

85<sup>th</sup> SPECIAL SESSION – April 12, 2005

Mayor William M. Breichner called this 85<sup>th</sup> Special Session and Work Session of the Mayor and City Council to order at 3:32 p.m., Tuesday, April 12, 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, and P. M. Nigh, City Administrator Bruce Zimmerman, City Attorney John Urner and City Clerk D. K. Spickler.

**Resolution: Repeal of the Interim School Impact Fee 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 repeal the Resolution enacted on December 14, 2004 and January 25, 2005 creating the Interim School Impact Fee Policy. In taking this action, the Mayor and Council believe that it is more appropriate to raise revenue for school construction through the excise tax legislation presently under consideration of the State Delegation, County Commissioners, and County Municipal governments. I further authorize staff to return any fees previously collected.

Discussion: Councilmember Aleshire asked if the policy needs to be amended since the Excise Tax bill was approved during the Legislative Session.

Councilmember Metzner stated the money that the City has tried to collect was never for the City but for the community. It was not to increase revenue but to provide funding for school construction. The interim policy came as a result of this body's commitment to work with the County Commissioners to ensure that development paid for the infrastructure it required. He stated the Mayor and City Council has done everything they could to ensure this would happen. The community will be losing over \$ 1 million because of this repeal. That money will have to be made up through general tax revenues. He stated the Council has been advised they cannot implement this school impact fee because it is a tax for schools and the City doesn't regulate schools. He stated the City's counsel obtained a second opinion from the County attorney and it was determined that the Mayor and City Council could not implement this fee. The government (Washington County) that would have benefited from the funds also had input in the decision. He stated the Mayor and City Council are sworn to uphold the law of this State and it would be unfair to take the money and to litigate lawsuits that could not be won. He encouraged his fellow Council members to rescind the policy, which is not legal, even though it would help the community.

Mayor Breichner stated the very community that would gain from the fee has tried to change the excise tax bill. Developers and their attorneys have indicated they would sue if the City continues with the school impact fee. He stated the developers might have won this skirmish, but in the long run, the schools are being hurt.

Councilmember Hendershot agreed that having to repeal this fee is hurting the children.

Councilmember Aleshire stated as the Mayor and City Council have tried to address the school capacity issue through revenue resources and changes in policy, they have seen similar challenges from specific developers. There were some developers that agreed with the policy that was put in place and there were others who were continually opposed. He stated when the City attempts to move in this direction, they are going to be challenged. Some examples are the annexation policy, fees for water/sewer connections and now the school impact fee. He stated fortunately, one of the aspects of this endeavor that may help mitigate the impact of development is the fact that the City will be implementing a sewer allocation policy. The money that will be lost between now and July 1, 2005 (when the sewer allocation policy is implemented) is estimated to be \$ 1.5 million.

Mayor Breichner stated he thinks the excise tax bill will still require the City to adopt an Adequate Public Facilities Ordinance (APFO) by July 1, 2005.

Councilmember Aleshire stated he thinks this body will be agreeable to adopting the APFO but they need the ability to choose their own destiny.

The developers that have paid the school impact fee will be reimbursed.

#### WORK SESSION – April 12, 2005

##### Request for Proposal for a Wholesale Power Supply for Electricity

Michael Spiker, Hagerstown Light Department Manager, stated the current contract for wholesale purchased power expires June 30, 2006. It is necessary to begin the Request for Proposal (RFP) process soon for a new contract, due to the length of time it takes to develop the RFP, analyze the bids and finalize a contract.

As with the current contract, the electric supply requirements for the towns of Thurmont, Williamsport, and Front Royal, will also be included in the RFP. This aggregation not only curtails the overall procurement expenses, but also increase the marketability by making us a

somewhat larger customer than each of the municipalities would be as stand alone entities.

Due to the complexities for this type of procurement, the assistance of an engineering consulting firm is needed to ensure that we obtain a reputable supplier and a stable purchased power agreement at the best available price. It is recommended that the engineering firm of R. W. Beck be retained to perform this work. R. W. Beck has assisted in the procurement of the current contract and they have considerable industry experience working with municipal electric utilities.

Beck's scope of work includes the development of the RFP, aid in the selection of qualified power producers to receive the RFP, aid in "short-listing" of the respondents, and assistance in negotiating with the short-listed firms to arrive at the most favorable, "best and final offer" from the selected supplier. Beck's not to exceed price is \$ 134,750.00. As stated earlier, Hagerstown would share this cost with the other Towns.

It was the general consensus of the Mayor and City Council to move forward with the development of the RFP.

Mr. Spiker mentioned that the price the City is paying for power is \$ 44.42/mgw at this point in time and the going rate in the market is \$ 60.00+/mgw.

#### Water and Sewer Cost of Service Study

The Water and Sewer Cost of Service Study consultants were present to discuss the results and preliminary recommendations from the study. Alfred Martin, Finance Director, Ed Donahue, Municipal and Financial Services Group, and Dennis Hasson, Whitman, Requardt and Associates, were present.

The scope of work included: identifying and documenting the cost of service, identifying and documenting demand and usage, identifying and evaluating alternative rate designs and documenting and summarizing the project.

The following assumptions were used for the study: water and sewer systems must be self-supporting and the objective is to keep rates and fees low over time and growth pays its own way.

The difference between a utility basis and a cash basis is that in a cash basis, principal and interest on debt is included in the calculations and money is added to reserves. Cost elements used in a utility basis is a return on equity, depreciation of equipment, and allowance for working capital. The rationale for using a utility basis outside the City limits is that is pretty well established.

Mr. Zimmerman stated that the customers outside the City limits are the ones that challenged

the rates charged by the city. Mr. Martin stated their attorney and consultant both were adamant that utility based rates was the only fair way to set rates.

Mr. Donahue stated they frequently see a declining block rate (like the City uses) in industrial communities. Where there is a water shortage, a different rate scale is often used.

Mr. Donahue presented three water rate structure alternatives. They are listed below:

Alternative A: Declining Block Rate Structure

- Minimum bill (which includes 10,000 gallons)
- Three step declining block rate
- Different rates for outside city and booster zone customers

Alternative B: Flat Rate Structure

- Minimum bill based upon meter size (which includes no usage)
- Flat consumption rate
- Elimination of Separate Booster Zone Rates

Alternative C: Declining Rate Structure

- Minimum bill based upon meter size (which includes no usage)
- Two step declining rate structure
- Elimination of Separate Booster Zone Rates

Mr. Martin stated some of the City's largest customers are other towns like Smithsburg and Williamsport.

The following recommendations were made for water rates:

Inside-City Rates

- Maintain current average rate of \$ 1.45
- Adopt two-step declining block rate with minimum bill based on meter size
- Add inside-City only expense of dividend to General Fund

Outside-City Rates

- Adopt utility basis for determining revenue requirement
- Set average rate at \$ 3.25
- Adopt two-step declining block rate with minimum bill based on meter size
- Eliminate booster zone surcharges

Resulting rate differential inside/outside is 125% (this would allow a sizable dividend to the general fund without increasing inside city rates)

Increase benefit charge to \$ 4,000 per EDU

The following recommendations were made for sewer rates:

Inside-City Rates

Increase current rate by 4% to \$ 3.55

Maintain current rate design but base minimum bill on meter size

Outside-City Rates

Adopt utility basis for determining revenue requirement

Increase rate to \$ 6.40

Maintain current rate design but base minimum bill on meter size

Resulting rate differential inside/outside is 80%

Increase benefit charge to \$ 5,600 per EDU

It is also suggested there is a need to increase fire line charges.

Mr. Martin stated that two years ago, the City agreed to take over some of the County's financed water system and the City agreed to assume the debt. The City has been charging what the County did. The City is now looking to change the water rate for debt surcharge. This will allow a reduction in the debt amount.

Councilmember Metzner suggested sharing the information presented at this meeting with the Washington County Commissioners.

Councilmember Aleshire stated this study shows that customers inside the City limits are responsible for paying down the debt service. Councilmember Metzner stated the study is also indicating the customers inside the City limits are the owners of the system. Those customers should receive preferential treatment.

Mayor Breichner stated it would be difficult to eliminate the booster zone systems. There is an investment in these areas. Councilmember Metzner stated this should be reviewed.

John Urner, City Attorney, stated the Mayor and City Council has the ability to make adjustments in any fashion they wish to.

Councilmember Aleshire asked why a declining rate structure is still being supported. Mr. Donahue stated a declining rate structure lessens the impact for a few of the larger customers.

Mr. Martin stated the largest customer is the prison, followed by Smithsburg, Williamsport,

Mack Truck, the paper company and the hospital. He pointed out because the hospital is in the City limits right now, they are paying less than what they would be paying if they were outside the City limits. The largest sewer customer is the hospital.

This report will be shared with the Public Service Commission and the Washington County Commissioners. Mr. Donahue stated this report is only in draft form at this point in time.

Councilmember Aleshire stated a decision needs to be on how this report is going to affect this year's budget. He is in favor of moving forward with adjusting the rates.

Mr. Urner questioned whether or not a public hearing could be held prior to adoption of the budget. Mr. Martin stated new rates are typically implemented on October 1.

The timing of a public hearing was discussed. Mr. Urner stated he would have to review the City Code to determine the requirements for increasing the water/sewer rates. Mr. Martin indicated the proposed budget includes an across the board rate adjustment.

It was the general consensus to have the report finalized and make a decision on the specific rates at a later time.

Councilmember Metzner asked if there is a method that could be used in the rates for customers in Greenberry Hills who do not receive the same kind of service as other areas. Mayor Breichner stated to increase pressure in Greenberry Hills, customers could install a reservoir and pump in their homes. He pointed out that customers in Williamsport have to install pressure reducing valves to decrease the pressure.

Mr. Urner suggested that the Mayor and City Council formally adopt the report and then decide what recommendations in the report to adopt.

Councilmember Metzner stated he is ready to accept the recommendation. Mr. Urner recommended adopting and accepting the report and recommendations in two separate steps. He stated the report needs to be given to the PSC and to the County.

Councilmember Metzner asked that everyone keep in mind this is what the community asked for. Councilmember Aleshire stated several Council members mentioned, repeatedly, the rates could be higher.

The acceptance of the report will be included on the agenda for April 26, 2005. The report will be discussed further on May 3, 2005.

City Administrator's Comments

*Bruce Zimmerman, City Administrator*, had no further comments.

Mayor and Council Comments

*Councilmember C. N. Moller* had no further comments.

*Councilmember K. B. Aleshire* stated he received a schedule of fireworks for the Hagerstown Suns. He stated there are six additional (above the original nine) fireworks displays on the schedule. He asked how these additional displays will be affected by the change to the noise ordinance. There will be an Art in the Park event on June 18 and 19, 2005 at Doubs Woods. There will be a kick off meeting for the 2006 Comprehensive Plan Update held on April 27, 2005 at Otterbein Methodist Church. He stated now is the time for people in the community to attend these meetings and have a voice in the update.

He stated there are nine cases before the Board of Zoning Appeals. He stated the length of the Board of Zoning Appeals meetings needs to be addressed. He stated he thinks it is unfair to ask a volunteer board to sit through lengthy meetings. Mayor Breichner suggested allowing Staff to approve the more routine variance requests.

Councilmember Aleshire stated a letter was received from the Joint Veterans Council indicating the Council approved renaming Memorial Boulevard to Willie Mays Way. Councilmember Metzner stated this is not going to happen. He stated there are more than three Council members opposed to the renaming.

Councilmember Aleshire then responded to comments made by one candidate that were printed in the newspaper. He stated the 2 + 2 committee was formed as a result of efforts made by the Economic Development Commission. The members did not just "get together" as indicated. There is a document that lists what has been reviewed by the Committee. This is available for public review. He indicated he has a letter that was sent to employees at the hospital refuting information that has been made public by the Mayor and City Council. He stated it has never been explained why the Allegheny Power site was removed from consideration. James Hamil (Washington County Hospital) has indicated the Mayor and City Council will not transfer water and sewer allocation to the new site. Councilmember Aleshire stated the Mayor and City Council did not say they would not transfer they allocation, they merely pointed out there is an ordinance prohibiting the transfer of water and sewer allocation. Councilmember Metzner stated no one has asked to have water or sewer allocation transferred. Councilmember Aleshire stated it was indicated the City turned down \$ 26 million in revenue from the hospital relocation. He pointed out that at least \$ 10 million of that amount was specific to the Mt. Aetna development. He stated no one has contacted him begging him to approve a 1500 unit development in the Robinwood area. He pointed out the State Health Care

Commission has repeatedly asked the hospital to seek zoning approval for the relocation site. He asked if there is any other developer who would spend \$ 4 million to \$ 5 million on a site design prior to obtaining zoning approval. The hospital has said the Board of Zoning Appeals (for Washington County) can't approve a special exception until a water and sewer plan is in place. He stated this is wrong because approval could be given, with conditions. The water/sewer service issue would be a condition of the approval. He stated no one has evaluated ambulance or fire response times or the impact 300 + calls would have on the Sheriff's Department.

*Councilmember N. L. Hendershot* stated he understands that the \$ 4 million to \$ 5 million expense for the hospital is now \$ 7.5 million.

*Councilmember P. M. Nigh* had no additional comments.

*Councilmember L. C. Metzner* stated the Willie Mays issue has not been positive. He understands a number of people are discussing renaming the field at Municipal Stadium. He stated this is another example that citizens don't have to get upset and scream and yell, all they have to do is contact the Mayor and City Council. It has never been the Mayor and City Council's intent to insult any veterans.

Councilmember Metzner then read the following statement:

*"On April 8, 2005 Candidate Trump answered a routine question posed by the newspaper. He had many days to think out, discuss and write out his answer. He was, according to the paper's reporting limited to 150 words. I am sure that he, like most of us chose his words very carefully. He made the limit, by my count by 5 words. He used 145 words.*

*In those 145 words he managed to unfairly and publicly criticize the Hagerstown-Washington County Economic Development Commission. He, in those same 145 words unfairly criticizes the Commissioners, the very County government that he seeks future relations with. He finds the ability in these few words to also insult our Mayor, who has served this City with integrity for more years than many have been alive. He then proceeds to insult the Council including at least three incumbent members that he may be compelled to serve with. In those same 145 words he shows his absolute lack of knowledge as to the very government he seeks to lead.*

*I am impressed that so much could be said in a mere 145 words.*

*He says: "Realize that a major reason for two-on-two is to limit public access. Two-on-two discussions are truly 'secret meetings.'" Given that the Economic Development Commission suggested this format he has unfairly criticized them.*



*Given the fact that the City Council and County Commissioners unanimously and publicly approved these meetings after a public report was made by our committee he insults the very people he needs to work with.*

*He says “Seen any results?” In this statement, Mr. Trump reveals his lack of knowledge about the government he seeks to lead. The results of our meetings are obvious to anyone who follows the workings of City government. I am not aware that Mr. Trump has asked any of us what we have done and/or accomplished. He certainly has never spoken to me.*

*All of these insults were minor. They can be written off as poor judgment and lack of knowledge, a malady suffered by most of us at some time.*

*His true insult however was when he said: “This two on two stuff that the city administration panders is getting nowhere.” The word ‘pander’ has a history dating back centuries. Its use as a verb was first recorded in 1602 meaning “to indulge, to minister to base passions.”*

*I was not positive what he meant exactly. I looked the word up, understood the insult and then gave him the benefit of the doubt. Surely my old paper dictionary just did not give all of the potential definitions of this word as used. Twenty dictionaries later (with the help of the internet) and I knew that this candidate who also is a publisher knew exactly what he was saying.*

*The way pander is used by Mr. Trump is insulting at best and reprehensible at least. In researching the word pander I found two examples of how this word may be used that brings out the irony of this situation. The Cambridge Advanced Learner’s Dictionary gives this example of usage: “Political leaders almost inevitably pander to big business.” Sort of like when political candidates accept unprecedented sums of money from a PAC made up of primarily businesses, owners of undeveloped land and land developers. This is especially true when many of these contributors will have dealings with the City relating to land use, rezoning and sewer allocation. These issues alone involve millions of dollars to both these “contributors” and to the taxpayers and truly have the potential to affect the quality of life of our citizens.*

*Law.com, after providing the word panders primary definition (i.e. v. to solicit customers for a prostitute and the noun form, a pimp), offers a third, more relevant definition: “catering to special interests without any principles, such as a politician who says to whatever group he/she is addressing just what they want to hear to win their support, contributions or favors.” Given the fact that I have never, during my 11 year tenure as a Councilmember, accepted any money and*

*will accept no money from anyone outside of my immediate family (who do not do business with the City) and given that I have spent less than \$ 700 in three elections I wonder who is really doing the pandering. It surely is not me.*

*It was almost funny when I picked up Sunday's paper and read the rest of your team's comments on this issue. Not one single team player had a criticism of our two by two process and at least one showed her integrity and understanding of the situation by breaking ranks with the slate's "party line" and called for a continuation of the two by two meetings. I would also note the obvious: you have not offered one single concrete proposal that offers a better solution than the current process.*

*One last thing: You have the audacity to accuse us of secrecy while at the same time your developer financed slate tries to suppress the free dissemination of the truth by elected officials under a claim that we are electioneering. It is interesting that the information that your slate wished Mr. Hendershot not to reveal was information found in the public records. If the slate is so proud of the \$ 40,000 plus your PAC has raised and if they are truly just folks like you and me why don't you list your contributors, their contributions and who they are on your website. You may also wish to note how many of these contributors will be appearing before your slate, if it is elected, to request such things as rezoning of their land and the changing of laws of this City (which have been on the books for over a decade) to allow for their land development and relocation. Instead you try to suppress free speech and then complain about secret meetings.*

*If you want to be elected leaders in this nation, I suggest that you acquaint yourselves with a document known as the Bill of Rights. That weathered and venerable document contains the first ten amendments to our Constitution. I would direct your attention to the first of those ten amendments. If you win this election, when you are sworn in, you will affirm that you will not violate the terms of that document. You would do well to learn it.*

*As long as any person spreads lies and falsehoods in the public about me, the office that I hold or this administration I will use this forum to refute them. If you think that this is unfair or illegal I would suggest you use some of that PAC money that you have to hire a good corporate lawyer to try and stop me. The public would be well served by such a civics lesson."*

Mayor W. M. Breichner stated there will be a ground breaking ceremony on April 20, 2005 for the Arts and Entertainment Parking Deck at 2:00 p.m. The gala at the University System of Maryland will be held April 22, 2005. There will be a gala held at Discovery Station on April 23, 2005. The Economic Development Commission's Celebration of Business is being held this

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Mayor & City Council

April 12, 2005  
Hagerstown, Maryland

evening at 6:00 p.m.

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 5:08 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: May 24, 2005