

80th SPECIAL SESSION - February 1, 2005

Mayor William M. Breichner called this Special Session of the Mayor and City Council to order at 4:00 p.m., Tuesday, February 1, 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, City Administrator Bruce Zimmerman, and City Clerk D. K. Spickler.

Councilmember P. M. Nigh was ill and was not present at the meeting.

Approval 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 N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote of all members present to approve an ordinance amending Code 64-8 Section 104.4 to provide specific authority for the issuance of administrative search warrants.

Approval of a Resolution to Create an Interim Sewer Capacity Allocation Program

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 of all members present to approve a resolution for the creation of an Interim Sewer Capacity Allocation Program. This program will limit the number of gallons of sewer allocation that may be approved for the creation of new final plats or site plans, and the gallons of sewer allocation associated with sewer permit applications for existing final plats and site plans. Further, it establishes a Discretionary Reserve allocation for the Mayor and Council and an allocation reserved for future use during this calendar year.

Discussion: Councilmember Aleshire stated one of the charts included an allocation limit of 2400 gallons for uses inside the City limits. This would be the equivalent of one 12 unit structure. He would expect Staff to ask for a change in that limit quickly. Mr. Shindle indicated this would, perhaps, get people thinking about building single family structures. Councilmember Metzner asked if the message from the Mayor and City Council is that this type of development is not what we want. Ms. Maher stated single family development is being encouraged.

Mr. Zimmerman stated the resource is becoming scarce and the City is prioritizing projects in order to meet the goals established by the Mayor and Council.

Mr. Shindle indicated the City would be able to accommodate some of the larger developments with this interim policy. Councilmember Aleshire is still apprehensive.

WORK SESSION - February 1, 2005

Proclamation: Neighborhoods 1st Month

Mayor Breichner read a proclamation recognizing February, 2005 as Neighborhoods 1st Month.

Neighborhoods 1st provides an effective mechanism whereby the citizens of Hagerstown, sharing common neighborhood identity, goals, and concerns, may form groups that are officially recognized by the City and given the responsibility to identify, plan for and implement improvements to their neighborhood.

Haven Road Annexation

A Petition for Annexation of the Dewey Jordan, Inc./Rogers Farm, LLC property north of the City was presented for the Mayor and City Council's review. The property contains 54.658 acres, more or less, and is contiguous to and adjoins the existing corporate boundaries of the City on the northern boundary.

Deborah Everhart, Economic Development Director, Kathleen Maher, Planning Director, and Ken Jordan, applicant, were present to discuss the petition for annexation.

Ms. Everhart distributed an amended petition for annexation of 54.658 acres on the north side of the City. The applicants had anticipated constructing 450 homes on the land over a three year period. The text was amended to make it compatible with the sewer capacity allocation program. Ms. Maher stated the applicant was looking for a blanket allocation and that is not possible anymore.

The homes will be single family and duplex residences. There will be no apartments on the property. Ms. Maher indicated the zoning would allow apartments, but the applicant has stated they do not want to construct apartments.

Councilmember Metzner asked Councilmember Aleshire if this would be the appropriate time to include restrictions on the property. Councilmember Aleshire indicated this would be the Council's opportunity to do so.

Mr. Jordan stated he understood the Mayor and City Council did not want more apartments,

so he decided not to build apartments. He asked if he was correct in thinking the revised language in the petition limits them to building only 25 homes per year. This is correct.

Councilmember Metzner stated it does not seem fair to have this discussion when it is obvious the applicant has just seen the revisions to the petition.

Councilmember Aleshire stated this policy is only an interim policy and the numbers may change in July, 2005. Councilmember Metzner suggested postponing this annexation, since the applicant has not had the opportunity to review the amendments.

Mr. Zimmerman indicated Staff is looking to get direction from the Mayor and City Council for language to include in the petition for annexation. Councilmember Metzner stated the City's policies have changed due to the requirements of the consent order.

Mayor Breichner suggested the applicants meet with Staff to further discuss this annexation. Councilmember Aleshire stated he disagrees with that approach. He feels that the Mayor and City Council, as a body, should discuss what conditions are going to be required.

Councilmember Aleshire indicated he feels the language in paragraph #4 is sufficient enough to cover the consent order requirements. He thinks paragraph #7 could be deleted because it is covered under the current interim plan. Mr. Jordan asked if recordation of a lot is connected to allocation. He asked if sewer capacity has to be in place before a lot can be recorded.

Councilmember Aleshire expressed his concern that there is not a second access road for this property. All traffic would use Haven Road to Pennsylvania Avenue. He is also concerned about the location of land for the requirements of the forest conservation ordinance. He does not think off site forestation meets the intent of the ordinance.

Mr. Jordan stated he is confused because the Mayor and City Council indicated two months ago they were pleased there were only 450 units being planned. Councilmember Metzner stated that is how they felt two months ago, but things have changed since that time.

Mayor Breichner asked if there would be any advantage in having the Planning Commission meet with the applicant for an initial consultation. Ms. Maher indicated a traffic study would be required. Councilmember Metzner stated he is not in favor of spending money on a traffic study, when he knows the traffic will be a problem.

Councilmember Aleshire stated he doesn't believe 450 units is an appropriate number for that piece of property. Ms. Everhart stated the 450 units would be allowed under the current zoning.

Mayor Breichner stated one of the goals of the Mayor and City Council is to annex property

and grow. He asked what the Council is telling Mr. Jordan. Councilmember Metzner stated the Council is trying to work with Mr. Jordan. He suggested continuing this discussion after Mr. Jordan has had the opportunity to meet with staff.

Mr. Jordan indicated it has been helpful to hear the discussion. He pointed out that under Washington County zoning, they would be allowed to construct 750 units. He stated they are trying to make the development as nice as it can be and they want to be a part of the City. Mr. Zimmerman stated, in summary, there is an interest to annex the property and the Mayor and City Council are willing to work with the applicant.

Mr. Jordan stated he thinks the Mayor and City Council may realize the 25 number limit is small. Ms. Everhart stated Staff is trying to address the sewer interim policy and the comments from the Mayor and City Council have been helpful. She stated the number still needs to be discussed. Councilmember Aleshire stated he thinks the appropriate place to consider the numbers is during the outline of services determination process.

It was the general consensus of the Mayor and City Council to discuss this petition for annexation after the applicant has met with Staff to review the details.

Request to Hold an African-American Heritage Parade

Karen Giffin, Public Information Manager, Susie Salvagni, Events Coordinator, Rev. L. J. Guillory, Ombudsman International and Merrill "E.J." Fuller, Ombudsman International, were present to discuss a request for an African-American Heritage Parade.

Ms. Giffin indicated there were a number of questions presented at the discussion on January 18, 2005 and Rev. Guillory is here to answer those questions.

Rev. Guillory read a statement from Ombudsman International indicating they were cancelling the African American Heritage Parade due to domestic terrorism and the threat of violence from the Ku Klux Klan (KKK). The statement indicated the group will not bow down to terrorism. Rev. Guillory stated there would be a press conference held in California to discuss the issues here in this community. He stated Ombudsman International will not put the citizens in this community in jeopardy.

Hagerstown Light Department Rate Study Information

Michael Spiker, Light Department Manager, Karl Kohler, Light Department Assistant Manager, and Alfred Martin, Finance Director, were present to discuss a rate study for the Hagerstown Light Department (HLD).

Mr. Spiker stated the HLD over collected \$167,491.00 in calendar year 2003. This has been refunded to the customers. In calendar year 2004, the HLD has under collected \$343,875.00. When the revenue figures are computed on a fiscal basis, \$967,590.00 was over collected in fiscal year 02/03 and \$1.4 million was under collected for fiscal year 03/04. The Maryland Public Service Commission requires that computations for submission be performed on a calendar year basis, hence the difference in the figures cited above. Steps have been taken, approved by the Maryland Public Service Commission, to correct this situation by instituting a mid-year purchase power adjustment (PPA) in November 2004, and monthly adjustments in the PPA to better recover bulk power costs in a timely fashion.

The recovery of the costs of purchased power comes from three sources: (1) the amount included in base rates of \$0.03283/kWh sold, (2) the amounts collected through the PPA clause, and (3) the amounts collected through the ACA clause. Purchased power costs represent more than 76% of all costs incurred by the Light Department. The base rates are not currently recovering all of the costs that the Light Department incurs for the services it is providing.

In order to remedy the under recovered costs, changes could be made in how the base rate is calculated. The base rates currently include a factor of \$0.03283/kWh for purchased power costs. The remainder of the costs are recovered in the PPA and the Actual Cost Adjustment (ACA). The possible changes are as follows:

1. The rate could be “unbundled”, which is an accounting procedure that shows the cost of the generation, transmission, and distribution component of a customer’s bill.
2. The base rate factor could be raised to the current level of purchased power costs in an attempt to “zero out” the PPA and ACA temporarily.
3. The base rate factor could be left at its current level, and attempts could be made to recoup as much revenue as possible through the PPA and ACA, and reduce capital expenditures by eliminating overhead to underground relocations, street light projects, Community Betterment Funds dividends, etc.

Other options to reduce the under recovered costs include:

1. Rate Code 09, Light Industrial, could be eliminated or frozen from future use except by any current Rate 09 customers that would remain after an updated analysis to determine which rate is better for each of them. This process allows for the correct collection of revenue from each user rate class. The switching of these customers would cause the revenues from Rate Code 09 customers to decrease. The shortfall would not be absorbed by the HLD, but rather would be a

component of the requested revenue increase to be recovered from all customers, by spreading it equally between the rate classes.

2. All the non-purchased power costs currently being incurred by the Light Department need to be examined in order to provide for recovery of these costs in prospective rates. This would also provide an opportunity to determine if other rate designs and/or tariff rules and regulations need to be revised.

The approximate cost of the rate study, including submission to the Maryland Public Service Commission and the associated legal fees, is \$35,000.00. Staff has been working in conjunction with Al Clark, of Fred Saffer and Associates in reference to a rate study. Staff is confident that a rate study and subsequent rate realignment will allow the Hagerstown Light Department to be competitive and still be the lowest cost provider of electrical service in the region. Staff defers to the Mayor and Council on a final decision in this matter. Staff also recommends that a base rate study be performed, and if approved, would follow this time line:

1. February 2005 - City of Hagerstown staff would submit financial and tariff information to Fred Saffer & Associates.
2. March 2005 - Al Clark will be scheduled to meet with City of Hagerstown Staff to discuss the compilation of information and our direction in the process.
3. June 2005 - The completed rate study will submitted and reviewed with this body to determine if the final submission of the rate study will be forwarded to the MDPSC.
4. If the determination for submittal is positive, the HLD will make the necessary preparations, forward the required documents to the MDPSC, and await an assigned hearing date. Once the date is assigned, all involved parties will testify at the subsequent hearings.

It was the general consensus of the Mayor and City Council to proceed with the rate study as discussed.

Downtown Revitalization Status Report

Deborah Everhart, Economic Development Director, and Kathleen Maher, Planning Director, presented a status report on downtown revitalization.

There is \$ 29 million being invested in downtown projects at this time. The projects include:

1. The University System of Maryland is now open and classes are in session.
2. University Plaza - this is a \$1.23 million project and events are being planned now. Events will be programmed by the City for Thursday afternoons. Councilmember Metzner suggested opening the gates to the plaza. Rodney Tissue, City Engineer, indicated the contractor has not turned over possession of the plaza to the City yet.
3. Bowman Project on S. Potomac Street
4. Arts and Entertainment Parking garage - construction is expected to begin in March, 2005. The entrance to the garage will be from E. Washington Street and the City will be entering into a contract with Bowman Development that the alley will eventually be utilized for two way traffic to the deck. Mr. Zimmerman stated this the most substantial private investment in downtown in many years and other sizeable private investments are being made as well.
5. Mercantile Fidelity Bank - exterior work will begin soon to change the facade to brick
6. Barbara Ingram School for the Arts - feasibility study is already under way; expecting to open for students in Fall 2006
7. Tusing Warehouse - the City is working with developer on a project (\$1 million)
8. Old Nicoemus bank building - expecting to have a Discovery Station in this building
9. Washington County Free Library - hoping to expand in downtown. The Mayor and City Council have indicated this is a major project for the City. Ms. Maher stated it is important to keep the library in the downtown because of a proposed relationship to the School for the Arts.
10. Massey Redevelopment Project - Hagerstown Neighborhood Development Partnership, Inc. is planning a development of 35 upscale residences
11. 28 S. Potomac Street - possibility of retail/commercial on first floor and offices on the upper floors
12. New downtown businesses: Marcel's Bakery and Café; Square Cup Café; and Beautiful Sky Gifts

13. Possible new downtown businesses: Cloak & Cupboard Antique Shop (by April 1); One Two Kangaroo; and Michelle's Restaurant. Ms. Everhart stated the Economic Development Department is close to announcing four or five new downtown businesses.

Councilmember Aleshire asked if any of the new businesses are taking advantage of the revolving loan fund. Ms. Everhart stated the fund was changed recently from GAP financing status and she anticipates more business owners will seek this funding.

Councilmember Hendershot asked that a discussion be held about snow removal. Councilmember Metzner agreed this discussion needs to be held. He stated it is frustrating that spaces are not available for customers due to snow.

Mr. Zimmerman stated this will be scheduled as a work session topic. He stated the investments being made in downtown is very encouraging.

Water Service Area Exclusion Request

David Shindle, Water and Sewer Department Manager, stated a request has been received from several property owners asking the City to allow the Antrim Township municipal Authority to extend water service to their properties. These properties are inside the Urban Growth Area just south of the Pennsylvania border on the west side of Interstate 81. Additionally, two of the four properties are currently connected to the township's water system.

Washington County's Water and Sewer Plan indicates that the City of Hagerstown is to be the Water service provider for these properties. There could be issues with Public Service Commission rules for providing water service in the future.

It was the general consensus of the Mayor and City Council to deny the request.

City Administrator's Comments

Bruce Zimmerman, City Administrator, stated he has received word that Chief Smith has been accepted for an assignment in Iraq and is now on unpaid leave.

Mayor and Council Comments

Councilmember L. C. Metzner stated he doesn't know if the African American Heritage Parade would have happened, but he rejects Rev. Guillory's reason for withdrawing the request. It only takes one person to write a letter, but it takes a community to be racist, and he feels that Hagerstown is not a racist city. He rejects the statements made that this is a hate filled

community and it was presumptuous of Rev. Guillory to assume the parade would have been approved before reviewing the costs involved. He also indicated he felt it was presumptuous of Rev. Guillory to use the Mayor and City Council meeting forum in a manner that it was not intended to be used. He stated he feels sure that Ron Hovis, who sent letters to all Council members, would have liked to have been able to address the Mayor and City Council this evening. He stated there are many reasons to not have a parade, but one is not because of the Ku Klux Klan.

He stated he thinks Rev. Guillory's commentary has been defamatory towards Greg Simmons (Herald Mail reporter). He questioned why Rev. Guillory has several addresses, including Berely Hills, and why he won't disclose the intent of Ombudsman International. He stated Rev. Guillory should stop discussing hate and start discussing solutions. He stated the person who is writing the hate letters is bad, but this is not a racist government.

Councilmember C. N. Moller agreed with Councilmember Metzner. She stated the Commission on Aging will help senior citizens file their tax returns.

Councilmember N. L. Hendershot echoed Councilmember Metzner's comments. He stated it is obvious that Rev. Guillory doesn't know Hagerstown and the people who live here. He stated the presentation today about downtown revitalization is something to celebrate. He feels Hagerstown is on the tipping point of becoming truly exceptional.

Councilmember Metzner expressed get well wishes to Councilmember Penny Nigh. He stated both she and her daughter are in our prayers. Councilmember Hendershot stated the State of the County meeting held this morning was exceptional.

Councilmember K. B. Aleshire addressed the issue of the use of the fields at Fairgrounds Park. He has great respect for the Hagerstown Softball League and the Pony League. Some points in recent letters to the editor were missed. He stated he told Pony League representatives he was willing to meet with them, the County and the City to work out a plan to meet the needs of the Pony League. His goal is to provide a place for everyone. He doesn't think there is only one solution and all options need to be explored.

He indicated citizens often think their remarks go unheard, but he voted in favor of waiving APFO fees for a project because a citizen took the time to discuss the project with him

Councilmember Hendershot stated he has received a number of calls about Holly Place. There are 15 residents in each house and tremendous care has been provided to these residents over the years. Holly Place is in trouble financially. This is not due to mismanagement, but from a Medicare waiver funding change. He stated Senator Munson has been working to alleviate the financial strain caused by the change. He stated he understands Holly Place may close as soon as the middle of March if something doesn't change. They are losing money at the rate of \$20,000

80th Special Session and Work Session
Mayor & City Council

February 1, 2005
Hagerstown, Maryland

per month. There are many people working to resolve this situation, including the Washington County Hospital.

Mayor W. M. Breichner stated the City's Board of Election Supervisors issued their decision in response to Merrill Fuller's request to be allowed to be considered a candidate for Council. Mr. Fuller had not filed all the necessary paperwork before the deadline to file. The Board denied the request.

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 N. L. Hendershot, the meeting was adjourned at 6:00 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved:_____