

**26<sup>TH</sup> REGULAR SESSION – August 24, 2010**

**Mayor R. E. Bruchey, II called this 26<sup>th</sup> Session of the Mayor and City Council to order at 7:05 p.m., Tuesday, August 24, 2010, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. W. Easton, A. C. Haywood, L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney John Urner 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 June 23, 2009. 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: A Strategic Planning Session on Tuesday, August 31, 2010 at 4:00 p.m., Work Sessions beginning at 4:00 p.m. on Tuesday, September 7, 2010, Tuesday, September 14, 2010, Tuesday, September 21, 2010 and the Regular Session on Tuesday, September 28, 2010 at 7:00 p.m.

**APPOINTMENTS**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed by voice vote to reappoint Carolyn Brooks to the Hagerstown Housing Authority. The term of the appointment will expire August 31, 2015.

**AWARDS**

Highlight Hagerstown Awards were presented to:

Residential Category:

1. Michael & Judith Barnes, 905-907 Potomac Avenue
2. Ann Holtzman, 1076 Lindsay Lane
3. Leonard & Elizabeth Hicks, 48 Fairground Avenue

Non-Residential Category:

1. The Maryland Theatre, 23 S. Potomac Street

Adopt-a-Planter Category

1. Discovery Station, 101 W. Washington Street
2. Frederick Seibert & Associates, Inc., 128 S. Potomac Street
3. Town & Country Garden Club, 111 S. Potomac Street

### **CITIZEN COMMENTS**

Louise Dawson, 542 Guilford Avenue, Hagerstown, Maryland, expressed her feeling there is a lack of services for homeowners in Hagerstown. She doesn't think laying off employees in Code Enforcement is right. There should be more police patrols in neighborhoods. More officers should be hired to cover the large annexations and increased calls from department stores and apartments. The streets are not cleaned enough and there is no weed spraying.

Leonard Cooper, a barber in Hagerstown, doesn't think seat belts are entirely safe. The seat belt law should be up to the individual. He believes that a business owner or property owner should be allowed to vote in the municipal election. He was not able to vote because his residence is outside the City limits. He expressed concern that young black men receive a stricter sentence for drug crimes than young white men do. After they serve the time, they find it difficult to find a job. He thinks that if drugs are legal in one place, they should be legal in all places.

Tim Light, Hagerstown realtor, agreed that seat belts are not safe.

Penny Nigh, 634 N. Mulberry Street, Hagerstown, Maryland, wondered who the members of the Community Coalition are. Councilmember Metzner indicated it is the same group when Ms. Nigh was a Councilmember. Ms. Nigh thanked the Mayor for taking care of notifying someone about wood across from the old Sears building. She is sorry to hear Al Martin is retiring. Mr. Martin has provided a good service to the City. He helped keep the City solid.

### **PUBLIC HEARINGS**

#### **Water Resources Element Amendments to 2008 Comprehensive Plan**

Kathleen Maher, Planning Director, stated this public hearing is being held to receive public comments on the proposed amendments to the City's Comprehensive Plan to accommodate the final requirements for H.B. 1141's Water Resources Element.

This element establishes policies to guide the provision of future wastewater and water service to, and the management of nonpoint source nutrient loading from the City and its Medium-Range Growth Area (MRGA). It complies with the Water Resources Element requirements of Article 66B of the Annotated Code of Maryland, as modified by Maryland House Bill 1141, passed in 2006.

At the time of the publication of this Water Resources Element, Washington County was evaluating options to complete the countywide Water Resources Element requirements. The City anticipates working closely with the County to achieve their common Water Resources goals. This Water Resources Element, adopted in 2010, replaces the Water and Wastewater Element of the 2008 Comprehensive Plan.

Ben Sussman, Environmental Resources Management (ERM), was present to provide additional information. Hagerstown and the Conococheague wastewater treatment plants have adequate capacity to support projected City/MRGA growth. Hagerstown, Conococheague and Funkstown wastewater treatment plants have adequate capacity to support MRGA build out. There is inadequate capacity for full UGA build out.

There are nutrient cap limits set by MDE on the mass of nitrogen and phosphorus that can be discharged. Hagerstown wastewater treatment plant can support projected growth, plus substantial additional nutrient discharges. Nutrient trading may be an option.

Hagerstown could reach or exceed its permitted system capacity by 2028. There is inadequate water capacity for full MRGA build out. Expanded withdrawals or new sources may be needed. Water conservation can be the most cost-effective strategy

The Water Resources Element expresses the City's concerns about the compatibility of the 2007 Act with redevelopment. Stormwater hotspots should be identified and addressed.

According to projections, nutrient loads are expected to drop, due in part to the way jurisdictions are dealing with stormwater nutrients.

Impervious surface is relatively high in the City. The State has said cities should direct growth, thus higher impervious surface is reasonable.

New policies and actions are being added to the Water and Sewer Element. They include pursuing more stringent stormwater requirements, participate in the State's nutrient trading policy and advocate for more flexible State stormwater standards.

The following were entered into the record:

Exhibit 1 – Certificate of Advertisement

Exhibit 2 – Planning Commission Record

There was no testimony presented.

The hearing was closed at 7:53 p.m. The record will remain open for 10 days for additional comments.

### **2010 Small Areas Plan**

Kathleen Maher, Planning Director, stated the 2008 Comprehensive Plan identifies seven (7) Special Planning Areas in where the Plan recommended further study before future land uses could be defined. Action 204 of the 2008 Comprehensive Plan calls for a detailed analysis of the Special Planning Areas to develop small area plans to determine future land uses. It is the intent of the 2010 Small Areas Plan to fulfill Action 204 and provide the future land use planning basis for the Phase IV Comprehensive Rezonings.

The Special Planning Areas included in the 2010 Small Areas Plan include the East End/Hospital area, the Jonathan Street area, and the Locust/Mulberry Street area. The Future Land Use Plan in the 2010 Small Areas Plan was based on extensive existing land use studies of all three areas, citizen input from neighborhood meetings, and feedback from owners of non-residential properties. The other Special Planning Areas identified in the Comprehensive Plan were dealt with in prior phases of the Comprehensive Rezoning.

This public hearing is to gain input on the proposed amendment to the 2008 Comprehensive Plan for the 2010 Small Areas Plan. This action is linked to the Phase IV Comprehensive Rezoning.

Redevelopment options for the East End included some scenarios which are beyond the scope of land use. The cost analysis in the old East End redevelopment plan is no longer valid. The options deliberately leaves out the Washington County Hospital building, the First Urban Fiber Plant and the former MELP plant because plans are not defined for these sites by the current owners. Recommendations for these sites will be included in future addendums to the Small Areas Plan after further studies are completed.

The Small Areas Plan for Jonathan Street limits high density residential uses. The regulations allow Mom and Pop type businesses and maintain current industrial land uses but adjust the land use to eliminate split zoning.

The Small Areas Plan for Mulberry Street is primarily medium density residential.

The following testimony was presented:

Alfonso Mitchell, Trustee with Zion Baptist Church, spoke about the Jonathan Street area. On behalf of the Church, he requested that the area from Harmon Avenue to Bethel Street be zoned R3. The church has been on the corner of Jonathan and Bethel Streets for more than 100 years and has been a positive influence. They considered expanding 10 years ago and R 3 would allow that. Liquor stores and night clubs have been located in the area and they do not have a positive effect on the community. The church wants to continue to be a positive influence. The members are opposed to D-MU zoning because many uses are permitted.

The following were entered as into the record:

Exhibit 1: Certificate of Advertisement

Exhibit 2: Planning Commission file by reference

No further testimony was presented. The hearing was closed at 8:11 p.m. Mr. Mitchell's comments will also be entered into the record for Area 8 of the Comprehensive Rezoning hearing.

**Comprehensive Rezoning Phase IV, Case No. ZM-2010-01**

Kathleen Maher, Planning Director, and Alex Rohrbaugh, Planner, stated this is the fourth and final phase of the Comprehensive Rezoning process, which covers three of the Special Planning Areas identified in the 2008 Comprehensive Plan – East End/Hospital Area, Jonathan Street Area, and Locust/Mulberry Street Area. The Planning Commission and Planning Staff have identified nineteen (19) specific areas recommended for rezoning. The 19 areas of rezoning are consistent with the proposed future land use recommendations in the draft 2010 Small Areas Plan. The proposed rezonings for Phase IV are the Planning Commission's recommendations, but are subject to change based on consideration of the input received from the public hearing.

Ms. Maher entered the following into the record:

Exhibit 1: Certificate of Advertisement

Exhibit 2: Planning Commission record by file

This public hearing is being held to hear testimony on each separate issue. Testimony presented is recorded with the appropriate Area.

East End/Hospital Special Planning Area

Area 1 – 309-345 East Antietam Street (from C2, IR, R2 to POM, R2)

Testimony:

Dean Martin, 345 E. Antietam Street, Hagerstown, Maryland, suggested waiting to determine land use for the hospital after a decision is made about its future use. He stated he spoke in May and has sent letters regarding his position.

Area 2 – SW Corner of E. Antietam Street & S. Cleveland Ave; Venice Inn Parking Lot (from C2, IR to POM, C2)

Area 3 – Mill Street Area (from IR, R2, R4 to POM)

Area 4 – 221 Memorial Boulevard (from C2 to IR)

Area 5 – 401 S. Cannon Ave & 345 S. Cleveland Ave (from IR, C1 to C1, R2)

Area 6 – Eastridge Townhomes Development (From R4, C2 PUD to R2 PUD)

Testimony:

Rodney Price, 300 Radcliffe Avenue, Hagerstown, Maryland, is concerned about the commercial use of property in this area. He thinks there should be more police patrol in this residential area. There are problems with kids riding skateboards in the street. The fireworks at Municipal Stadium are loud.

Area 7 – Lot on Tracy's Lane (from R2 to C2)

Jonathan Street Special Planning Area  
Area 8 – 226-234 Jonathan Street (former Car Wash) (from R2 to D-MU)

Testimony:

Alfonso Mitchell, Trustee with Zion Baptist Church, spoke about the Jonathan Street area. On behalf of the Church, he requested that the area from Harmon Avenue to Bethel Street be zoned R3. The church has been on the corner of Jonathan and Bethel Streets for more than 100 years and has been a positive influence. They considered expanding 10 years and R 3 would allow that. Liquor stores and night clubs have been located in the area and they do not have a positive effect on the community. The church wants to continue to be a positive influence. The members are opposed to D-MU zoning because many uses are permitted.

William Woodson, agreed with Mr. Mitchell. The members of the church want to have a positive impact on the community. He is concerned about the use of the former car wash. He asked that zoning remain R3.

Stan Brown, 425 Beechwood Drive, Hagerstown, Maryland, spoke on behalf of Greater Camphor Temple. He is not opposed to mixed use zoning, unless it would impact the church's ability to expand.

Tim Light, representing the owners of the car wash (Bitner and Martin, LLC) pointed out he's been associated with the car wash for many years. Mr. Martin wants to do what is best for the community. The owners would like the church to have it, but they would have to purchase it. The asking price was reduced for the church. He personally believes it would be the best location for the Doleman Black Heritage Museum. He stated Mr. Martin allowed the company that did the utility work on Jonathan Street use the lot free of charge. The owners are open for suggestions for the use of the property.

Councilmember Brubaker asked if there is a specific request from the property owner. Ms. Maher stated the car wash use would fall under "car repair" and would not be a permitted use. Mr. Light indicated he thinks the best use would be for the museum. The price is \$ 350,000.00 and the owners have offered to reduce this by a substantial amount. Councilmember Haywood asked if there was a specific proposal. Mr. Light said it was for the museum. He suggested that the City consider putting money toward the purchase price.

Willie Conyers owns rental property in the Jonathan Street area. He is opposed to the car wash and D-MU zoning.

Area 9 – 115-137 Bethel Street (south side) (from D-MU to R2)

Area 10 – 26, 56 Bethel Street (from R3 to R2)

Area 11 – 23-43 W. North Avenue (from R3 to R2)

Area 12 - Jonathan Street (300-400 Blocks) (from R3 to R2)

Area 13 – 407-443, 596-617 North Prospect Street (from IR to R2)

Testimony:

Alan Baurath, President of Potomac Dealer Supply, 605 N. Prospect Street, Hagerstown, Maryland is not in favor of the recommended zoning change. His family has owned a wholesale lumber company at this location for several generations. This has been industrial since the City implemented zoning districts. He is not aware of complaints from the residents in the area. He does not want the business to be non-compliant. There has been no change in the area.

Area 14 – Charles Street & Park Place Area (from R3 to R2, IR)

Area 15 – 645-651 Forest Drive & portion of 100 Charles St. (from IR, R2 to R2, IR)

Area 16 – 686 Pennsylvania Avenue (from R2 to IR)

Area 17 – 701-711 Forest Drive (from IR to R2)

Area 18 – South side of Prospect Avenue (from IR to C2)

Locust/Mulberry Streets Special Planning Area

Area 19 – 320 Valley Road (from IR to R2)

Testimony:

Tim Gammon, owner of 322 and 324 E. Antietam Street, Hagerstown, Maryland, is not in favor of rezoning Area 1. He recommended waiting until the hospital re-use is determined for a better point of view.

There being no further testimony, the public hearing was closed at 8:58 p.m. The record will remain open for 10 days for additional comments.

## **MINUTES**

On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed by voice vote to approve the minutes, as presented, for the Mayor and Council meetings held on July 13, 2010, July 20, 2010 and July 27, 2010.

### **CONSENT AGENDA**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to approve the Consent Agenda as follows:

- A. Community and Economic Development: Civil War Sesquicentennial Activities and Authority to Apply for Filming Permit
- B. Public Works: Bulk Road Salt for 2010/2011 – Mid Atlantic Salt LLC (Lenora, PA) \$ 70.64 per ton
- C. Water Department: Inventory for Water Fund – HD Supply Waterworks, LTD (Martinsburg, WV) \$ 50,496.34

### **UNFINISHED BUSINESS**

#### **A. Introduction of an Ordinance: Amending the City Code, Section 216-10, B, Streets and Sidewalks and Section 240-32, Water Pollution Control**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to amend Section 216-10, B, and Section 240-32 of the City Code. The future adoption of the aforementioned amendments will align the language contained within the City Code with what are currently in place as internal policies within the Department of Utilities and the Department of Public Works.

### **NEW BUSINESS**

#### **A. Introduction of an Ordinance: View Street Diner Local Conversion District Overlay**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance for a Local Conversion District Overlay, including the four conditions endorsed by the Planning Commission, on property located at 800 View Street.

#### **B. Introduction of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article I, Building Standards**

**Action:** 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 introduce an ordinance to amend the



Code of the City of Hagerstown, Chapter 64 Building Construction Article I, to provide for updated Building Standards.

**C. Introduction of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article IV, Electrical Standards**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to amend the Code of the City of Hagerstown Chapter 64 – Building construction, Article IV to provide a reference to the established fee schedule for Electrical Permits.

**D. Introduction of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article V, Plumbing Standards**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to amend the Code of the City of Hagerstown, Chapter 64 – Building Construction, Article V to provide for updated Plumbing Standards.

**E. Introduction of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article IV, Mechanical Standards**

**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 amend the Code of the City of Hagerstown, Chapter 64 – Building Construction, Article VI to provide for updated Mechanical Standards.

**F. Approval of a Resolution: Petitioning Reinstatement of State Shared Revenues**

**Action:** On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to be sent to the State Administration, and Maryland General Assembly petitioning the reinstatement of state shared revenues diverted from municipalities to fund operations of the state and request that the State provide more diverse revenue raising authority to municipalities. The City of Hagerstown has lost 90% of the State Shared Highway User Revenue or \$ 1,576,929 and 35% of the State Aid for Police Protection or \$ 275,097. It is critical that these funds be restored.

**G. Approval of a Resolution: FY 2011 Community Legacy Grant Application**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to approve a resolution and authorize staff to submit a Community Legacy grant application to the Maryland Department of Housing and Community Development for five projects with individual funding requests ranging between \$ 150,000 to \$ 200,000. Matching funds are proposed from a variety of City sources, but staff will seek alternative non-State funding sources to replace or supplement the matches proposed in the City's application.

**H. Approval of Amendment of Partners in Economic Progress (PEP) Eligibility Criteria for Artist Live-Work Spaces**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote to approve an amendment to the Partners in Economic Progress (PEP) eligibility criteria to add provisions for Artist Live-Work Spaces.

**I. Approval of Community Development Funding for Food and Friends - \$ 5,000.00**

**Action:** Councilmember A. C. Haywood made a motion to provide \$ 5,000 in Community Development Block Grant funding to Food and Friends which will be used to provide meals and nutritional information to persons living with life threatening illnesses. These funds will come from Neighborhood Development leaving \$ 69,565 available for projects in that activity. Councilmember L. C. Metzner seconded the motion.

Motion carried, 3-2 with Councilmember W. M. Breichner and Councilmember F. W. Easton voting No.

**CITY ADMINISTRATOR'S COMMENTS**

*Bruce Zimmerman, City Administrator*, congratulated everyone involved with the Augustoberfest celebration. This was another great event.

**MAYOR AND COUNCIL COMMENTS**

*Councilmember W. M. Breichner* had no additional comments.

*Councilmember M. E. Brubaker* stated Augustoberfest was a success again this year. He thanked everyone who helped with the event.

*Councilmember F. W. Easton* agreed it was another successful Augustoberfest. He thanked everyone, especially Karen Giffin and Eric Deike for their efforts.

*Councilmember A. C. Haywood* agreed that Augustoberfest was a great event.

*Councilmember L. C. Metzner* agreed with everyone about Augustoberfest. He expressed condolences to the family of Trav Ruppert who passed away recently. Mr. Ruppert was a noted radio host for many years. He will be missed in the community.

*Mayor R. E. Bruchey, II* offered condolences to the family of Trav Ruppert. He agreed that Augustoberfest was a success and it seemed like there was a renewed inspiration during this year's event.

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 9:08 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: September 28, 2010