

**7<sup>th</sup> REGULAR SESSION – February 26, 2013**

**Mayor D. S. Gysberts called this 7<sup>th</sup> Regular Session of the Mayor and City Council to order at 7:04 p.m., Tuesday, February 26, 2013 in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, M. E. Brubaker, L. C. Metzner, D. F. Munson, P. M. Nigh; City Administrator Bruce Zimmerman, City Attorney John Urner and D. K. Spickler, City Clerk.**

The invocation was offered by Councilmember M. E. Brubaker. The pledge of allegiance was recited.

**ANNOUNCEMENTS**

Mayor Gysberts announced the Rules of Procedure for this meeting will be followed as adopted December 18, 2012. It was announced that the use of cell phones and electronic devices during meetings is restricted and that all correspondence for distribution to elected officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.

The next scheduled meetings are: The State of the City at 7:30 a.m. on Tuesday, March 5, 2013, Work Sessions beginning at 4:00 p.m. on Tuesday, March 5, 2013, Tuesday, March 12, 2013 and Tuesday, March 19, 2013, and the Regular Session on Tuesday, March 26, 2013 at 7:00 p.m.

**CITIZEN COMMENTS**

Matthew Sullivan, 210 S. Mulberry Street, Hagerstown, Maryland, expressed his concern that zoning regulations changed for used car dealers. He was not aware the change was being considered. His business is now a non-conforming use.

Timothy Gipe, 14982 Mercersburg Road, Greencastle, Pennsylvania, co-owns a used car dealership with Mr. Sullivan. They have received notices from the City of Hagerstown for repairs to sidewalks and removal of graffiti. They did not receive a notice about the zoning regulations. He stated the minutes from a public hearing in July, 2012 do not indicate specific changes in the zoning ordinance. He asked if a Board of Zoning Appeals hearing would be an option for him. It would not. The business is considered a permitted, non-conforming use and an exception is not required.

Mr. Gipe is concerned he will not be able to expand the business, if he wishes to.

Jeff Cooper, 505 S. Burhans Boulevard, Hagerstown, Maryland, operates a small car dealership. He is concerned the property would not be able to be used for a car lot if he sold it. Councilmember Metzner stated the property could be used for a car dealership, as long as it is not out of use for two consecutive years.

Bill Feurenstein, 1433 Salem Avenue, Hagerstown, Maryland, owns Salem Avenue Auto Exchange, and has owned several car dealerships and is the past director of the Used Car Dealer Association of Maryland and Delaware. He is concerned that a non-conforming use designation reduces the value of his property and dealership. He fought

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curbstoning for many years. Councilmember Metzner stated there was no intent to keep people from knowing what changes in the Land Management Code were being considered. This issue will be discussed further at future work session.

Harold P. Wills, 149 Summit Avenue, Hagerstown, Maryland, stated the property at the corner of Prospect Street and Washington Street (the former Mid-Town Motel) is a fine example of Draconian Roman architecture. He urged the Mayor and City Council to preserve this building. He would like a place to exercise that would be comfortable for senior citizens, such as the YMCA or the former army reserve building. He stated there is no place to park on Summit Avenue. The parking meters should be returned. Residents should be issued permits to park on the street if the meters are returned.

### **PUBLIC HEARING**

#### **Annexation – 12305 Delwood Avenue, Case No. A-2012-01**

A Public Hearing was held to receive testimony regarding the annexation of 12305 Delwood Avenue. The proposed annexation was introduced on January 22, 2013. The Annexation Plan was also adopted at that time.

The subject property is located in the Cedar Lawn Subdivision north of West Washington Street (MD Route 144). The property is located on the east side of Delwood Avenue and is contiguous to the City via the Snook Annexation from the mid-2000's. The property is owned by Tristate Holdings LLC and contains a recently constructed single-family detached house which initiated a request for City water service last year. Under the City's Annexation Policy, properties requesting City utilities that are contiguous to the City are required to petition for annexation. As a result the attorney representing Tristate Holdings LLC filed a petition for annexation in early November.

The proposed City zoning for the property is RMOD (Residential – Moderate Density), and the current County zoning is RS (Residential Suburban). The two zoning classifications are generally consistent, and a change from RS to RMOD does not require express approval from the County Commissioners.

As required by State Law, there were two published notices advertising the annexation hearing at no less than weekly intervals. The Annexation Plan was provided to the appropriate County, Regional, and State Planning Agencies, at least 30 days prior to the Public Hearing. After the Public Hearing, the Mayor and Council pass or reject the annexation resolution. If the resolution is passed the annexation becomes effective in forty-five days.

Alex Rohrbaugh, Planner, discussed the details of the annexation. In the petition for annexation, the applicant has requested that the annexation be denied by the City on the argument that providing City services to this single property “may prove more costly to the City than is apparent.” Planning Staff reached out to City Fire, Police, Engineering, Finance, Utilities, and Public Works to determine what impact this annexation may have on operations. Each of these departments believes there would be no significant impact to operations to provide their respective services to the property, if annexed.

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Mr. Rohrbaugh entered the following as Exhibits into the record:

Exhibit 1 – Certificate of Advertisement

Exhibit 2 – Planning Commission file by reference

The following testimony was presented:

Kathleen and Harold Gray, 12305 Delwood Avenue, Hagerstown, Maryland, own this home. They do not understand why the property has to be annexed when it is in the County.

Mayor Gysberts stated to receive City water, the property must be annexed. Ms. Gray stated other in the neighborhood have City water. She wondered why this property would be singled out.

Councilmember Metzner stated the other properties had City water service before the Annexation Policy was adopted.

Ms. Gray stated they may have to sell the property because the taxes may be out of their budget range. Mayor Gysberts stated there are many benefits to being City property owners. The double taxation was addressed by the County Commissioners two years ago.

Andrew Wilkinson, 13104 Pennsylvania Avenue, Hagerstown, Maryland, is the attorney representing the applicants. They have asked the petition for annexation be denied. He stated it is not clear the property is contiguous to the City of Hagerstown. There is a 15' wide alley behind the property. The current deed does not describe this alley as being part of the property. Mr. Wilkinson pointed out this would be the only property annexed within two neighborhoods. He is concerned providing City services to this home would create an undue burden.

Mr. Wilkinson requested that three documents showing the property be entered as exhibits.

Councilmember Aleshire stated he believes the property is contiguous to the City. He does not support providing services to properties without annexation.

Mr. Wilkinson proposed that the whole neighborhood be annexed. John Uner, City Attorney, stated the City cannot make property owners annex.

Mayor Gysberts is a strong supporter of annexation. For years, the City provided services without asking for anything in return.

There was no further testimony presented.

Mr. Zimmerman stated discussion of this annexation petition will be included on a Work Session agenda in March, 2013.

The record will remain open for 10 days. The hearing was closed at 7:55 p.m.

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to approve the minutes, as presented for the Mayor and Council meetings held on January 8, 2013, January 15, 2013 and January 22, 2013.

**CONSENT AGENDA**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve the Consent Agenda as follows:

- A. Department of Parks and Engineering:
  - 1. Mowing and Trimming in Various Parks – J. R. Services (Smithsburg, MD) \$ 55,754.52
  - 2. Golf Course – Mowing and Trimming – J. R. Services (Smithsburg, MD) \$ 16,500.00
  
- B. Department of Community and Economic Development:
  - 1. Various Street Closures for Events in 2013
  
- C. Department of Utilities:
  - 1. Stream and Current Monitor Analyzer – Hach Company (Loveland, CO) \$ 21,016.00
  - 2. Emergency Power System Preventive Maintenance Contract – GE Critical Power (Chicago, IL) \$ 13,175.00

**UNFINISHED BUSINESS**

There was no unfinished business.

**NEW BUSINESS**

**A. Introduction of an Ordinance: Amend Land Management Code Definition of Minor Subdivision – Case No. ZT-2012-03**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance amending Chapter 140, Land Management Code, of the City Code, to revise the definition of a Minor Subdivision to 7 or fewer residential lots.

**B. Introduction of an Ordinance: Amend Adequate Public Facilities Ordinance Definition of Minor Subdivision – Case No. ZT-2012-03**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance amending

Chapter 47, to revise the definition of a Minor Subdivision to 7 or fewer units.

**C. Approval of a Resolution: Memorandum of Understanding between Hagerstown Police Department and Department of Defense for Equipment**

**Action:** On a motion duly made by K. B. Aleshire and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to enter into a Memorandum of Understanding (MOU) with the United States Department of Defense for the acquisition of decommissioned equipment from the Department of Defense (DOD).

This program carries no cost to the City and comes with the stipulation that the equipment be returned to the DOD once it is deemed no longer of use to the department.

**D. Approval of a Resolution: Easement Agreement with Potomac Plaza, LLC for Structural Connections to Wall at 44 N. Potomac Street**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to authorize the execution of an easement agreement with Potomac Plaza, LLC, property owners of 44 North Potomac Street. This agreement will allow the City to anchor structural members to the wall at 44 North Potomac Street for the 36-40 North Potomac Street Artists Apartment Renovation project. The agreement also acknowledges pre-existing encroachment of 36-40 North Potomac Street structural members into the 44 North Potomac Street wall and requires the City to make repairs to the wall if any damage occurs as a result of the City's structural connections.

**E. Approval of an Amendment to the Fairgrounds Cell Tower – Shentel Lease Agreement**

**Action:** Councilmember K. B. Aleshire made a motion to approve a lease amendment with Shenandoah Personal Communications Company (Shentel) at the Fairgrounds Cell Tower to accommodate additional and upgraded equipment and to upgrade the facility. Under this amendment, the estimated completion date is April 15, 2013. There is no change in the monthly fees to Shentel. Councilmember D. F. Munson seconded the motion.

Discussion: Councilmember Metzner asked if this agreement requires additional maintenance responsibilities to the City. This information will be provided.

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the motion was tabled.

**F. Approval of “Dublin at the Diamond” Festival and the Addition of the Maryland State Lottery Keno at Municipal Stadium**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to approve the non-game event “Dublin at the Diamond” festival on Saturday, March 16, 2013. The event will commence immediately following the St. Patrick’s Day 5K race in downtown. The Mayor and City Council also approve the addition of the Maryland State Lottery Keno equipment at the Stadium and authorized staff to execute the required application to allow the Suns to place the equipment in the Stadium.

Discussion: Councilmember Brubaker is reluctant to approve the addition of Keno at the stadium. Councilmember Aleshire asked what process would be in place if that part of the operation becomes unsatisfactory. Councilmember Metzner stated the Council could withdraw the permission. Mr. Zimmerman clarified that the Mayor and Council are granting permission, as the property owner, to apply for the Keno operation. The State of Maryland oversees the operation of the game.

**G. Approval of Hagerstown Pony League Loan Waiver**

**Action:** Councilmember D. F. Munson made a motion to waive the \$ 6,000 loan balance as requested by the Pony League officials. The loan was for certain fence improvements to the facility in Funkhouser Park in 2006. Councilmember P. M. Nigh seconded the motion.

Discussion: Councilmember Aleshire reiterated the offer to waive a portion of the remaining amount. Councilmember Brubaker does not think the full amount should be waived.

Motion carried, 3-2 with Councilmember K. B. Aleshire and Councilmember M. E. Brubaker voting No.

**H. Approval of Purchase: Replacement of Engine 1, 1994 Pumper – Kovatck Mobile Equipment (Nesquehoning, PA) \$ 447,017.00**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to approve the purchase of a KME Pumper to replace Engine 1 at the First Hose Fire Company in the amount of \$ 447,017.00 from Kovatck Mobile Equipment in Nesquehoning, Pennsylvania. First Hagerstown Hose has agreed to contribute \$ 150,000.00 towards the purchase of the apparatus. The City of Hagerstown’s share is \$ 297,017.00, which is included in future bond proceeds.

**I. Approval of Administration of Dental Coverage for FY 2013-14 to United**

**Action:** On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve of United Concordia (UCCI) to administer the dental coverage for City of Hagerstown employees and retirees for a minimum of three years beginning in FY 2013-14. UCCI has provided a projected savings of \$ 26,000 over a 3 year period. The change to UCCI will offer participants a larger network of dental providers as well as a nationwide network for those participants who live outside of Maryland.

**J. Approval of Amendment to the Power Service Agreement between the City of Hagerstown and Allegheny Energy Supply Company, LLC**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the Amendment to the Power Service Agreement between the City of Hagerstown and Allegheny Energy Supply Company, LLC. The existing Power Service Agreement has been extended for a period of one year, from the initial expiration date of May 31, 2014 through the new expiration date of May 31, 2015. The MWh (megawatthour) charge for service during the aforementioned one year period will become \$ 53.90.

**K. Approval of Full-time Police Technologist Position**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve adding one full-time headcount for the Police Technologist position to support police operations. This position will increase the Information Technology and Support Services full-time position count by one from March 1, 2013 to December 15, 2013 and the costs associated with this position are covered by the Cops Technology grant.

**CITY ADMINISTRATOR'S COMMENTS**

*Bruce Zimmerman, City Administrator,* reported the yard waste collection starts again in March.

**MAYOR AND COUNCIL COMMENTS**

*Councilmember P. M. Nigh* asked that someone communicate with the gentleman on Hager Street who has been sending emails to the Mayor and City Council.

*Councilmember D. F. Munson* had no additional comments.

*Councilmember L. C. Metzner* hopes this administration does everything it can to provide a proposal to the Board of Education for the Central Offices downtown.

*Councilmember M. E. Brubaker* appreciates the Pony League and all the efforts by non-profit organizations and volunteers.

*Councilmember K. B. Aleshire* would like to pursue a request made by Burkett's Deli. Mr. Zimmerman indicated Rodney Tissue and Andrew Sargent are planning to meet with Mr. Burkett.

Councilmember Aleshire stated the Board of Zoning Appeals granted a request from the Salvation Army to expand their services. He believes there is a reason to review expansion of this type of service into a neighborhood. He thinks there should be a ceiling established for pension costs for the City. The City needs a broader, more effective approach in addressing foreclosures and vacant properties. He would welcome a discussion on the partnerships the City has with various entities. He would also like to discuss the issues at the Wells House. He still has no answer of whether or not the EDC strategic plan has been formally adopted. He thinks the City should make formal comments and respond to the plan. When this administration started their term, they briefly discussed their goals. He thanked staff for the demographic information. In regards to the agreement with the Sora group, he stated that it would be almost impossible for the City to sign an exclusive agreement with any organization regarding plans for downtown if the plan is not acceptable to the other parties. He thinks the local elected bodies need to be in agreement for such an agreement before anything is signed.

*Mayor D. S. Gysberts* has been working with staff since last week to develop a solid proposal for the Board of Education's review. The State of the City will be held on March 5, 2013. There is a redevelopment focus in the City Code.

There being no further business to come before the Mayor and City Council, on a motion duly made, seconded and passed, the meeting was adjourned at 8:31 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: March 26, 2013