

**BRIEFING, REGULAR MEETING, WORKSESSION & EXECUTIVE SESSION
OF THE CITY COUNCIL**

Monday, December 8, 1997

Executive Session 11/24/97 - Moved by Porter; seconded by Williams. Council convened in Executive Session by unanimous vote at 10:35 p.m., in the Conference Room. OFFICIALS PRESENT: Porter, Chavez, Elrich, Hawkins, Rubin, Stewart, Williams. STAFF PRESENT: Habada, Hobbs, Sartoph, Silber, Ludlow, Schwartz. (1) The Council received a briefing regarding possible land acquisition (open space properties); staff was given direction on how to proceed with negotiations related to acquisition. (NOTE: Staff left the room.) (2) The Council discussed the City Administrator's evaluation; work on the evaluation was not concluded. (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(3) and (1)(ii)).

Executive Session 12/01/97 - Moved by Williams; seconded by Hawkins. Council convened in Executive Session by unanimous vote at 11:20 p.m., in the Conference Room. OFFICIALS PRESENT: Porter, Chavez, Elrich, Hawkins, Rubin, Stewart, Williams. STAFF PRESENT: Habada, Hobbs, Espinosa. (1) The Council received a briefing regarding possible land acquisition (open space properties); staff was given direction on how to proceed with negotiations related to acquisition. (2) The Council was briefed on negotiations with the Co-op regarding the lease of parking spaces and loading dock areas; staff was given instructions to proceed with negotiations. (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(3) and (7)).

OFFICIALS PRESENT:

Mayor Porter

Councilmember Chavez

Councilmember Elrich

Councilmember Hawkins

Councilmember Rubin

Councilmember Stewart

Councilmember Williams

City Administrator Habada

Assistant City Administrator Hobbs

City Clerk Sartoph

Assistant Corporation Counsel Perlman

Police Chief Anderson

Officer Riesling

Arborist Busciano

Senior Planner Schwartz

Engineer Monk

The Council convened at 7:35 p.m. in the Council Chambers of the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland.

ANNOUNCEMENTS

Mayor Porter noted that she attended the filming of a segment of "The Word at Blair", a presentation at Blair High School, and commented that she had enjoyed listening to the speakers. She announced that the students from the Landscape Architecture Community Design Studio of the University of Maryland will be making a final presentation this Saturday in the Council Chambers. Residents are invited and encouraged to attend.

Councilmember Hawkins announced that the Takoma 2010 Advisory Committee will be hosting a community meeting targeted at residents of Ward 4 on Saturday in the Council Chambers (1:00 p.m.). She commented on Takoma 2010 and their mission, explaining that focus groups will be held after the public meeting. She invited all City residents to attend, but extended a special invitation to the residents of Ward 4. Ms. Hawkins commented on the City being understaffed, and said that she would like to implement an internship program which could draw from local colleges--particularly, students who are studying various disciplines which might be supportive of City government.

Councilmember Williams remarked that yesterday, more than a hundred people attended the formal opening of the Liz Lehrman Dance Exchange at the former post office location on Maple Avenue. He welcomed the dance exchange to Takoma Park.

ADDITIONAL AGENDA ITEM

City Administrator Habada requested that a discussion of acquisition of open space property be added to the Executive Session agenda.

CITIZEN COMMENTS

Benjamin Onyeneke, Maple Avenue (Generation X), remarked about crime prevention and safety protections. He referred to a letter he received from the Attorney General in response to one of his own. Mr. Onyeneke said that he would like to see a strong Public Safety Citizens Advisory Committee come up with objectives to address public safety issues. He commented on the tragic consequences of HIV, and offered to work with youth to help prevent further spread of the disease.

BRIEFING

1. Status of Funding for Merit Increases. Ms. Habada explained that the budget adopted by the Council in June included a 2% COLA (full-year) and half-year merit increases. This was accepted by AFSCME and rejected by Local 400. It was suggested that staff review

revenues/expenditures in an attempt to identify possible funding for full-year merits. She referred to the staff memorandum, explaining where the funds have been identified in the budget.

Mr. Williams questioned whether Ms. Habada is comfortable with taking the high end of the range on the revised highway user revenues.

Ms. Habada responded in the affirmative.

Councilmember Rubin asked when the proposal will be presented to the unions for action.

Ms. Habada stated that a letter has already gone out to Local 400, and that a representative from AFSCME was on the staff review group that came up with the proposal.

Assistant City Administrator Hobbs noted that he spoke with Archer Blackwell (AFSCME) today, who feels that they have, in essence, already voted on this since it was an opener in the original contract. Therefore, no further action is required of AFSCME to accept the proposed full-year merits. Local 400 is still in the process of getting an affirmative vote on the proposal. He noted that the ratification resolution would probably come before the Council in early January. Some performance evaluations still need to be completed before awarding the merits. Mr. Hobbs commented on the three-year cycle of contract negotiations with the unions. The AFSCME contract will be negotiated this year.

Ms. Habada stated that the property tax revenues (real property collections) will be lower than what was budgeted and anticipated; however, other revenues will make up the difference.

Ms. Porter noted that there is still a \$2,000 gap, and asked where that money might come from.

Ms. Habada remarked that the police rebate from Montgomery County will be substantially higher than what was originally projected.

Ms. Porter confirmed that a budget amendment will be presented to the Council at some point in the future.

REGULAR MEETING

2. Resolution re: Jackson/Garland Right-of-Way. Ms. Porter explained that the issue is not whether the City will permit a road to be put through on the right-of-way. The issue is whether the road will be put in at current standards or whether the applicant will be granted a waiver.

Senior Planner Schwartz noted the information distributed this evening (memo and map), and stated that the draft covenant was submitted to Corporation Counsel at 5:00 p.m. today which did not allow time for review. Ms. Schwartz stressed that the applicant will need to make all final

changes to the plan before being issued a City permit, and that he will also have to obtain a Stormwater Permit before obtaining a permit for road improvement plans. So, even if there is information not available this evening, it can be required before issuance of a permit. She summarized the points of the new Item #2 memo (see memo dated Dec.8 -- "Additional Information: Jackson Avenue Right of Way Road Improvement Plan). She noted that in regards to condition #12B, the City may also want to require a bond for the "sod".

Ms. Porter commented that she understands the contingency bond, but proposed that there be a 125 percent requirement for both the stormwater improvement and road improvement.

Engineer Monk had no objection.

Mr. Rubin complimented and thanked staff (particularly, Ms. Schwartz and Mr. Monk) for all their work on this issue. It has been a tough and long battle to minimize the related problems. He also complimented the community members who have stayed informed and active. Mr. Rubin commented on a site visit conducted with Paula Nercesian and Robert Goo who both provided their assessments in the spirit of coming to a good conclusion (to make the best of a situation and minimize the damage from this proposal). Despite all of the work, the City's approach to this whole proposal right now is in the best public interest, in only one sense--it avoids the costs of a court battle. The City essentially has to allow development. He said that the Council has come to this conclusion very reluctantly. If the Council had its way, it would want this parcel and the neighboring parcel for open space. With a focus on the access route, the Council has modified the Code to establish the authority to grant a waiver for the construction standards for the road. There are still questions--long-range maintenance, stormwater run-off, etc. Mr. Rubin remarked that his first thought was to vote against the resolution, just to send a message. But since the resolution only deals with the access road, it would be hard for someone to read the resolution and know that the intention was generally opposed to development at all. He said, however, that he would like to state the Council's sentiment in the Whereas clauses, recognizing that these clauses do not have the force of law. So, is not a good remedy. He distributed a page with several additional Whereas clauses (attached), and read them for the record. He proposed that these clauses be added as the first clauses of the resolution to make a "clear statement of intent."

Councilmember Stewart stated that historically, the City has at other times been more successful at saving some of our land for open space. She remarked that she has been very impressed with the work of City staff, but also really impressed with the citizen comments that have been helpful to staff and Council in formulating a solution. The solution that has been presented is about the best that the City can arrive at. She extended her appreciation for the hard work and the good results.

Ms. Porter agreed with Mr. Rubin's presentation and the idea that adding Whereas clauses is the way to make the intent clear. She referred to his proposed third Whereas clause, and offered an amendment "...permit access to the already dedicated right-of-way". Regarding the first Whereas clause (Rubin's proposal), she questioned the statement "has no legal option", and asked

whether the Council wants to put the focus on the issue of the right-of-way, instead.

Mr. Rubin remarked that often, the first Whereas clause sets the scene for the rest of the resolution.

Ms. Hawkins proposed that the language be "...City of Takoma Park is under the impression that it has no legal option...."

Ms. Porter stated that she has a more broad concern. The Council should address where we find ourselves at the moment, instead of trying to address a broader issue of history.

Mr. Rubin suggested inserting "...is now under the impression".

Ms. Porter restated her proposed amendment to the third Whereas clause (Rubin's proposal) "...the City has no legal option except to permit access to the above-cited parcel on the already dedicated right-of-way."

Ms. Hawkins suggested that the language in the first Whereas clause (Rubin's proposal) might read "...is currently under the impression".

Ms. Porter proposed that the first Whereas clause (Rubin's proposal) be worded "The City of Takoma Park has been presented with a development proposal that appears to be within the County..."

Assistant Corporation Counsel Perlman clarified that the Council is trying to find words to say that the City does not have any zoning authority.

Mr. Rubin remarked that he understands the point, but his intent was different--it was to speak to the fact that we are in a "pickle", not to speak to the "pickle" itself.

Ms. Porter recognized it is not the exact language she is looking for, but that the clause should say something like "...for Lot 10, Block E.....appears to be within county development standards that the county uses to make decisions about things like this".

Mr. Rubin maintained that he is still speaking to a different point, and clarified that he wants to speak to the desire to keep this land as open space in the first place.

Ms. Porter remarked that she is trying to be as accurate as possible about the situation that we are being faced with at the moment.

Ms. Hawkins agreed with Mr. Rubin's intent statement, but suggested that there might be also be language to speak to Ms. Porter's concern.

Mr. Rubin proposed "...City of Takoma Park would prefer to retain this land as open space..." The reason we are not, is not just because there is a proposal, but because of historical reasons. He suggested that both things be stated.

Ms. Porter restated her concern about the language "no legal option", explaining that she does not want to put the Council in the position of saying something that is not true. In fact, the City is in a situation where there are very few things that can be done.

Mr. Rubin clarified that there are few things short of exercising eminent domain. He stated that he wants to make the Council's position very clear, and proposed that the first Whereas clause be rewritten "...despite the fact that the City's priority was to retain the below cited parcel as open space, and; Whereas, the City now finds itself in the position of having to allow the development of Lot 10(continue with rest of what he has already proposed)".

Ms. Porter suggested that this statement be combined into one Whereas clause.

Mr. Rubin agreed. ("Whereas, despite the desire of the City of Takoma Park to retain Lot 10....as open space, the City finds itself unable to prevent the development of said property; and") There were no objections to this phrasing.

Ms. Porter noted that there are a number of changes suggested by staff that need to be incorporated.

Ms. Hawkins made a motion to consider the resolution with Councilmember Rubin's proposed Whereas clauses, as amended through Council's discussion. Seconded by Porter.

Senior Planner Schwartz noted each of the additional changes proposed by staff (see memorandum).

Condition #8 (page 4), insert "and must be approved before a road improvement permit will be issued." There were no objections.

Condition #12B, insert "...a bond representing 125 percent of the estimated construction costs for the road improvements and 125 percent of the estimated construction costs of the stormwater improvements as determined by the City Administrator or his/her designee....with the exception of the portion that applies to the plantings and the bioretention pond, which shall be held for one year after completion and the portion which applies to the sod to be planted on the road shoulders which shall be held for a period of four months."

Ms. Porter referred to the sentence beginning "the bond shall be held", and proposed adding "...completed, inspected and approved by the City Administrator or ...". There were no objections.

Condition #16, revise to “Violation of any of the provisions...or for 24 hours, whichever period is longer.” (See memo for full text.) There were no objections.

Further Resolved Clause, add “County” between the words “City” and “State”. There were no objections.

Mr. Rubin pointed out the last Whereas clause of his proposal, and read it for the record.

Ms. Porter noted that this has been a very long process. There has been a lot of participation on the part of the community all the way through. There are a number of people who have been involved from start to finish, and it is fair to say that we all would have liked a different outcome--property retained as open space. However, the City is in a situation where we cannot achieve what we would have liked. The City cannot legally block access to the right-of-way. She acknowledged that citizens have brought forth legal questions, and the City has explored them all, each time coming back to the conclusion that we have to allow access. This resolution provides a method for minimizing the impact on the community and stream. This is probably the lowest impact road that we have ever seen. The decision is not whether to put a road through (or not), but whether to do this modified road construction versus a full standard road. To vote against the resolution would essentially mean that we would be requiring a full width road which meets standard construction requirements.

Mr. Rubin remarked that given the nature of the question before the Council (full-width and standard construction road vs. modified construction), he will vote in favor of the resolution.

Paula Nercesian, 508 Elm Avenue, stated that she has a full understanding of what the resolution is intended to finalize, but that she still has a few questions for clarification. She suggested that the “bioretention pond” (see Condition #14) be referred to as the “bioretention facility or device”. She questioned why the City Administrator is given certain authority regarding tree concerns, and suggested that the City Forester should be given this authority.

Ms. Porter responded to the later comment, noting that “City Administrator or his/her designee” is the standard language used, and that in this case, the City Administrator would likely designate the City Forester.

Ms. Nercesian referred to Item #1 of the Resolved clause, and questioned whether the “6 inch berm” would contribute to a greater velocity for run-off. She asked about the 100 year flood plane. Regarding #11(C) “...prior to construction...”, a visit to the site would clearly indicate that construction has already begun. She stated that the frequency of the arborist’s site visits should be clearly delineated in the requirement. Regarding #12(A)(II), who determines whether the tree has some decline after construction? Regarding #14, where and with whom is the common use and maintenance agreement for the driveway filed.

Assistant Corporation Counsel Perlman stated that the agreement would be filed in the land

record.

Robert Goo, applauded the Council for the way this issue has been handled. He proposed alternate language to the section regarding violations and fines--\$400 for each individual offense.

Katherine Tunis, Co-Chair on Committee on the Environment, thanked staff and Council for their work on this matter. She questioned why Mr. Casey still wants to develop the site after the degree of public opposition to the development. Regarding #12, how long can the bond be held on the trees. She stated that she thought the Council had discussed trying to hold the bond for the full 7 years. On another point, she noted that there are a couple of places in the resolution where the right-of-way is referred to as a private drive, and emphasized the importance of being clear that the land is a public right-of-way.

Ms. Porter recognized the concern, explaining that the term "private drive" is a type of roadway.

Benjamin Onyeneke, Maple Avenue, stated that he is a member of the Transportation and Public Safety Advisory Committee (Montgomery County). He asked who will be responsible for any injuries that occur on the "private drive". Mr. Onyeneke stated that too much bond is being required on the development. Regarding #14, who will assume responsibility for the right of way? He supported adoption of the resolution.

Ms. Porter said that she thought we were going to figure out some way of preserving money for the tree, and that the Council had talked about keeping the money available for a number of years to determine whether the health of the tree is adversely impacted.

Forester Busciano commented that seven years is not a magic number, but that it might be a reasonable time frame. After the first three years or so, the tree might be out of danger. However, the Council might consider keeping the money for seven years; and if there is no evidence of decline after three years, the money could be released in portions over time. He said that he could work-out a schedule.

Ms. Porter suggested language for the resolution to address this issue "...the following bond shall be required and shall be released following 7 years."

Ms. Schwartz referred to #12(A), and proposed "...total bond amount equals \$5090 to be released according to a schedule to be determined by the City Administrator or his/her designee." There were no objections.

Ms. Porter asked for staff to respond to the concern about berms channeling run-off.

Engineer Monk responded that the berms are supposed to channelize the water back onto the proposed roadway.

Mr. Rubin referred to #11C (hiring of an Arborist), and suggested deletion of the words “prior to construction...” The phrase should begin “the applicant shall hire a certified arborist to monitor the tree for instability. If instability occurs...” This language makes it clear that the onus is on the developer to protect the tree.

Ms. Habada noted that there had also been a comment about changing “bioretention pond” to “bioretention facility” throughout the resolution.

The Council agreed to this amendment.

Ms. Habada questioned whether the Council wants it stated in the resolution where the agreements will be filed.

Ms. Perlman referred to #13 and #14, explaining that the records will be filed in the Montgomery County Land Records. She commented on the suggestion to restructure the fines for repeat offenses.

Mr. Rubin clarified that “repeat offense” implies that violations can be cited individually.

Ms. Perlman referred to #12AII, and suggested “...incurred; such tree decline or damage shall be determined by the City Administrator or his/her designee...”

Ms. Schwartz referred to #14, and proposed “...the agreement should state that the owner of Lot 10 is responsible.”

Ms. Tunis noted that in the Tree Law, each and every violation is a separate offense. She suggested that the same be applied to this project.

Ms. Porter distinguished between violations of the Tree Ordinance and of the conditions of the waiver. The intention is to be able to cite each violation.

Ms. Porter stated that the Resolution, as moved, included the suggested Whereas clauses (Rubin’s proposal). Since that time, there have been amendments to several sections. She noted each for the record, and called for a vote on the amendments (VOTING FOR: Porter, Hawkins, Rubin, Stewart, Williams; ABSENT: Chavez, Elrich).

Resolution #1997-71, as amended, was adopted unanimously, approving, with conditions, a road improvement plan for the Jackson Avenue right-of-way (VOTING FOR: Porter, Hawkins, Rubin, Stewart, Williams; ABSENT: Chavez, Elrich).

**RESOLUTION #1997-71
(Attached)**

3. Resolution re: Holiday Recess. Ms. Porter noted that there is an issue that the Council is likely to have to deal with next week that will require the Council to meet in Special Session. Therefore, the Council will convene in Special Session next Monday, beginning at 6:30 p.m. in the Council Chambers.

She proposed that the second Whereas clause be amended "...shall commence following the special session and council retreat..."

Moved by Porter; seconded by Williams.

Resolution #1997-72 was adopted unanimously, setting forth the City Council's 1997 Holiday Recess (VOTING FOR: Porter, Hawkins, Rubin, Stewart, Williams; ABSENT: Chavez, Elrich).

**RESOLUTION #1997-72
(Attached)**

WORKSESSION / EXECUTIVE SESSION / ADJOURNMENT

The Council moved into Worksession at 9:23 p.m. Following the Worksession, the Council convened in Executive Session at 9:40 p.m., and later adjourned for the evening.

Executive Session 12/08/97 - Moved by Williams; seconded by Rubin. Council convened in Executive Session by unanimous vote at 9:45 p.m., in the Conference Room. OFFICIALS PRESENT: Porter, Hawkins, Rubin, Stewart, Williams. OFFICIALS ABSENT: Chavez, Elrich. STAFF PRESENT: Habada, Hobbs, Sartoph, Perlman, Koch, Sickle. (1) The Council received a briefing regarding the Co-op lease of loading dock and parking area; Counsel Koch was given direction on proceeding with negotiations. (NOTE: Sickle and Koch left the room.) (2) The Council discussed possible land acquisition (open space properties); Council decided on conditions and acquisition price. (NOTE: Staff left the room.) (3) The Council discussed the City Administrator's evaluation; work on the evaluation was concluded. (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(7), (3) and (1)(ii)).

Introduced By: Councilmember Hawkins

Resolution No. 1997-71

**Resolution Approving, With Conditions,
A Road Improvement Plan for the Jackson Avenue Right-of-Way**

- WHEREAS, despite the desire of the City of Takoma Park to retain Lot 10, Block E, Cunningham's Addition to Takoma Park, known as 916 Jackson Avenue, as open space, the City finds itself unable to prevent the development of said property; AND
- WHEREAS, the City wishes to minimize the damage development will cause to the above-cited parcel and to the general community environment; AND
- WHEREAS, the City has no legal option except to permit access to the above-cited parcel on the already dedicated right-of-way; AND
- WHEREAS, the City wishes to minimize the damage that construction of a right-of-way will cause; AND
- WHEREAS, Mr. John Casey has submitted an application for a waiver from street construction requirements under Chapter 11, Article 2, Section 11-14 of the Takoma Park Code (Streets - Construction Requirements); AND
- WHEREAS, the waiver is being requested to construct a private drive in the Jackson Avenue right-of-way east of Garland Avenue, in order to provide access for a proposed single-family house on the parcel cited above; AND
- WHEREAS, the proposed road improvement plan is attached and made a part of this resolution by reference; AND
- WHEREAS, Chapter 11, Article 2, Section 11-14 of the Takoma Park Code empowers the Council, at its discretion, to grant a waiver to allow a private road or a private automobile driveway on or partly on a public right-of-way if the affected property owners sign a covenant with the City, which shall run with the land and be recorded in the land records, agreeing to maintain the road or driveway; AND
- WHEREAS, Chapter 11, Article 2, Section 11-14 of the Takoma Park Code further requires the Council to hold a public hearing on any application submitted for such a waiver, and to make several findings before approving any waiver application; AND
- WHEREAS, the Council held a public hearing on November 24, 1997 on the application and provided the required public notice of the hearing at least 14 days in advance by sending out written notices, publishing a notice in the City Newsletter, and posting a notice at the right-of-way; AND

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

- A. *That compelling reasons exist for varying the minimum standards. These reasons may include environmental constraints, tree preservation, lack of need for a full street due to small number of lots served, or other unusual or unique conditions affecting the site.*
- B. *That a waiver of the minimum standards is justified.*

The site contains steep terrain, an existing creek, an environmentally sensitive stream valley, and a 46 inch oak tree and pedestrian path within the right-of-way. In addition, the road will serve only one or at most two lots (Lot 10 and part Lot 3). Construction of a full width road with curb and gutter would require removal of the oak tree and demolition of the pedestrian path, and would result in a much greater volume of storm water.

Unlike a full section road or an alley, the proposed private drive would be constructed at grade using geoblock pavers, thus minimizing disturbance to tree roots. Several additional protections are included in the conditions.

A private driveway constructed according to the standards set out by the conditions would result in the least amount of environmental impact on the site, and would be adequate to serve the small number of lots involved.

- C. *That the minimum standards may be waived without endangering public health, safety and welfare, and that the proposed roadway can accommodate necessary emergency vehicles.*

The proposed roadway will provide a total clearance area of 20 feet, and the proposed geoblock pavers will provide a 9 foot width. The proposed roadway can therefore accommodate necessary emergency vehicles.

- D. *That the degree of variation from the standards is the minimum necessary, and that the use of an alternate road improvement standard (such as an alley standard) has been considered.*

The private driveway is the only option that will not require excavation, that will allow use of an alternate road surface, and that will keep road pavement out of the tree dripline, thus minimizing damage to the roots of the 46 inch oak. The private driveway option will also result in the least amount of stormwater runoff; AND

WHEREAS, the City is determined to enforce measures that speak to these concerns;

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL OF TAKOMA PARK, MARYLAND, THAT, the City Council hereby **Approves** the waiver application, with the following **Conditions**:

1. Provide typical road section on drawing: 9 foot wide roadway (3 foot geoblock pavers, 3 foot grass in center, 3 foot geoblock pavers) with 5.5 foot shoulder on each side. Indicate shoulder locations on plan. Extend pavers for full 9 foot width in front of driveway apron for Lot 10. Fill pavers with sand or gravel. Shoulder to be 6 inch high topsoil berm with fescue sod on top. If sod does not take within 3 to 4 months, applicant will need to replace. No fences, bushes, etc. may be installed in 20 foot roadway clearance area.
2. Any existing topsoil will need to be removed prior to paving with geoblock pavers.
3. Move location of driveway apron for Lot 10 as close as possible to Lot 9; move up bioretention facility.
4. Any future access to part Lot 3 will need to be via Lot 10 - the road may not be extended over the proposed bioretention facility.
5. No invasive or exotic plants are permitted in the bioretention facility. The following planting instructions for the bioretention facility shall be observed:
 - A. Tree Cover Component - Plant one balled and burlapped willow oak tree (*Quercus phellos*) with a caliper of 2.0 - 2.5 inches and a corresponding height of 10 -14 feet, strictly observing the planting schedule attached and made a part hereof by reference.
 - B. Shrub Component - No less than 50 percent bare ground shall be covered (shaded) by shrub foliage using equal proportions of the following shrub species: inkberry (*Ilex glabra*), red osier dogwood (*Cornus stolonifera*), and northern bayberry (*Myrica pensylvanica*) randomly planted throughout the bioretention facility. Shrub size shall be no less than 5 gallon. Strictly observe the planting schedule attached and made a part hereof by reference.
 - C. Planting Timetable - Depending upon when the construction is complete, planting shall be done either in the month of April or May 1998 (watering still may be required if planted at this time), or October/November 1998.
 - D. Planting Stock Quality - All plant material shall conform to the guidelines established by the "American Standard for Nursery Stock," published by the American Association of Nurserymen, Inc. All plants shall be approved by the City Forester or Designee upon arrival at the site, and shall be free from defects, injuries, plant diseases and insect infestations.
 - E. Planting Specifications - See Attachments.

- F. Guarantee on Planting Stock - All planting stock shall be guaranteed for one year against death or significant decline (loss of greater than 33 percent of the above ground plant parts) to insects, disease, drought stress or other factors.
6. Show driplines of trees on plan, and add 100 year floodplain line to plan. Scale in the correct dripline on the 46 inch black oak in the right-of-way. A tree protection plan will be needed if the bioretention facility is within any tree dripline.
 7. If needed, install 6 inch PVC perforated pipe at 6 inch depth (or 6 inch drain tile only at locations where PVC pipe is not feasible) from the bioretention facility to the creek or the manhole, depending on which method would have the least environmental impact. Hand install pipe (no machinery allowed) to facilitate tree protection. Include rodent screen in installation.
 8. A new stormwater application with new computations will be required based on the new design, and must be approved before a road improvement permit will be issued.
 9. Limits of disturbance are needed for the entire site; note these on the plan and show on plan to the extent feasible. A limit of disturbance orange mesh construction fence will be required around the south side of the driveway, around the Lot 10 building site, and along the north side of the driveway to Garland Avenue. The applicant shall close off the site after the work day is completed. Refer to Limits of Disturbance fencing specification attached and made a part hereof by reference.
 10. Show the existing split rail fence on the plan.
 11. Observe the following protection/preservation measures for the 46 inch oak in the right-of-way:
 - A. The permanent tree protection fence should be split rail to match the existing fence.
 - B. Show location of the WSSC water line in the right-of-way, and show location of water tap in relation to tree dripline. Water line should be outside tree dripline. A road improvement permit will not be issued until the water line location is approved by WSSC.
 - C. The applicant shall hire a certified arborist to monitor the tree for instability. If instability occurs, the tree will have to be removed immediately by the applicant in accordance with all City and State laws and regulations.

12. The following bonds shall be required:
- A. 46 Inch Black Oak Tree (total bond amount = \$5,090.00, to be released according to a schedule to be determined by the City Administrator or his/her designee):
 - I. If the tree dies within 7 years of disturbance of roadbed/berm installation, the applicant will be held responsible for the tree's removal and replacement at 3% rate (equals 8 trees at \$255.00 per tree, or \$2,040.00 [1997 dollars]), per the City's Tree Ordinance.
 - II. Monies will be required to be reserved for hazard reduction (if the tree has some decline after construction) and deep root fertilization (to help the tree rebound from any damage incurred. Such tree decline and/or damage shall be determined by the City Administrator or his/her designee.) Pruning = \$900.00 (3 events @ \$300 per event); fertilization = \$500 (2 events @ \$250 per event).
 - III. Additional monies (\$1,750.00) will be required to be reserved for the cost of removal of the tree, if this should become necessary.
 - B. Road and stormwater improvements: A bond representing 125 percent of the estimated construction costs for the road improvements and 125 percent of the estimated construction costs of the stormwater improvements as determined by the City Administrator or his/her designee shall be required in the form of cash, a letter of credit from a bank, or a performance bond through an insurance company. The bond shall be held until all construction work has been satisfactorily completed, inspected, and approved by the City Administrator or his/her designee, with the exception of the portion that applies to the plantings in the bioretention facility, which shall be held for one year after completion, and the portion that applies to the sod to be planted on the road shoulders, which shall be held for 4 months after completion. A permit fee and reimbursement of engineering and staff expenses related to the review and inspection of construction shall be paid according to the provisions of Chapter 11, Article 3 (Streets - Permits and Improvements) of the Takoma Park Code.
13. The applicant will be required to record a covenant in the Montgomery County land records stating that the property owner will not protest a future front foot benefit assessment if the road is built by the City or will pay their proportionate share of the cost to build the road to City standards under a permit.

14. The applicant will be required to record a common use and maintenance agreement for the driveway in the Montgomery County land records. The agreement should specify that the owner of Lot 10 is responsible for maintenance of the 20 foot roadway area, including the geoblock pavers and mowing of the shoulders and center grass strip, stormwater management facilities (including plants in bioretention facility and scraping the first 1 to 2 inches of sand field and replacing every 6 months for the first year and yearly thereafter), leaf collection, and snow removal, and that trash must be hauled to Garland Avenue. Any changes to plant species in the bioretention facility must be approved by the City Administrator or his/her designee (see #5). Any changes to the surface or structure of the roadway will require approval by the City Council. Use of a plow to clear snow from the geoblock pavers will result in damage to the pavers; therefore the homeowner must either use a snow blower or shovel snow manually from the pavers.
15. The applicant shall install No Parking and No Outlet signage on the private drive. Signage will require approval by the City Administrator or her/her designee. The City will not be obligated to install street lights, regulatory signs, or warning signs of any type on the private drive.
16. Violation of any of the provisions of this Resolution shall be a Class C municipal infraction subject to a fine of \$200.00 for the initial offense and \$400.00 for repeat offenses. Each day the violation continues may be considered a separate offense. Violation of any of the provisions of this Resolution also shall be cause for the City to shut down the construction site (or any part thereof) and order work to stop until the violation is corrected or for 24 hours, whichever period is longer.

BE IT FURTHER RESOLVED THAT, the applicant shall be required to obtain a construction permit under Chapter 11, Article 3 of the Takoma Park Code (Streets - Permits and Improvements), and to obtain all other necessary City, County, State, and Federal permits.

ADOPTED THIS 8TH DAY OF DECEMBER, 1997.

jgrimpln.res

Introduced By: Mayor Porter

RESOLUTION #1997 - 72

SETTING FORTH THE CITY COUNCIL'S 1997 HOLIDAY RECESS

WHEREAS, it has been decided that in order to accommodate vacation schedules of the City Council, a holiday recess shall be called; **AND**

WHEREAS, this recess shall commence following the Special Session and Council Retreat on Monday, December 15, 1997; **AND**

WHEREAS, the Council will reconvene their meetings on Monday, January 5, 1998, with a Special Session and Worksession.

NOW, THEREFORE, BE IT RESOLVED THAT the Council of the City of Takoma Park, Maryland, does hereby set forth its holiday recess to begin on Tuesday, December 16, 1997, and conclude on Friday, January 2, 1998.

DATED this 8th day of December, 1997.

**SPECIAL SESSION
OF THE CITY COUNCIL**

Monday, December 15, 1997

Executive Session 12/08/97 - Moved by Williams; seconded by Rubin. Council convened in Executive Session by unanimous vote at 9:45 p.m., in the Conference Room. OFFICIALS PRESENT: Porter, Hawkins, Rubin, Stewart, Williams. OFFICIALS ABSENT: Chavez, Elrich. STAFF PRESENT: Habada, Hobbs, Sartoph, Perlman, Koch, Sickle. (1) The Council received a briefing regarding the Co-op lease of loading dock and parking area; Counsel Koch was given direction on proceeding with negotiations. (NOTE: Sickle and Koch left the room.) (2) The Council discussed possible land acquisition (open space properties); Council decided on conditions and acquisition price. (NOTE: Staff left the room.) (3) The Council discussed the City Administrator's evaluation; work on the evaluation was concluded. (Authority: Annotated Code of Maryland, State Government Article, Section 10-508(a)(7), (3) and (1)(ii)).

OFFICIALS PRESENT:

Mayor Porter

Councilmember Chavez

Councilmember Elrich

Councilmember Rubin

Councilmember Stewart

Councilmember Williams

City Administrator Habada

Assistant City Administrator Hobbs

City Clerk Sartoph

Senior Planner Schwartz

Assistant Corporation Counsel Perlman

OFFICIAL ABSENT:

Councilmember Hawkins

The Council convened in Special Session at 6:42 p.m. in the Council Chambers of the Municipal Building, 7500 Maple Avenue, Takoma Park, Maryland.

SPECIAL SESSION

1. Resolution re: Acquisition of Open Space (Lot 3 - Jackson/Garland). Mayor Porter explained the resolution and described the location of the lot being proposed for acquisition. The Council has been discussing this issue for several months. The property in question, as well as the adjoining property were placed in the City's Open Space Plan months ago. The City has been trying to acquire the properties. The negotiations with the property owner resulted in a tentative agreement regarding Lot 3; but there has been no resolution regarding Lot 10.

Moved by Stewart; seconded by Williams.

Councilmember Stewart stated that she received a phone call from a neighbor who was concerned about the short notice provided to the community about Council's consideration of the resolution. There was also a question raised about how the property will be retained--either as open space or as park land. It was pointed out that there are environmental concerns related to the use.

Councilmember Chavez noted that he received a call from owner of immediately adjacent property, who commented on the short notice and lack of time to consider the resolution.

City Administrator Habada stated that staff has no recommendation regarding use of Lot 3 as park land.

Ms. Porter remarked that the County has expressed interest in purchasing the property as open space. She added that she does not know that there is a distinction between open space and park land, but that it is her understanding that the County would purchase the lot as an extension of the Longbranch Park.

Councilmember Elrich questioned the implications of connecting the existing pathway. He suggested that the City should make it clear to the County that the sentiments of the adjacent property owners must be taken into consideration. A path should not be right up against the common property line.

Todd Baldwin, Jackson Avenue, asked for an explanation of the wording of paragraph 14 of the resolution, and expressed curiosity about the meaning of the text amendments referred to in the resolution.

Ms. Porter explained that the text amendments deal with the change from Prince George's to Montgomery County, and zoning of the former Prince George's County to comparable Montgomery County zoning categories. She explained the delay that is going on now regarding the proposed Sectional Map Amendments and text amendments.

Paula Nersesian expressed support for the City's efforts to acquire and manage open space for public use. The process for considering the acquisition of Lots 3 and Lot 10 has been time consuming, costly, and frustrating. Although the Council has taken actions within its authority, the actions are not to the level of satisfaction sought by citizens. These lots should have been purchased years ago. The construction that has already begun has had detrimental effects on the environment. By purchasing Lot 3, the City will be rewarding behavior that is not consistent with good environmental protection. She suggested that the City conduct an inventory of all land that should be considered for acquisition as open space. The inventory should be reviewed by citizens and appropriate agencies, and should be prioritized for acquisition. She remarked that she would like to be assured that all possible options for protection of Lot 3 have been explored. In general, the situation with the Jackson/Garland property has been embarrassing. There is very little

undeveloped land left in the City. Ms. Nersesian recalled the history of the City when it was once a retreat for people from Washington. She also noted the spring water that was once plentiful. Ms. Nersesian called on the Council to establish and implement a plan which would prevent a situation similar to the once surrounding the Jackson/Garland property from ever occurring again. (She presented City Clerk Sartoph with written testimony prepared by her and Robert Goo.)

Ms. Porter noted that the City does have an Open Space Plan, and observed that the subject property is the last for acquisition according to the plan.

Rolf Hubbe, Garland Avenue, urged the Council to adopt the resolution, adding that it will be helpful to the community.

Katherine Tunis (Co-Chair of Committee on the Environment), commented that the committee has been pleased with the Council's diligent work on this issue, and also commended the work of staff and Mr. Casey (developer). This has been a long process, and the committee is pleased that it has come to this point in the negotiations. Acquisition of the lot does fall within the recommendations of the Open Space Plan. It is important to preserve this property. Ms. Tunis pointed out that the property was referenced in a recent design study conducted by the University of Maryland. She stated that from a personal standpoint, she does not believe the City should actively develop this property as park land. Any plans for the property should be discussed with the adjacent neighbors. Ms. Tunis suggested two amendments to the resolution: (1) second Whereas clause "...varied understory in one of the most pristine ecosystems in Takoma Park...", and (2) fourth Whereas clause "...open space for the environmental values and for the pleasure..."

Leslie Agro, 7513 Carroll Avenue, said that the Rivera's would have liked to be here this evening, but received the notice too late. She stated that they have known for some time that the City was moving in this direction, but that it would have been nice to have had more time to review the resolution and prepare comments. Ms. Agro stated that she gets nervous when she hears the term "open space" thrown around, because it means different things to different people. She commented that she is very concerned about what happens to the property once the City acquires it, but that she is more concerned about what will happen when the County purchases it from the City. She remarked about the property owned by her family, noting that she has turned down several offers for acquisition. Ms. Agro expressed concerns about environmental protections, and concluded that while she does not know what the guidelines are or what the negotiations are with the County, the City must protect the property. She remarked about "pleasure and use" of the property by residents, and stated that she does not want the trails overused. She questioned what assurance will she be given that people will stay off of her property.

Benjamin Onyeneke, Maple Avenue, expressed strong support for the plan to purchase the property. He suggested use of the property for a new police station and office space for the Mayor and Councilmembers. It could be a very useful piece of property. Mr. Onyeneke urged adoption of the resolution.

Doug Scott, Gazette Newspaper, asked why the City is purchasing the property, and how is the acquisition being funded.

Ms. Porter responded that the property was designated through a process of putting it in the City's Open Space Plan. The money for the purchase is coming through the State Open Space Program--a program that funds acquisition of properties for open space and recreational purposes.

Mr. Rubin recalled the process and discussions which occurred around the time the Open Space Plan was adopted.

Ms. Porter said that only Lot 3 was originally recommended for inclusion in the Open Space Plan, and that it fell through and was not adopted as part of the Plan. Lot 3 and Lot 10 were put into the Plan a few months ago.

Mr. Rubin asked if there would be a guarantee from the County to retain the property as open space if the county purchases the property, and questioned whether it would be passive or "used" open space.

Ms. Porter commented that the county has indicated a desire to purchase the property, and also indicated that they will put the money to acquire the property into their long-range budget. However, the City does not have to sell the property to the county. This would be a topic of future discussions.

Mr. Rubin asked whether the City can require a guarantee that the property remain "passive" open space.

Mr. Williams noted that since the property is being purchased with open space funds, there are some automatic restrictions put on what can be done with the property. No buildings can be put on the property, given the source of funds being used for acquisition. The question when negotiating with the county will be what kind of open space use is intended--passive or use.

Mr. Elrich commented that the Council can be clear that the intent is "passive", and that the record should show that this Council's intention is that any negotiations with the County should ensure passive open space retention. The City wants a guarantee from the county. And if the City does sell the property with a guarantee, the purchase monies could be used toward other open space acquisition.

Mr. Rubin suggested amending the resolution to delete "...and to preserve open space....(to the end of phrase)" in the fourth Whereas clause.

Ms. Porter cautioned that the resolution needs to refer to "open space", and suggested striking the language "...for the pleasure and...(to the end of phrase)" in the fourth Whereas clause. There

were no objections.

Mr. Williams restated the amendments proposed by Ms. Tunis.

The Council unanimously accepted the amendment proposed by Ms. Porter (fourth Whereas clause), and the amendment to the second Whereas clause as proposed by Ms. Tunis.

Resolution #1997-73 was adopted unanimously, authorizing the City to purchase Part of Lot 3 of the Jackson/Garland Property for the purpose of preserving this property as open space (VOTING FOR: Porter, Chavez, Elrich, Rubin, Stewart, Williams; ABSENT: Hawkins).

RESOLUTION #1997-73
(Attached)

2. Resolution re: Ratification of Collective Bargaining Agreement (Local 400). Ms. Porter explained the resolution, noting that the Local 400 union represents the City's police officers.

Assistant City Administrator Hobbs noted that the union ratified the offer that was made by the City--2% COLA and full-year merit funding. The same offer was made to AFSCME.

Moved by Rubin; seconded by Williams.

Mr. Rubin expressed support for the resolution. He asked for clarification about where, in the budget, will the money come from to fund the full-year merits.

Ms. Habada stated that the State Highway User revenue, comes from the State and is based on the amount that is paid in gasoline tax, registration of vehicles, and licenses. She explained that City staff recently got a more refined figure from the state budget analyst, enabling her to revise the projected revenue figure. Regarding "sale of recyclables", the City has changed vendors; and the City is now being paid for cardboard and newsprint. This year's budget included money for the purchase of recyclable containers; but the containers were bought last year, so the money received from the State in this year's budget represents an additional revenue source. The "additional revenues from car auctions" are based on a projection from the Police Department regarding the number of cars to be auctioned (primarily, cars that are abandoned on city streets). Ms. Habada explained that the City printed information packets that went to the Prince George's County residents in preparation for Unification. While the City did not expect to get reimbursed from the M-NCPPC, we requested reimbursement and it was granted (\$5,000). On the expenditures side, the bill for State Retirement/Pension came in \$25,000 lower than what was anticipated.

Benjamin Onyeneke, Maple Avenue, supported adoption of the resolution, stating that he had hoped for a 3-4% COLA increase. He said that he would like to see the issue of take-home cars explored.

Resolution #1997-74 was adopted unanimously, ratifying the collective bargaining agreement between the City and Local 400 of the United Food & Commercial Workers Union, AFL-CIO (VOTING FOR: Porter, Chavez, Elrich, Rubin, Stewart, Williams; ABSENT: Hawkins).

**RESOLUTION #1997-74
(Attached)**

ADJOURNMENT

The Council adjourned at 7:25 with an announcement that the Council will be reconvening at another location for the continued Council retreat. Following the retreat, the Council will adjourn for the holiday recess.

Introduced By: Councilmember Rubin

RESOLUTION 1997-74

**RATIFICATION OF COLLECTIVE BARGAINING AGREEMENT
LOCAL 400, UNITED FOOD & COMMERCIAL WORKERS UNION
AND THE CITY OF TAKOMA PARK, MARYLAND**

WHEREAS, the Negotiating Team representing the City of Takoma Park, Maryland and the Union representing City employees who are members of Local 400 of the United Food & Commercial Workers Union, AFL-CIO, have culminated negotiations over pay issues for the third year of the existing contract which covers three years from July 1, 1995 through June 30, 1998; AND

WHEREAS, both parties have agreed to a 2% COLA effective July 1, 1997 and merit pay increases to be retroactive to July 1, 1997: AND

WHEREAS, both parties request that funds necessary to implement the Agreement be approved by the Council pursuant to Section 8B-206 (g) of the Takoma Park Code.

NOW, THEREFORE, BE IT RESOLVED, that the Council ratifies the Collective Bargaining Agreement, effective July 1, 1995 through June 30, 1998, as modified for FY 98, between the City of Takoma Park and Local 400 of the United Food & Commercial Workers Union, AFL-CIO.

Dated this 15th Day of December, 1997.

ATTEST:


Catherine E. Sartoph
City Clerk