

36TH SPECIAL SESSION, WORK SESSION AND EXECUTIVE SESSION – October 10, 2006

36th Special Session – October 10, 2006

Mayor R. E. Bruchey, II called this 36th Special Session to order at 4:00 p.m. Present with the Mayor were Councilmembers K. B. Aleshire, L. C. Metzner, P. M. Nigh, A. Parson-McBean; City Attorney Mark Boyer, City Administrator Bruce Zimmerman and City Clerk D. K. Spickler. Councilmember K. S. Cromer was not present but was participating in the meeting via speaker phone.

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the Mayor and City Council unanimously agreed by voice vote of all members present to open the 36th Special Session.

Suspension of a Portion of Rules of Procedure

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote of all members present to, pursuant to Section 7.1 of the Rules of Procedure, suspend the provisions of the Rules of Procedure adopted by the Mayor and Council on the 21st day of June, 2005 which require a member of the Council to be present to participate in and vote at any Work, Special or Regular Session of the Mayor and Council for the period of time beginning upon the approval of this Motion and extending through November 30, 2006, inclusive, for the purpose of accommodating Councilmember Cromer's participating in said meetings during her period of convalescence and recuperation from a scheduled medical procedure. During this period Councilmember Cromer may participate in all meetings via speaker phone to enable the public observation of her participation in such meetings, the identity of Councilmember Cromer shall be satisfactorily verified by City Staff prior to her participation in any meeting, and Councilmember Cromer's participation in such meetings via speaker phone shall not be counted toward the establishment of a quorum at said meetings. The remainder of the Rules of Procedure not specifically suspended hereby shall remain in full force and effect.

Discussion: Councilmember Metzner stated it would be appropriate to include this provision in a charter reform discussion.

Motion carried, 4-0 with Councilmember K. S. Cromer abstaining from the vote.

Approval of Loan to Paradise Hospitality Group, LLC through Hagerstown Revolving Loan Fund

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a loan in the amount of \$ 100,000 to PARADISE HOSPITALITY GROUP, LLC through the Hagerstown Revolving Loan Fund for use as working capital by the borrower. The loan shall have a term of five (5) years with an interest rate of nine and one quarter (9.25%) percent per annum. Security shall be a second mortgage lien on the improved real estate located at 431 Dual Highway, Hagerstown, MD. This loan may not be subordinated. Upon the closing of any subsequent loan secured by a lien on this property, this loan becomes immediately due and payable. Councilmember Aleshire and Councilmember Metzner amended the motion to include the statement: shall be subject to the terms and conditions of a loan commitment to be dated October 11, 2006.

City of Hagerstown – United Way Incentives

Mayor Bruchey indicated Councilmember Aleshire had asked that this be placed on the agenda for a vote by the Council

Action: Councilmember L. C. Metzner made a motion to approve a 2006 United Way Thank You Incentives Program providing for three prize winners for each of four donation levels as outlined in the attached schedule of donation levels and prizes. Councilmember A. Parson-McBean seconded the motion. This list includes four time-off prizes.

Discussion: Councilmember Aleshire stated if time off was included in the incentive plan, the cost would be approximately \$ 700, which would provide an incentive to increase the United Way donations by \$ 11,000. He is confused that money could be found for the Council's development but not for this.

There was considerable discussion about why this was being discussed again, when it was decided at last week's meeting.

Motion failed, 3-2 with Councilmember K. S. Cromer, Councilmember P. M. Nigh, and Councilmember A. Parson-McBean voting No.

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the Mayor and City Council unanimously approved by voice vote a 2006 United Way Thank You Incentives Program providing for two prize winners for each of four

donation levels as outlined in the attached schedule of donation levels and prizes.

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the Special Session was closed at 4:19 p.m.

WORK SESSION – October 10, 2006

Vacant Structures Draft Ordinance

John Lestitian, Chief Inspector Office of Code Compliance, Chief Gary Hawbaker and Chief Arthur Smith were present to discuss the vacant structures draft ordinance.

In accordance with the Mayor and Council direction of the August 15, 2006 meeting, staff sought additional input from Councilmembers Cromer, Nigh, and Metzner. The concerns expressed during these separate discussions centered on vacant commercial structures and in particular the following:

1. Public safety – at the core of this proposal is the need to improve public safety through the licensing and inspection of vacant structures. Vacant structures are frequently the location of illegal activity and fires.
2. Scope of inspections – The inspections will be interior and exterior inspections. In order to meet the public safety goal, there is a need to ensure that a building is secure, free from fire and electrical hazard code violations, and is being maintained so as to not cause diminution to neighboring properties.
3. Required improvements – The improvements required will be limited to the abatement of the relevant code violations. A property owner will only be required to abate the violations identified in the scope of the inspection.
4. Definition of a vacant commercial structure – In being true to the core purpose of improving public safety it is recommended that the definition of a commercial vacant structure be edited. This change is meant to include Vacant Upper Level as defined in the attached proposed ordinance. This change will expand the number of structures required to be licensed but as proposed would not require a fee for such defined structures.
5. Fees – The fees presented at the last meeting are reasonable in terms of covering the basic cost of the program and are not punitive in nature. However, through these discussions the issue was raised whether or not the cost of the program should in part be supported from the general fund. Staff offers for consideration maintaining the fee structure as presented on August 15, 2006 for a Vacant Commercial Structure and general funds

utilized for Vacant Upper Level category as defined in the proposed ordinance.

6. Need for two ordinances – Staff believes maintaining separate ordinances for vacant residential and vacant commercial is best. As such, staff maintains the recommendation to have a separate ordinance for Vacant Residential Structures as presented on August 15, 2006.

Mr. Lestitian indicated the ordinance will close a loophole with the rental licensing program. Currently, a landlord can empty the building to get around code compliance.

Councilmember Cromer stated the only people who will pay the fee are those that have continually vacant properties. Councilmember Bruchey asked if a condemned building would be considered a vacant structure. Mr. Lestitian stated the owner would have to pay the fee for the vacant building license.

A new home would be considered vacant after twelve months. Councilmember Aleshire would like a provision included to exempt new structures. Councilmember Nigh and Councilmember Parson-McBean agree with the way the ordinance is written. Councilmember Nigh stated she thinks new structures could be exempted because this ordinance is to provide safety. Mr. Boyer indicated vacant structures have the potential to be less safe because there is no occupant.

Mayor Bruchey asked what the benefit is for the fee. Councilmember Parson-McBean stated it is a future value and part of the services that are provided by the City of Hagerstown.

The Landlord Association has indicated they are opposed to any further regulation.

It is anticipated that that 20 condemned units would be subject to this ordinance. Councilmember Metzner stated he is concerned about fire safety in these condemned properties. Chief Hawbaker indicated that many of these structures are required to have fire suppression systems, whether vacant or not.

Mr. Lestitian stated there is a vacant property on Mulberry Street and the owner has not been located. Staff is asking the court for permission to demolish the building. He stated the goal is not to tear down properties, but to make them safe.

The fee scale would increase as properties continue to be vacant. Mr. Lestitian stated it is reasonable to expect that as buildings age, there would be more hazards.

Councilmember Aleshire asked if properties being redevelopment would be subject to the fees. Mr. Lestitian stated common sense would be used for such cases. The ordinance would also apply to city properties. Mr. Boyer stated property owners are given a reasonable amount of time to address the code violations.

Multi-use buildings with vacant floors would be considered vacant under this ordinance.

Councilmember Aleshire expressed concern that someone who is working on a house and obtaining permits will be required to pay the fees. A suggestion was made to exempt the fee for one year from the date of the issuance of building permits. Mr. Boyer will add this exemption to the ordinance. The commercial section of the ordinance will be revised and presented for further review.

It was the general consensus of the Mayor and City Council to include the residential vacant structures ordinances on the agenda for the regular session for introduction.

Excessive Use of Police Services Draft Ordinance

Chief Arthur Smith and Mark Boyer, City Attorney, presented a revised ordinance for review. The changes are in the definition of disturbance. The revision excludes assault and includes an expanded alcoholic beverage definition to include public consumption or open container violations.

It was the general consensus to include the introduction of the ordinance on the agenda for October 24, 2006.

Subdivision Ordinance

Stuart Bass, Comprehensive Planner, stated the Subdivision Ordinance has been through an extensive review process. The current ordinance dates to 1976.

The major revisions include:

1. Mandatory Sketch Plan (similar to a concept plan)
2. Mandatory open space
3. Mandatory sidewalks
4. Mandatory street trees
5. Bike routes encouraged
6. Connectivity to adjacent lands and roads
7. Preservation of natural features is encouraged
8. Cul de sacs discouraged
9. Grid street system is encouraged
10. Buildings must be oriented towards a street, unless an adequate buffer is provided
11. Alleys are encouraged
12. Gated communities are prohibited
13. Private streets are prohibited
14. Preliminary Plat renamed Development Plan
15. Condominium Plats required as simplified plat
16. Final Plat approval must be coordinated with SCAP

17. Increase violation penalties to match Zoning Ordinance (from \$50 up to \$1,000)
18. Various technical updates

Councilmember Aleshire stated the definition for open space includes language that the open space is not intended to be used for forestation areas or small fragments of land that cannot provide any recreational value.

A Public Hearing is scheduled for October 24, 2006.

Adaptive Reuse of the Roslyn Building

Larry Bayer, Manager of Community Development, was present to discuss the adaptive reuse of the Roslyn Building. On August 8, 2006, staff presented a proposal to create three residential units on the third floor of the Roslyn Building with the City retaining ownership. Staff was directed to look at alternate ways to achieve the desired outcome without the City owning the units.

A local developer, familiar with condominiums and residential redevelopment, was contacted and asked to look at the building and tell us if housing was feasible. After touring the building and preparing some preliminary estimates, they feel that by including both upper floors, 7-8 units could be created which would make such an undertaking financially feasible.

Staff continues to be supportive of the idea of creating housing in the Roslyn and, if the Mayor and City Council are in agreement with the concept, would recommend the following steps be taken:

1. Develop a plan to condo the building
2. Arrange for an appraisal of the upper floors to be completed
3. Develop and publish an RFP for the project

Councilmember Metzner recommended developing a condominium plan. Mayor Bruchey asked if using part of the building for city offices is still being considered. Mr. Bayer indicated it would cost approximately \$ 100,000 to provide a weather resistant walkway to connect the two buildings. The building lends itself to residential development. An elevator has been installed, parking is available and the residences would qualify under the downtown residency program.

A condo plan will be developed and brought to the Mayor and City Council for their review.

Market House HVAC System

Eric Deike, Public Works Manager, was present to discuss the results of M.S. Johnston's (MSJ's) redesign of the project. The key points of the revised design include:

1. Divide the project into two phases: (A) air conditioning, and (B) heating. Doing this will allow the City to proceed with the air conditioning installation with funds that are already budgeted, and to complete the heating phase of the project at a later date when funds are available for its completion. The intent is to have the air conditioning system operational by the summer of 2007.
2. Install the major components of the air conditioning system inside the building instead of mounting them on the roof. Doing this will significantly cut project costs because it will eliminate the need for enforcement and repair of the building's roofing system.
3. Design the air conditioning units so that they could be converted into supplemental hot water heating units in the future if desired. By ordering the units with heating coils that can be connected in the future, this will give the City more flexibility in the future to efficiently heat the building.
4. Keep the existing steam boilers in operation as the building's heating system until funds are available to replace them with a new boiler system. Staff feels that the existing boilers can be kept in service temporarily until funds are available to replace them.

MSJ's proposed cost for Phase I of the project is \$ 118,850. Staff estimates that the total cost for Phase I (including additional work that must be completed) will be approximately \$125,000 - \$130,000.

For Phase II of the project, MSJ's budget estimate for this work was \$80,000; however, there are some technical details on the boiler replacement that need to be clarified before a firm cost can be calculated. Staff recommends that Council budget \$100,000 for this work in the 2007-2008 budget, with the source of the funding being a future General Fund Bond Issue.

It was the general consensus of the Mayor and City Council to approve the plan for the HVAC System.

Jonathan Street Utility Replacement & Streetscape Enhancements – Church Street to Pennsylvania Avenue

Rodney Tissue, City Engineer, was present to discuss the Jonathan Street project. The design of the project is 70% complete and the project's scope-of-work must be finalized so the design efforts can be completed. Staff is seeking feedback from the Council on schedule and financing for this major public works project.

Burying selected overhead wires (communications, signal, HPD camera system) and moving the rest (City Light, Antietam Cable, and hopefully Verizon) to new poles in the rear of the properties is a major decision that needs to be made. It appears that since the work is for aesthetic improvements only, the City would be fully responsible for the cost of relocating the wires.

Based on the 70% complete plans, the current estimate of the project is \$3,900,000, excluding the work with the overhead wires. If this scope of work is selected, staff feels construction could begin in 2007.

If burying selected overhead wires and moving the rest to new poles in the rear of the properties is included to improve the aesthetics of the streetscape, the additional estimated cost is \$1,350,000. If this is included, the project could not begin before 2008 (at the earliest) because right-of-entry agreements from every property owner fronting the project would be needed.

Funding the project will be by General Obligation bonds for both the General Fund and the Water and Sewer fund. The funding would be approximately as follows: \$2,325,000 from General Fund, \$1,300,000 from Water and Sewer Fund, and \$275,000 from City Light.

If relocating the overhead wires is added to the project, the additional cost (\$1,350,000) would be almost entirely the responsibility for the General Fund, with City Light's relocation costs being about \$120,000 of this total.

Councilmember Metzner stated he would prefer to have the work done next year, rather than put it off for multiple years.

Councilmember Parson-McBean would like to have the project started but she is concerned the residents will have the same problems with birds on the wires. She stated the residents should see an improvement and the lines should be moved to the rear of the properties. Mr. Tissue stated a public meeting was held to receive input from residents. The meeting was not well attended. She asked if the project could be started and then move the lines at a later date. Mr. Tissue stated the conduit for lines should be put in at the same time the street is upgraded.

The only way to move the project forward in 2007 is to leave the lines in the front. Councilmember Metzner asked that the property owners that would have to sign the agreements be identified. He also asked that this be discussed at a future work session.

Councilmember Cromer asked what the cost is for the things that must be done, such as replacing the water and sewer lines. Mr. Tissue indicated the majority of the \$ 3,900,000 million estimate is for the things that must be completed. Only \$ 50,000 is for incidentals.

Downtown Holiday Parking Program

Alfred Martin, Finance Director, discussed the downtown holiday parking program. The City will be kicking off the holiday season downtown on Monday, November 20, 2006 with the annual Hollyfest celebration.

Staff is recommending that the City provide two hours of free parking in the North Potomac Street Parking Deck during the day on weekdays and free parking in the deck in the evenings after 7:00 p.m. and all day Saturday and Sunday. Parking at the downtown street and lot meters will continue to be free after 5:00 p.m. and all day Saturday and Sunday, as it is throughout the year.

Several downtown merchants have asked the City to consider free metered parking during the holiday season. In the past, there were problems controlling employee parking at the street meters. It is estimated that the revenue impact on the Parking Fund of lost revenue from the street meters would be about \$1,850.

Councilmember Metzner does not think the meters should be free. He agreed there were problems when this was done before.

Mr. Martin suggested working with the City Attorney on recommendations from the Finance and Police Department on changes to Chapter 60 the City code regarding parking regulations. Many people are confused about what days the parking meters are enforced. He suggested clarifying the code to reflect that “official holidays” are the days that City Hall is closed. Staff also recommended opening the parking decks to free public parking in the evenings after 7:00 p.m. to encourage patronage of downtown businesses and the new university of MD Center in the evenings.

Councilmember Metzner stated he would recommend that there be a fee for parking in the deck during events such as the Bluesfest. Councilmember Aleshire agreed and supports free parking in the evenings and weekends at other times.

Councilmember Parson-McBean stated the City should be gaining revenue from the special events. Councilmember Cromer agreed.

The code will be reviewed in order to clarify the days the parking meters are enforced. The holiday parking will be the same as in the past.

License Agreement for 122 North Potomac Street

This item was postponed until the next work session.

City Administrator's Comments

Bruce Zimmerman, City Administrator, thanked the Mayor and City Council for working through difficult issues during this meeting.

Mayor and City Council Comments

Councilmember A. Parson-McBean stated Building Community is hosting a forum on October 11, 2006. She thanked the Mayor and Council for their support of her attendance at the Rawlings Fellowship and for continued prayers for her father.

Councilmember K. B. Aleshire hopes the Mayor and Council discuss their goals soon.

Councilmember K. S. Cromer asked how many other streets are in the same condition as Jonathan Street. Mr. Tissue stated there are no other roads with four major utilities in this condition.

Councilmember Cromer stated, in response to a recent mail call entry, she is aware of all the years city employees have done volunteer work and that she has not forgotten that some city employees volunteered their time to help with her election campaign. She stated a citizen had asked if her participation in the meetings from home was costing the taxpayers anything. She indicated it is not. She wants to fulfill her responsibilities and duties as a councilperson. She thanked everyone for their cards, notes, flowers and prayers.

Councilmember L. C. Metzner had no further comments.

Councilmember P. M. Nigh stated there have been two more incidents involving pit bull terriers. She will be asking the County Commissioners about the status of the Animal Control Ordinance. The Harvest Hoe Down will be held on Saturday, October 14, 2006. There will also be a community yard sale that day at Fairgrounds Park.

Councilmember Metzner stated the animal control ordinance needs to be discussed again. The issue of animals that have been deemed dangerous and continue to attack needs to be addressed.

Mayor R. E. Bruchey, II stated the United Way Day of Caring was held, with salaried and non-salaried employees, being allowed to participate during their regular work hours.

He rode with the COPS group on Saturday.

Councilmember Aleshire reminded everyone that the Downtown Live festival will be held October 21, 2006. The price is \$ 10.00 in advance and \$ 15.00 at the gate.

EXECUTIVE SESSION – October 10, 2006

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the Mayor and City Council unanimously agreed by voice vote of all members present to meet in closed session at 6:30 p.m. to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, to remain in the State, #4. No formal action was taken at the session. The meeting was held in the Council Chambers, 2nd floor at the City Hall. The meeting was adjourned at 7:02 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: