the legal opinion that was requested, and that he is sufficiently satisfied that the Council can go forward with upholding the Tree Commission Decision. He moved that the Council uphold the commission's decision.

Ms. Porter reiterated that during the last discussion, she heard nothing that persuaded her that the Commission made the wrong decision, and that she will vote to affirm their decision.

Mr. Prensky said that he never questioned the commission's decision and will vote to affirm the decision.

Mr. Sharp said that he holds a similar view, and that there was value in the delay for receiving an opinion from Corporation Counsel by making the Council feel more firm in its legal views. He suggested that the Council vote on the matter and have an opinion written, that the councilmembers will review for comments to be certain that Council agrees with the actual text of the Opinion. The Opinion will be brought back for an additional vote at a later date.

Moved by Elrich; seconded by Prensky. The Tree Commission Decision was upheld unanimously.

Alan Adler, 7419 Hancock Avenue asked if someone purchases the property from him, can that person apply for a tree permit from the City?

Mr. Sharp told him to consult with the City Administrator regarding this question.

#7 1st Reading Ordinance re: Ethics. Mr. Sharp explained that the ordinance in front of the Council reflects the changes that have been suggested up until the time of the last Worksession discussion, and additions and deletions subsequent to that last discussion are noted by striking and shading of text. A copy of the ordinance prior to this version, showing striking of current Code text, is available upon request. Mr. Sharp noted some of the most recent changes that resulted from the last Worksession discussion. He called attention to where Sec.2-17(f) is suggested for removal and asked the Council to consider whether or not this is desired, and noted that the section regarding campaign material has been moved to the Elections Code.

Jim Douglas, 18 Sherman Avenue stated that the Task Force submitted a report to the Council on December 2nd and that their major objectives had been to refocus the nature of the City's Ethics Ordinance on what they

consider to be proper and ethical behavior on the part of City officials (elected and appointed), employees, and volunteers. One recommendation was to use this ordinance to address specific legal issues affecting elected officials and the City's two appointed officials (City Administrator and Corporation Counsel); issues affecting other employees should be dealt with in the City's personnel regulations. He said that a project for the City Administrator next year should be to update the personnel regulations. Another goal was to create a process within the City which is perceived as being fair. He commented that the ordinance includes the creation of an Ethics Commission that he feels provides a useful way of addressing issues in a quasi-legal manner. The final objective of the Task Force was to decriminalize the Ethics Ordinance and remove the provisions for offenses and citations. Mr. Douglas thanked the City Clerk for her efforts in drafting the ordinance and the Mayor for assisting the Task Force in coming to a useful approach, particularly to the Ethics Commission. He commented on the rationale for deleting section 2-17(f) and another similar section regarding exemptions and waivers, saying that the Task Force felt it is inappropriate to grant someone the authority to give these waivers.

Mr. Sharp noted that section 2-17(f) also speaks to "significantly reducing the availability of qualified persons for public service" and asked how the Commission would be affected by this section if a majority of the members found they were unable to conduct business.

Mr. Douglas said that the policy and purpose portion of the ordinance was re-written to create a constant balance because it was felt that too stringent an ethics ordinance would drive persons away from participating in public office. There may be a circumstance in which a majority of the Commission is unable to conduct business but that, in general, many such "what if's" may exist and to provide for them all, the ordinance would become a long, not practical, and unworkable ordinance. He said that it may be worth giving some thought to what happens if a majority of the Ethics Commission has to disqualify itself, and what happens if a complaint is brought against a member of the Commission.

Mr. Sharp said that the way section 2-17(f) is written it does not speak to the issue that he was addressing because it has to do with the more general standard of exemption from public service. He said that he is not sure that the code is not written in such a way that if this situation did arise, a person could not simply declare the conflict as part of the process.

Mr. Douglas said that the current draft is consistent with the recommendations of the task force.

Mr. Prenskey thanked the members of the task force for extensive and excellent work. He said that the City Administrator should see if a member of the task force could write a brief synopsis of the nature and holdings of the new ordinance, since one of the times that people are most interested in this ordinance is election season. It would be helpful if an article can be drafted for publication in the next Newsletter.

Mr. Sharp said that the ordinance does not necessarily have to go to second reading in two weeks and that he wants Corporation Counsel's opinion and any additional comments from the task force on the ordinance. He proposed that the second reading be scheduled for October 25th.

Mr. Douglas said that he would be willing to explain the ordinance following adoption because of the short timeframe between now and publication of the next Newsletter.

Moved by Mr. Sharp; seconded by Ms. Porter. The ordinance was accepted unanimously at first reading.

ORDINANCE #1993-30
(Attached)

#8 1st Reading Ordinance re: Campaign Material. Moved by Mr. Elrich; seconded by Ms. Porter.

Mr. Sharp explained the amendment to the Code, and commented on the additional suggestion that was made by Ms. Porter in the last Worksession discussion, that the authority line should apply to situations where literature is distributed opposing a candidate. He also noted the task force recommendation to change the Class A offense to a civil penalty.

Mr. Prensky moved the amendment regarding the authority line for literature distributed in opposition to a candidate; seconded by Ms. Porter. The text will be amended as follows: "person promoting, endorsing or opposing any such..."

Mr. Sharp said that he will probably vote in favor of this amendment but that he does not feel that the omission of "opposing" was unintentional, because if you are offering something that opposes a candidate can be judged on its merit as to whether the statements contained make sense or not. He stated that it is possible that requiring a person to put an authority line on literature would inhibit them from expressing opposition; and that people may be concerned about being targeted if they put their name on opposition literature. Opposition literature can be useful.

Ms. Porter said that this change puts into the law what has been customary practice, and that she would also like to know where opposing campaign literature originates from. An authority line will help persons in evaluating an opposing view.

Mr. Sharp recalled an instance, where the "who" would have been completely irrelevant, but the information was very helpful.

Mr. Elrich said that there is an invitation for mischief when persons do not have to attribute views expressed in literature.

Mr. Prensky asked how a civil penalty would be prosecuted if a violation were to occur. He said that what this does is establish the standard of how things ought to be done, but that he does not believe that we will end up prosecuting anyone who might violate the law.

Juan Torres, 900 Elm Avenue said that he agrees with the Mayor. Persons holding public office are open for criticism. If you have nothing to fear, then allow persons to speak; people fear retaliation. He said that it is very possible that a person who speaks in opposition will be outcast by the Councilmember. In principal, this is an opportunity for letting everyone know what is going on.

Jim Douglas, 18 Sherman Avenue stated that he does not see the distinction between supporting and opposing literature and that anyone who puts out information should be accountable for it. He said that he supports the amendment.

Mr. Prensky commented that many regular publications will not accept anonymous allegations and make every effort to verify the facts. Letters to the editor often must be signed.

Ms. Porter said that the Council is not regulating free speech, since the only materials that are being discussed are campaign materials.

The amendment passed unanimously.

Mr. Sharp said that the question is now whether the penalty should be changed to a civil penalty. Mr. Sharp said that maybe the Council should take this under advisement to look at all three of the penalties for this Article and later return to a discussion of this matter with Corporation Counsel and the task force members.

Juan Torres, 900 Elm Avenue said that in reference to this section, it seems that it should be unnecessary for a candidate who is running his own campaign to indicate his name on his campaign literature. He said that it would be a different case if there is a campaign committee working on

behalf of a candidate and issuing literature. He commented that he has had approximately 4000 pieces of campaign literature printed without prior knowledge of this change in the ordinance and that if there is to be a change to this ordinance, it should apply to future elections.

Mr. Prenskey suggested that Mr. Torres purchase a rubber stamp to stamp his literature with an authority line. He said that a person could hypothetically have printed a piece of literature with a candidates picture that includes ridiculous statements. The authority line will attribute the literature to the person to whom complaints should be addressed.

Jim Douglas said that there simply has to be the name of the person who is responsible for the literature somewhere in the literature.

The amended ordinance was accepted unanimously at first reading.

ORDINANCE #1993-31
(Attached)

#9 1st Reading Ordinance re: Election Judges. Mr. Sharp explained that this is the first reading of an ordinance designating election judges, and asked Ms. Sartoph how many judges will be needed.

Ms. Sartoph stated that she is still seeking an additional twelve election judges--three for each ward and six alternates.

Mr. Prenskey asked persons who are interested in serving as election judges to contact the City Clerk's office.

The ordinance was accepted unanimously at first reading.

ORDINANCE #1993-32
(Attached)

#10 Consent Agenda. Mr. Sharp explained that there are two items on the consent agenda, (1) making the appointment of Gaby O'Brian to the Commission on Landlord-Tenant Affairs and (2) making three appointments to the Takoma Park Recreation Council.

Moved by Mr. Sharp; seconded by Ms. Porter.

The consent agenda was adopted unanimously.

Appointment to COLTA
RESOLUTION #1993-87
(Attached)

Appointments to the Takoma Park Recreation Council
RESOLUTION #1993-88
(Attached)

Moved by Ms. Porter; seconded by Mr. Prenskey, the Council adjourned to Worksession at 10:15.

City of Takoma Park, Maryland

DEPARTMENT OF HOUSING AND
COMMUNITY DEVELOPMENT
TELEPHONE 301-270-5900



7500 MAPLE AVENUE
TAKOMA PARK, MD 20912

July 30, 1993

Mr. Michael Israel
321 Boyd Avenue
Takoma Park, Md. 20912

Re: COLTA Case

Dear Mr. Israel:

Enclosed please find a copy of a document that has been submitted by Mr. Kwong which will be added to the COLTA file.

Sincerely,

Linda Walker
Housing Coordinator

P.S.

I never demanded that Mr. Speizman do what could and would like to have done at that time. But on a good front but Rear looks like hell.

Michael E. Israel

P.S.S.

I tried many times to talk to Mr. and Mrs. Horowitz about the Tree. Then the morning I went over, all their lights were on and I caught them home at 10 minutes to 7 A.M.

m. e. i.

I

Xerox Copies of pictures of mee-ying Kwong
Yui's property at 260 N. Manor Circle and 321
Boyd ave., and Mr. Speigmans at 319 Boyd ave.

Picture # 1.

1. my car in our parking lot. (1974 chev.)
2. fence between properties
3. our apartment complex facing N. Manor circle
upper apartments, and 2 apartments facing Boyd.
4. Mr. Speigmans house in right background.

2.

Mr. Speigmans house and mess between
properties.

3.

Fallen wall and part of standing
wall.

The water from Mr. Speigmans gutters
washed the wall down, many
months ago and still laying there
up to 9-27-93.

II

Picture # 4.

Fallen wall and long grass and brush, which has never been cleaned out since Mr. Speigman moved in. a mess for all these past months, (It makes me cry).

5.

Shows broken pipe (disconnected) which now runs to and behind or in front of wall on Boyd ave. white line is curb on opposite side of Boyd ave.

6.

Disconnected pipe from gutter drain which has been that way for many months on Mr. Speigman's property which runs into Mei-Ying Kwong Yui's

Property.

Michael E. Israel
260 N. Manor Circle
apt. # 2
Takoma Park, Md. 20912

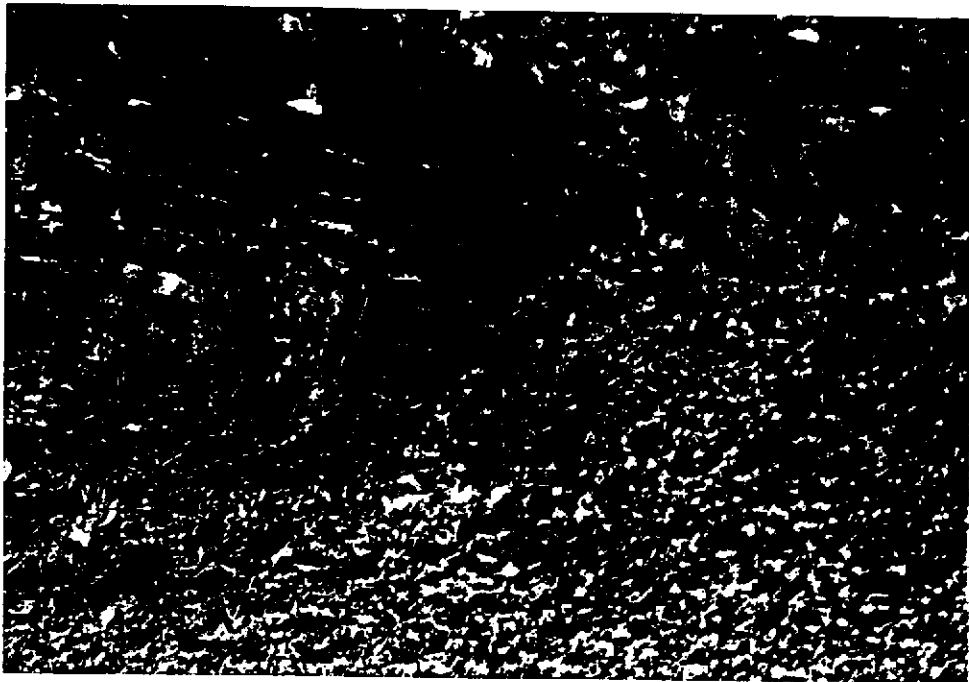
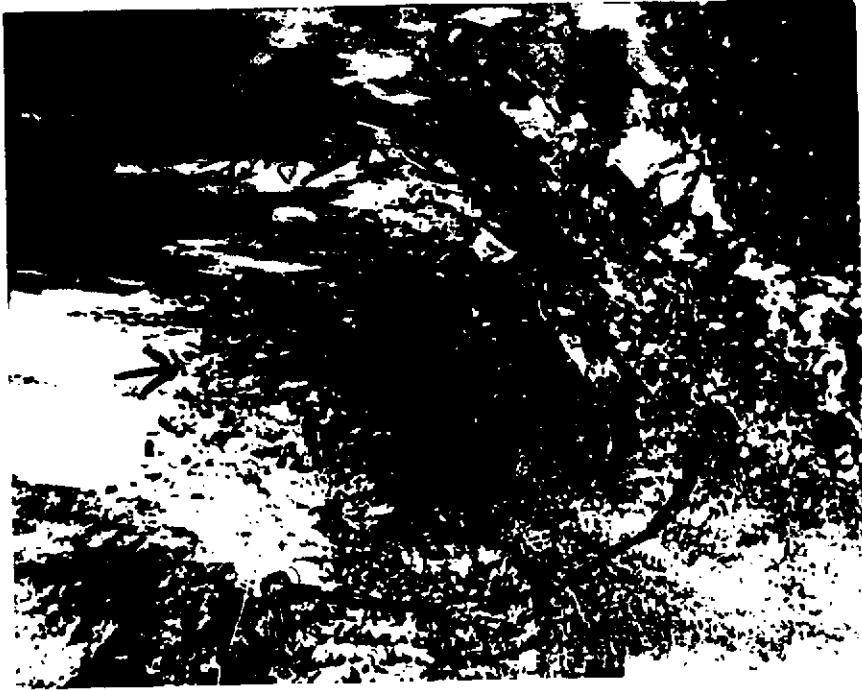
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Introduced By: Councilmember Elrich

ADOPTED: SEPTEMBER 27, 1993

Resolution No. 1993-83

**Resolution Recommending No Position on a
Pre-Preliminary Subdivision Plan #7-93044
for Lot 7, Block 59, Ritchie Avenue**

WHEREAS, Marc and Patrice Smith have submitted a request for a pre-preliminary subdivision (Preliminary Plan #7-93044) to the Montgomery County Maryland-National Capital Park and Planning Commission for Lot 7, Block 59, B.F. Gilbert's Addition to Takoma Park, located on Ritchie Avenue in Takoma Park; AND

WHEREAS, the applicant is seeking to subdivide the subject property into two single-family lots; AND

WHEREAS, this property is located in the City of Takoma Park and the application has therefore been referred to the City for review and comment; AND

WHEREAS, the application has been reviewed by City staff, which has recommended that the Council take No Position on the application on the basis of analysis contained in the pertinent staff report dated September 15, 1993; AND

WHEREAS, the City has provided public notice and the Council has taken public comment on this matter; AND

WHEREAS, the Council makes the following findings concerning the application:

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND THAT, the City Council hereby takes **NO POSITION** on the requested pre-preliminary subdivision plan.

BE IT FURTHER RESOLVED THAT, should the Montgomery County Planning Board determine that the pre-preliminary plan may continue to the preliminary plan stage, the City Council recommends that the Planning Board adopt the following conditions to the preliminary plan:

1. That the proposed shared driveway be 16 feet wide at the top and bottom, and 12 feet wide in the middle.
2. That the applicant provide three two and one-half inch caliper trees to replace the tree within the public right to be removed, and that these trees are to be planted in appropriate nearby right-of-way locations designated by the City.

3. That a tree protection plan be provided for the 30 inch oak that meets with the satisfaction of the Public Works Director or his designee, in accordance with the provisions of the Takoma Park Tree Ordinance.

BE IT FURTHER RESOLVED THAT the City Administrator is hereby directed to transmit a copy of this Resolution to the appropriate Montgomery County authorities.

ADOPTED THIS 27TH DAY OF SEPTEMBER, 1993.

793044ra.res

Introduced by: Councilmember Elrich

RESOLUTION 1993-84

A Resolution to adopt the recommendations of the Community Development Block Grant Citizens Advisory Committee regarding funding proposals to Montgomery County and Prince George's County for Program Year 20, Fiscal Year 1995 and to authorize DHCD staff to submit proposal applications in response to the request for applications issued by each County.

WHEREAS, the City anticipates receiving federal Community Development Block Grant (CDBG) funds as a passthrough from Montgomery County for PY 20, FY 1995, for eligible projects; AND

WHEREAS, Prince George's County has invited proposals for the use of CDBG funds available from the County which will be considered on a competitive basis; AND

WHEREAS, to achieve maximum citizen input into how CDBG funds are spent by the City, the City Council formed a CDBG Citizens Advisory Committee composed of representatives of various community organizations for the purpose of reviewing and evaluating proposals for CDBG funds and to make recommendations based on those proposals to the City Council; AND

WHEREAS, the Citizens Advisory Committee has now completed its review and has issued its final report which has been considered by the City Council;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND THAT the following proposal recommendations for PY 20 CDBG funding are hereby adopted as listed below and that the Department of Housing and Community Development is hereby authorized to submit applications for funding of the appropriate recommendations to Montgomery County and Prince George's County:

Montgomery County

Head Start Health Project	\$ 18,000
Transitional Housing	33,000
Sec. 108 Loan Guarantee	50,000
Ritchie Avenue Area Sidewalks	19,000
TOTAL	\$120,000

Prince George's County

NH/East West Highway	\$103,685
Holton Lane	87,338
Takoma/Langley Improvements	89,128
Merchant Organizer	35,000
Total	\$310,151

AND,

BE IT FURTHER RESOLVED THAT the Department of Housing and Community Development is hereby directed to make every effort to increase the amount available for the Head Start Health Project to the \$25,00 approved by the CDBG CAC by using to the maximum extent possible any additional funds made available to the City through an increase in the passthrough allocation from Montgomery County above the anticipated \$120,000 and, if needed, submit a request on behalf of this proposal to Montgomery County for a waiver of the 15% funding cap for community services.

ADOPTED THIS 27th DAY OF SEPTEMBER, 1993

Introduced by: Councilmember Porter

RESOLUTION 1993 - 85

A Resolution to recognize the members of the Program Year 20 Community Development Block Grant Citizens Advisory Committee and express appreciation for their service to the City of Takoma Park

WHEREAS, to achieve maximum citizen input into how Community Development Block Grant (CDBG) funds received by the City are spent, the City Council formed a CDBG Citizens Advisory Committee (CAC) composed of representatives of citizen, tenant, civic, neighborhood and business organizations and groups to review and evaluate proposals for the use of CDBG funds and to make recommendations to the City Council; and

WHEREAS, the Citizens Advisory Committee for Program Year 20 has completed its review and evaluation of proposals submitted for the use of PY 20 CDBG funds and has submitted its recommendations to the City Council; and

WHEREAS, the member of the CAC have generously volunteered their time, knowledge and talents in developing these recommendations and have performed a valuable service for the community;

NOW, THEREFORE BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT the City Council formally thanks the members of the Program Year 20 Community Development Block Grant Citizens Advisory Committee, listed below, and commends them for their service to the City of Takoma Park.

<u>Name</u>	<u>Association</u>
Susan Gibson Amstadter	Between the Creeks
Peter Dowling	
Alfred Martins	Edinburgh Tenants Assoc.
David Whyte	
Carl Elefante	Westmoreland Area Community Org.
Bill Valdez	
Roger McGary	North Takoma Citizens Assoc.
Bruce Williams	S.S. Carroll's Citizens Assoc.
G. Neel Teague	T/L Crossroads Development Authority
Jeff Zellmer	
C.P. Cook	Takoma Park Recreation Committee
Bryan Sayer	Circle Woods Community Assoc.
John Hartmann	
Abby Eden	B.F. Gilberts Citizens Assoc.
William Lone	Ritchie Avenue Citizens Assoc.
C. Eudora Clayton	

ADOPTED THIS 27th DAY OF SEPTEMBER, 1993

Presented by: Councilmember Prensky

RESOLUTION 1993 - 86

A Resolution to approve the reprogramming of remaining funds from the PY 17 Tenant Awareness Program and PY 19 Rehabilitation Project and PY 19 Section 108 Loan Guarantee Project to the Takoma Junction Development Project to provide resources for the City's continuing role in the development of this commercial area

WHEREAS, the City Council has previously determined that the City must maintain an active role in determining the direction of development in the Takoma Junction area; and

WHEREAS, the development process requires the City to be able to respond in a timely manner; and

WHEREAS, there are currently block grant funds which could be redirected to assist in achieving the revitalization goals in the Takoma Junction commercial area;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND THAT the Department of Housing and Community Development is hereby directed to submit amendment requests to Montgomery County which will transfer remaining funds from PY 17 Tenant Awareness Program in the amount of \$27,755, PY 19 Rehabilitation Project in the amount of \$63,050 and Py 19 Section 108 Loan Guarantee Project in the amount of \$50,000 to the Takoma Junction Development Project to enable the City to pursue acquisition activities and further the City's revitalization goals in this area.

ADOPTED THIS 27TH DAY OF SEPTEMBER, 1993

Introduced by: Mayor Sharp

RESOLUTION #1993 - 87

APPOINTING A NEW COMMISSIONER TO COLTA

WHEREAS, effective September 14, 1993, a commissioner on the Commission on Landlord-Tenant Affairs (COLTA) resigned; AND

WHEREAS, consequently, there is one vacancy on COLTA; AND

WHEREAS, one person has applied for appointment to fill the remaining vacancy.

NOW, THEREFORE, BE IT RESOLVED THAT the City Council of Takoma Park, Maryland, hereby appoints the following individual to fill-out the term of a vacancy on the Takoma Park Commission on Landlord-Tenant Affairs:

<u>Name</u>	<u>Address</u>	<u>Term Expires</u>
Gaby O'Brien	7009 Poplar Avenue	6/30/96

BE IT FURTHER RESOLVED THAT this appointment becomes effective 27 September, 1993 .

ATTEST:


Catherine Sartoph, City Clerk

Introduced By: Mayor Sharp

RESOLUTION NO. 1993 - 88

APPOINTING MEMBERS TO THE RECREATION COUNCIL

WHEREAS, the Takoma Park Recreation Council has been established by the City Council as a means to promote citizen volunteers and their assistance to the Recreation Department of the City; AND

WHEREAS, there are vacancies on the City's Recreation Council; AND

WHEREAS, the following Takoma Park residents have made application to serve on the Recreation Council.


NOW, THEREFORE BE IT RESOLVED THAT THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, does hereby appoint to the Takoma Park Recreation Council:

Name	Address	Term Expires
Christopher Dyabio	7513 Maple Avenue	June 14, 1994
Denny May	7322 Willow Avenue	June 14, 1994
Bill Seedyke	34 Freemont Avenue	June 14, 1994

BE IT FURTHER RESOLVED, THAT this appointment becomes effective immediately.

Adopted this 27th day of September 1993.

ATTEST:



Catherine Sartoph
City Clerk

Introduced By:
Drafted by: Catherine Sartoph
Draft #5 (9/22/93)

1st Reading: 9/27/93
2nd Reading:
Effective:

ORDINANCE #1993-30

REPEALING IN ITS ENTIRETY TAKOMA PARK CODE ARTICLE 2A. "ETHICS"
AND AMENDING IT WITH THE FOLLOWING ADDITIONS AND DELETIONS

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF
TAKOMA PARK, MARYLAND

SECTION 1. AMENDMENTS TO CHAPTER 2, ARTICLE 2A. ETHICS.

ARTICLE 2A. ETHICS.

Sec. 2-11. Title.

This Article may be cited as the "City of Takoma Park Public
Ethics Ordinance."

Sec. 2-12. Purpose and policy.

~~(a) The City of Takoma Park, recognizing that our system of
representative government is dependent in part upon the people
maintaining the highest trust in their public officials and
employees, finds and declares that the people have a right to be
assured that the impartiality and independent judgment of public
officials and employees will be maintained.~~

~~(b) It is evident that this confidence and trust is eroded
with the conduct of the City's business is subject to improper
influence and even the appearance of improper influence.~~

~~(c) For the purpose of guarding against improper influence,
the Mayor and City Council of the City of Takoma Park enacts this
Public Ethics Ordinance to require City officials and employees
to disclose their financial affairs and to set minimum standards
for their conduct of City business.~~

~~(d) It is the intention of the Mayor and Council that this
Article, except its provisions for criminal sanctions, be
liberally construed to accomplish this purpose.~~

(a) The City Council of the City of Takoma Park finds that:

(1) Officials and employees will maintain the highest
standards of political and professional responsibility and
maintain the highest respect for the interests of the citizens
and for the City itself;

(2) Representative government depends upon the Citizens having the highest trust in their public officials;

(3) The trust, necessary to our system of government, is dangerously eroded not only by improper conduct by employees and official of government, but equally by the appearance of improper conduct, as well;

(4) In order to maintain the fact and appearance of high standards of conduct, it is necessary to have clearly articulated standards of conduct, a procedure for resolving questions that may arise concerning the propriety of specific acts, and a forum for receiving receipt and review of complaints and questions, whether raised by concerned citizens, employees, or those doing business with the City;

(5) The Citizens have a right to expect that all decisions made in the name of the government of Takoma Park will be made for the general welfare of the Citizens of Takoma Park, rather than for the private gain or personal motives of the official or employee making the decision;

(6) Employees and officials of Government have a right to know that the Government clearly articulates the standards of conduct by which their actions will be measured;

(7) Employees and officials of Government have a right to their personal lives, choices, associations, and those of their families will not unduly or unnecessarily be burdened because of their choice to serve the City;

(8) No restriction placed upon the employees or officials of Takoma Park can be made without cost to the City, whether by discouraging otherwise qualified persons from serving Government, or by discouraging vendors or other businesses from trading with the City, or by placing administrative burdens upon the City and those with which it conducts business;

(9) Full and timely disclosure of information and private activities that could affect the nature of public decisions allows the public to be aware of real or actual conflicts and make their own judgments about such conflicts.

(b) In order to meet these found needs, and to articulate the balance which the City Council has struck between the needs and expectations of the citizens, employees, and those with whom the City does business, the City Council has enacted this Ethics Ordinance.

(c) On behalf of the citizens of the City of Takoma Park, the City Council intends that this ordinance be liberally construed, in complement with the civil and criminal statues of

the State of Maryland and of the United States, to accomplish these goals without unduly restricting the rights of the officials and employees and their families to associate freely, speak freely, and to enjoy the other rights and benefits of citizenship in this City, State and Country.

Sec. 2-13. Scope.

This ordinance shall apply to all individuals and organizations acting on behalf of the City in any capacity and to all those individuals and organizations doing business with the City in any capacity. The extent of application of the ordinance shall depend on the nature of the relationship with the City and the degree to which conflicts between public and private interest affect the public trust in the City of Takoma Park government.

Sec. 2-14. ~~2-13.~~ Definitions.

The words used in this Article shall have their normal accepted meanings, except as set forth below:

(a) "Business entity" means arrival corporation, general or limited partnership, sole proprietorship (including a private consultant operation), joint venture, unincorporated association or firm, institution, trust, foundation or other organization, whether or not operated for profit.

~~(b) "Commission" means the City Ethics Commission established in Section 2-15 of this Article.~~

~~(b)~~ (c) "Compensation" means any money or thing of value, regardless of form, received or to be received by any individual covered by this Article for service rendered. If lobbying is only a portion of a person's employment, "compensation" means a prorated amount based on the time devoted to lobbying compared to the time devoted to other employment duties. For reporting purposes, a prorated amount shall be labeled as such.

~~(e)~~ (d) "Doing business with" means:

(1) Having or negotiating a contract that involves the commitment (either in a single or combination of transactions) of controlled funds; or

(2) Being regulated by or otherwise under the authority of an entity; or

(3) Being registered as a lobbyist in accordance with Section 2-17 of this Article.

~~(d)~~ ~~(e)~~ "Financial interest" means:

(1) Ownership of any interest as the result of which the owner has received, within the past three (3) years, or is presently receiving or in the future is entitled to receive more than one thousand dollars (\$1,000.) per year; or

(2) Ownership, or the ownership of securities of any kind representing or convertible into ownership, of more than three percent (3%) of a business entity.

~~(e)~~ ~~(f)~~ "Gift" means the transfer of anything of economic value, regardless of the form, without adequate and lawful consideration. "Gift" does not include the solicitation, acceptance, receipt or regulation of political campaign contributions regulated in accordance with the provision of Article 33, 26-1 et seq., Annotated Code of Maryland, or any other provision of state or local law regulating the conduct of elections or the receipt of political campaign contributions.

~~(f)~~ ~~(g)~~ "Immediate Family" means a domestic partner, spouse, mother, father, siblings, children and any dependents.

~~(g)~~ ~~(h)~~ "Interest" means any legal or equitable economic interest, whether or not subject to an encumbrance or a condition, which was owned or held, in whole or in part, jointly or severally, directly or indirectly. For purposes of Section 2-16 of this Article, "interest" applies to any interests held at any time during the calendar year for which a required statement is to be filed. "Interest" does not include:

(1) An interest held in the capacity of a personal agent, representative, custodian, fiduciary or trustee, unless the holder has an equitable interest therein;

(2) An interest in a time or demand deposit in a financial institution;

(3) An interest in an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed number of dollars either in a lump sum or periodically for life or some other specified period; or

(4) A common trust fund or a trust which forms part of a pension or profit sharing plan which has more than twenty-five (25) participants and which has been determined by the Internal Revenue Service to be a qualified trust under Sections 401 and 501 of the Internal Revenue Code of 1954.

~~(h)~~ (i) "Lobbying" means:

(1) Communicating in the presence of a City official or employee with the intent to influence any official action of that official or employee; or

(2) Engaging in activities having the express purpose of soliciting others to communicate with a City official or employee with the intent to influence that official or employee.

~~(i)~~ (j) "Official" and/or "employee" means any individuals and organizations acting on behalf of the City in any capacity and to all those individuals and organizations doing business with the City in any capacity. ~~person elected to any public office of the City or any employee (whether designated as an employee or an independent contractor) of the City or any person appointed to any, agency, board or commission or similar entity, whether or not paid in whole or in part with City funds and whether or not compensated.~~

~~(j)~~ (k) "Person" ~~includes~~ means any individual or business entity.

Section 2-15. ~~2-14.~~ Administration Ethics Commission.

(a) There shall be a City Ethics Commission, which shall be composed of ~~three~~ ~~(3)~~ five (5) members appointed by the City Council. The Commission shall have the following responsibilities:

(1) To devise, receive and maintain all forms generated by this chapter.

(2) To provide published advisory opinions to persons subject to this chapter as to the applicability of the provisions of this chapter.

(3) To process and make determinations as to complaints filed by any person alleging violations of this chapter.

(4) To conduct a public information program regarding the purposes and application of this chapter.

(b) The members of the Commission shall be appointed to staggered two-year terms and may only be removed for cause. Initially, ~~one~~ ~~(1)~~ three (3) members shall be appointed to a one-year term, ~~one~~ ~~(1)~~ and two (2) members to a two-year term. ~~and one (1) member to a three-year term.~~ The terms shall begin on January 1 and end on December 31.

(c) Consistent with the provisions of state and city laws and ordinances, the Commission shall operate under Robert's Rules of Order, ~~and its members shall take an oath of office, and or~~ such rules as it may promulgate.

(d) Its members shall take an oath of office.

~~(f)~~ ~~(e)~~ The Commission shall ~~may~~ establish three-member review panels to investigate and adjudicate complaints or respond to requests for advisory opinions.

~~(e)~~ ~~(f)~~ Each year the Commission shall elect one of its members as Chair and one of its members as Vice-Chair. The Chair shall preside over meetings, assign members to ~~such~~ review panels ~~as may be established~~ and carry out other duties ~~as may be established in the Commission's Rules~~. The Vice-Chair shall act as Chair in the absence of the Chair.

~~(g) The City Administrator shall make available to the Commission such staff assistance as may be needed and shall provide appropriate security for Commission records.~~

~~(a) The City Clerk shall be the custodian of all forms submitted by any person in accordance with this Article.~~

~~(b) Any official or other person subject to the provisions of this Article may request the Corporation Counsel for an advisory opinion concerning the application of this Article. The Corporation Counsel shall respond promptly, to these requests, providing interpretations of this Article based on the facts provided or reasonably, available to him or her. Copies of these interpretations, with the identity of the subject deleted, shall be kept in the office of the City Clerk and made available to the public in accordance with any applicable law regarding public records.~~

~~(c) Complaints. Any person may file with the City Clerk a complaint alleging a violation of any of the provisions of this Article. These complaints shall be written and under oath, and shall be referred to the Corporation Counsel for investigation and review. If the Corporation Counsel determines that a violation has not occurred or that there are insufficient facts upon which to base a determination of a violation, that finding shall be advised. If the Corporation Counsel shall determine that there is a reasonable basis for believing a violation has occurred, then the subject of the complaint shall be afforded an opportunity for a hearing conducted by the Mayor and Council in accordance with established rules for the conduct of administrative proceedings on the record. Any member of the Council or the Mayor who is the subject of a complaint shall not participate in the hearing as a member of the hearing body. Any formal determination resulting from the hearing shall include~~

~~findings of fact and conclusions of law. Upon the finding of a violation, the Mayor and City Council may take any enforcement action provided for in accordance with Section 2-18 of the Article. After a complaint is filed and until a final determination by Corporation or the Mayor and Council, all actions regarding a complaint shall be treated confidentially.~~

Sec. 2-16. Complaints and Alleged Violations.

(a) The Commission will receive and review any ethics inquiries or complaints concerning elected officials, City staff, or volunteers. Any inquiry or complaint concerning City staff other than the City Administrator or Corporation Counsel, and volunteers other than members of the Commission on Landlord-Tenant Affairs, City Ethics Commission, Personnel Advisory Board, and Tree Commission shall be referred to the City Administrator for appropriate disposition. The City Administrator shall report to the Ethics Commission on the disposition of the complaint. The Ethics Commission may comment on the City Administrator's actions. If a complaint is referred to the Ethics Commission which is a personnel matter and not an ethics issue, it shall be referred to the City Administrator for disposition without further reporting to the Ethics Commission.

(b) The Commission shall investigate any inquiry or complaint it receives, whether it is anonymous or identified, written or oral.

(1) The person about whom an inquiry or complaint has been received shall be immediately notified about its receipt by the Commission. ~~The subject of the inquiry or complaint may provide a response which shall be considered by the Commission.~~

(2) The Commission may make an initial investigation into the inquiry or complaint without taking testimony or receiving information from the subject of the inquiry or complaint. The Commission may dispose of an inquiry or complaint after the initial investigation, which shall not be publicly released without the written consent of the subject, but only with a finding of no conflict of interest or no basis for the complaint.

(3) The Commission may, after an initial investigation, proceed further and must offer the subject the opportunity of being interviewed by the Commission, provide information to the Commission, and offer witnesses for the Commission to interview.

(4) The Commission may not use as a basis for any fact or conclusion in its report any information the source of which is not specifically identified; that is, information from anonymous sources cannot be used in a report.

(5) Should the Commission propose to issue a finding other than no conflict of interest or no basis for the complaint, a draft final report must be presented to the subject before it is issued. The subject shall have an opportunity to respond to the report before it is issued, and his or her response shall be addressed by the Commission in its final report.

(6) The final report shall be transmitted to the subject prior to being released to the public. The report shall, at a minimum, state the nature of the inquiry or complaint, the actions taken by the Commission to investigate the matter, the information received as a result of the investigation, the Commission's conclusions, and the subject's response (which may be summarized).

(c) There shall be an opinion of the Commission issued. Commission members may also release separate concurring and dissenting opinions.

Sec. 2-17. ~~2-15.~~ Prohibited conduct and interests.

(a) Participation prohibitions. Except as specifically permitted by a resolution of the City Council ~~Mayer~~ and or by an opinion of the Corporation Counsel, an official or employee may not participate in:

(1) Any matter, except in the exercise of an administrative or ministerial duty which does not affect the disposition or decision with respect to that matter, if, to his knowledge, he or she, his or her immediate family ~~spouse, parent, child, brother or sister~~ has an interest therein.

(2) Any matter, except in the exercise of an administrative or ministerial duty, when any of the following is a party thereto:

(A) Any business entity in which he or she has a direct financial interest of which he or she may reasonably be expected to know;

(B) Any business entity of which he or she is an officer, director, trustee, partner or employee, or in which he or she knows any immediate family ~~of the above-listed relatives~~ has this interest;

(C) Any business entity with which he or she or, to his or her knowledge, any immediate family ~~of the relatives listed in Subsection (a)(1) of this section~~ is negotiating or has any arrangement concerning prospective employment;

(D) Any business entity which is a party to an existing contract with the official or employee, or which the official or employee knows is a party' to a contract with any immediate family ~~of the above named relatives~~, if the contract could reasonably be expected to result in a conflict between the private interest of the official or employee and his official duties;

(E) Any entity doing business with the City in which a direct financial interest is owned by another entity in which the official or employee has a direct financial interest, if he or she may be reasonably expected to know of both direct financial interests; or

(F) Any business entity which the official or employee knows is his creditor or obligee, or that of any immediate family ~~of the relatives listed in Subsection (a)(1) of this section~~, with respect to a thing of economic value and which, by reason thereof, is in a position to affect directly and substantially the interest of the official or employee or any immediate family ~~of the above named relatives~~.

(3) If a disqualification pursuant to Subsection (a)(1) or (2) of this section leaves any body with less than a quorum capable of acting, or if the disqualified official or employee is required by law to act or is the only person authorized to act, the disqualified person shall disclose the nature and circumstances of the conflict and may participate or act.

(b) Employment restrictions.

(1) Conflicts of interest.

~~(A) Except as permitted by a resolution of the Mayor and Council or by an opinion of the Corporation Counsel, and when such interest is disclosed or when this employment does not create a conflict of interest or appearance of conflict, a~~
An official or employee may not:

[1] Be employed by, or have a financial interest in, any entity subject to his or her authority or that of the City, agency, board or commission with which he or she is affiliated or any entity which is negotiating or has entered into a contract with that agency, board or commission; or

[2] Hold any other employment relationship which would impair the impartiality or independence of judgment of the official or employee.

(B) This prohibition does not apply to:

[1] An official or employee who is appointed to a regulatory or licensing authority pursuant to a requirement that persons subject to the jurisdiction of the authority be represented in appointment to it;

[2] Subject to other provisions of law, including this Article, a member of a commission in regard to a financial interest or employment held at the time of appointment, provided that it is publicly disclosed to the appointing authority; or

[3] An official or employee whose duties are ministerial, if the private employment or financial interest does not create a conflict of interest or the appearance of a conflict of interest, as permitted and in accordance with any resolutions adopted by the ~~Mayer~~ and City Council.

(2) A former official or employee may not assist or represent a party for contingent compensation in a case, contract or other specific matter involving the City if that matter is one in which he or she significantly participated as an official or employee.

(3) An official or employee may not assist or represent a party for contingent compensation in any matter before or involving the City other than in a judicial or quasi-judicial proceeding; provided, however, that nothing herein shall preclude an official or employee from assisting or representing a party for contingent compensation in any matter before or involving entities where fees are established by law.

(c) Use of prestige of office. An official or employee may not intentionally use the prestige of his or her office for his or her own private gain or that of another. The performance of usual and customary constituent services, without additional compensation, does not constitute the use of the prestige of office for an official's or employee's private gain or that of another.

(d) Solicitation or acceptance of gifts.

(1) An official, or employee may not solicit any gift.

(2) No official or employee may knowingly accept any gift, directly or indirectly, from any person that he or she knows or has reason to know:

(A) Is doing business with the City Council, as to members thereof, or, as to other officials or employees, with their office, agency, board or commission;

(B) Has financial interests that may be substantially and materially affected, in a manner distinguishable from the public generally, by the performance or nonperformance of his or her official duty.

(3) Unless a gift of any of the following would tend to impair the impartiality and the independence of judgment of the official or employee receiving it or, if of significant value, would give the appearance of doing so, or, if of significant value, the recipient official or employee believes, or has reason to believe, that it is designed to do so, Subsection (d)(2) does not apply to:

(A) Meals and beverages;

(B) Ceremonial gifts or awards which have insignificant monetary value;

(C) Unsolicited gifts of nominal value or trivial items of informational value;

(D) Reasonable expenses for food, travel, lodging and scheduled entertainment of the official or the employee for a meeting which is given in return for participation in a panel or speaking engagement at the meeting;

(E) Gifts of tickets or free admission extended to an elected official or employee to attend a professional or intercollegiate sporting event or charitable, cultural or political events, if the purpose of this gift or admission is a courtesy or ceremony extended to the office;

~~(F) A specific gift or class of gifts which the Mayor and Council may by resolution exempt from the operation of this section upon a finding, in writing that acceptance of the gift or class of gifts would not be detrimental to the impartial conduct of the business of the City and that the gift that is purely personal and private in nature;~~

~~(G) Gifts from a person related by blood or marriage, or a spouse, child, ward, financially dependent parent or other relative who shares the official's or employee's legal residence, an immediate family member or a child, ward or other relative over whose financial affairs the person has legal or actual control;~~

(H) Honoraria.

(e) Disclosure of confidential information. Other than in the discharge of his or her official duties, an official or employee may not disclose or use for his or her own economic benefit or that of another confidential information which he or

she has acquired by reason of his or her public position and which is not available to the public.

~~(f) Exemptions and waivers. The Mayor and Council may, after consultation with the Corporation Counsel, grant exemptions to or modifications of this section as to persons serving as members of City agencies, boards, commissions and similar entities, when it finds that the application of this section would constitute an unreasonable invasion of privacy and would significantly reduce the availability of qualified persons for public service and if it also finds that the exemption or modification would not be contrary to the purposes of the Article.~~

Sec. 2-18. ~~2-16.~~ Financial disclosure.

(a) Officers and employees to file.

(1) Every official and employee shall file annually a statement with the City Clerk disclosing gifts received by that person during the preceding year. Such a disclosure shall be required for individual gifts valued in excess of fifty dollars (\$50) or a series of gifts valued in excess of one hundred dollars (\$100) during the time period covered by the filing from any one person who does business with the City. This requirement also applies to gifts made indirectly or on behalf of someone but does not apply to gifts received from a spouse, children or parents an immediate family member. If no such gifts have been received, a statement need not be filed. The disclosure statement shall describe:

~~(1) Every official and employee shall file, on or before the time specified in Subsection (b)(1) hereof, a disclosure statement of the receipt of gifts by that official or employee during the preceding year or other time period specified in Subsection (b)(1). Such disclosure statement shall consist of a schedule of each gift in excess of fifty dollars (\$50.) in value or a series of gifts totaling one hundred dollars (\$100.) or more from any one (1) person received at any time during the year for which the statement is filed by the person making the statement, or by any other person at the direction of the person making the statement, from, or on behalf of, directly or indirectly, any person who does business with the City; provided however, that neither gifts received from the spouse, children or parents of the person making the statement need be disclosed. This schedule, as to each such gift, shall include:~~

- (A) The nature of the gift;
- (B) The value of the gift; and

~~(A) The nature and value of the gift, and~~

(C) ~~(B)~~ The name ~~identity~~ of the person from whom, or on behalf of whom, directly or indirectly, the gift was received.

(2) In addition, any official, employee or volunteer ~~or employee~~ shall file a full financial disclosure statement when an anticipated action by the official, employee or volunteer ~~or employee~~ will present a potential conflict with his or her personal interest. Such a disclosure shall be submitted to the ~~Ethics Commission and then~~ sufficiently in advance of the action to provide adequate disclosure to the public. Such disclosure statement shall contain a full and complete statement of all facts, including a complete description of the nature and extent of the official's, employee's or volunteer's ~~employee's~~ financial interest(s) which present a potential conflict of interest.

(b) Time limits for filing.

(1) Each incumbent official and employee identified in Subsection (a)(1) hereof shall file under oath or affirmation with the City Clerk on or before the 30th day of April of each year during that person's term in office the statement required by this section for the calendar year immediately preceding each such year in office. An official or employee who has not filed the required statement and who is appointed to fill a vacancy to a position listed in Subsection (a)(1) hereof shall file a statement covering the calendar year in which he is appointed within thirty (30) days after appointment.

(2) Each candidate for election to an office for which a disclosure statement is required is required to file such a statement within one week of his or her nomination for the immediately preceding calendar year. If gifts of the nature covered by this Section have not been received, no statement need be submitted. The disclosure requirement of this subsection does not apply to individuals who have been filing required disclosure statements by virtue of the office they hold.

~~(2) Except for an official or employee who has filed a statement pursuant to Subsection (b)(1) above for the same year or portion of the same year for which a statement otherwise would be required to be filed by this subsection, each candidate for election to an office as an official or employee identified in Subsection (a) hereof shall file under oath or affirmation with the City Clerk, within one (1) week of his nomination, the statement required by this section for the calendar year immediately preceding.~~

(c) All statements filed pursuant to this section shall be maintained by the City Clerk and shall be made available, during normal office hours, for examination and copying by the public, subject, however, to such reasonable fees and administrative procedures as the City Council ~~Mayor~~ and may establish from time to time. The forms shall be retained for three (3) ~~four (4)~~ years from the date of receipt. Any person examining or copying these statements shall be required to record his name, home address and the name of the person whose disclosure statement was examined or copied. This record shall be forwarded upon request to the person whose disclosure statement is so examined or copied.

(d) Except as otherwise specifically provided herein, all statements filed pursuant to this section shall be on a form or forms developed by the ~~Ethics Commission City Clerk with the assistance of the Corporation Counsel.~~

(e) Evidence of noncompliance shall be referred to the Ethics Commission for appropriate action.

(f) Volunteers need not submit disclosure statements if the activities for which they are volunteering involve no authority to recommend purchases or commit funds.

~~(e) The statements submitted pursuant to this section shall be reviewed by the City Clerk for compliance with the provisions of this section, and officials and employees shall be notified of any omissions or deficiencies. The Corporation Counsel shall refer evidence of any noncompliance with this section to the City Council Mayor and for appropriate action.~~

~~(f) Exemptions and waivers. The Mayor and Council may, after consultation with the Corporation Counsel, grant exemptions to or modifications of this section as to officials or employees serving, as members of City agencies, boards, commissions and similar entities when it finds that the application of this section would constitute an unreasonable invasion of privacy and would significantly reduce the availability of qualified persons for public service and if it also finds that the exemption or modification would not be contrary to the purpose of this Article.~~

Sec. 2-19. ~~2-17.~~ Lobbying disclosure.

(a) Any person who personally appears before any City official or employee with the intent to influence that person in the performance of his official duties and who in connection with such intent expends or reasonably expects to expend in a given calendar year in excess of two hundred dollars (\$200.) on food, entertainment or other gifts for such officials or employees

shall file a registration statement as a lobbyist with the City Clerk.

(b) The registration statement required in Subsection (a) above shall be filed with the Clerk not later than five (5) days after first performing any act requiring registration under this section, and shall include complete identification of the registrant and of any other person on whose behalf the registrant acts. It shall also identify the subject matter on which the registrant proposed to conduct lobbying activities

(c) Registrants under this section shall file a report within thirty (30) days after the end of any calendar year during which they were registered, disclosing the value, date and nature of any food, entertainment or other gifts provided to a City official or employee. When a gift or series of gifts to a single official or employee exceeds twenty-five dollars (\$25.) in value, the official or employee shall also be identified.

(d) All statements filed pursuant to this section shall be maintained by the City Clerk and shall be made available during normal office hours for examination and copying by the public, subject, however, to such reasonable fees and administrative procedures as the City Council ~~Mayer~~ and may establish from time to time. The forms shall be retained for four (4) years from the date of receipt. Any person examining or copying these statements shall be required to record his name, home address and the name of the person whose disclosure statement was examined or copied. This record shall be forwarded upon request to the person whose disclosure statement is so examined or copied.

(e) All statements filed pursuant to this section shall be on a form developed by the City Clerk with the assistance of the Corporation Counsel.

Sec. 2-20. ~~2-18.~~ Enforcement; violations and penalties.

(a) Upon direction by ~~the Mayor~~ and of the City Council, the Corporation Counsel may seek whatever civil remedies he or she deems appropriate to achieve compliance with the provisions of this Article. However, such action may not involve, and a court may not void, any official action appropriating public funds, levying taxes or providing for the issuance of bonds, notes, or other evidence of public obligation. ~~file a petition for injunctive relief in the appropriate circuit court for the purpose of requiring compliance with the provisions of this Article. The Corporation Counsel may seek to have the court issue an order to cease and desist from the violation; and/or to void an official action taken by an official or employee with a conflict of interest prohibited by this Article when the action arises from or concerns the subject matter of the conflict and if~~

~~the legal action is brought within ninety (90) days of the occurrence of the official action, if the court deems voiding the action to be in the best interests of the public; provided, however, that the court may not void any official action appropriating public funds, levying taxes or providing for the issuance of bonds, notes or other evidence of public obligation.~~

~~(b) Any violation of this Article shall be a Class A offense.~~

~~(c) Any person who knowingly and intentionally violates the provisions of this Article is guilty of a Class A misdemeanor offense. If the person is a business entity and not a natural person, each officer and partner of the business who knowingly and intentionally authorized or participated in the violation is guilty of a Class A misdemeanor offense, and upon conviction, is subject to the same penalties as the business entity.~~

~~(d) In addition to any other enforcement provisions in this Article, a person who is subject to the provisions of this Article and who is found by the City Council Mayor and or a court to have violated its provisions may be subject to termination or other disciplinary action in accordance with the City's Personnel Regulations, as may be warranted. , or may be suspended from receiving payment of salary or other compensation pending full compliance with the terms of an order of the City Council or a court.~~

~~(e) Any person who is subject to the provisions of this Article shall obtain and preserve all accounts, bills, receipts, books, papers and documents necessary to complete and substantiate any reports, statements or records required to be made pursuant to this Article for three (3) years from the date of filing the report, statement or record containing these items. These papers and documents shall be available for inspection upon request by the City Council Mayor and after reasonable notice.~~

~~Secs. 2-18.1 through 2-18.3. Reserved.~~

~~Sec. 2-18.4. Campaign material.~~

~~(a) It shall be unlawful for any mayoral or City Council candidate, campaign committee or person promoting or endorsing any such candidate or acting on behalf of any such candidate or campaign committee to issue or cause to be issued any written material, including but not limited to any flyer, leaflet, pamphlet, sign, poster, bumper sticker, button or badge, concerning such candidate or his or her opponent without the same containing the name of either the candidate or some other person responsible for the issuance of such written material.~~

~~(b) Any violation of Subsection (a) shall be a Class A offense.~~

SECTION 2. THAT this ordinance shall be effective
_____, 1993.

Adopted this _____ day of _____, 1993.

AYES:
NAYS:
ABSTAIN:
ABSENT:

Note: In this Draft Ordinance, dated 9/22/93, language deleted from the existing Code and previous draft (9/7/93) is noted by ~~strikeout~~; and language that was proposed during the Council's discussion in Worksession on September 20th is noted by ~~shadow~~.

Introduced by:
(Drafted by: C. Sartoph)
Draft #2 (10/22/93)

1st Reading: 9/27/93
2nd Reading:
Effective:

ORDINANCE #1993 - 31

AMENDING THE TAKOMA PARK CITY CODE CHAPTER 4D. ELECTIONS, ARTICLE 3. FAIR ELECTION PRACTICES, TO ADD CURRENT SECTION 2-18.4. CAMPAIGN MATERIAL, FROM THE ETHICS CODE.

NOW, THEREFORE, BE IT ORDAINED BY THE COUNCIL OF THE CITY OF TAKOMA PARK, MARYLAND

SECTION 1. AMENDMENT TO CHAPTER 4D, ARTICLE 3. FAIR ELECTION PRACTICES.

ARTICLE 3. FAIR ELECTION PRACTICES.

Sec. 4D-6. Political matter published or distributed.

(a) No person, candidate or political committee shall print, publish, distribute or broadcast or cause to be printed, published, distributed or broadcast any political matter unless such political matter includes the name of the person responsible for the publication or distribution of the same.

(b) No person, candidate or political committee shall expend any money for printing, publication or broadcasting of any political matter unless such matter states that it is a paid political advertisement and is printed, published or broadcast by the authority of the person, candidate, political committee or an authorized representative for a candidate or political committee.

(c) A violation of this section is a Class B offense.

Sec. 4D-7. Campaign material.

(a) It shall be unlawful for any Mayor or City Council candidate, campaign committee or person promoting, endorsing or opposing any such candidate or acting on behalf of any such candidate or campaign committee to issue or cause to be issued any written material, including but not limited to any flyer, leaflet, pamphlet, sign, poster, bumper sticker, button or badge, concerning such candidate or his or her opponent without the same containing the name of either the candidate or some other person responsible for the issuance of such written material.

(b) Any violation of Subsection (a) shall be a Class A offense.

~~Sec. 4D-7.~~ ~~Sec. 4D-8.~~ Campaign reports.

(a) Each candidate and political committee shall appoint an authorized representative.

(b) Each candidate or his or her authorized representative and each authorized representative of any political committee shall file a report with the City Clerk disclosing the names and addresses of all persons, other than the candidate or members of his or her immediate family, who contribute anything of value, other than volunteer services, of twenty-five dollars and one-cent (\$25.01) or more in an election. All campaign reports filed shall be available for public review during the normal office hours of the City Clerk.

(1) An initial report listing contributions received since the date of the last preceding election to fill the office for which the candidate is running shall be filed with the City Clerk no later than noon of the 10th calendar day preceding the election.

(2) A final report of campaign contributions not previously reported shall be filed with the City Clerk no later than 4:00 p.m. of the Monday following the election.

(3) Even if no contributions have been received since the end of the period for which the last preceding report was filed or due, a statement to that effect must be filed with the City Clerk.

(c) All campaign reports shall be made on the forms designated by the City Clerk. The campaign reports shall contain a certification by the persons responsible for filing the report that the contents of the report are true and complete to the best of their knowledge, information and belief.

(d) There is a late filing fee for each campaign report which is not filed within the time prescribed in this section. The fee is ten dollars (\$10.) for each day or part of a day, excluding Saturdays, Sundays and holidays that a report is overdue. The maximum late fee payable with respect to any single report is two hundred fifty dollars (\$250).

(1) The City Clerk shall receive an overdue campaign report even if any late filing fee has not been paid, but the report shall not be considered officially filed until all fees have been paid.

(2) Upon receipt by the City Clerk of an overdue campaign report, no further late filing fees shall be incurred, notwithstanding the fact that the report is not considered officially filed.

(3) It is the personal responsibility of the candidate, if it is the report of a candidate, and of the authorized representative of a political committee to file all reports in a complete and accurate detail and to pay all late filing fees. A late filing fee may not be paid, directly or indirectly, from contributions to a candidate or political committee.

(e) For purposes of this section, the failure to provide complete and accurate information on the campaign report forms is a failure to file provided that the City Clerk has notified the candidate and his or her authorized representative or the authorized representative of a political committee, in writing, of the deficiency and a properly corrected report has not been filed within two (2) weeks of the date of the written notice. After two (2) weeks, and in the absence of a filed corrected report, daily late filing fees are thereafter payable.

(f) A person may not receive any salary or benefits from the office of the Mayor or Council member until all required campaign reports have been filed and all late filing fees have been paid.

(g) A violation of this section is a Class B offense.

Sec. ~~4D-8~~ through 4D-9. (Reserved)

SECTION 2. THAT this ordinance shall be effective _____, 1993.

Adopted this _____ day of _____, 1993.

AYES:
NAYS:
ABSTAIN:
ABSENT:

Note: Language deleted from the existing Code is noted by ~~strikeout~~; and language that is proposed for addition is noted by shadow. Language amended at 1st Reading is noted by underlining.

Introduced by:
(Drafted by: C. Sartoph)

1st Reading: 9/27/93
2nd Reading:

ORDINANCE #1993 - 32

BE IT ORDAINED BY THE MAYOR AND COUNCIL OF THE CITY OF TAKOMA PARK,
MARYLAND

SECTION 1. THAT the persons named below, all registered voters of the City of Takoma Park, are hereby designated as Judges to serve as a Board of Election for the November 2, 1993 City Election:

- (1) Claire B. Kozel, 7804 Wildwood Drive
- (2) Pearl Blacksin, 652 Kennebec Avenue
- (3) Gene E. Sidwell, 7209 Spruce Avenue
- (4) Paul C. Aloï, Jr., 14 Sherman Avenue
- (5) June A. Aloï, 14 Sherman Avenue
- (6) Harold Alston, 7710 Maple Avenue, #105
- (7) Verne Wilson, 907 Davis Avenue
- (8) Paul Weisbord, 6753 Eastern Avenue
- (9) Billie M. Dyhouse, 7051 Carroll Avenue, #617
- (10) Rein S. Parris, 7620 Maple Avenue, #730
- (11) Martin Morse Wooster, 8624 Flower Avenue, #101
- (12) Virginia S. Jenkins, 32 Columbia Avenue

SECTION 2. THAT this Ordinance becomes effective upon adoption.

Adopted this 11th day of October, 1993 by Roll Call Vote as follows:

AYES:

NAYS:

ABSTAIN:

ABSENT: