

8TH REGULAR SESSION AND EXECUTIVE SESSION – September 22, 2009

EXECUTIVE SESSION – September 22, 2009

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 meet in closed session to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4 at 6:05 p.m. in Room 407, City Hall, Hagerstown, Maryland. The following people were in attendance: Mayor R. E. Bruchey, II, Councilmember W. M. Breichner, Councilmember M. E. Brubaker, Councilmember F. Easton, Councilmember A. C. Haywood, Councilmember L. C. Metzner, City Administrator Bruce Zimmerman, City Attorney William Nairn, Deborah Everhart, Economic Development Director, Larry Bayer, Manager of Community Development, Alfred Martin, Finance Director, Tim Gordon, Our Three Sons, LLC, Dwayne Dillard, Our Three Sons, LLC, Chris Shoop, Our Three Sons, LLC, Randy Catlett, Hagerstown Redevelopment Authority Chairperson and Donna Spickler, City Clerk. The meeting was held to discuss two loan requests from Mr. Gordon through the revolving loan fund program. No formal action was taken at the meeting. The meeting was adjourned at 7:10 p.m.

5TH REGULAR SESSION – September 22, 2009

Mayor R. E. Bruchey, II called this 8th Session of the Mayor and City Council to order at 7:19 p.m., Tuesday, September 22, 2009, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. Easton, A. C. Haywood, L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney William Nairn and D. K. Spickler, City Clerk.

The invocation was offered by Councilmember Forrest Easton. 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, September 29, 2009 at 4:00 p.m. at Elgin Station, Work Sessions beginning at 4:00 p.m. on Tuesday, October 6, 2009, Tuesday, October 13, 2009, Tuesday, October 20, 2009 and the Regular Session on Tuesday, October 27, 2009 at 7:00 p.m.

CITIZEN COMMENTS

There were no citizen comments.

PUBLIC HEARINGS

Consolidated Annual Performance and Evaluation Report (CAPER) for FY 2009

Larry Bayer, Director of Community Development, stated this public hearing is being held to permit interested parties an opportunity to comment on the Consolidated Annual Performance and Evaluation Report (CAPER). The City of Hagerstown must submit the CAPER on October 1, 2009.

The purpose of the CAPER is to permit City officials, HUD and the general public to review the activities undertaken utilizing Community Development Block Grant (CDBG) funds, determine if the City is meeting the regulatory requirements of the CDBG program, and to evaluate the City's progress made in meeting the goals established in its five year Consolidated Plan.

This CAPER provides details of the operation of Hagerstown's CDBG program for the fiscal year from July 1, 2008 through June 30, 2009. The budget for the program during this period was \$ 2,976,080, which included a CDBG entitlement grant of \$ 919,094, anticipated program income of \$ 1,299,597 and carryover from the previous year of \$ 757,389. Expenditures for the period totaled \$ 1,480,008.

There was no testimony presented.

The record will remain open for 10 days for written comment.

Comprehensive Zoning Map Amendments – Phase II

Kathleen Maher, Planning Director, stated the 2008 Comprehensive Plan sets forth new City policies to be implemented through a number of separate decisions, ordinances, and laws. One of these is to update and amend the zoning map to be consistent with the Plan's recommendations. The City last completed a comprehensive rezoning in 1977.

The recommended rezonings include specific recommendations of the Plan, as well as additional smaller scale recommendations from staff. Staff recommendations are based on a goal of eradicating illogical and outdated zoning designations where possible. Phase II of the Comprehensive Rezoning is now being considered. A set of recommended zoning map district revisions, along with the accompanying Findings of Fact, for Phase II of the Comprehensive Rezoning Process were presented for consideration.

These recommended revisions to the Zoning Map are the result of a lengthy and arduous review by the Planning Commission. A Public Review meeting was held by the Planning Commission on March 25, 2009. The Commission then took the comments reviewed under advisement, and along with the recommendations from the Comprehensive Plan, formulated the proposed zoning changes.

Ms. Maher entered the following as Exhibits:

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.

Area 2 – NE Corner of Eastern Blvd. & Leitersburg Pike (From AT & C1 to C4, R2, & R3)

Testimony:

Jack Byers, 242 Potomac Heights, Hagerstown, Maryland, urged the Mayor and Council to consider the past history of attempts to rezone the Evergreen parcel to commercial zoning. He stated he supports the Planning Commission's recommendation of R2 zoning since it is a compromise which would at least be a transition between the R1 and the C4 district.

Jason Divelbiss, 12916 Conamar Drive, Hagerstown, Maryland, representing the owners of the Evergreen parcel, submitted written comments. He stated the owners are opposed to R2 zoning and supports the Comprehensive Plan's recommendation for commercial general and the staff's original proposal for C4 zoning. He stated the owner would support C2 if the Mayor and City Council deem C4 too intense. The commercial general is appropriate because Eastern Boulevard is a natural dividing line between the residential and commercial developments in this area. They feel the neighborhood is already impacted by widened roads and commercial development and that development of this 3+ acre parcel would not significantly increase that impact. The owners feel that road access issues would be more flexible with commercial development rather than residential development because of the differences between a public street and a private driveway.

Doug Wright, 911 Potomac Avenue, Hagerstown, Maryland, requested that if the Evergreen parcel is rezoned to C2, that his billboard property also be rezoned to C2 rather than C4. The reason being the property cannot develop for anything else besides the billboard and C2 might bring a lower tax assessment.

Area 3 – YMCA – Eastern Blvd. (From AT to R1)

Testimony:

Jason Divelbiss, representing the YMCA, stated the owner objects to the special exception status which R1 zoning would result in for the YMCA. The property owner is requesting C2 zoning so the YMCA would be a principle permitted use. Ms. Maher stated she would confer with the City Attorney over whether the YMCA would have special exception status in place with the proposed rezoning or whether such status would need to be sought from the Board of Zoning Appeals.

Councilmember Brubaker pointed out that additional vehicular access to additional uses in this area will be difficult.

Area 4 NE Corner of Potomac and Manilla (C2 to R1)

No testimony was presented.

Area 5 – Pangborn Corporation (R2 and IG to N-MU)

Jason Divelbiss, representing Pangborn Corporation, stated the property owner agrees with the rezoning proposal and that they plan to seek the N-MU zoning when they submit an annexation request for the balance of the property which is located outside the City at present.

Area 6 – Fairgrounds Park and Vicinity (AT to R2 and R1)

No testimony was presented.

Area 7 – Jefferson Street area, east of Vale (C2 to R2 and C1)

Ms. Maher indicated the concerns raised by Deafnet have been relieved by the rezoning and text amendments that are being proposed.

Testimony:

Jason Divelbiss, representing the owner of a ¼ acre vacant lot on Jefferson Boulevard, stated the property owner is opposed to rezoning to C1. They feel that there is no single character to this area and therefore C2 is better suited than C1. The property owner feels that the lots are too small to allow for high intensity commercial activity. Their concerns have been relieved by the rezoning and the text amendments that we are proposing.

Area 8 – South side of E. Washington Street (R2 to C2)

Testimony:

Peggy Zeigler, 428 E. Washington Street, Hagerstown, Maryland, lives across E. Washington Street from the proposed rezoning and requests that her side of the street also receive the C2 zoning so she can sell it for redevelopment and not have to look at the rear of commercial development on the Dual Highway.

Jason Divelbiss, representing the property owner of 421 E. Washington Street, stated the property owner is supportive of the rezoning.

Mayor Bruchey asked if there is a different zoning classification that would fit this area better than C2. Mr. Bass indicated the theme in the Comprehensive Plan is to look at future land use and extend the C2 district.

Area 9 – Pangborn Blvd., North of the Dual (R3 to C2)

Mr. Bass indicted this change is being proposed to even the boundaries of the district.

There was no testimony presented.

Area 10 – Eastern Blvd. South, W. of Dual (IG to C2)

Ms. Maher indicated staff thinks the C2 zoning designation would be more appropriate, given the proximity to the commercial corridor.

Jason Divelbiss, representing the affected property owner, stated the property owner supports the rezoning.

Area 12 – Eastern Blvd. area (C2 to POM)

Testimony:

Richard Gruber, 1120 Professional Court, Hagerstown, Maryland owns Eastern Professional Center, which would have one building remaining C2 and one building rezoned to POM. He stated that while the buildings are occupied with POM uses now, he wants the flexibility of C2 zoning for the future.

Dr. Daniel Franklin, 1125 Professional Court, owns Mid-Atlantic Veterinary Hospital. He does not want to become a non-conforming use with the rezoning to POM. He stated his facility is a hospital and he would like it treated as such with the POM zoning. Staff stated that the groundwork has already been laid with the commercial text amendments up for introduction by differentiating between vet clinics with outdoor kennels and vet clinics without outdoor kennels. Those with operations entirely enclosed within the building are treated as medical facilities and will be permitted in a number of other districts, although not in POM. Staff sees making that change to allow Vet Clinics without outdoor kennels in the POM with the Land Management Code amendments this fall.

Jason Divelbiss, representing Ed Massoud, stated that L.J.'s restaurant and Sagittarius hair salon would become non-conforming uses with the rezoning to POM. Mr. Massoud feels that Conrad Court has developed differently than the other MKS streets with more general commercial uses and therefore feels this street should remain C2.

Area 13 – Harrison Farm (West of Howell Road) (IR, R2 to I-MU)

There was no testimony presented.

Area 14 – Southside of Edgewood Drive (C2 to POM)

Area 15 – Dual Hwy. and Hebb Road (R3, C2 to C4)

There was no testimony presented.

Area 16 – East side of Dual Highway (R3 to C2)

There was no testimony presented.

Area 17 – Large Tract NE of Day Road (R3, C2 to N-MU)

There was no testimony presented.

Area 18 – S/S of Hebb Road (AT to R3)

There was no testimony presented.

Area 21 – Wilson & Kuhn (IG to I-MU, R1)

Testimony:

George Burrey, 1100 Kuhn Avenue, Hagerstown, Maryland, owns land south of Third Street. He is opposed to rezoning to R1 because he wants the ability to sell the land with industrial zoning.

Area 22 – Frederick (south of Wilson Blvd.) (R3 to C2)

Testimony:

Jason Divelbiss, representing the owner of the vacant lot on west side of Kenley Avenue, stated that the 1985 special exception that approved the commercial percentage for the Kenley development included this parcel and that the property is assessed for commercial. The property owner would like the C2 zoning also.

Wes Churchey, 19803 Cool Hollow Road, Hagerstown, Maryland, owns the vacant lot. He stated that the properties fronting the south side of Wilson Boulevard in this area are all non-residential and therefore feels that commercial zoning for this parcel is appropriate.

Area 23 – All Star Court (C2 to I-MU)

Ms. Maher indicated that a letter is forthcoming from the affected property owner withdrawing his request that this area be rezoned from C2 to I-MU. Since this rezoning was not recommended by the Comprehensive Plan, but requested by the owner, staff would support leaving the parcel as C2.

The record will remain open for 10 days for additional comments.

The public hearing was closed at 8:45 p.m.

MINUTES

On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve the minutes, as presented, for the Mayor and Council meetings held on August 11, 2009, August 18, 2009, August 25, 2009 and September 1, 2009.

CONSENT AGENDA

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 approve the Consent Agenda as follows:

- A. Engineering: Ridge Avenue Traffic Island – Concrete Central, LLC (Hagerstown, MD) Not to exceed \$ 65,000.00
- B. Water Department:
 - 1. Check Valve for Pump 3 – Gardner, O’Conner, Inc. (Pasadena, MD) \$ 10,214.00
 - 2. Engineering Services for Dam Repairs and Tree Removal – Triad Engineering, Inc. (Hagerstown, MD) \$ 35,380.00
 - 3. Water Storage Tank (Henson Boulevard) Painting – Preferred Tank and Tower, Inc. (Evansville, IN) \$ 95,000.00
- C. Community Affairs: South Potomac Street Closures – October 20, 2009 (3:00 p.m. to 5:00 p.m.) for Barbara Ingram School for the Arts Ribbon Cutting and October 23, 2009 (5:00 p.m. to 10:00 p.m.) and October 24, 2009 (6:00 p.m. to 12:00 midnight) for events at The Maryland Theatre
- D. Human Resources: Voluntary Medcomp Plan Option: Medicare Part “D” Rx Plan for Retirees
- E. Community Affairs: 2009 Utility Relief Concert Budget and City Funding Support of \$ 2,500.00

UNFINISHED BUSINESS

Approval of an Ordinance: To Increase Water Rates

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember L. C. Metzner, the Mayor and Council unanimously

agreed by voice vote to approve an ordinance as introduced to increase the average unit cost of water rates by an average of 5% per year for in-City customers and 6.5% per year for customers outside of the City over the next five fiscal years. These rate increases are necessary to meet the revenue requirements of the Water Fund in order to keep the fund self supporting as determined by the recently completed cost of service study prepared for the City by the Municipal Financial Services Group. They are also important to ensure that the City is able to continue to operate and maintain the water system to provide reliable service to customers and to stay in compliance with appropriate Federal and State environmental safety standards and laws.

By spreading the required increases out over five years and through the use of special federal stimulus fund financing, growth related benefit charges and deferring several capital projects, the City has been able to significantly reduce the required rate increases from the 12.75% initially proposed in the 2010 budget for each of the next two fiscal years and the 5% increases each year thereafter.

The detailed individual rate changes in the volume charges and fixed charges by meter size are indicated, by fiscal year, in the body of the ordinance. The increased rates shall be effective for all bills rendered on or after November 1, 2009 for the current fiscal year (2010) and for all bills rendered on or after July 1st of each of the subsequent four fiscal years.

Discussion: Councilmember Breichner agreed that rates need to be increased because it is important to maintain the utilities in an appropriate manner. He does not support the escalating rate for more than 18,000 gallons in usage. He thinks it will be detrimental for large families, apartment building owners and for customers with an occasional underground leak.

Councilmember Brubaker stated this is a difficult time for rate increases but it is necessary. He and Councilmember Breichner worked with staff to decrease the initially proposed increase. The City has a responsibility to maintain a solid and sound water and sewer system.

B. Approval of an Ordinance: To Increase Sewer Rates

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 ordinance as introduced to increase the average unit cost of sewer rates by an average of 5% per year for in-City customers and 3.0% per year for customers outside of the City over the next five fiscal years. These rate increases are necessary to

meet the revenue requirements of the Wastewater Fund in order to keep the fund self supporting as determined by the recently completed cost of service study prepared for the City by the Municipal Financial Services Group. They are also important to ensure that the City is able to continue to operate and maintain the sewer system to provide reliable service to customers and to stay in compliance with appropriate Federal and State environmental standards and laws.

By spreading the required increases out over five years and through the use of special federal stimulus fund financing, growth related benefit charges and deferring several capital projects, the City has been able to significantly lower the required rate increases from the 11.5% initially proposed in the 2010 budget for each of the next two fiscal years and the 3.5% increase each year thereafter.

The detailed individual rate changes in the volume charges and fixed charges by meter size are indicated, by fiscal year, in the body of the ordinance. The increased rates shall be effective for all bills rendered on or after November 1, 2009 for the current fiscal year (2010) and for all bills rendered on or after July 1st of the subsequent four fiscal years.

NEW BUSINESS

A. Introduction of an Ordinance: Amending the City Code by Adding Chapter 62, Bottle Clubs

Action: On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember F. Easton, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to amend the City Code by adding Chapter 62, entitle *Bottle Clubs*. The chapter prohibits bottle clubs from operating within the corporate limits of the City of Hagerstown, except as provided in Section 62-3, Paragraph A., which allows for a restaurant which has accommodations for no more than 74 customers and a valid Bottle Club License to allow the consumption of beer and wine on its premises. The license fee will be \$ 100.00, or a renewal fee of \$ 50.00 for a current, valid licensee applying for a subsequent license year.

B. Introduction of an Ordinance: Land Use Management Code Text Amendment to Modify Commercial District Requirements, ZT-2009-01

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 text amendment to the City Code, Chapter 140, Land Management Code,

Article 3., Article 4., Section F., and Article 5., Section I, to modify the Commercial District Requirements.

The two items involving Our Three Sons, LLC were removed from the agenda - (Items C and D).

E. Approval of Amendment to the City's Water and Wastewater Policy

Action: On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve an amended City of Hagerstown Water and Wastewater Policy.

F. Approval of Expenditure of Funds for Removal of Trees and Repair of the Toe Drain at the Edgemont Reservoir Dam and the Removal of Trees at the Smithsburg Lagoon Embankment – Dam Repairs and Tree Removal – W. F. Delauter & Sons, Inc. (Emmitsburg, MD) Application Permit for Doleman Black History Museum

Action: 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 approve the expenditure of \$ 152,358.65 for the removal of trees and repair of the toe drain at the Edgemont Reservoir dam and the removal of trees at the Smithsburg Lagoon embankment in order to comply with the regulatory requirements of Maryland Department of the Environment – Dam Safety Division. Water Division CIP 168, account number 5285001-5814 currently has \$ 190,000 available for disbursement.

G. Approval of Expenditure of Funds for Construction of 6.4 Million Gallon Park Avenue Water Tank – West End Tanks II – Construction Phase – Pre-Load, Inc. (Hauppauge, NY) \$ 5,435,840.00

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 the expenditure of \$ 5,435,840 for the construction of a 6.4 million gallon water tank located on Park Avenue. Water Division CIP 275, account number 5285001-5814-CO275 currently has \$ 5,802,125 available. Funding sources for this project will include \$ 3.3 million in ARRA funding at a 0% interest rate and the remainder from the Maryland Department of the Environment's State Revolving Loan Fund.

Discussion: Councilmember Breichner stated he read through the information staff provided for the water tower that he requested and found the information he was looking for.

Councilmember Brubaker stated the estimated savings over the life of the tank is \$ 3.8 million.

H. Approval of Downtown Holiday Parking Program

Action: On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve the recommended downtown holiday parking plan to allow two hours of free parking in the North Potomac Street parking deck on weekdays beginning Monday, November 23, 2009 through Friday, December 25, 2009. Free parking in the deck after 7:00 p.m. in the evenings and all day Saturday and Sunday will remain unchanged.

Parking at the downtown central business district street and lot meters will continue to be free after 5:00 p.m. and all day Saturday and Sunday as it is normally throughout the year.

Also, parking enforcement of metered spaces along the streets and in city owned lots would be suspended during the city recognized holidays of Thanksgiving (November 26 and 27, 2009) and Christmas (December 24 and 25, 2009).

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, had no additional comments.

MAYOR AND COUNCIL COMMENTS

Councilmember W. M. Breichner had no additional comments.

Councilmember M. E. Brubaker urged everyone to visit Pangborn Park and see the Born Learning Trail.

Councilmember F. Easton participated in the cleaning of the Antietam Creek on September 19, 2009.

Councilmember A. C. Haywood is concerned about the concept plan presented by the Housing Authority for a senior living facility on Baltimore Street. She stated services for senior citizens are too far away from this site.

Councilmember L. C. Metzner had no additional comments.

Mayor R. E. Bruchey, II thanked employee Junior Mason for his hard work and dedication.

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 9:04 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: October 27, 2009