

97<sup>TH</sup> SPECIAL SESSION AND WORK SESSION – April 14, 2009

Mayor R. E. Bruchey, II called this 97<sup>th</sup> Special Session and Work Session of the Mayor and City Council to order at 4:10 p.m., Tuesday, April 14, 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.

97<sup>th</sup> Special Session – April 14, 2009

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.

**Approval of Collective Bargaining Agreement with AFSCME 3373**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to approve a one year Collective Bargaining Agreement between the City of Hagerstown and the American Federation of State, County, and Municipal Employees, Council 67, AFL-CIO Local Union 3373. This Agreement commences on Monday, June 29, 2009 and continues until Sunday, June 27, 2010. This contract provides no change in salary scales. Major changes to existing contract language include:

1. Employees hired after July 1, 2009, who qualify for retiree health insurance will be eligible for that benefit until becoming eligible for Medicare.
2. Language currently in a side agreement added to the new contract that allowed the City to maximize police coverage during the peak hours by overlapping of shifts (4 10/hour days).
3. Language to clarify light duty assignments to keep personnel on light duty status on their regular shift and with their unit.

Discussion: Councilmember Cromer asked if these three changes are the only changes to the contract. Mayor Bruchey indicated they are.

**Approval of Widening of Cramer Alley and Parking Improvement Project**

**Action:** Councilmember L. C. Metzner made a motion to award Contract # 09-09-A-06, to Huntzberry Brothers, Inc. of Smithsburg, Maryland in the amount of \$ 286,075.00. Cramer Alley is the main access to the Arts and Entertainment Parking Deck, and this project concludes and fulfills an agreement with Bowman Development previously approved by Mayor and Council in February 2005. This construction contract includes the alley widening, paving of the adjacent parking lot, landscaping, and street lighting. Total project costs and funding for the project shall be per the “Budget Summary”, which includes a \$ 300,000 contribution from

Washington County. Councilmember M. E. Brubaker seconded the motion.

Discussion: Councilmember Nigh will vote no for this because she is concerned that the City has paid for many parts of the overall project that were supposed to be paid for by someone else.

Councilmember Metzner suggested considering, at a later date, whether or not to change the name of Cramer Alley.

Motion carried, 4-1 with Councilmember P. M. Nigh voting No.

The contract with AFSCME # 3373 was signed at this time.

The Special Session was closed at 4:18 p.m.

#### WORK SESSION – April 14, 2009

#### Comprehensive Rezoning – Phase I

At the March 31, 2009 meeting, the Mayor and Council tabled the introduction of an ordinance to approve Phase I of the Comprehensive Rezoning in order to receive additional input from the Virginia Avenue/Howard Street neighborhood. Staff is seeking direction for the process of notification desired by the Mayor and Council.

In an attempt to resolve the remaining issues with The Comprehensive Rezoning – Phase I, the Mayor and City Council discussed the existing uses in the Virginia Avenue proposed re-zoning. The Planning Commission is currently reviewing proposed revisions to the commercial zoning districts.

Stephen Bockmiller, Development Review Planner/Zoning Administrator, analyzed the effect the proposed revisions would have on the property. He reported that nine properties would experience no change in the existing use if the property is change to C-1. Six of the existing uses would become permitted under C-1. One property would become a non-conforming use and would be allowed to continue as long as the business remains intact.

Kathleen Maher, Planning Director, Stuart Bass, Comprehensive Planner, and Alex Rohrbaugh, Planner, were present. Ms. Maher stated if the Mayor and Council wish to have another public hearing, the record of the original hearing would have to be opened and a two week notice would have to be provided to the public. This would cause the issue to be discussed over two Mayor and Council administrations. She suggested postponing the discussion until the new administration is in office.

Councilmember Brubaker asked if adjacent property owners would be notified. Ms. Maher indicated a public hearing notice would be required. The Mayor and Council would need to decide what other notifications would be made.

Councilmember Parson-McBean doesn't understand why the record should be opened. The procedure has been the same for this hearing as for previous hearings. Councilmember Metzner pointed out there has not been a comprehensive rezoning in 30 years.

Ms. Maher confirmed there is a different process for individual rezoning of lots as opposed to large, conglomerate areas. It was hoped the newspaper notification would be sufficient.

Councilmember Metzner stated he wanted to make sure the public notice would provide a broader range of opinions expressed at the public hearing.

Councilmember Parson-McBean stated she asked staff to research whether or not property on Virginia Avenue would be acceptable for the location of a Sheetz or McDonald's. She received a response from Mr. Sullivan (not staff). He indicated it would not be acceptable because it would require five approvals from adjacent property owners. When it is time for decisions to be made, everyone should have all the information.

Councilmember Brubaker and Councilmember Metzner stated these uses could be located in that area because they currently are existing uses. Ms. Maher stated several properties were grouped together with the drawing she provided to show possible uses.

Councilmember Parson-McBean stated it seems it would be unlikely. Ms. Maher indicated this type of use happens frequently. Councilmember Cromer asked if other properties were grouped together for a Sheetz location. Ms. Maher indicated the Sheetz on Cannon Avenue is located on a grouping of several former individual properties. Councilmember Nigh stated the residents had the opportunity to speak about the proposed Sheetz during the variance process. Ms. Maher indicated that is correct.

Councilmember Metzner asked what uses will be permitted by down zoning.

Councilmember Parson-McBean expressed her concern that gentrification in the neighborhood will occur if the zoning is changed, by eliminating the "mom and pop" types of businesses.

Councilmember Brubaker indicated the C1 zoning classification allows "mom and pop" stores in neighborhoods and the C2 zoning classification permits larger uses, such as restaurants and convenience stores. He stated the question to consider is whether or not the Virginia Avenue/Howard Street neighborhood should be left at C2 zoning, which would permit uses like those on the Dual Highway.

Mayor Bruchey asked if the Neighborhood Mixed Use (NMU) classification was considered by the Planning Commission for this area. He stated this designation would allow the area to be residential with neighborhood type businesses, especially with the text changes being considered. Ms. Maher indicated it was not considered by the Planning Commission. She pointed out that residential and commercial uses are permitted in the C1 classification.

Mayor Bruchey stated he thinks more time is needed to consider the information to effectively make a decision. He asked if the Council agrees with the staff recommendation to postpone the discussion until the new administration takes office.

William Nairn, City Attorney, stated he thinks the record of the public testimony needs to be expanded in order to fully consider the rezoning.

Councilmember Metzner and Councilmember Brubaker supported the recommendation to postpone the discussion. Councilmember Cromer, Councilmember Parson-McBean and Councilmember Nigh stated they are ready to make a decision and it should not be postponed.

Councilmember Cromer asked who was notified of the public hearing. Ms. Maher stated property owners who would be affected by the Phase I change were notified. More notices were sent for Phase II because of the Mayor and Council's discussion following the public hearing for Phase I. Citizens have been contacting Council members about Phase II.

Ms. Maher pointed out that down-zoning would improve the quality of life for residents because they would know that an adult bookstore or high intensity uses would be prohibited. If the zoning is changed, existing businesses would be permitted to continue as permitted non-conforming uses. Councilmember Parson-McBean stated there should be an ordinance that prohibits adult bookstores, McDonald's and Sheetz in any residential neighborhood.

Mr. Bass informed the group that the required legal notice was advertised for the comprehensive rezoning. The requirements for a comprehensive rezoning are different than for other zoning changes. Even though the legal notice is the only requirement, staff talked to residents, provided information on the City's website and held public hearings before the Planning Commission.

Mr. Nairn indicated the record, as presently constructed, only contains testimony in opposition of the change. There is no positive testimony. In the absence of supporting testimony, there could be a legal issue if someone contests the decision.

Councilmember Cromer, Councilmember Brubaker and Councilmember Metzner disagreed. Councilmember Brubaker stated the Mayor and Council have to look at the totality of the discussion.

Mr. Nairn indicated the recommendation of the Planning Commission is not backed up by findings of fact or a rationale that was introduced into the record. Ms. Maher stated the Planning Commission file was entered into the record at the hearing.

Councilmember Metzner asked if Mr. Nairn was implying that changes can't be made without supporting testimony. Mr. Nairn stated there has to be findings of facts or rationale in advance of the decision.

Councilmember Metzner stated the Council placed a great deal of weight on the public input. If this much consideration is given to testimony, the neighbors, as well as property owners, should have received the same type of notification. There is not enough time to complete this type of notification prior to the end of this administration. If a majority does not want to postpone the vote, then information provided in previous work session discussions should be considered.

Ms. Maher stated the Council would vote on what was introduced if they wish to or they could decide to re-open the record, and then advertise for a public hearing. The advertisement would have to be placed two weeks prior to the hearing. Councilmember Cromer asked if people could be notified and asked to comment prior to the April regular session. Councilmember Parson-McBean asked what would be considered the neighborhood for notification purposes. Ms. Maher stated that would have to be determined by the Mayor and Council. Mr. Zimmerman stated staff would need to know if the Mayor and Council wanted all of the affected areas in Phase I to be notified or just the Virginia Avenue area.

The tabled motions will be included on the agenda for the April 28, 2009 meeting. The Mayor and Council can then decide if they want to remove them from the table and proceed from that point.

#### City Administrator's Comments

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

#### Mayor and Council Comments

*Councilmember P. M. Nigh* asked if someone could confirm that one developer is now looking to place subsidized housing in the A & E District. She asked why a loan request is being heard again by the Housing Redevelopment Authority (HRA) when it was previously denied. The request was also to be discussed by the Mayor and Council but there were not enough favorable votes to meet in executive session.

Mayor Bruchey stated a different funding plan has been developed and the owner is returning to the HRA with the new plan.

Councilmember Nigh expressed concern that it appears there is pressure being placed on one of the volunteer boards to approve this request. Mayor Bruchey indicated there is no restriction on reapplying for the revolving loan fund.

Councilmember Parson-McBean asked if there is a limit on the number of times someone can apply within a year. She doesn't think an applicant's risk factor would change within a short period of time.

Councilmember Nigh expressed condolences to the families of three young men who passed away last week (Nick Adenhardt, Benjamin Burger, Jr. and Ryan Myers).

*Councilmember L. C. Metzner* stated last week's tragedy has left him speechless.

*Councilmember K. S. Cromer* expressed sympathy to these families as well.

*Councilmember M. E. Brubaker* expressed condolences to the families.

*Councilmember A. Parson-McBean* also expressed sympathy to these local families. She thanked the Black Achievers and the Martin Luther King scholarship mentors for their contributions to the community.

*Mayor R. E. Bruchey, II* also expressed condolences to the families. He stated he supports the new Neighborhood Mixed Use zoning classification.

There being no further business to come before the Mayor and City Council, on a motion duly made, seconded and passed, the meeting was adjourned at 5:06 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: April 28, 2009