

6TH SPECIAL SESSION AND EXECUTIVE SESSION – September 1, 2009

Mayor R. E. Bruchey, II called this 6th Special Session and Work Session of the Mayor and City Council to order at 4:05 p.m., Tuesday, September 1, 2009, in the Council Chamber, 2nd Floor, at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. Easton, A. C. Haywood and L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney William Nairn and D. K. Spickler, City Clerk.

6TH SPECIAL SESSION – September 1, 2009

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed to meet in special session at 4:05 p.m.

Approval of a Resolution: City of Hagerstown Public Facilities Bonds of 2009

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 a revised resolution authorizing the City of Hagerstown to issue and sell \$ 17,995,000 in general obligation bonds to be designated as the City of Hagerstown Public Facilities Bonds of 2009 in two series, as detailed in the resolution. This revised resolution is being considered to allow the City more flexibility in issuing the bonds including the possible use of taxable Build America Bonds that have recently been authorized under the Federal Economic Recovery Act. These bonds, while taxable, would be eligible for a rebate of 35% of the interest cost by the Federal government back to the City. They have the potential of significant interest cost savings to the City over the 20 year term of the bonds.

As required by the enabling ordinance adopted on November 4, 2008 and which became effective on December 5, 2008, the resolution enumerates the uses of the bond proceeds and all the details regarding the bonds and their sale. The resolution provides that the full faith and credit and unlimited taxing power of the City of Hagerstown shall be irrevocably pledged to the payment of principal and interest on the bonds. Appropriate City officials are hereby authorized to take the actions necessary to proceed with the sale of the bonds, obtain the lowest net true interest cost and otherwise act in the best interests of the City

Discussion: Councilmember Brubaker noted the project includes the changes made by previous Mayor and Council actions. Alfred Martin, Finance Director, stated a benefit in delaying the bond sale is that the market has stabilized.

The Special Meeting was adjourned at 4:17 p.m.

Work Session – September 1, 2009

Urban Tree Canopy Cover Goal

Kathleen Maher, Planning Director, stated staff made a presentation on July 7, 2009 about setting an Urban Tree Canopy Cover Goal for the City. The Planning Commission's recommendation was to strive for a goal of 30% tree canopy cover in the City by 2050. The Mayor and Council discussed alternative options of perhaps 30% by 2020 or setting incremental goals. Staff were also requested to provide data on how much acreage is required to achieve a goal for an increase in tree canopy cover in the City.

In order to attain the goal of a 30% cover by 2020, an additional 8.6% coverage would be needed. This would be 641 acres. It would take about 35 mature Pin Oak trees to cover one acre of ground and 22,435 trees to cover 641 acres.

Councilmember Brubaker hopes volunteer groups would become involved with a project like this. Councilmember Haywood stated this would be a good goal for the Green Task Force to discuss. It will take a number of years to complete a project this large.

There is no deadline to reach the goal. The grant application that was submitted required a statement that a goal had been discussed.

Councilmember Brubaker recommended accepting the Planning Commission's recommendation of a 30% cover by 2050. The Green Task Force will discuss this goal at their first meeting.

Partners in Economic Progress (PEP) Program – Mayor and Council Discussion

During the August 25, 2009 Regular Session adoption of the Partners in Economic Progress (PEP) Program was tabled for further discussion at the September 1, 2009 work session. Staff was present to address questions related to the program and the ten proposed incentives.

Should the Mayor and Council wish to modify the Program from that which has been previously presented to them, Bruce Zimmerman, City Administrator, presented the following possible approaches:

1. The designated geographic area for Program eligibility can be expanded or reduced to include or exclude properties.
2. The program eligibility criteria can be amended to increase or decrease the number of projects or properties that can receive PEP incentives.

3. The incentives can be revised.
4. The funding of the Program can be adjusted
5. The Program can be combined or partnered with other Mayor and Council priorities or other community based programs to broaden the impact of PEP.
6. The Program is structured for annual reviews by Mayor and Council to provide opportunities for enhancements.

Mr. Zimmerman stated staff recognizes that the Mayor and Council may have other ideas and approaches that will further strengthen and enhance the PEP Program.

Councilmember Haywood asked if the funding for the PEP Program was the original amount for the Roslyn Building. Alfred Martin, Finance Director, indicated the \$ 125,000 was originally intended to be used toward the Roslyn Building rehabilitation and since the project was delayed, that funding was available to be used for other economic development projects.

Councilmember Haywood asked if the \$ 125,000 commitment is for one year only. She does not want to commit to two years of the program with only one year budgeted. Mr. Zimmerman indicated it depends on the amount requested by applicants and distributed. If the \$ 125,000 is reached, Staff would alert the Mayor and Council and they could decide whether to continue or suspend additional funding.

Councilmember Haywood suggested that the \$ 125,000 be for two years of the program rather than one. She is concerned the full amount will be used in one year and there will not be funding available to meet the obligations of the Program.

Councilmember Brubaker stated Staff could notify the Mayor and Council when the \$ 125,000 is committed, whether it's in the first or second year. At that time, the Mayor and Council could decide whether or not to continue funding the program.

Mr. Zimmerman stated Staff would not be asking for new money in next year's budget, just a continuation of the line item. He stated there is a limit for each project. When four PEP Program applications have been approved, Staff would report to the Mayor and City Council.

Councilmember Breichner asked who will manage the program. Mr. Zimmerman indicated Deborah Everhart, Economic Development Director, would be the person to assist an applicant with the process. A Staff panel, consisting of Kathleen Maher, Larry Bayer, John Lestitian and Alfred Martin, would review the applications and determine whether or not they meet the criteria.

Councilmember Easton asked why Ms. Everhart is not part of the staff review panel. Mr. Zimmerman indicated she is an advocate for economic development and it would be more appropriate to not place her in the review process.

Councilmember Haywood wondered if the applications should be reviewed by an outside group. If the staff group denies an application it may be difficult to work with the developer.

Mr. Zimmerman stated there is a strict list of criteria and there should not be a problem with staff doing the review.

Councilmember Breichner stated there is an incentive providing two hours of professional assistance with the historic tax credit program. He asked what happens if the meeting is longer than two hours. Ms. Everhart has found that a two hour meeting gives developers enough information to allow them to decide if they want to pursue the tax credit benefit.

Councilmember Breichner asked if the parking benefit is for the surface lots or for the parking deck. He suggested it be for the parking deck. Mr. Zimmerman indicated the incentive states public parking facilities, which will permit flexibility depending on where the project is located.

Councilmember Easton asked if there is an appeal process. Mr. Zimmerman stated if a project is attractive and fits the ideal of the program but doesn't meet the criteria established, it would be brought to the Mayor and Council for discussion. Councilmember Metzner pointed out this would not really be an appeal but close to the current practice. Councilmember Haywood stated there should be an appeal process.

Councilmember Breichner asked if there are any incentives for electric service. Michael Spiker, Director of Utilities, stated developers already are permitted to pay for new service over a three year period. Because the Hagerstown Light Department is a not-for-profit entity, the cost of any incentive benefit would be spread over the entire rate base.

Councilmember Brubaker thinks the current process works well. The criteria is distinctly set and it will take a significant diversion before it comes to the Mayor and Council. He would not want the Mayor and Council to become an appeals board.

Councilmember Metzner stated a standard is set with the criteria and it is either met or not.

Councilmember Haywood stated she doesn't doubt staff is capable of making this program work. She doesn't want staff members in a position in which they are overwhelmed.

Mayor Bruchey stated Ms. Everhart is experienced enough to know if a project fits into PEP and if it doesn't but is a good project, she will bring it before the Mayor and Council. Councilmember Brubaker stated the review committee would also determine if the project was a viable one.

Councilmember Haywood stated her primary concern is positive, constant contact with businesses and developers. She wants there to be a good working relationship with the government.

It was the general consensus that an appeal process in the PEP Program is not necessary and to schedule approval of the Program.

Mayor Bruchey announced he was amending the agenda to include a Special Session item at the end of the work session. Councilmember Haywood wants to review a final version before it is voted on. Mr. Zimmerman indicated the incentives and criteria remain the same. The additional information was clarification of the incentives, not amendments.

Ms. Everhart stated this Program will be a significant economic development tool for the City of Hagerstown.

Historic District Commission Review of Windows

Kathleen Maher, Planning Director, presented information on the Historic District Commission's (HDC) review of windows. A discussion occurred with the prior administration on January 13, 2009 and February 3, 2009.

As enabled by State law and spelled out in the City's Land Management Code, the City's Historic District Commission reviews proposals for changes to existing buildings in the City's four locally designated historic districts and six individual landmark properties. Additions to those buildings, new construction, and demolition are also reviewed by the HDC. Review is restricted to the exterior of the buildings with significant leeway granted for portions of the building not visible from a public way. In their review, the HDC consults their adopted design review guidelines in determining the appropriateness of the request and in rendering their decisions. State law requires that the HDC develop design review guidelines which are consistent with the Secretary of the Interior's standards for Rehabilitation and they have done so. These guidelines have been adopted by the HDC as is consistent with local regulations. However, local regulations did not provide for Mayor and City Council public review and adopting which as is required by State law.

In an analysis undertaken in January, it was found that the HDC had approved 95% of the applications which came before them over the past five years.

As specified in the local regulations, appeals of the HDC's decisions are made to Circuit Court. The Maryland Historical Trust recommends that such appeals go before

the local Board of Zoning Appeals to be consistent with a 1982 opinion of the State Attorney General's Office. The City Attorney issued an opinion on February 2, 2009 in agreement with the MHT that the Board of Zoning Appeals would be a more suitable local solution for appeals than the Circuit Court.

The Commission's design review guidelines recommend retention and repair of original windows whenever possible because they are important character defining features for historic buildings. Replacement of the parts of an antique with new materials or finishes results in the destruction or significant lessening of the historic and monetary value of the antique. The same is true for antique or historic buildings when windows, doors, porch railings, cornices, siding, etc. are replaced with new materials or removed all together. The guidelines recognize that in some cases materials have deteriorated too far and replacement may be appropriate, but in such cases the standard is replacement in-kind so that the original appearance is still maintained although with new product that matches the old. In most cases the original windows are wood and so the standard is for wood replacement windows. The guidelines for the Residential districts specifically state that "vinyl and vinyl clad windows are generally not considered compatible and should only be used if the cost of better windows prohibits or restricts an important rehabilitation project; even then, these materials should only be considered on rear and other facades not visible from public ways. This standard is consistent with the practices of other historic district commissions across the State who follow the Secretary of the Interior's Standards for Rehabilitation.

Earlier this year, Staff suggested two methods to address concerns raised by some members of the Mayor and City Council about the existing process as it relates to the vinyl replacement window issue in the City's historic districts. The two methods were to review the design guidelines and review the appeals process. In February of this year, the Mayor and Council decided not to make any changes to the existing process.

The City's Community Affairs Department and Planning Department are finishing work on a video on historic windows and how to retain and repair them which will run on Channel 6 as a public information service.

Ms. Maher indicated the HDC members visit the property and view it from the public way to determine what is visible.

Mayor Bruchey asked if allowing vinyl replacement windows would have an impact on the historical designation for the City of Hagerstown. Ms. Maher indicated she did not think it would have an affect.

The cost difference between vinyl windows and wood windows has been reported to be about \$ 800 per window. Councilmember Breichner stated there is less maintenance with vinyl windows. Councilmember Haywood pointed out that vinyl windows don't require lead paint inspections. The State indicates it is more economical to repair wood than to replace. Ms. Maher stated the HDC is more willing to allow vinyl in a new opening than in an existing opening.

Councilmember Brubaker stated the Mayor and Council have to decide whether to review the design review regulations and incorporate different regulations for vinyl replacement windows. He suggested working closely with the members of the HDC in reviewing the guidelines. He remembers that it was decided that having one civilian board of experts appealing to another civilian board would not be appropriate.

Councilmember Haywood asked how the case mentioned by Mr. Daniel Hammond several weeks ago will be handled during this review. Ms. Maher indicated the appeal deadline has expired. Mr. Hammond may file an identical application after one year has lapsed.

Councilmember Easton asked for information regarding the number of applications that have been denied. Ms. Maher will provide this information. She indicated the 5% mentioned in the preceding information includes withdrawn applications. Councilmember Metzner asked for a five year review of the types of requests that were denied.

Work Session discussions will be scheduled with the Historic District Commission Chairman and Ms. Maher to review the present guidelines.

A ten minute recess was taken. City Attorney William Nairn left the meeting at this time.

Water Rate/Wastewater Rate Information

Michael Spiker, Director of Utilities, stated City Staff and Municipal Financial Service Staff have addressed the concerns expressed during the August 18, 2009 by the Mayor and Council. Subsequently, portions of the Cost of Service Study have been revised.

Highlights of the Cost of Service Study are:

1. Institute an approved 5 year rate structure which will eliminate the need for annual approvals and will diminish the City's dependence of the use of benefit charges to fund outstanding debt and allow the utilities to continue to perform financially independent from the General Fund while maintaining the ability to meet the environmental requirements and regulations mandated by the regulatory agencies
2. Adopt an inclining block rate structure to promote conservation for residential customers
3. Increase the fixed charges to capture the true cost of the billing and revenue collection process
4. Maintain a utility rate basis for setting Outside City rates
5. Establish a Repair, Renewal, and Replacement (3R) Reserve Fund for aging infrastructure expenditures that are growth related

6. Increase Fire Line charges by 15%
7. Institute late fees to encourage timely payment

The Water Division requests to continue with the current water rate structure using the utility basis approach for Outside City rate customers with a residual cash basis for Inside City rate customers and the inclining block rate for luxury users who consume over 18,000 gallons per quarter. In order to meet the financial requirements of the operation, a 5.5% increase in revenue for Inside City rates and a 7% increase in revenue in Outside City rates will be required for each year for the next 5 years.

The Wastewater Division rate structure will be similar to that which is currently in place and will utilize a unit cost flat rate and a fixed charge with a utility basis approach for Outside City rate customers and a residual cash basis for Inside City rate customers. In order to meet the financial requirements of the operation, a 7% increase in revenue in Inside City rates and a 3.2% increase in revenue in Outside City rates will be required each year for the next five years.

Mr. Spiker indicated a discussion was held on August 31, 2009 and it was determined that the increase can be reduced. A proactive approach in regard to the Water transmission mains upgrade will be temporarily delayed by shifting approximately \$ 12 million out of Fiscal years 11, 12 and 13. This and other adjustments, will now require a 5% revenue increase for Inside City rates and 6.5% revenue increase for Outside City rates for the next five fiscal years.

The Wastewater Division has reduced Fiscal Year vehicles by \$ 100,000. Present commitments in regard to the wastewater treatment plant upgrades and collection system rehabilitation prohibit any CIP reductions for Fiscal Years 10 and 11. The Wastewater Division will now require a 5% revenue increase for Inside City rates and 3% revenue increase for Outside City rates for the next five fiscal years.

Late fees for tardy payments are not currently collected by the City. In order to collect the necessary revenues on a timely basis, Staff would request an implementation of utility bill late fees to encourage timely payment. Staff suggests that a survey be performed with other local utilities to determine the locally charged fees before this policy change is implemented.

The three wholesale customers are Funkstown, Smithsburg and Williamsport. They receive a 16% rate reduction because the City does not maintain the lines.

A Public Hearing to receive testimony on the proposed Water and Wastewater rate increases will be held on Tuesday, September 8, 2009 at 7:00 p.m. Written notice will be provided to the wholesale customers, as required. An ordinance to increase the rates will be introduced at the September 8, 2009 meeting.

SPECIAL SESSION

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 meet again in Special Session at 6:57 p.m.

Partners in Economic Progress Program (PEP)

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember F. Easton, the motion to approve the Partners in Economic Progress Program (PEP) was removed from the table.

The motion tabled on August 25, 2009 reads as follows:

Councilmember L. C. Metzner made a motion to approve of the Partners in Economic Progress Program. The goal of this program is to provide incentives to spark private sector investment that contributes towards the revitalization of a defined area of the downtown. The program includes ten different incentives to be offered by the City of Hagerstown and is based on program eligibility criteria that will determine whether an applicant qualifies to participate in the program. The Partners in Economic Progress Program will be reviewed annually by Mayor and Council. The motion was seconded by Councilmember M. E. Brubaker.

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 amend the original motion to include the requirement that Staff report to the Mayor and City Council each and every application that is approved and the financial impact this would have on the budget.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, reminded everyone that the trash pick up schedule will be delayed by one day due to the Labor Day holiday.

MAYOR AND COUNCIL COMMENTS

Councilmember M. E. Brubaker congratulated Beverly Swaim Staley on the Governor's Appointment to the Transportation Board. He thanked staff for their work in securing a favorable bond rating and for working on the alternative bond issue savings.

Councilmember W. M. Breichner reported the Trash and Recycling Task Force met for the first time this week and had a good discussion. The recognition of emergency services ceremony at City Park today was a good event.

Councilmember L. C. Metzner congratulated those responsible for the service at City Park. He thanked staff for their professional response to an issue with his utility bill recently.

Councilmember A. C. Haywood thanked staff for their work on the water and wastewater rates and PEP. The Green Task Force members were sworn in today. One member received recognition from the Maryland Department of the Environment for his work with the Antietam Watershed.

Councilmember F. Easton had no additional comments.

Mayor R. E. Bruchey, II stated the ceremony at City Park was well planned. He thanked all who participated. He is sure the PEP Program will spur development.

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 7:08 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: September 22, 2009