

WORK SESSION AND EXECUTIVE SESSION – March 24, 2009

Mayor R. E. Bruchey, II called this Work Session and Executive Session of the Mayor and City Council to order at 4:06 p.m., Tuesday, March 24, 2009, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers M. E. Brubaker, K. S. Cromer, L. C. Metzner, P. M. Nigh and A. Parson-McBean; City Administrator Bruce Zimmerman, City Attorney William Nairn and D. K. Spickler, City Clerk.

WORK SESSION – March 24, 2009

Preliminary Agenda Review

Consent Agenda

- A. Engineering:
 - 1. Reconstruct Alley 4-22 and Portion of Alley 4-21, South of Randolph Avenue and East of Locust Street – Santos Construction Co., Inc. (Bowie, MD) \$ 43,229.30
 - 2. Install Sidewalks Along Dual Highway (MR. Rt. 40) Phase III – Huntzberry Bros., Inc. (Smithsburg, MD) \$ 75,340.50 (this project is fully grant funded)
- B. Community Affairs Application Permits:
 - 1. Washington County Arts Council, BluesFest, Central Parking Lot – Friday, May 29, 2009 and Saturday, May 30, 2009
 - 2. Conservit, Inc., BluesFest, Central Parking Lot – Friday, May 29, 2009 and Saturday, May 30, 2009
 - 3. M & T Bank, BluesFest, Central Parking Lot – Friday, May 29, 2009 and Saturday, May 30, 2009
 - 4. Washington County Arts Council, Thursday Evening Music Series at University Plaza – May 28, 2009 through July 2, 2009 on consecutive Thursdays
- C. Public Works: Mowing Contract – TK & Sons Enterprise, LLC (Boonsboro, MD) \$ 28,950.00
- D. Parks & Recreation:
 - 1. Mowing and Trimming Contract – 4 Year Contract – 2008 through 2010 – Ground Envy (Hagerstown, MD) \$ 78,320.40 for all four seasons (2009 Season \$ 20,196.00, 2010 Season \$ 21,069.60 – subsequent seasons to be awarded each year)
 - 2. Mowing and Trimming – Fairgrounds Park and Hager Park – information will be available for March 31, 2009 meeting

Councilmember Cromer received an email from one of the bidders questioning the mowing contract with Ground Envy. Junior Mason, Parks and Recreation Supervisor, stated the bid with Ground Envy was awarded two years ago and was awarded as a four year contract. Other parks have been added to the bid and all bidders will have the opportunity to submit a bid.

E. Police Department:

1. HeartStart Defibrillators – Lifework, Inc. (Ellicott City, MD)
\$ 28,635.00
2. Down Payment for 2 (two) Trained Police K-9 Dogs, Plus Handler Training – Rudy Drexler’s School for Dogs, Inc. (Elkhart, IN)
\$ 14,000.00

Councilmember Nigh asked if adding these two dogs would allow for a dog on each shift. Chief Arthur Smith indicated there is a K-9 unit on each shift but on the handler’s days off, the dog is not working. Two K-9 dogs are nearing retirement. This purchase will be replacements for those dogs.

Councilmember Parson-McBean asked if there were training facilities closer to Hagerstown. Chief Smith indicated he is not sure if there are any facilities in Maryland.

F. Water and Wastewater Departments:

1. Wastewater Division – Mowing Contract – All In One Lawn Service (Hagerstown, MD) \$ 10,305.00
2. Water Division – Mowing Contract – All In One Lawn Service (Hagerstown, MD) \$ 14,585.00
3. Water Division – Protectus Meters – HD Supply Waterworks, LTD (Martinsburg, WV) \$ 19,800.00

Approval of a Resolution: 2009 MWQFA Bond

This bond is a zero percent bond, provided by the State of Maryland. The normal rate is between 1% and 2%. The lower rate will save the City \$ 70,000 to \$ 140,000 per year. It was the general consensus to include approval of the resolution on the agenda for March 31, 2009.

Approval of Extension of City Annual Financial Audit Contract for Two Years – Smith Elliott Kearns and Company, CPA

Alfred Martin, Director of Finance, recommended to the Mayor and Council that they consider extending the City’s existing contract with Smith Elliott Kearns and Company, CPA’s to perform the annual audit of the City’s financial statements, Federal grants single audit and review of the State of Maryland Uniform Financial Report.

Smith Elliott Kearns and Company is offering to extend the current contract and are quoting to perform the June 30, 2009 and 2010 audits for \$ 72,500 and \$ 74,000,

respectively. The quotes represent an average annual increase of 2.1% over the \$ 71,500 that was paid for law year's audit.

This completed the preliminary agenda review.

Alms House Presentation

Mary Haines, 27 Laurel Street, Hagerstown, Maryland, presented information regarding the Alms House. She is trying to save the house because of its history. A search of area newspapers indicated there was a desire for an act from the General Assembly to sell the alms house and connected real estate. In 1853, improvements were made to the almshouse. This prompted the Grand Jury to praise the management on the condition of the interior of the almshouse. In September 18, 1861, a request was made for the construction of another building at the almshouse. The Civil War had begun earlier in 1861. No reference is made to the almshouse in the newspapers until after the Battle of Antietam that took place in September, 1862. At the end of October, 1862, between six or eight hundred sick and wounded Union soldiers were brought from hospitals in the lower county to Hagerstown. An undertaker for the hospitals submitted a list of Union soldiers that he had buried to the Herald of Freedom and Torch Light for publication. The article indicated that a lot had been secured in the vicinity of the almshouse for their burial and that each grave had been marked with a pine board with the name of the soldier written on the board. No report has been found in newspapers of the time as to where the Confederate soldiers received medical care. One possible place of medical care for the Confederate soldiers was the alms house. In August 1874, Henry C. Mumma gave the newspaper the names of Confederate dead he relocated from the almshouse lot and several Funkstown cemeteries.

Ms. Haines stated it is only a possibility that Confederate soldiers may have been cared for at the almshouse or the almshouse was used as a hospital, but she has not been able to find anything to document that. She found nothing in the Hagerstown newspaper through 1897. Public sentiment in Hagerstown toward Confederate sympathizers was not of a sympathetic nature.

Many people visit Gettysburg and Antietam Battlefield each year. The Gettysburg Park is part of the town of Gettysburg. She suggested developing a connection between Hagerstown and the Antietam Battlefield by establishing a tour route that uses the Alms House as the center point. This will bring tourists to Hagerstown. The Alms House could be restored with Community Legacy Funding.

Tom Riford, Executive Director of the Convention and Visitors Bureau, stated Hagerstown is part of the Civil War Heritage Area. The anniversary of John Brown is being planned. Tourism brings money to communities and provides opportunities for employment. If the Alms House fits with the Gettysburg anniversary, he would be supportive. A marker could be placed on the Alms House highlighting its role in the Civil War.

Councilmember Parson-McBean has been working with people across the county who are working to preserve the history of the Underground Railroad. A link has been found in Hagerstown.

Councilmember Nigh asked that the Alms House be saved and kept as part of Hagerstown's history.

Councilmember Brubaker is not convinced the Alms House has a greater link to the Civil War than other sites in downtown. He doesn't think it could be used as a museum.

Ms. Haines agreed, stating security of artifacts would be difficult. People will visit the Alms House to walk through it.

Kathleen Maher, Planning Director, indicated a historical plaque has been ordered for the Alms House.

Mr. Zimmerman indicated the City spent \$ 90,000 to acquire the building and \$ 20,885 to stabilize it. The State awarded a grant of \$ 85,000 to the City.

Review of the Police and Fire Retirement Plan

Donna Frazier, Director of Human Resources, stated in 1998 the City of Hagerstown established a retirement program for safety (fire and police) employees. The plan provides for a defined benefit for the retiree until death and other available options provide for a continuing benefit for the beneficiary. The plan provides a benefit equivalent to 2% of the average monthly base pay times the number of years of service. The benefit is maxed at 60%, which is available with 30 years of service.

The employee contributions are a fixed 7% of base pay as their contribution. The City contributions change each year, based on the actuarial report and the percentage necessary to keep the plan appropriately funded.

John Ketzner, CBIZ, reported the required contribution by the City in FY 2009 is \$ 1,035,463. Investment returns continue to lag. Demographics of the active group remain stable.

Chris Little, PNC Bank Portfolio Manager, reported the market value, as of June 30, 2008, was \$ 11.8 million. A portion of the fixed income allocation has been reallocated because the market is so volatile at this time. He doesn't believe this the yield has suffered significantly.

No plan changes are recommended at this time.

A recess was taken.

Phase One of Comprehensive Rezoning

Kathleen Maher, Planning Director, and Stuart Bass, Comprehensive Planner, were present to discuss the two unresolved issues for Phase One of the Comprehensive Rezoning. The proposed changes are being recommended to make the zoning more appropriate for density of development in particular neighborhoods.

Councilmember Cromer asked how the Mayor and Council can justify changing the zoning and making some properties into a non-conforming use. Many people have contacted her with concerns. Ms. Maher indicated there are a number of non-conforming uses throughout the City. She has not heard that the designation has negatively affected bank loans. An existing use would be “grandfathered” as a non-conforming use if the zoning is changed.

Councilmember Parson-McBean has received concerns from property owners about the potential decrease in resale value. She asked if this has been considered. Ms. Maher indicated zoning does not govern resale value.

Councilmember Metzner stated the Mayor and Council are looking at specific locations and taking the issues into consideration. He is concerned there are times when changing a property to a non-conforming use would negatively impact the property.

Mayor Bruchey stated a public hearing was held and all who spoke on Issue 6 were against it. He asked why a public hearing was held if the Mayor and Council don't listen to the input.

Councilmember Cromer stated there could be adverse affects if the zoning isn't changed. Councilmember Metzner pointed out that a McDonald's or Sheetz would be permitted near City Park under the existing zoning. Councilmember Brubaker stated the Council has to do their due diligence and if commercial zoning is in the middle of a neighborhood, it should be changed. If it remains a less strict zoning district, larger uses can be located there.

Issue No. 6 – Virginia Avenue at Howard Street - Planning Commission recommends this area be rezoned from C2 to C1

Councilmember Metzner and Councilmember Brubaker support the recommendation. Councilmember Cromer, Councilmember Nigh and Councilmember Parson-McBean do not support the recommendation.

Staff additional recommendation on Issue No. 6 – zoning lines modified to include the entirety of a parking lot at the south end of the area

The Council unanimously supported this recommendation.

Issue No. 7 – Wilson, Burhans, and Virginia Avenue – Planning Commission recommends this area be rezoned from C2 to R1

Councilmember Brubaker supports the Planning Commission recommendation. Councilmember Cromer, Councilmember Metzner, Councilmember Nigh and Councilmember Parson-McBean do not support the recommendation.

Councilmember Metzner asked if there is agreement among the Council members that if a landowner disagrees with recommended zoning changes, the zoning will not be changed. Councilmember Brubaker stated there will be times when property owners ask for things that the Council will not be willing or able to provide.

After further discussion Councilmember Cromer, Councilmember Nigh and Councilmember Parson-McBean supported a recommendation to change the area to R1, except for the existing businesses, which will remain C2. Councilmember Brubaker still supports the recommendation of the Planning Commission.

Issue No. 8 – S. Potomac Street and Howard (at the RR) – Planning Commission recommendation to rezone from IR to C2

Ms. Maher indicated this issue had been resolved at the last work session. There were three council members in favor of the recommended change.

Councilmember Brubaker stated he respects the testimony presented at public hearings, but the Mayor and Council have to look at all sides of an issue and make a decision.

An ordinance to introduce the Comprehensive Rezoning, Phase One recommendation will be included on the March 31, 2009 agenda.

Curb and Sidewalk Replacement Program

Rodney Tissue, City Engineer, provided information on a sidewalk replacement program. Historically the City sends “curb and sidewalk notices” to property owners who abut substandard or deteriorated curb and/or sidewalks in the City. Several hundred notices are sent each year based upon City Code section 216-24 which states:

“Sidewalks and curbs along the public streets and thoroughfares within the corporate limits of the City shall be constructed and kept in a reasonable state of repair by the abutting property owner.”

Typically notices are sent along overlay/pavement preservation streets and the property owners are given anywhere from 12 – 15 months to replace the defective curb and sidewalk. Notices are also sent to other areas based on complaints or a systematic inspection of various sectors of the City and the compliance time is shorter per the City Code. A typical curb and sidewalk replacement now is in the range of \$ 2,000 - \$ 3,000.

At the request of Mayor Bruchey, staff is requesting the Council's support of a task force to study this issue in more detail. One suggestion would be for the City to contract to do all curb and sidewalk replacements in the City. To do this, a fund would need to be established.

For the City to complete the work, a fund would need to be established to create a pool of money to replace all the deficient curb and sidewalk along overlay streets, where street trees have damaged sidewalk, and to replace random deteriorated curb and sidewalks throughout the city. This fund would be created by assessing a quarterly fee to each water account or to each parcel within the City. This fund would be used for all curb and sidewalk repairs within the City and the property owners would be relieved of the impact of receiving a curb and sidewalk notice. The task force's study should include: 1) what the fee amount should be; 2) what, if any, areas of the City are exempt (i.e. no sidewalk); 3) how to address property owners who recently replaced their curb and sidewalk at their expense; 4) how to address owners that are elderly and/or need financial assistance and; 5) should residential and commercial property owners pay the same rate.

The suggested task force membership would be as follows: City elected official, City Attorney, City staff, Planning member, 2 or 3 at large members.

Councilmember Parson-McBean stated she thought Annapolis found this type of fund was illegal. Mayor Bruchey stated Frederick has a similar program. Councilmember Parson-McBean stated Delegate Benson has indicated there is a residential grant available for sidewalk replacement.

It was the general consensus to create a task force to study curb and sidewalk replacement.

Councilmember Metzner stated the Council needs to let this task force know if they are willing to force people to install sidewalks. He told Mayor Bruchey he is no longer willing to support the appointments he makes.

Mayor Bruchey stated sidewalks have been discussed for many years. A program needs to be created that makes sense.

Election Date Ballot Question Revision

Councilmember Metzner requested this agenda item. He stated he is concerned if the language for the City election is changed to the language the voters will be voting on, the primary election would be held in February. The general election would not be held until November.

Councilmember Cromer stated there could be Council members sitting at the table who no longer want to be there.

Councilmember Metzner suggested considering a stand alone primary in September and a combined election in November. He would be willing to support the expense of a stand alone primary, if the County Board of Elections agrees to conduct the election. He thought the Board of Education had indicated they would be willing to allow two professional days for City election days per decade.

The wording will stay the same as approved in a resolution at this point. However, City Attorney William Nairn was asked to find out the latest possible date for the wording to be at the County Board's office. Mayor Bruchey will contact the County Board about conducting a stand alone primary election.

Charter Amendment – Article VIII, Section 805

During discussion of the recommended revision of Article VIII, Section 805 of the City Charter, the Mayor and Council requested clarification from the Charter Review Committee. The response from the Committee was the group agreed that, unless there was a state or federal law prohibiting employees from filing and running for elected office while employed by the city, they should be allowed to seek office. Requiring one to resign at the time of filing for offices seems to be an unfair restriction of their rights as a citizen. Only when elected should they be required to resign from public employment.

Mayor Bruchey stated he did not think there would be a conflict if an employee is an elected official in a different municipality. Councilmember Cromer indicated there could be if there is competition for funding or similar situations.

Councilmember Nigh stated she would like to know why this was included in the charter originally.

It was the general consensus of the Mayor and Council to include this Charter Amendment on the agenda for March 31, 2009.

Bank On Request for Proposal

Larry Bayer, Manager of Community Development, and Meghan O'Brien, Community Resources Coordinator, were present to discuss a grant the National League of Cities is offering to local governments to provide technical assistance in establishing a program aimed at reducing the reliance on non-traditional banking (i.e. pawn shops, check cashing establishments, payday loan businesses) by low income persons.

Staff has spoken with representatives of Community Action Council, Hagerstown Housing Authority and Commission on Aging and found that these organizations each have a program, but they are not coordinated with each other. It is felt that Bank On will allow for the development of a coordinated program, which will be of benefit to the entire city and each of the above has supplied letters of support for the application.

A goal of the program is to have residents establish a relationship with a commercial bank. Sovereign Bank has also agreed to participate. One of the requirements of the application is that the Mayor or a member of Council act as sponsor of the program. Councilmember Brubaker has agreed to be the sponsor.

Councilmember Parson-McBean recommended reviewing regulations to prohibit predatory businesses within the City.

It was the general consensus of the Mayor and Council to submit an application for the grant.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, had no additional comments.

MAYOR AND COUNCIL COMMENTS

Councilmember P. M. Nigh had no additional comments.

Councilmember L. C. Metzner had no additional comments.

Councilmember K. S. Cromer extended condolences to the family and friends of John Kreigh and Sharpsburg Councilwoman Marjorie Griffith.

Councilmember M. E. Brubaker had no additional comments.

Councilmember A. Parson-McBean attended the National League of Cities Congressional Cities Conference last week in Washington, DC. She urged Senator Cardin to continue supporting Hagerstown.

Mayor R. E. Bruchey II extended condolences to the families of John Kreigh and Marjorie Griffith. He reported the Community Free Clinic is in need of financial assistance. He urged anyone who can to help the clinic.

EXECUTIVE SESSION – March 24, 2009

Councilmember L. C. Metzner made a motion to meet in closed session at 6:56 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. Councilmember M. E. Brubaker seconded the motion.

Motion denied, 2-1. The vote was as follows:

Councilmember L. C. Metzner – Yes
Councilmember M. E. Brubaker – Yes
Councilmember A. Parson-McBean – No

Councilmember Kelly S. Cromer – No

Councilmember P. M. Nigh left the meeting prior to the vote.

The meeting was adjourned at 6:58 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: April 28, 2009