

17TH SPECIAL SESSION, WORK SESSION AND EXECUTIVE SESSION – March 9, 2010

17TH Special Session – March 9, 2010

Mayor R. E. Bruchey, II called this 17th Special Session, Work Session and Executive Session of the Mayor and City Council to order at 4:15 p.m., Tuesday, March 9, 2010, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. Easton, A. C. Haywood, L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney John Urner and D. K. Spickler, City Clerk.

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 meet in Special Session at 4:16 p.m.

Stormwater Management

The Stormwater Act of 2007 is intended to improve the quality of Maryland's waterways by requiring the use of Environmental Site Design (ESD) techniques to manage and treat stormwater runoff. ESD techniques focus on the use of multiple small scale practices to treat stormwater runoff close to its source, instead of the traditional regional or end of pipe treatment facilities. The Act, and the resulting MDE regulations, requires developers to implement ESD techniques to the maximum extent practicable on projects that disturb more than 5,000 square feet of land area. Several concerns have been raised during the current session of the Maryland General Assembly, and several bills have been introduced to either soften the requirements of the new regulations, or delay their implementation. City staff, working with the Maryland Municipal League and other municipalities, has raised these concerns to the legislature. As a result, there are ongoing negotiations between the legislature and MDE to re-write certain provisions of the regulations to provide municipalities more flexibility in dealing with these issues.

While the final result of these negotiations and the pending legislation will not be known for several weeks, staff feels that the best course of action for the City is to move ahead with the introduction and adoption of the new stormwater ordinance before the May 4, 2010 deadline, and then amend the ordinance as necessary to account for any regulatory changes.

Introduction of an Ordinance: Repealing & Replacing Chapter 213 of the City Code "Stormwater Management"

Action: Councilmember A. C. Haywood made a motion to introduce an ordinance to amend the Code of the City of Hagerstown by deleting and repealing Chapter 213 thereof, entitled Stormwater Management, and replacing it with a new Chapter 213, to be entitled Stormwater Management. Councilmember L. C. Metzner seconded the motion.

Discussion: Councilmember Breichner asked what the penalty would be for not adopting the ordinance. He also asked what the cost to comply will be. Mr. Tissue indicated the bill will create more work for City staff. Councilmember Breichner expressed his concern that this is another unfunded mandate.

Jim Bender, Assistant City Engineer, received word that HB 1125 had been pulled from the voting session on March 10, 2010.

Councilmember M. E. Brubaker made a motion to table the discussion until after the legislative session. Councilmember L. C. Metzner seconded the motion.

Discussion: Councilmember Haywood stated the City should be proactive in its approach to this. The discussion should not be avoided.

Motion to table failed, 1-4 with Councilmember Brubaker, Councilmember Metzner, Councilmember Easton and Councilmember Haywood voting No.

Mayor Bruchey stated if this type of legislation is not implemented in neighboring states, it will drive development from this area.

Councilmember Haywood stated sharing of fees should be discussed with the County at some time.

Motion to introduce the ordinance passed, 4-1 with Councilmember W. M. Breichner voting No.

The Special Meeting was then closed.

Work Session – March 9, 2010

County Tax Rate Differential

Greg Murray, County Administrator, was present to discuss the Washington County Tax Rate Differential. The County is making a change in the tax rebate formula that has been in place since 1986. The agreement, dated January 21, 1986, is being terminated now and a new plan will be implemented beginning July 1, 2010. The County Commissioners have decided to use a new tax offset model. Instead of a rebate payment to the municipalities, a County tax rate differential will be used. The differential is passed on directly to taxpayers in the form of a lower County tax rate for those living within a municipality.

Mr. Murray presented an updated schedule of the calculation of the differential. He stated they are waiting on final approval of the Capital Improvements Project budget. Legislation may be passed during this session that would transfer some additional costs to county governments.

The current proposed rate is 13.2 cents. The calculation uses the net of all revenues received for county services to determine an appropriate tax rate.

The model used is similar to the Annapolis/Anne Arundel one that has been mentioned in previous discussions. Councilmember Brubaker asked if the City receives a higher percentage if it shares an expense that other municipalities do not. Mr. Murray stated the services are grouped together and not weighted.

Councilmember Metzner asked what the rebate amount would be for the 13.2 cent rate. Alfred Martin, Finance Director, stated it would be approximately \$ 3.2 million. This is a higher amount than what was received in the past. Councilmember Metzner thanked the County for being more realistic about the shared services.

Debbie Murray, County Finance Director, pointed out the new calculation includes the highway user revenue component. This was not included in previous tax rebate calculations. Mr. Murray stated the differential will change as funding changes. The County will see a \$ 2 million decrease in revenue because of the differential.

Mr. Murray indicated the County Commissioners thought this change would be most logical this year because of the change in core services and changes in highway user revenue. The differential will be used from this point on. The County intends to use an average and review the amounts every three to four years. A policy will be developed to establish the interval for a rate change.

Mr. Martin stated the 13.2 cents rate reduction would mean a \$ 246.00 tax bill reduction for a home assessed at \$ 200,000.00.

Councilmember Haywood asked what would happen to the differential if other services become consolidated. No answer was stated.

Mr. Murray encouraged Mayor and Council members to review the information and contact him with questions.

Barbara Ingram School for the Arts (BISFA) Foundation Request – South Potomac Street Closure and Take Flight II Support

Karen Giffin, Director of Community Affairs, and Dale Bannon, Director of System Development for Washington County Public Schools, were present to discuss plans for the Barbara Ingram School for the Arts (BISFA) Foundation. Pieter Bickford, Cynthia Perini, and Angie Youngblood were also present.

The City received a request for the closure of South Potomac Street on Saturday, April 10, 2010 from 4:00 p.m. to 8:00 p.m. as part of a Gala for the Barbara Ingram School for the Arts. The City would utilize fire police for the closure and for the setting of the barricades. Therefore, this would be at no cost to the City. Also, the left lane of traffic will not be blocked so that emergency vehicles can pass if needed.

It was the general consensus of the Mayor and City Council to approve the street closure.

The BISFA Foundation is also requesting support for the Take Flight II Civic Arts Project planned for the spring of 2011. The goal of the project is to have 45 sculptures artistically decorated and placed in the downtown Hagerstown area in April – May of 2011. They are seeking the Mayor and Council's consideration of the following:

1. Permission to place the sculptures in the Downtown and City Park areas.
2. Logistical support from the Public Works Department (moving of the sculptures from one off-site location to downtown locations; and from downtown locations to the gala/auction)
3. Sponsorship of one of the sculptures for \$ 5,000

The next project will be three dimensional hot air balloons. The sculptures will be lighted and will be of different heights.

It was the general consensus to sponsor one of the sculptures for \$ 5,000. The Mayor and Council also agreed to grant permission to place the sculptures downtown and to approve the requested support from the Public Works Department.

Comprehensive Zoning Map Amendments – Phase III

Stuart Bass, Comprehensive Planner, reported no additional written comments have been received regarding Phase III of the comprehensive zoning map amendments since the public hearing that was held on February 23, 2010. Staff has spoken with the property owner of Area 11 (the old Fairchild plant) and he indicated he planned to submit a letter in opposition to the rezoning of this property from IG to I-MU.

Additional information which had been relayed in previous emails:

1. Area 7 – The City Attorney has advised staff that two properties requesting rezoning to C1 are encumbered by residential restriction covenants in their deeds. This would not prevent the City from rezoning the properties from R1 to C1, but the owners may need to do some legal research to determine the status of these deed restrictions and pursue removal with the other affected property owners if so desired.
2. Area 25 – A search of the zoning files showed no evidence that 800 Pennsylvania Avenue was ever zoned commercially.

Kathleen Maher, Planning Director, stated several years ago, Area 11 was primarily warehousing. The owner is saying the use has changed and it is currently being used for industrial uses. Councilmember Brubaker asked for more detail of the existing uses. More information will be provided to the Mayor and Council

It was the general consensus to change Area 7 to C1 and Area 25 to C2.

Mr. Bass reported Mr. Sneckenberger submitted a letter asking that the S. Burhans Boulevard corridor not be changed to C2. It was the general consensus of the Mayor and City Council to accept the Planning Commission's recommendation to change the zoning to C2.

It was the general consensus of the Mayor and Council to accept the Planning Commission's recommendation for all areas, except as noted for Area 7 and Area 25. A decision will be made after further information is provided for Area 11.

Zoning Text Amendments Affecting "Hospitals, Nursing and Residential Care Facilities"

Kathleen Maher, Planning Director, was present to provide information on zoning amendments to address residential care facilities.

In July 2009, Councilmember Metzner highlighted a problem he saw with "residential care facilities" being permitted so broadly by the zoning ordinance and the negative impact arising from the clustering of some of these residential care facilities within the downtown and the surrounding neighborhoods. In the following months, the Mayor and City Council's concerns intensified due to a plan by a group called Bannum, Inc. of New Port Richey, Florida to operate what they classified as a "residential care facility" in Downtown Hagerstown and which would consist of a halfway house/release point for 26 federal prisoners from the Martinsburg Federal Court system. In October, the Mayor and City Council sent letters of protest over this proposal to U. S. Senators. The Bannum proposal was eventually dropped for Hagerstown.

In October 2009, staff began discussing potential zoning text amendments with the Planning Commission to address the Mayor and City Council's concerns over the impact of certain residential care facilities on the City's neighborhoods and urban services. Presently, "hospitals, nursing and residential care facilities" are permitted as special exception uses in all the City's residential zoning districts and the C1 (Commercial Local) and C2 (Commercial General) zoning districts and by right in the D-MU (downtown), the POM (Professional Office Mixed-Use) and the I-MU (Industrial Mixed-Use) zoning districts. After a number of meetings, a strategy was devised which unbundles "hospitals, nursing and residential care facilities", more precisely defines types of "residential care facilities", and assigns zoning district locations for the newly defined types of uses.

The Planning Commission held a public review meeting on the draft amendments on January 27, 2010 and no one spoke in favor of or against the amendments at the hearing or within days of the hearing when the record was left open. The Commission recommended the amendments to the Mayor and City Council on February 10, 2010.

Councilmember Metzner expressed concern that this language would allow a "mini-prison" within the city limits. He would prefer that this type of use not be permitted anywhere in the City. If this use must be permitted, he recommended that the language be "county correctional system" rather than from a state or federal facility.

Councilmember Haywood is not supportive of expanding the permitted locations for these uses.

Staff was asked to determine if these houses are subject to rental licensing requirements.

Councilmember Metzner does not think a residential area is an appropriate place for a transitional residential facility with in-house professional care for up to 10 residents, which are typically known as halfway houses. Councilmember Haywood pointed out that Hagerstown has not had a positive experience with this type of facility. Councilmember Easton suggested limiting the number of residents to 3.

In summary, the Mayor and Council agreed to prohibit transitional facilities for residents under correctional system supervisions or being treated for substance abuse issues in the R4 district; to prohibit transitional residential facilities for up to 10 transitional residents with mental and/or physical disabilities in the R4 district; and to prohibit facilities for residents under the supervision of state or federal correctional systems.

Staff and the City Attorney will review the information and provide recommendations to prohibit transitional facilities for prisoners in certain locations and to limit the number of residents in a home.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, reported the Salem Avenue project is scheduled to begin on March 15, 2010. The road will be closed to all traffic during the day. One lane will be opened at night.

MAYOR AND COUNCIL COMMENTS

Councilmember F. Easton had no additional comments.

Councilmember A. C. Haywood had no additional comments.

Councilmember L. C. Metzner had no additional comments.

Councilmember W. M. Breichner had no additional comments.

Councilmember M. E. Brubaker had no additional comments.

Mayor R. E. Bruchey, II recognized and commended the Hagerstown Police Department for their prompt capture of the suspects who robbed the M & T Bank on Dual Highway on March 8, 2010.

EXECUTIVE SESSION – March 9, 2010

On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to meet in closed session to consider the acquisition of real property for a public purpose and matters directly related thereto, #3 and to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #3 at 6:43 p.m. in the Council Chamber, 2nd Floor, City Hall, Hagerstown, Maryland. The following people were in attendance: Mayor R. E. Bruchey, II, Councilmember W. M. Breichner, Councilmember M. E. Brubaker, Councilmember F. Easton, Councilmember A. C. Haywood, Councilmember L. C. Metzner, City Administrator Bruce Zimmerman, Deborah Everhart, Director of Economic Development, Alfred Martin, Finance Director, and Donna Spickler, City Clerk. The meeting was held to discuss details of a potential acquisition of a downtown building and to discuss economic struggles of individual businesses. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the meeting was adjourned at 7:59 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: April 27, 2010