

EXECUTIVE SESSION – February 7, 2006

City Clerk Donna K. Spickler called this Executive Session to order at 3:37 p.m. On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember K. S. Cromer, the Council unanimously agreed by voice vote to meet in closed session at 3:37 p.m. to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4. It was the general consensus of the Council to have Councilmember L. C. Metzner act as the Chairman of the meeting. No formal action was taken at the session. The meeting was held in the Mayor's Office, 2nd floor at the City Hall. The meeting was adjourned at 4:10 p.m.

17TH SPECIAL SESSION – February 7, 2006

City Clerk Donna K. Spickler called this 17th Special Session and Work Session to order at 4:30 p.m., Tuesday, February 7, 2006 in the Council Chambers at the City Hall. Present were City Council Members K. B. Aleshire, K. S. Cromer, L. C. Metzner and A. Parson-McBean, City Administrator Bruce Zimmerman, City Attorney John Uner, City Attorney William Nairn, and City Clerk D. K. Spickler. Councilmember P. M. Nigh was not present. On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember K. S. Cromer, the Council unanimously agreed by voice vote of all members present to elect Councilmember L. C. Metzner to act as the Chairman of the meeting.

Emergency Ordinance: Designating the City Administrator to Sign Documents and Administer Oaths in the Absence of a Mayor

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember K. S. Cromer, the Council unanimously agreed by voice vote of all members present to approve an emergency ordinance designating the City Administrator to sign documents and administer oaths in the absence of a Mayor until such time as a Mayor is appointed by the Council. This is an emergency ordinance because of the resignation of the Mayor and the need to have documents executed and oaths administered in the time period before a new Mayor can be appointed. It is necessary that this Ordinance become effective immediately upon passage by the Council.

Resolution: To Establish a Procedure for the Election of a Mayor

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember K. S. Cromer, the Council unanimously agreed by voice vote of all members present to approve a resolution establishing a procedure for the election of a Mayor by the City Council. The Council will receive applications for the office of Mayor until the close of business on February 15, 2006. The applicants must meet the qualifications of

Section 302 of the City Charter and in addition must meet the qualifications of Section 515 of the Charter for the filling of vacancies in that the person must be affiliated with the Republican Party for more than one year.

Discussion: The Council agreed that the applications received for the position of Mayor would be made immediately available to the public.

The Special Session was then closed.

WORK SESSION – February 7, 2006

Local Government Insurance Trust (LGIT) Presentation of Training Grant Funds

Eric Deike, Public Works Manager, stated that in December, 2005, staff applied for a training grant from the Local Government Insurance Trust (LGIT) in the amount of \$ 5,250.00. The funds were requested for the purpose of work zone flagger certification as required by the Maryland State Highway Administration (MDSHA). Flagger training provides employees with the means to properly arrange traffic control measures and then manage that work zone in the street or highway. This training was once provided free of charge by MDSHA, but is no longer available through their organization.

Staff requested funding to train approximately seventy employees. Even though Public Works applied for the grant, the training will extend to other departments who wish to take advantage of this training. Coordination of this training will be handled by the Safety and Loss Coordinator, Kevin DeHaven.

LGIT recently informed staff that the City of Hagerstown is the recipient of the \$ 5,250.00. Jon Burrell, LGIT, presented a check for the grant to the Council. Mr. Burrell stated LGIT and the City of Hagerstown have an excellent working relationship. He thanked Mr. Deike, Alfred Martin, Director of Finance, and Caroline Twigg, Insurance Coordinator, for their cooperation with LGIT.

House Keys 4 Employees

Larry Bayer, Manager of Community Development, stated the House Keys 4 Employees is a program of the Maryland Department of Housing and Community Development which enables eligible homebuyers to receive more down payment and/or closing cost assistance than is available through the standard programs currently offered by DHCD. Under the program, DHCD will match contributions dollar-for-dollar, up to \$ 5,000.00, toward down payment and closing costs from participating employers. The employer's contribution may be combined with assistance from local jurisdictions, unions and/or nonprofit agencies; however, the House Keys 4 Employees match will not exceed \$ 5,000.00. The DHCD match is in the form of a 0% deferred loan.

Any borrower who receives a contribution for down payment and/or closing cost assistance from a participating employer and meets the eligibility criteria under the More House 4 Less Maryland Mortgage Program (MMP) may participate in House Keys 4 Employees. House Keys 4 Employees differs from most housing programs in that it is not intended to serve only low or low and moderate income persons. Because Hagerstown is a targeted area under this program, both the maximum family income and maximum purchase price are significantly higher than for the county. A single person or couple can earn up to \$ 90,300.00 and the maximum for a family of three or more is \$ 105,350.00. The maximum purchase price for a home is \$ 390,500.00.

Staff recommends that the City of Hagerstown enter into an agreement with the Maryland Department of Housing and Community Development to become a participating employer in the House Keys 4 Employees program. The following is staff's recommendation on how to structure the program:

1. Assistance will be made to full-time employees of the City of Hagerstown who purchase a home within the city limits and are eligible to participate in the House Keys 4 Employees program.
2. The amount of assistance to be offered will be \$ 1,500.00, except in the Downtown Residency Initiative area where the assistance will be \$ 2,500.00. If two eligible employees purchase a home together, the level of assistance will be limited to that provided to one employee.
3. Employees receiving assistance will be required to maintain the home purchased under the program as their primary residence for a minimum of five years.
4. The assistance will be in the form of a 0% deferred loan which will be forgiven at the end of five years, if the property remains the primary residence of the participant, and the participant continues full-time employment with the City.
5. Repayment in full will occur upon either termination of employment or failure to maintain the home as the primary residence within five years of receipt of assistance. If two eligible employees purchase a home together, one must maintain employment and residency to avoid repayment.

CDBG funds can be used to provide the assistance to those employees who meet that program's eligibility requirements. After speaking with Al Martin, we have found there is funding available under community initiatives for those who are not CDBG eligible.

This information has been shared with the presidents of the four employee unions. Hopefully, they will join in this effort to make homeownership a reality for all of the employees of the City.

It was the general consensus of the Council to move forward with this program.

Little Heiskell Follow-Up

Karen Giffin, Public Information Manager, and Chas. H. Rittenhouse, Sr. were present to provide information about Little Heiskell.

Councilmember Metzner stated that an idea for a Little Heiskell bobblehead was presented to the Council and during the discussion it was mentioned the Mr. Rittenhouse had a need for a new uniform.

Mr. Rittenhouse has portrayed Little Heiskell as a living historical character. He has never asked for, nor received, any compensation for his portrayal but the rewards have been priceless. In order to portray Little Heiskell in an authentic representation, a new outfit is needed. The cost is estimated at \$ 3,000.00.

Mr. Zimmerman stated the Hagerstown Suns have offered bobbleheads representing people from the local community. Ms. Giffin stated a sponsor could be sought for the cost of a Little Heiskell bobblehead.

Councilmember Metzner stated he feels providing funding for living history is a better use of taxpayers' money than for sponsoring bobbleheads. Councilmember Cromer stated they could ask Ms. Giffin to look for a sponsor for the full cost of \$ 6,000.00 (for the outfit and for the bobbleheads). Councilmember Parson-McBean stated she feels it is more imperative to provide funding for an authentic outfit than for bobbleheads.

It was the general consensus of the Council that they are not in favor of turning Little Heiskell into a bobblehead.

Howell Road Project

Bruce Zimmerman, City Administrator, and Kathleen Maher, Planning Director, were present to discuss the Howell Road Project. The ordinance for the rezoning of 28 acres along Howell Road from IR to R2 was introduced during the January 31, 2006 Regular Meeting. In prior discussions three members of the Mayor and Council have expressed a willingness to move forward with this rezoning. However, there has been much discussion over the development, zoning, and traffic issues related to this project.

The project before the Mayor and Council is the requested rezoning of 28 acres of a total of 180 acres of IR property along Howell Road to R2. The conceptual plan presented by the Developer includes the construction of 175 townhomes on these 28 acres and the construction of a privately funded road connecting Howell Road to the Dual Highway near the Four Points Hotel. The Developer has also indicated their willingness to contribute private funding toward the intersection improvements currently being considered at Edgewood Drive and the Dual Highway.

The property in question was annexed into the City in 1962 and was zoned IR as part of the Comprehensive Rezoning in 1977. The property consists of 180 acres west of

Edgewood Drive. The requested rezoning applies to 28 acres. The balance of 152 acres are zoned IR.

For approximately 44 years the majority of this property has remained undeveloped, except for several parcels along Howell Road and Edgewood Drive.

The City's Planning Commission has recommended the rezoning to R2 due to a mistake in the original zoning. City Attorney, John Urner, was present at the Work Session to address questions regarding the ordinance and findings of fact related to this rezoning.

The ordinance introduced on January 31, 2006 included two conditions:

1. The portion of R. Paul Smith Boulevard from Howell Road to South Edgewood Drive, sufficient to serve the residential units, shall be completed prior to the approval of any site development plans associated with the rezoning.
2. A Comprehensive Traffic Impact Study addressing all affected intersections shall be completed during the review phase of the project, to fully assess the traffic impacts of the proposed development.

The Findings of Fact attached to the ordinance state: "the following development provisions appropriate to preserve, improve, or protect the general character and design of the lands being rezoned and the surrounding and adjacent lands:"

1. Prior to final subdivision plat approval for the residential development of the property being rezoned, the portion of proposed R. Paul Smith Boulevard from Howell Road, across Edgewood Drive to the Dual Highway shall be completed;
2. When warranted, traffic signals will be installed at R. Paul Smith Boulevard's intersection with Edgewood Drive and at its Dual Highway terminus.

Issues for Mayor and Council Consideration:

1. Mayor and Council are faced with an opportunity that will lead to the development of critical land that has remained for the most part, undeveloped and unproductive for Hagerstown for over 40 years. If the City of Hagerstown is to compete for the development that is currently occurring outside of the City, often with damaging consequences to the health and vitality of Hagerstown, we will need to allow development on this property.

2. The Developer is offering to construct and privately fund a road that will improve traffic flow on the east side of the City and also lessen some traffic movements at the intersection of Edgewood Drive and the Dual Highway. This will result in an enhancement to the City's transportation network without requiring public funds for the construction of the road.
3. The Developer is offering to contribute private funding to upgrade the intersection at Edgewood Drive and the Dual Highway, lessening the need for the City to secure public funding for this project.
4. This privately funded new road along with privately funded water and sewer infrastructure will open up the balance of the 180 acres on this tract for industrial or office development and another 80 acres on the other side of Edgewood Drive for development. This development will create jobs for our community and needed revenues for the City.
5. The Planning Commission has requested the Developer to create a comprehensive development plan for this property.
6. The Planning Commission is not receptive to any further "piecemeal" development of offices on the road frontage of this property due to concerns over traffic congestion on Howell Road and the end result of such development which will land lock the interior of the property and make future development difficult and possibly unmarketable.
7. Other than medical offices along Howell Road, the City staff is not aware of any other interest or development proposals for this property.
8. A residential development on these 28 acres will have less traffic impact on the Dual Highway/Edgewood Drive intersection than an office development.
9. This rezoning will provide a residential buffer to the existing Howell Road residents.
10. The privately funded road will allow 12 acres adjacent to Howell Road, which has current interest by developers for office development, to develop without accessing Howell Road.
11. Based on 175 townhomes with an average sales price of \$ 250,000.00 to \$ 275,000.00 and current tax rates, this residential development will

increase City revenues from \$0 to \$ 349,125.00 to \$ 418,950.00 per year.
12. To accomplish the Mayor and Council's goals for Hagerstown, in terms of public safety staffing, capital improvement funding, and community

revitalization, we need vacant property such as this to develop and begin adding vitality to the City and contributing revenue for the community.

Staff believes the developer has addressed the traffic issues as requested by Mayor and Council in October. We believe this project fits well with the update of the City's Comprehensive Plan, which is currently being finalized. The privately funded road improvements and future development of property which has stood vacant for 43 years will both provide future benefits for Hagerstown. Staff recommends Mayor and Council approval of this rezoning.

Councilmember Metzner stated it appeared during the last discussion there would be a 3-2 vote on this rezoning; however, it is not apparent if the rezoning request will be approved. Ms. Maher pointed out if the rezoning request is not approved, the wording in the ordinance would have to be changed.

Councilmember Aleshire stated this property is already in the City limits. He mentioned that the developers are offering to develop the road that will improve traffic at Edgewood Drive and Dual Highway. However, during one presentation the Council was told the road would not improve the traffic flow. Rodney Tissue, City Engineer, stated there would be an impact but certain movements on the road would be improved. Mr. Zimmerman stated Staff is saying that the road is good for the City and it will lessen certain traffic movements at that intersection.

Councilmember Aleshire indicated the memo states the road being built by the developer will lessen the need for public funding. Last year's budget did not have any funding obligated for this project. He stated the memo does not specify what type of development would occur on 160 acres opened by a privately water/sewer system. He stated what is being presented is a piecemeal request for 28 acres, not a comprehensive development plan. He stated the Planning Commission has stated it is not in favor of any additional commercial development but this proposed development is clearly outside the bounds of the area determined by the Planning Commission. He asked why one area of the report indicates Staff is not aware of any other development and in another area of the report Staff indicates they are aware of interest by developers. Ms. Maher stated the first area refers to the last lot on Howell Road.

Councilmember Aleshire asked what will protect the residential uses from the industrial uses. The 1997 Comprehensive Plan offers two uses for this tract. He asked if the plan addressed the whole property or just these 28 acres. Ms. Maher stated the Comprehensive Plan addresses the entire property.

Councilmember Aleshire noted that a request for rezoning for this property had been withdrawn previously. He stated the ordinance requires that the road should be completed prior to development. He asked what happens if the road is not completed. Mr. Tissue stated the building permits would not be released until the road is complete. He pointed out the City is telling the developer that they could not get building permits until the road is complete, that an assessment district should be implemented and that the

development would be subject to the excise tax. Mr. Tissue stated the developer submitted a letter stating they understand this.

Mr. Zimmerman stated City Attorney John Urner is comfortable with the ordinance that has been introduced.

Councilmember Cromer stated people tend to look at the here and now and not look at the impact on the future. She will discuss the ordinance with Mr. Urner so she understands it fully.

Councilmember Aleshire asked if this rezoning could be challenged as spot zoning. He also asked what affect this rezoning would have on future rezoning requests.

Councilmember Parson-McBean stated the Council needs to do something. She wondered if the Council is ever going to trust staff enough to say they understand their recommendation. She stated the Council cannot constantly poke holes in what Staff has presented.

Mr. Urner addressed the two legal questions presented. He has worked with Staff in preparing the findings of fact for the rezoning. Based on these findings, he does not believe the findings of fact reflect any instance of spot zoning. He stated rezoning these 28 acres does not carry any ramifications for future requests for rezoning.

Councilmember Metzner stated this will probably be one of the largest rezoning issues the Council will face in the next 3 ½ years. Any decision made needs to take into consideration the future.

Fairgrounds Park – Property Southwest Side of North Cannon Avenue

Rodney Tissue, City Engineer, stated the portion of Fairgrounds Park on the southwest side of North Cannon Avenue is vacant and underutilized. It includes approximately 12,000 s.f. of land. In an effort to develop future plans for some of the City's larger vacant properties, Staff is requesting Council consider this property for sale or better use.

Possible uses include:

1. Parklette: Referring to the Fairgrounds Park Master Plan, approved by City Council on October 27, 1998, the land in question is shown as a "neighborhood parklette", a small park for the neighbors' use.
2. Parking Lot: In January 2001, an 18 space parking lot was proposed for the area. This was based on a citizen request. However, public meetings were held and little additional interest was shown, so the concept died.

3. Sale of Land: In August, 2005, the land was appraised. The estimated market value is \$ 70,000.00. This assumes the land is subdivided from the rest of Fairgrounds Park. The land is zoned R2 and could be developed as a residential duplex. A major condition of selling this land is the resolution of the Program Open Space (POS) requirement. Fairgrounds Park was purchased by the City using POS funds. This land cannot be sold unless other land is purchased with the proceeds. This gives the City the opportunity to use the funds toward expanding other park land.
4. Planting Trees: Another option is to install trees on the parcel. This would improve the aesthetics and prevent motorists from using the area as a parking lot. Forest Conservation funds could be used to plant the trees.
5. Community Garden: There is some interest in having a “Community Garden” established where residents could have a common garden for growing flowers or vegetables.

It was the general consensus of the Council to pursue selling the property.

Discussion of Adequate Public Facilities Ordinance (APFO)

Staff was present to renew consideration by the City Council of adoption of a City Adequate Public Facilities Ordinance regarding school adequacy as a means of retaining 28% of the County excise tax collected within the City.

In order to provide staff guidance on this issue, they believe it would be beneficial for the City Council to consider answers to the following questions:

1. Are you comfortable with adopting an APFO with a school adequacy test substantially similar to the County's?
2. Are you confident that the pace of school construction in the County CIP will be adequate to ensure that a City APFO with a school test will not lead to a moratorium on new residential development projects within the City or a moratorium on downtown revitalization projects which include a residential component?
3. Are you willing to proceed with the approval process outlined in the attached County resolution which states the following: “The County Attorney shall review each of the municipal APFOs for compliance with the school adequacy provisions of the County APFO and shall make recommendations to the Board (of County

Commissioners) as to whether each municipality shall be permitted to retain or recover the municipality's share of the building excise tax proceeds collected within the municipality."

4. Is the potential for a moratorium to occur a worthy risk for the City as a means of retaining 28% of the excise tax collected within the City for road improvement projects, park improvement projects, public safety capital projects, and water and sewer improvement projects?
 - a) Between July 2005 and January 31, 2006, the City collected \$1.7 million in County excise tax revenue – 28% of that amount is \$ 476,000.
 - b) 28% of the excise tax for a 50,000-100,000 sq. ft. retail center or store would provide \$ 1,400.00 per 1,000 square foot.
 - c) The City's draft Impact Fee ordinance is proposing \$ 7,430.00 per 1,000 square foot for a 50,000-100,000 sq. ft. retail center store.
5. If you are not willing to adopt an APFO with a school test, are you willing to adopt an Impact Fee which will be collected in addition to the County excise tax only within the City? – in lieu of retaining 28% of the excise tax.

Kathleen Maher, Planning Director, stated the County resolution states that, in order to retain any of the APFO fees, the City's APFO must be submitted to the County for approval. Councilmember Aleshire stated he does not recall this requirement.

Councilmember Metzner stated if the City passes an APFO, they would receive half a million dollars. He wondered if the City could later dissolve the APFO if it did not work out as planned. Councilmember Aleshire stated the City would only be approving the school portion. He doesn't think it would be wise to set up an APFO with the intention of later removing it.

Councilmember Aleshire suggested drafting an APFO to submit to the County for comments. The County has not made any comments on the APFO that was submitted in July. He sent comments to the County repeatedly and has not received a response.

It was the general consensus of the Council to submit a letter to the County indicating that the previously submitted APFO is what the Council is actively considering. The letter would state the APFO conforms with the school test and would ask for approval by the County. The letter would be signed by all five members of the Council.

Mr. Zimmerman stated there is an updated ordinance in the packet. He asked if the Council wanted to submit the revised ordinance for consideration. Councilmember Cromer stated this has been discussed by the 2+2 Committee. She believes the same answer will be received for either ordinance.

Ms. Maher indicated a hearing would have to be held. Councilmember Metzner stated a hearing could not be held until an answer is received from the County. Councilmember Aleshire stated it is obvious the City cannot meet the March 1, 2006 adoption deadline.

Councilmember Aleshire stated he would like an answer to his comments. He is concerned the existing version creates the opportunity for the County to shut down a development at any point. He stated if an agreement is not reachable, he is supportive of the Staff recommendation for impact fees.

Requests for Sewer Allocation from the Discretionary Reserve

Kathleen Maher, Planning Director, stated the 2006 Sewer Capacity Allocation Program set aside 15,000 gallons per day for the Discretionary Reserve to allow the Mayor and City Council to award sewer allocation beyond the normal allocation process to enable priority development projects to move forward. The 2006 SCAP set up a schedule for the Discretionary Reserve requests for disbursement on a quarterly basis, if so desired by the Mayor and City Council.

Two requests were received by the January deadline for the February disbursement date. Planning staff recommend approval of the requested allocations for these two important downtown revitalization projects for the following reasons:

1. They will create market rate housing in the downtown which is a high priority of the City's Comprehensive Plan
2. They will help to positively diversify the demographic make-up of a census tract which contained a 23.6% home-ownership rate in 2000 and had 24% of its families below the poverty level.

The two requests are:

Antietam Street School – requesting 800 gallons per day (4 residential units) – TBS Properties, LLC has purchased the old Antietam Street School property at 138 E. Antietam Street, which has been most recently occupied with offices. The applicant has submitted building permit plans to renovate the building into 27 residential condominiums. The units will range in size from 750-1,900 square feet and are expected to sell from \$ 115,000-\$160,000. The building was already allocated 8 units of sewer and the project received a Master List award of 15 units of sewer in January, 2006. Tom Plant, TBS Properties, stated they will be gutting the entire interior of the building. It was the general consensus to grant this discretionary reserve request.

Potomac Square – requesting 3,100 gallons per day (15.5 residential units) – Hagerstown Neighborhood Development Partnership, Inc, (the CDC) has finalized a contract for the transfer of the Massey property on E. Baltimore Street to Orchard Development. The concept plan which the CDC approved and which has since received Planning Commission approval for the concept plan is for a 47 unit townhouse

development in a condominium regime. The units will all be 1,800 square feet or less in size and are expected to sell for \$250,000-\$270,000. The properties were already allocated 7.5 units of sewer and the project received a Master List award of 24 units of sewer in January, 2006.

Councilmember Cromer asked if the selling price of the homes in Potomac Square fit in the definition of workforce housing. Sharon Disque, CDC, stated these units will hit the market about a year later than the Antietam Street project. She stated workforce housing is defined at 1800 square feet.

Councilmember Metzner pointed out that, without County acceptance of workforce housing, the concept will not work. Councilmember Cromer stated her vision of workforce housing is to be affordable for blue collar workers. Councilmember Parson-McBean stated it is the Council's responsibility to make sure everyone can afford housing and people can't be pushed out of the downtown.

Ms. Maher stated neither of these projects will displace low income people. The CDC would like to find a way to mix workforce housing with market rate housing. Councilmember Parson-McBean stated the price seems high to her.

Councilmember Aleshire stated he would like the project to be named something other than Potomac Square because there is already the Public Square.

It was the general consensus of the Council to approve this discretionary reserve request.

City Administrators Comments

Bruce Zimmerman, City Administrator, had no further comments.

Council Comments

Councilmember A. Parson-McBean had no further comments.

Councilmember K. B. Aleshire stated the Washington County Planning Commission approval of the hospital site plan will affect the City at some point. He wants to make sure there are guarantees in place that assures the City that any infrastructure started will have to be completed. If the hospital project is abandoned he wants to be sure the developer will be held responsible for the completion of the sewer line, roads, etc.

Councilmember K. S. Cromer asked when utility costs may be available for the U.S. 40/Edgewood Drive project. Mr. Tissue indicated he will have more information after a meeting scheduled for tomorrow. She asked why the railroad crossing on Wilson Boulevard is being improved when other crossings are in greater need of repair. Mr. Tissue stated the railroad is repairing the crossing on Wilson Boulevard for safety reasons. He stated it is the City's opinion that the surface at the railroad crossings at Park

Circle and Oak Hill Avenue are worse but the railroad seems to ignore this opinion. The State Highway Administration has been asked to assist the City in contacting the railroad. It was the general consensus to send a letter to the railroad asking that these crossings be repaired. She pointed out that recycling bins can now be ordered on-line. The compensation study report will be presented on March 7, 2006. The coordinating committee, a group consisting of representatives of each employee group, will review the study prior to the presentation to the Council. Councilmember Cromer stated the fountain at University Plaza is very nice.

Councilmember L. C. Metzner expressed get well wishes for Councilmember Penny Nigh. He reminded everyone February is Black History Month.

A gang awareness workshop will be held on Thursday, February 16, 2006 at Elgin Station at 5:30 p.m.

There being no further business to come before the Council, on a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember K. B. Aleshire, the meeting was adjourned at 6:22 p.m.

Respectfully submitted,

Donna K. Spickler
City Clerk

Approved: _____