

**81<sup>ST</sup> REGULAR SESSION – JULY 29, 2008**

**Mayor R. E. Bruchey, II called this 81<sup>st</sup> Session of the Mayor and City Council to order at 7:10 p.m., Tuesday, July 29, 2008, 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.**

The invocation was offered by Councilmember Martin E. Brubaker. The Pledge of Allegiance was then recited.

Mayor Bruchey announced the Rules of Procedure for this meeting will be followed as adopted March 28, 2006. It was announced that the use of cell phones and electronic devices during meetings is restricted and that all correspondence for distribution to elected officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.

The next scheduled meetings are: Work Sessions beginning at 4:00 p.m. on Tuesday, August 5, 2008, Tuesday, August 12, 2008, Tuesday, August 19, 2008 and the Regular Session on Tuesday, August 26, 2008 at 7:00 p.m.

**PUBLIC HEARINGS**

**Stamper (Dual Highway) Annexation, A-2008-03**

Stuart Bass, Comprehensive Planner, stated Milton Stamper has submitted a request that the City annex 1914 – 1920 Dual Highway.

The proposed annexation was introduced on May 20, 2008. The Annexation Plan was also adopted at this time. The area of the subject property is .0918 acres. The proposed zoning district is C2 (Commercial General). The current County Zoning is HI-1 (Highway Interchange).

The Land Use Plan, as described in the 2002 Washington County Comprehensive Plan, designates the property as Commercial. The City's Comprehensive Plan designates the property as Commercial General.

The property is within the County's Urban Growth Boundary and the State's designated Priority Funding Area. It is within the City's designated Medium Range Growth Area, characterized by Priority #2 as defined in the 2008 Comprehensive Plan. The proposed zoning is similar or compatible to that of the current County Zoning and does not permit a land use substantially different from that currently available under County zoning.

A Pre-Annexation Agreement was obtained as a condition for receiving water in January of 2006. The property is now contiguous across the Dual Highway. A site plan

was approved by Washington County, proposing a basic office building. The City will issue the building permit, once the annexation becomes effective. Given the routine nature of this application, the lack of public comment to date, and the desire of the applicant to begin the building process, a vote is scheduled after the Public Hearing in order to expedite the process.

There were two published notices advertising the annexation hearing at no less than weekly intervals, pursuant to State law. The Annexation Plan was provided to the appropriate County, Regional, and State Planning Agencies, at least 30 days prior to the Public Hearing. After the Public Hearing, the Mayor and Council may pass or reject the annexation resolution. If the resolution is passed the annexation becomes effective in forty-five (45) days.

The commercial development of this property would have no impact on Washington County Board of Education facilities with respect to school capacity. There will be no impacts to the Washington County Free Library as a result of this proposed annexation.

Sanitary sewer service to this site will be by extension of existing waste water mains in the general area and will be at the cost of the developer. Any necessary upgrades to accommodate the project shall be at the expense of the developer. The amount and timing of the allocation of sewer service shall be subject to the City's Sewer Capacity Allocation Program. Sufficient capacity exists to serve this area.

Water service to this site will be by extension of water lines in the vicinity of the site and will be at the cost of the developer subject to the Water Department's standards, policies, procedures and payment of the applicable fees. Any extension of water lines to provide additional water service will be at the sole cost of the owner or developer of the property. Sufficient capacity exists to serve this area.

The Electric Distribution System is external to the Hagerstown Light Department operating territory. Electrical service will be provided by Allegheny Power. The City of Hagerstown (HLD) normally supplies street light services to public streets and supplies the manpower and equipment to serve a new area once the developer builds the infrastructure. The developer is responsible for the purchase and installation, to approved Hagerstown Light Department specifications, of the street light system. However, there are no public streets associated with this project; therefore this provision will not apply.

No significant impact on emergency service delivery is expected either police or fire.

The property has access to the Dual Highway, Maryland State Route 40. Any necessary improvements will require coordination with the State Highway Administration. Any necessary improvements to existing public roads shall be completed at the direction of the City Engineer at the developer's expense.

Parks and recreation facility expansion are not proposed for this annexation. Maintenance of City streets and right-of-ways are normally performed by the Public Works Department. No significant impacts are anticipated.

All future persons within the area proposed to be annexed shall obtain or be entitled to existing benefits of the City of Hagerstown in accordance with any special conditions contained in the annexation resolution. They shall also be required to pay for all applicable utility services, charges, assessments, taxes and other costs and expenses which are required of the residents of the City of Hagerstown.

Mr. Bass entered the following as Exhibits:

- Exhibit 1: Annexation Plan
- Exhibit 2: Notification to County, Regional, and State Planning Agencies
- Exhibit 3: Certificate of Advertisement
- Exhibit 4: Annexation Resolution

There was no testimony presented, either in favor of or against the proposed annexation.

The record was closed. A vote is scheduled for later in this meeting.

#### **PER CCC Investments, LLC Annexation, A-2008-04**

Stuart Bass, Comprehensive Planner, stated PER CCC Investments, LLC has submitted an annexation request for property located on Harwood Road (Lot 182).

The proposed annexation was introduced on May 20, 2008. The Annexation Plan was also adopted at this time. The area of the subject property is 10,000 square feet in size. The proposed zoning district is R1 (Residential). The current County Zoning is RU (Residential Urban).

The Land Use Plan, as described in the 2002 Washington County Comprehensive Plan, designates the property as Low Density Residential. The City's Comprehensive Plan designates the property as Moderate Density Residential. The property is within the County's Urban Growth Boundary and the State's designated Priority Funding Area. It is within the City's Medium Range Growth Area, characterized by Priority #2 as defined in the 2008 Comprehensive Plan.

The proposed zoning is R1 (Residential). The purpose of the R1 District is to provide locations for low density residential development. The proposed zoning is similar or compatible to that of the current County zoning.

Given the routine nature of this application, the lack of public comment to date, and the fact that a single family home has recently been constructed on the lot, a vote has been scheduled after the Public Hearing in order to expedite the process.

There were two published notices advertising the annexation hearing at no less than weekly intervals, pursuant to State law. The Annexation Plan was provided to the appropriate County, Regional, and State Planning Agencies, at least 30 days prior to the Public Hearing. After the Public Hearing, the Mayor and Council may pass or reject the annexation resolution. If the resolution is passed the annexation becomes effective in forty-five (45) days.

The development of a single family dwelling on a single lot would have no adverse impact on Washington County Board of Education facilities with respect to school capacity. There will be no impacts to the Washington County Free Library as a result of this proposed annexation.

Sanitary sewer service to this site will be by extension of existing waste water mains in the general area and will be at the cost of the developer. Any necessary upgrades to accommodate the project shall be at the expense of the developer. The amount and timing of the allocation of sewer service shall be subject to the City's Sewer Capacity Allocation Program. Sufficient capacity exists to serve this area.

Water service to this site will be by extension of water lines in the vicinity of the site and will be at the cost of the developer subject to the Water Department's standards, policies, procedures and payment of the applicable fees. Any extension of water lines to provide additional water service will be at the sole cost of the owner or developer of the property. Sufficient capacity exists to serve this area.

The Electric Distribution System is external to the Hagerstown Light Department operating territory. Electrical service will be provided by Allegheny Power. The City of Hagerstown (HLD) normally supplies street light services to public streets and supplies the manpower and equipment to serve a new area once the developer builds the infrastructure. The developer is responsible for the purchase and installation, to approved Hagerstown Light Department specifications, of the street light system. However, there are no public streets associated with this project; therefore this provision will not apply.

No significant impact on emergency service delivery is expected, either police or fire.

Any necessary improvements to existing public roads shall be completed at the direction of the City Engineer at the developer's expense. However, none are anticipated.

Parks and recreation facility expansion are not proposed for this annexation. Maintenance of City streets and right-of-ways are normally performed by the Public Works Department. No significant impacts are anticipated.

All future persons within the area proposed to be annexed shall obtain or be entitled to existing benefits of the City of Hagerstown in accordance with any special conditions contained in the annexation resolution. They shall also be required to pay for all applicable utility services, charges, assessments, taxes and other costs and expenses which are required of the residents of the City of Hagerstown.

Mr. Bass entered the following as Exhibits:

- Exhibit 1: Annexation Plan
- Exhibit 2: Notification to County, Regional, and State Planning Agencies
- Exhibit 3: Certificate of Advertisement
- Exhibit 4: Annexation Resolution

There was no testimony presented, either in favor of or against the proposed annexation.

The record was closed. A vote is scheduled for later in this meeting.

#### **C4 (Shopping Center) Parking Requirements Zoning Text Amendment, ZT-2008-01**

Stuart Bass, Comprehensive Planner, stated the Planning Commission has recommended an adjustment to the standards for shopping centers as part of an ongoing effort to restructure parking requirements. The following information outlines parking requirements for shopping centers. Currently, the zoning ordinance requires 5.5 per 1,000 feet of net floor area. This was the industry standard in 1965, according to the findings of a 1965 Urban Land Institute (ULI) study.

More recent standards, as defined in Parking Requirements for Shopping Centers outline the following requirements:

1. 4 per 1000 sq. ft. of Gross Leasible Area (GLA) for centers containing between 25,000 and 400,000 sq. ft.
2. A sliding scale of 4 to 4.5 spaces per 1,000 sq. ft. for centers containing between 400,000 and 600,000 sq. ft.
3. 4.5 spaces per 1,000 sq. ft. for centers containing more than 600,000 sq. ft.

An executive summary, based on the 1999 ULI study, and published by the International Council of Shopping Centers offered the same recommendation.

The Planning Commission held a Public Review meeting on June 25, 2008. No public comments were received. The Commission is forwarding this proposed text amendment to the City Council with a positive recommendation for adoption.

Mr. Bass entered the following as Exhibits:

- Exhibit 1: Certificate of Advertisement
- Exhibit 2: Planning Commission file by record

There was no testimony presented, either in favor of or against, the proposed text amendments.

The hearing was then closed.

## **APPOINTMENT**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. S. Cromer, the Mayor and City Council unanimously agreed by voice vote to appoint Judy Wheeler to the Planning Commission.

It was the general consensus to recommend to the Board of County Commissioners that Shelby Penn be appointed to the Economic Development Commission.

## **CITIZEN COMMENTS**

Sevinc Joy Hackley, 356 S. Cannon Avenue, Hagerstown, Maryland, thanked the Mayor and Council for helping her resolve an issue with a towing company when her car was recently towed. She contacted a Council member when her car was towed and the fee quickly escalated to \$ 250.00. The recently approved ordinance was helpful in resolving the issue. She has lived in Hagerstown since the 1970's and many positive changes have occurred.

Bruce Zimmerman, City Administrator, acknowledged that Sgt. Simmers responded to the call when this occurred and resolved it quickly.

James Devine, P. O. Box 2217, Hagerstown, Maryland, stated people are still harassing him. He is homeless and people harass him on a constant basis. Approximately two weeks ago, he called the police for assistance. The people harassing him returned after the police officer left. He defended his home and residence from the harassment and was arrested. When he was released, his vehicles had been towed. He thinks the City should reimburse him for the towing charges. He also lost his job because he wasn't at work. He stated he recorded conversations and his equipment was confiscated. He doesn't think enough is being done to protect him from the people who harass him.

## **MINUTES**

On a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve minutes, as presented, for the Mayor and Council meetings held on June 3, 2008, June 10, 2008, June 17, 2008, July 8, 2008, and an addition to the April 15, 2008 minutes.

## **CONSENT AGENDA**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember A. Parson-McBean, the Mayor and City Council unanimously agreed by voice vote to approve the consent agenda as follows:

- A. Community Affairs: Application Permit for Augusterfest
- B. Community Development: Rehabilitation Contract for 333 S. Mulberry Street – Dale M. Ford Construction (Boonsboro, MD) \$ 62,500.00
- C. Fire Department: Airmation Units – Air Technology Solutions (Burlington, NJ) \$ 163,098.89
- D. Engineering:
  - 1. Architectural Design of Renovations to Roslyn Building and Portions of City Hall – Harne Bowen Architects (Myersville, MD) \$ 61,660.00
  - 2. 2008 Pavement Preservation Program and Ice Rink Driveway Reconstruction – Craig Paving, Inc. (Hagerstown, MD): Not to Exceed \$ 440,000.00 for Pavement Preservation, Not to Exceed \$ 60,000.00 for Ice Rink Driveway
  - 3. Installation of Sidewalks and Alley Modifications for the Handicapped – Royal Construction (Arlington, VA) Not to Exceed \$ 40,000.00
  - 4. Curb and Sidewalk Replacement Program – Royal Construction (Arlington, VA)
    - A. Approval of Unit Price for City Ordered Abatements
    - B. Replacement of Curb and Sidewalk Damaged by Street Trees, Not to Exceed \$ 100,000.00
  - 5. 2008 Chevrolet Uplander Minivan – Replacement of Unit 710 – Criswell Chevrolet, Inc. (Gaithersburg, MD) \$ 13,998.00
  - 6. Reconstruction of Alley 3-38 – Huntzberry Bros, Inc. (Hagerstown, MD) \$ 36,035.00
- E. Public Works:
  - 1. LED Signal Lights – RGA, Inc. (Powhatan, VA) \$ 16,999.00
  - 2. Signal Controller Cabinet – Econolite Control Products, Inc. (Hanover, MD) \$ 11,375.00
  - 3. ¾ Ton Pickup – Replacement of Unit 14 – Criswell Chevrolet, Inc. (Gaithersburg, MD) \$ 16,703.00
- F. Wastewater Department:
  - 1. Emergency Repair of Sewer Line – Western Maryland Parkway – Henson & Sons, Inc. (Hagerstown, MD) Cost per hour \$ 720.00
  - 2. Service Agreement for Oxygen System – m2T Technologies (Peekskill, NY) \$ 19,400.00
- G. Water Department:
  - 1. Large Water Meters – HD Supply Waterworks, LTD (Martinsburg, WV) \$ 20,013.00
  - 2. Small Water Meters – L/B Water Service, Inc. (Chambersburg, PA) \$225,827.50

3. Water Pipe for Tammany Lane – Griffin Pipe Products Co. (Florence, NJ) \$ 31,400.00
4. Change Order #5 – West End Reservoir Phase I – Hazen and Sawyer (Baltimore, MD) \$ 130,519.00
5. Inventory Purchase – HD Supply Waterworks, LTD (Martinsburg, WV) \$ 59,427.88

## **UNFINISHED BUSINESS**

### **A. Approval of an Annexation Resolution: Eastern Boulevard (Shaoool), A-2006-03**

**Action:** 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 remove this item from the table for discussion.

Councilmember M. E. Brubaker made a motion to adopt an Annexation Resolution for Ben Shaoool Construction for property located on the northeast side of the City, along Eastern Boulevard. The property to be annexed is approximately 5.948 acres in size and is intended to be added to and made part of the adjacent municipal lands. Councilmember A. Parson-McBean seconded the motion.

Discussion: Councilmember Metzner stated he has been opposed to this annexation for some time due to boundary issues. His opinion has changed on these issues.

Councilmember Brubaker indicated the fire and police departments already serve the subdivision immediately adjacent to this property and City services are already in the area. The land is subject to development, whether the City annexes it or not.

A site plan has not been submitted for the potential use of the property.

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

### **B. Approval of an Annexation Resolution: Stamper (Dual Highway), A-2008-03**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to adopt an annexation resolution for property located at 1914 – 1920 Dual Highway. The property to be annexed is 2.181 acres in size, and is intended to be added to and made part of the adjacent municipal lands.



**C. Approval of an Annexation Resolution: PER CCC Investments, LLC, A-2008-04**

**Action:** Councilmember M. E. Brubaker made a motion to adopt an annexation resolution for property located at Lot 182, Harwood Road. The property to be annexed is approximately 10,000 square feet in size and is intended to be added to and made part of the adjacent municipal lands. Councilmember L. C. Metzner seconded the motion.

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

**NEW BUSINESS**

**A. Introduction of an Ordinance: Land Management Code**

**Action:** 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 introduce an ordinance to adopt the Land Management Code, Chapter 140, to provide a consolidation and reformatting of the Subdivision Regulations, the Zoning Ordinance, the Forest Conservation Ordinance, and the Floodplain Ordinance.

**B. Introduction of an Annexation Resolution: Private Reserve, LLC (Atlantic Drive), A-2008-05**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to introduce an annexation resolution known as Private Reserve, LLC for property located at the end of Atlantic Drive. The property to be annexed is approximately .65 acres in size and is intended to be added to and made part of the adjacent municipal lands.

**C. Adoption of an Annexation Plan: Private Reserve, LLC (Atlantic Drive), A-2008-05**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to adopt an annexation plan for the Private Reserve, LLC Annexation for property located at the end of Atlantic Drive.

**D. Approval of a Resolution: Stadium Tavern Lease Agreement**

**Action:** On a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember A. Parson-McBean, the Mayor and City Council unanimously agreed by voice vote to approve a resolution for approval of

a 25 year lease from the Stadium Grill and Tavern, located at 401 S. Cannon Avenue, Hagerstown, Maryland. The leased area shall be utilized only for the purpose of providing parking as shown on the attached Exhibit A.

Discussion: Councilmember Metzner understood the tenant would not be responsible for maintenance of the parking lot. A clause will be added to the agreement that parking would be provided for patrons of activities at Municipal Stadium. Both the owner and his attorney have agreed to this.

**E. Approval of Amendment of the City's Water and Sewer Policy**

**Action:** 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 approve an amended City of Hagerstown Water and Wastewater Policy. In order to maintain consistency with the City of Hagerstown's 2008 Comprehensive Plan and the City's Annexation Policy, changes to the former Water and Sewer Policy, adopted February 24, 2004, were required.

**F. Approval of License Agreement: JST Investments, LLC – 230 N. Potomac Street**

**Action:** 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 execute a License Agreement between the City of Hagerstown and JST Investments, LLC for the installation of a basement window well in the right-of-way of North Potomac Street.

Discussion: The applicant is renovating and installing a basement bedroom. The Code requires a second point of egress and ingress. There are specific requirements for the size of the opening for egress and ingress.

**G. Application Permit and Open Container Exemption for Demcore, Downtown Live**

**Action:** Councilmember L. C. Metzner made a motion for the Mayor and Council to authorize the closure of the first block of South Potomac Street, and portions of North Potomac Street, West Washington Street and East Washington Street on October 25, 2008 for a musical festival operated by Demcore Entertainment LLC. The Mayor and City Council authorize the application/permit agreement with Demcore Entertainment LLC. Also, according to the City of Hagerstown's Open Containers Law, the Mayor and City Council may permit the possession of alcoholic beverages in open containers on the streets, lanes, alleys, sidewalks, parking lots or

public ways of the City during special events upon application or upon its own initiative. Therefore, the Mayor and City Council formally approve the possession alcoholic beverages (beer and wine) in the designated festival area on the map for October 25, 2008 for the musical festival only. Hours of the festival are to be 2:00 p.m. to 10:00 p.m. Councilmember K. S. Cromer seconded the motion.

Discussion: Councilmember Nigh asked that Mr. Deming be required to make a down payment for the City services. Councilmember Parson-McBean stated the attendance numbers do not justify closing the street, but she does believe the event brings a diverse group downtown.

Motion carried, 3-2 with Councilmember A. Parson-McBean and Councilmember P. M. Nigh voting No.

#### **H. Approval of Memorandum of Understanding (MOU): Fugitive Apprehension Task Force**

**Action:** On a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve of a cooperative agreement between the United States Marshall's Service and the City of Hagerstown. This MOU will provide for the deputizing of Hagerstown Police Department personnel for joint operations with federal counterparts.

#### **I. City Funding Support for Barbara Ingram School for the Arts "Take Flight" Program**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve City support for the Barbara Ingram School for the Arts Take Flight Program. The City will provide support through the Public Works Department in the placement and relocation of the public art sculptures and the City will also provide between \$ 3,500.00 and \$ 5,000.00 in funding to sponsor one of the sculptures. Funding for this support will come from the City's General Fund Contingency.

#### **CITY ADMINISTRATOR'S COMMENTS**

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

#### **MAYOR AND CITY COUNCIL COMMENTS**

*Councilmember M. E. Brubaker attended a forum concerning State Growth this week. The Hagerstown Municipal Band concerts are good events.*

*Councilmember A. Parson-McBean* traveled to Annapolis last week to meet with a number of elected officials. She appreciates what City employees do to keep Hagerstown beautiful.

*Councilmember L. C. Metzner* expressed condolences to the family of Aubrey Kemp, former Councilmember, who passed away this week.

*Councilmember K. S. Cromer* stated it is difficult to bring older buildings up to current building code standards. She asked that this be reviewed and a discussion held. She also asked that a discussion be scheduled for the request for the sundial that used to be in City Park. She would like to discuss guidelines for organizations who gather and assemble on the public right of ways. She received complaints about the abortion protestors who were in Hagerstown this week.

*Councilmember P. M. Nigh* told Mr. Devine he needs to find a place in a lighted area, for his own safety. National Night Out will be held August 5, 2008. Neighborhoods 1<sup>st</sup> is actively involved and residents will have their porch lights on. Councilmember Brubaker, Councilmember Metzner and Councilmember Nigh attended the Fire Fighters Academy graduation. She congratulated all the graduates.

*Mayor R. E. Bruchey, II* stated there will be a shorter meeting on August 5, 2008 so members can attend National Night Out. He presented a letter from Dave Jordan, Executive Director of CAC, noting there is \$ 18,000 left in the Utility Relief Fund. Many people who applied for the funding fit under the initial assistance guidelines for CAC. He stated half of the funding will be saved for the winter heating season. He urged people to contact CAC to apply for the funding.

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 8:22 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: August 26, 2008