

WORK SESSION - JANUARY 25, 2005

Mayor William M. Breichner called this Work Session of the Mayor and City Council to order at 5:00 p.m., Tuesday, January 25, 2005 in the Council Chambers at the City Hall. Present was Mayor Breichner; City Council Members K. B. Aleshire, N. L. Hendershot, L. C. Metzner, C. N. Moller, P. M. Nigh; City Administrator Bruce Zimmerman, and City Clerk D. K. Spickler.

Interim Sewer Capacity Allocation Program - Follow Up Discussion

David Shindle, Water and Sewer Department Manager, and Kathleen Maher, Planning Director, were present to continue a discussion regarding the recommended Interim Sewer Capacity Allocation Program.

In review, the objectives of this program are as follows:

1. Move towards fulfilling the requirement of the Consent Judgement to create a Capacity Management Plan.
2. Institute a user-friendly short-term program to sensibly manage a portion of this year's annual allocation until the final program is developed.
3. Provide our community with a planning tool for more predictable growth.

Several different typical scenarios and their relationship to the Interim Sewer Capacity Allocation Program were discussed. The scenarios are as follows:

1. The owner of three existing adjacent buildings on separate parcels, each of which are already connected to the sewer system with a total of 3,000 gallons of allocation, desires to demo the buildings and construct a new office building on the three lots and re-connect to the sewer system. The new office building is expected to use 2,500 gallons per day.

Under the interim program, this would have no impact to allocation and the project would be permitted to proceed at the owner's pace. The reuse of buildings/properties with existing allocation is encouraged. Under the final program, we would want to consider ways to reuse the excess 500 gallons in this example.

2. A house with a failing septic system wants to connect to the sewer system.

Under the interim program, and because the property has never been connected to

the system and has no existing allocation, this is considered an existing lot. The 200 gallons for this house would have to come from the pool of gallons in Table 4 that is reserved for existing residential plats.

Councilmember Aleshire asked if a development with a failing septic system would have to be considered as part of the allocation. Mr. Shindle indicated a distinction would have to be made between extension of service and connection of service. This would be considered an existing lot that was not connected, not a new use. Councilmember Aleshire stated he is concerned that entire developments would be asking for allocation. Mr. Shindle stated this would be an unusual occurrence, but the topic is open for discussion.

3. A developer wishes to construct a new shopping center similar to the Centre at Hagerstown.

All of the existing stores and shops at the Centre at Hagerstown Shopping Center use a combined total of 39,000 gallons per day. The new shopping center would need to submit their site plans to the Planning Department. However, the allocation for the entire project could not be approved all at once. Under the interim program, there are 8,100 gallons reserved for nonresidential or commercial site plan allocation. If the Mayor and City Council choose, they could use all or part of their 20,000 gallon Discretionary Reserve to allow a major portion of the project to proceed.

4. Because of market conditions, a developer with a 30-lot single family residential subdivision and with a final plat that was approved in 2003, wishes to reconfigure 15 of the lots into 35 townhouse lots, for a total of 50 lots in this subdivision.

Under the interim program, the remaining 15 single family lots, and 15 of the proposed townhouse lots, would come from the pool of gallons in Table 4. To create the additional 20 lots, the developer would have the ability to use the gallons in Table 3 for "City Residential Plats."

5. The CDC wishes to proceed with their East Baltimore Street/Massey project.

The existing properties for this project have 1,700 gallons of allocation, or the equivalent of 8 homes. The allocation for the remaining proposed 22 to 27 lots would need to be used from the gallons shown in Table 3.

The gallons reserved in Table 3 allow for new plats and site plans and allow for a proportionate amount of the 120,000 annual allocation to be used during the interim plan.

Councilmember Aleshire stated he would prefer that a clarification be made that the estimated 600 homes includes commercial development also. Mr. Shindle stated everything is measured by gallons and there are several different ways of converting data into gallons.

The date that will be used for determining if a property falls under the interim plan is January 12, 2005 and it will be based upon the approval by the Water and Sewer Department.

Councilmember Aleshire stated there are a few homes outside the city limits currently on septic systems. He hopes during this interim time, the City would take into account what affect this will have on the potential of development to occur. He hopes that residential developments don't suffer. Mayor Breichner indicated there are not too many areas that don't have City and County water and sewer service.

The details of the entire plan will be included in the administrative policies.

Councilmember Aleshire stated he would hope additional allocation will be granted as improvements and upgrades are made to the sewer plant.

Ms. Maher expressed concern about the idea of shutting off new developments. It has been a long process of getting new development in Hagerstown and the City doesn't want to turn them away. Mr. Shindle indicated new developments have been capped at 25 connections per development per year.

Councilmember Aleshire suggested being more cautious at the beginning to make sure there is enough in reserve to accommodate development. Councilmember Metzner does not want to be in a position to have to turn away development.

Mayor Breichner indicated MDE crafted this Consent Judgement so the City could proceed and continue to grow and meet the growth needs for this community. The City's concern is how to get these improvements completed. This Consent Order reflects the cooperation between the City of Hagerstown and MDE.

Councilmember Aleshire stated there is nothing in this order that is anything remotely like a moratorium. Councilmember Metzner asked if there is the possibility of being out of capacity under this interim policy. Mr. Shindle stated he could see that happening if there is not support from the community. Ms. Maher indicated they have suggested reserving 12,000 gallons for outside the City limits. Mr. Shindle stated this is a document that could change throughout the six months, if something is not working.

Councilmember Metzner stated that, above and beyond anything else, no more partially treated sewer is to be dumped into the Antietam. He would agree with this policy, with the

understanding that it is a fluid policy. He understands the sewer is an asset that can't be handed out without consideration.

Mayor Breichner stated the events at the Antietam Creek are not desirable, but he doesn't think MDE blamed the City for those events. He stated even I/I studies cannot safeguard against a catastrophic event that would cause flooding at the sewer plant

It was the general consensus of the Mayor and City Council to move forward with the interim plan. A monthly report will be presented showing the status of the policy and the impact it is having on the allocation.

Councilmember Aleshire stated he is confident the City will develop the required plan that is adequate; however, he doesn't believe the interim policy provides the constraints that the consent order intended.

Mr. Shindle stated he does not believe there were specific restraints in the order and these restraints are above and beyond the consent order.

Councilmember Aleshire expressed his concern that there will be a large number of requests for the allocation. Ms. Maher stated a consultant will be available to assist in working on the final plan. The consultants will be able to help determine what is a reasonable allocation amount.

Mayor Breichner asked if the "flush tax" was being applied to water bills at this time. Alfred Martin, Finance Director, stated the City is required to collect \$ 2.50/month from every customer who receives a bill after January 1, 2005. It is a user charge and is required by State Law.

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 6:15 p.m.

REGULAR SESSION - OCTOBER 26, 2004

Mayor W. M. Breichner called this 79th Session of the Mayor and City Council to order at 7:01 p.m., Tuesday, January 25, 2005, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, N. L. Hendershot, L. C. Metzner, C. N. Moller, and P. M. Nigh; City Administrator Bruce J. Zimmerman, City Attorney William Nairn and City Clerk D. K. Spickler.

The invocation was offered by Councilmember N. Linn Hendershot. The Pledge of Allegiance was then recited.

Mayor Breichner announced the Rules of Procedure for this meeting will be followed as

adopted May 28, 2001. 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: Work Sessions beginning at 4:00 p.m. on Tuesday, February 1, 2005; Tuesday, February 8, 2005; Tuesday, February 15, 2005 and the Regular Session on Tuesday, February 22, 2005 at 7:00 p.m.

Mayor Breichner reviewed the citizen rules for testimony and comments.

APPOINTMENTS

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to appoint Anne Yambor to the Preservation Design District Commission (term expires June 30, 2006)

Mayor Breichner stated the Charles Miller, appointee to the Hagerstown Housing Authority, asked that his name be withdrawn due to health reasons.

MINUTES

On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote to approve the minutes for Mayor and City Council meetings held on December 7, 2004, December 14, 2004, December 16, 2004 and December 21, 2004.

CONSENT AGENDA

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

- A. Engineering:
 - 1. Marshall Street Sidewalk Installation, Concrete Central, LLC (Hagerstown, MD) \$ 49,087.00
 - 2. Citywide Street Tree Planting, Antietam Tree Service, Inc. (Hagerstown, MD) \$ 32,800.00
 - 3. Purchase of Compact Pickup Truck (Vehicle Replacement of Unit 712), Hertech Fleet Services, Inc. (Denton, MD) \$ 10,398.00
 - 4. Purchase of Compact Utility Vehicle, Hertech Fleet Services, Inc.

(Denton, MD) \$ 18,049.00

- B. Parks and Recreation:
 - 1. Lights at Pangborn Tennis Courts, Ellsworth Electric (Hagerstown, MD) \$ 14,450.00
 - 2. Lights at Fairgrounds Park Deck Hockey Rink, Ellsworth Electric (Hagerstown, MD) \$ 25,950.00
- C. Fire Department:
 - 1. Scott Air Pack Cylinders, MES Allsafe Fire Equipment (Williamsport, MD) \$ 45,267.75
 - 2. Paratech Rescue Equipment, Fire and Rescue Products (Harrisburg, PA) \$ 21,905.40
- D. Water and Sewer Department: Phase II Change Order - Replace roof, Ulliman Schutte \$ 32,119.99
- E. Banner Requests
 - 1. February 21 - 27, 2005: Washington County Health Department Colon Cancer Awareness
 - 2. February 28 - March 13, 2005: Home Show
 - 3. March 28 - April 3, 2005: Multiple Sclerosis Walk
 - 4. April 4 - 17, 2005: Hagerstown Suns 25th Anniversary & Home Opener
 - 5. May 23 - June 5, 2005: Western Maryland BluesFest

UNFINISHED BUSINESS

A. Approval of an Ordinance - Amend the Code of the City of Hagerstown, Amending Chapter 46, *Adult Businesses* to Modify the Procedures for Obtaining an Adult Business License

Action: On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance to amend the Code of the City of Hagerstown, amending Chapter 46, *Adult Businesses*, to modify the procedures for obtaining an Adult Business License. The amendment establishes a time frame within which the City Clerk must issue or deny the license, and to specifically identify the right of appeal.

B. Approval of an Ordinance - Authorizing the Acquisition and Transfer of 328 North

Potomac Street (Armory)

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance authorizing the acquisition and transfer of 328 North Potomac Street. The Mayor and City Council have determined that the Armory is not needed for a public purpose and it is in the best interest of the citizens to transfer the Armory from the city to Cumberland Valley Chapter Associated Builders and Contractors, Inc. (ABC). The Mayor is hereby authorized to accept delivery of a Deed from the State of Maryland to the City of Hagerstown for the Armory and to execute and deliver a Deed from the City of Hagerstown to Cumberland Valley Chapter Associated Builders and Contractors, Inc. for the Armory immediately thereafter.

Discussion: Councilmember Metzner stated this transfer has been in process for quite some time. He is glad to see it finally happen. Councilmember Aleshire pointed out this building is owned by the State of Maryland and the City of Hagerstown is acting as a pass through for the transfer.

C. Approval of an Ordinance - City of Hagerstown Water Quality Bonds

Action: On a motion duly made by Councilmember C. N. Moller and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance as introduced authorizing the City of Hagerstown to issue and sell, upon its full faith and credit, general obligation bonds to the Maryland Water Quality Administration in one or more series in an aggregate principal amount not to exceed \$ 7,100,000. Proceeds from the sale of the bonds will be used for the public purpose of enhancing and improving the City's waste water treatment plant as more fully described in the ordinance together with related expenses and costs of issuance. Staff is hereby also directed to proceed with developing the necessary detailed resolutions and other documents to proceed with the sale of the bonds as directed by this ordinance. The detailed resolution will be presented to this body for approval at a future date prior to the issuance of the bonds as specified in the ordinance.

NEW BUSINESS

**A. Introduction of an Ordinance: Amendment of Property Maintenance Code: 64-8
Section 104.4 Administrative Search Warrants**

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by

Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance amending Code 64-8 Section 104.4 to provide specific authority for the issuance of administrative search warrants.

B. Resolution - Approval of Lease Renewal with Community Housing Resource Board, 21/23 East Franklin Street

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote to approve a resolution for a one year extension of the existing lease for the Washington County Community Housing Resource Board, Inc. located on the first floor of 21-23 East Franklin Street. Rent will continue at an annual rate of one dollar (\$ 1.00) payable in advance on the first day of this yearly term.

C. Resolution - Fairgrounds Park - Hagerstown Area Youth Soccer League (HAYSL) Lease Extension

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to renew the Lease Agreement with the Hagerstown Area Youth Soccer League (HAYSL), to allow Users the right to utilize three multi-purpose fields located at Fairgrounds Park for the period of January 1, 2005 through December 31, 2005.

D. Resolution - Fairgrounds Park - YMCA of Hagerstown

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to renew the Lease Agreement with the YMCA of Hagerstown, to allow Users the right to utilize one multi-purpose field located at Fairgrounds Park for the period of January 1, 2005 through December 31, 2005.

Discussion: Councilmember Nigh asked Staff to make sure the requirements for Program Open Space funding are met. She is particularly concerned about facilities being open for public recreation.

E. Resolution - Fairgrounds Park - American Little League Lease

Action: On a motion duly made by Councilmember P. M. Nigh and seconded by

Councilmember N. Linn Hendershot, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to renew the Lease Agreement with American Little League for the use of the baseball fields located at Hager Park and Fairgrounds Park for the period of January 1, 2005 through December 31, 2005.

F. Resolution - Clarification to Interim School Impact Policy

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to adopt a Resolution amending the Interim School Impact Policy. This amendment clarifies that this policy shall not apply to lots for which the owner has a Contract of Sale dated on or before December 8, 2004 between the owner and the intended resident of the building to be erected.

G. Approval of Revision to Planning Department Fees

Action: On a motion duly made by Councilmember C. N. Moller and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to revise the Planning Department's fees for Special Exceptions, Variances, and Rezonings to include the cost of advertising in the submittal fee rather than to continue the current practice of sending a subsequent bill for advertizing costs. With this revision, the submittal fee for Special Exceptions would rise to \$ 325, the submittal fee for Variances would rise to \$ 225 and the submittal fee for Rezonings would rise to \$ 1,150.

Discussion: Bruce Zimmerman, City Administrator, stated the timing of payment of the fees is being changed, not the fees themselves.

H. Resolution - Modification to the Guidelines of the Hagerstown Revolving Loan Fund

Action: On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution amending the guidelines of the Hagerstown Revolving Loan Fund to remove the requirement that all applicants seek private financing prior to applying for assistance under the program.

I. Approval of Request to Delegation: Increase of 2% in Hotel Room Tax

Action: Councilmember L. C. Metzner made a motion to approve of a Mayor and City

Council legislative request to the Washington County Delegation to amend the Washington County Hotel Rental Tax. The City of Hagerstown's legislative request is to increase the current 6%, tax which is currently imposed throughout the entire County, to 8% for those businesses located within the City's corporate boundaries. The City of Hagerstown intends to utilize the proceeds from this additional increase of 2% to fund capital improvement projects that will support Downtown Revitalization, Neighborhood Community Revitalization, Street and other Public Infrastructure Improvements, and Parks and Recreation Facility Enhancements. This request was discussed with the Washington County Legislative Delegation during the combined City/County/Delegation Meeting that was held on December 16, 2004 in preparation for the 2005 Session of the Maryland General Assembly. Councilmember C. N. Moller seconded the motion.

Discussion: Councilmember Aleshire stated this request has not been discussed at a work session. He stated several years ago, when the hotel room tax was doubled, there was language to specify some direction for that funding. Those funding sources did not occur in the manner presented. He is concerned the Mayor and City Council have not identified where these funds will be expended and the necessity for adding the additional tax. He thinks it is premature to ask for this legislation without any prior discussion.

Councilmember Metzner stated he thinks the limited revenue raising options have been discussed during budget sessions. He thinks this motion is to let the Delegation know what the Mayor and City Council's intent is, which is to take some of the burden off taxpayers and supplement revenue.

Councilmember Aleshire stated he would like to see more time devoted to this issue.

Mayor Breichner indicated it is important to have this to the Delegation for this General Session. Councilmember Metzner suggested approving the tax and then discussing the details, with the understanding that it could be withdrawn.

Councilmember Hendershot is in favor of approving the tax. He stated the City would have control of the funding and not have to rely on another agency to receive the funding.

Motion carried, 3-2 with Councilmember Aleshire and Councilmember Nigh voting No.

The anticipated amount of revenue is \$ 130,000 annually.

CITIZEN COMMENTS

Rev. Guillory, 8306 Wilshire Boulevard # 1752, Beverly Hills, California, stated there is a racist problem in the City of Hagerstown. He stated anyone who read the newspaper knows that someone took a document and passed it off as an official document. He indicated he received one of the hate letters that other residents have been receiving. He stated he took the letter to the FBI and had it fingerprinted. The letter was from someone posing as a police officer and it said if the Mayor doesn't put him (Rev. Guillory) in his place, they will. He stated 30 years after Martin Luther King's assassination, racism is still evident. He stated E. J. Fuller was one of the first African Americans to file for a Council seat. He stated the majority of city employees are good, hard working people, but their jobs are not in question and their families are not threatened. He asked how many managers and employees are African-American. He is concerned that job listings are posted within and that people capable of being employed by the City are not given an opportunity. He stated when the City asks where money for the Memorial Recreation Center is spent, there is a problem. The request was for assistance with operating the swimming pool at the facility. He stated it needs to be determined why African Americans aren't being promoted.

Nancy S. Allen, 942 Oak Hill Avenue, Hagerstown, Maryland, expressed her concern about the use of Fairgrounds Park and the Pony League. She stated she and her husband, as taxpayers, would like to see the facility used more by youth groups. Sports are positive activities for children to be involved in and it would be good for the City and for the youth to have more youth activities at Fairgrounds Park. She encouraged the Mayor and City Council to re-evaluate their decision regarding Fairgrounds Park. She stated it seems fair the Mayor and City Council should consider any request to use the facility.

CITY ADMINISTRATOR COMMENTS

Bruce Zimmerman, City Administrator, pointed out there are many things on this month's consent agenda that are making Hagerstown a more livable city, i.e. Marshall Street sidewalks, tree plantings and addition lights. These items tie in to the Mayor and City Council's goals.

COUNCIL COMMENTS

Councilmember N. L. Hendershot is extremely concerned with the state of fire and rescue throughout the City and the County. Community Rescue Service was forced to vote to close a substation in the downtown due to lack of funding. The Fire Department and Community Rescue Service must be funded.

Councilmember K. B. Aleshire thanked Senator Munson for sponsoring a bond bill for the

maintenance of University Plaza. He then discussed the issue of the Pony League and the Hagerstown Softball League at Fairgrounds Park. He stated it continues to be his opinion that, by replacing one group with another, the needs of all user groups are not being met. He would like to provide the necessary solution in meeting the long term needs of all the possible user groups.

Councilmember Aleshire stated this month's Maryland Municipal League magazine explains the steps the Governor has taken in evolving the Smart Growth areas and priority funding areas in to priority areas.

Councilmember P. M. Nigh thanked everyone who helped remove snow for people. She stated she is starting to receive telephone calls about potholes. She thanked the Public Works Department for repairing the holes on Locust Street. She expressed her concern about where the people who are kicked out of homeless shelters go. She would be interested in the ratio of women employees for the City of Hagerstown. She pointed out that Pony in Pony League stands for Protect Our Nation's Youth. She has received hate mail and email because of her discussions about the Hagerstown Softball League and the Pony League. She stated she will keep up the fight.

Councilmember C. N. Moller stated the topic of development in Washington County was discussed at the Washington County Chapter Municipal League meeting. There is not enough money being raised for school construction and this issue needs to be considered.

Councilmember L. C. Metzner stated he believes the Pony League should be given the opportunity to make a presentation about the use of the fields at Fairgrounds Park and he doesn't think it will take six months. There are two good organizations. The Pony League should state their needs, with or without Fairgrounds Park. There is no benefit in having two groups attack each other and any presentation should be positive. He stated it would be premature to say how he feels without seeing both presentations. He would have to see more information about the advantages of spending \$ 100,000 to change the fields before he could make a decision. He stated he told representatives of the Pony League he would be willing to give them the opportunity to make a presentation. He cautioned other Council members that if they say fields will be found for the Pony League, they will have to do the same for all other leagues. He stated this is not an easy issue.

Councilmember Metzner stated he would not be surprised to learn racism is doing well in this country; however, he doesn't think Hagerstown is as much of a problem as Rev. Guillory thinks. Unfortunately, racism is not only toward African-Americans. He stated the comments from Ku Klux Klan leaders were discouraging, to say the least. Hate groups are easy to discount. Racism is not openly discussed. He commended all who have filed for candidacy. The only way to stop racism is to publically talk about it and overcome it together.

Mayor W. M. Breichner stated he has received a number of letters concerning the use of Fairgrounds Park by the Hagerstown Softball League or the Pony League. None of them have been derogatory. This is a difficult issue in which two groups are pitted against each other. The Pony League has longevity in Hagerstown and the Hagerstown Softball League has made a significant investment at Fairgrounds Park.

Mayor Breichner stated racism does exist, but it is not part of the City's program or policy to allow it here. The Hagerstown Police Department is investigating the hate letters. These letters are not something anyone wants to see in this community.

Councilmember Nigh stated she has no problem with softball, her brothers all played. Her family was also involved in the Pony League. She asked where the twelve year olds would play if there wasn't Pony League.

There being no further business to come before the Mayor and City Council, on a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the meeting was adjourned at 7:58 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved:_____