

WORK SESSION AND 86TH SPECIAL SESSION – October 21, 2008

Mayor R. E. Bruchey, II called this Work Session of the Mayor and City Council to order at 4:00 p.m., Tuesday, October 21, 2008, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers M. E. Brubaker, K. S. Cromer, L. C. Metzner, P. M. Nigh and A Parson-McBean; City Administrator Bruce Zimmerman, and City Attorney John Urner.

Proclamation – Character Counts! Week

Mayor Bruchey read a proclamation in recognition of Character Counts! Week. Carolyn Brooks was present to receive the proclamation.

March of Dimes Prematurity Awareness Day

Carla Deter, Student Intern at the Western Maryland Division, was present to discuss the March of Dimes National Prematurity Awareness Day. This illumination campaign will serve as a reminder that the rate of premature births in the U.S. is growing and over a half million babies are being born too soon or too small each year. March of Dimes, Western Maryland Division is asking the community to participate in Prematurity Awareness Day on November 12, 2008 by lighting homes, businesses, schools, landmarks with pink and blue lights. The clock tower at City Hall will be illuminated with pink and blue lights.

Preliminary Agenda Review

Councilmember Nigh asked that a five year recognition of the Veteran's Memorial on Memorial Boulevard be held next year.

Consent Agenda

- A. Community Affairs: 2008 Utility Relief Benefit Concert Budget
- B. Engineering: Fairgrounds Park Soccer Field Irrigation – KT Irrigation (Chantilly, VA) \$ 91,828.00

Rodney Tissue, City Engineer, stated the parks department wanted to get all the fields irrigated. A funding plan has been proposed in which funding for amenities at the pool would be transferred to this project. The amenities cannot be completed for the budgeted amount because of health department regulations. The majority of the funding is from State Program Open Space. The Parks Department will be doing \$ 11,000.00 of the work in-house.

- C. Water/Wastewater Department:
 - 1. Contract for ENR/UV Construction Contract – Conewago Enterprises, Inc. (Hanover, PA) \$ 13,532,100

2. Headworks Construction Contract – Johnston Construction Company (Dover, PA) \$ 3,131,800
3. Hitachi Pumps – AR&E (Hagerstown, MD) \$ 11,966.00
4. Magna Flocc LT Polymer – George S. Coyne Chemical Co., Inc. (Croydon, PA) \$ 38,000.00

Michael Spiker, Director of Utilities, stated the ENR/UV Construction Contract and the Headworks Construction Contract are both being partially funded through grants and revolving loan funds from the MDE. The loan applications are being finalized. Seventeen of the twenty-one parameters in the Consent Judgment have been completed. Councilmember Brubaker noted that both these contracts are the low bidders. The City has been awarded an \$ 800,000 grant and approved for a \$ 2 million loan for improvements to the collection system.

- D. Light Department: Transformers – National Transformer Sales, Inc. (Raleigh, NC) \$ 28,609.00

Cross Easement Agreement/Arts & Entertainment Parking Deck/Bowman LLC

When the Arts & Entertainment Parking Deck was constructed, the tight site constraints dictated that numerous easements would be needed for the long term use and maintenance of the deck utilities. The first phase of development is complete and the City is ready to record a plan and “Easement Agreement” to memorialize these easements.

The easement includes:

To the favor of the City:

1. Public access across courtyard in the rear of the Walker House
2. Easement for long-term maintenance of the west façade of the deck
3. Waterline service from South Potomac Street
4. Elevator equipment in the basement of Bowman Building

To the favor of Bowman 2000 LLC:

1. Roof drain conveyance through City property to Alley 3-42
2. Sewer lateral conveyance through City property to Alley 3-42
3. Electric service through City property to Alley 3-42
4. Access in the parking deck to the rear of the Potomac Walk building where small trucks can collect trash

It was the general consensus to move forward with the easements.

Approval of Quit Claim: 373 and 379 Key Circle/Portion of Alley #1-6

On May 21, 1968, the City Council approved the closure of a portion of Alley 1-6. In August 1968, the City executed a quit claim deed for the southern half of the alley right-of-way to the adjoining property owner to the south. However, the northern half of the

alley was never conveyed to the adjoining property owners. One of these owners (Benjamin Oliver) has now requested the conveyance of the northern portion of the right-of-way to them.

It was the general consensus of the Mayor and City Council to approve the quit claim.

Downtown Holiday Parking Program

It was the general consensus of the Mayor and Council to provide two hours of free parking in the North Potomac Street Parking Deck during the day on weekdays from November 24, 2008 through December 26, 2008.

This completed the review of the preliminary agenda review.

Request to Change Winter Holiday Schedule

Donna Messina Frazier, Director of Human Resources, reported that the City's unions have requested permission to change the Christmas holiday from Wednesday, December 24, 2008 and Thursday, December 25, 2008 to Thursday, December 25, 2008 and Friday, December 26, 2008. This change would only be effective in 2008.

It was the general consensus of the Mayor and City Council to change the City's Christmas holiday to Christmas Day and the day after Christmas.

Maryland Theater Request- South Potomac Street Closure

Karen Giffin, Director of Community Affairs, reported the City received a request for the closure of South Potomac Street on Friday, October 31, 2008 from 4:00 p.m. to 2:00 a.m.

Staff determined that the closure would entail having one officer on duty, which would cost \$ 450 plus the cost of detour signs which would be \$ 400. These funds are available from the Public Functions Account.

Chief Gary Hawbaker opposes the closing of South Potomac Street for the same reason as in the past but the Hagerstown Fire Department will implement their contingency plan if so directed by the Mayor and Council.

Councilmember Nigh asked what function will be taking place during the closing of the block. Jenni Hatcher, Executive Director of the Maryland Theater, stated the request was made to accommodate the increased attendance at the Wind Down Friday events. She anticipated it would be a respectable event. This could help promote the downtown businesses. They may serve hot chocolate during Trick or Treat hours.

Mayor Bruchey stated the time was requested by the Hagerstown Police Department. Councilmember Nigh would not be in favor of closing the block.

Councilmember Parson-McBean is not clear on the purpose of closing the street. Mayor Bruchey stated they expect the Wind Down Friday night on October 31, 2008 attendance to be substantially larger and providing room for people to move into the street would be helpful.

Councilmember Metzner stated it took vision to see what this block of South Potomac Street could be. Closing the street on October 31, 2008 will be a celebration of what is occurring downtown.

Councilmember Brubaker suggested changing the time to close the street to 6:00 p.m., after the evening rush hour. Councilmember Cromer stated she felt the time should stay at 4:00 p.m. Ms. Giffin stated the 4:00 p.m. time was suggested in order to close the street prior to the evening rush hour. Councilmember Brubaker asked where the event is held if weather is inclement. Ms. Hatcher stated the band is set up inside during threatening weather. If it is cold, the event would still be held outside. People have been excited about the Wind Down being held during the cooler months. Councilmember Brubaker is concerned how alcohol consumption would be contained if there is no barrier.

Ms. Hatcher stated the main focus of the Wind Down Friday series has never been about the availability of alcohol. She stated closing the street at 6:00 p.m. would not cause a logistical problem for the Theater.

Councilmember Cromer suggested reopening the street at 9:00 p.m. Mayor Bruchey suggested closing the street from 5:30 p.m. to 11:00 p.m., which should be a compromise that everyone can live with. It was the general consensus to close the first block of S. Potomac Street on Friday, October 31, 2008 from 5:30 p.m. to 11:00 p.m.

Ms. Giffin reminded everyone that the next veteran's trip will be held on October 22, 2008. She thanked the sponsors.

McBare's/Double T Chronological History

Alfred Martin, Director of Finance, provided a history of the McBare's/Double T properties. The building is owned by the Hagerstown Washington County Industrial Foundation (CHIEF) and the City is involved through a mutual assistance agreement with CHIEF. The agreement spells out the roles and responsibilities of each party. Section 2 defines CHIEF's obligations and Section 3 defines the City's obligations. CHIEF is the owner of property, but the City is the responsible party for any expenses on the property not covered by income from the property. The City is also responsible for paying any taxes on the property, which the City has been doing on an annual basis. The first floor of the property is leased to the Maryland Theater and is used by them for their offices and snack bar.

The current Mutual Assistance Agreement between the City and CHIEF was put in place when CHIEF acquired the property from the City for \$ 250,000 on June 13, 2002 and transferred a long term loan from the City for \$ 111,088.50 that had been in place with CHIEF since the City partnered with them to acquire the Double T Lounge in March, 2000. The agreement requires that CHIEF keep the City informed of activities regarding the property and seek the City's consent to changes in use of the property.

The initial City purchase of the McBare's property in 2001 was made from the City's economic development budget as a development incentive to help move the Arts & Entertainment District concept plan forward. Its purchase and the joint venture with CHIEF on the acquisition of the Double T Lounge, helped remove two problem establishments from the Arts & Entertainment District and their liquor licenses. The City and CHIEF in 2002 terminated the original assistance agreement on the Double T to allow the City to become a 100% owner of that property to allow for the construction of the new Arts & Entertainment District Parking Deck and the sale of the front of the property to a private developer to tear the old tavern down and construct a new building in its place.

Sharon Disque, Hagerstown Neighborhood Development Partnership, Inc., presented a redevelopment plan for the upper floors of the McBare's property. The building's prime location makes it an obvious candidate for the introduction of a small number of quality market rate rental units. The original façade would be restored and natural light would be preserved and maximized to each unit. The units would be finished to a higher design standard than ordinarily found in Downtown Hagerstown. Individual outdoor spaces (balconies) would be created where possible. The existing street-front entrance to the upper floors would be maintained.

Councilmember Brubaker understands this discussion is seeking support of the Council to apply for Community Legacy grant funding for assisting in completing the redevelopment project. He would like to hear from the Maryland Theater for input about the project.

Ms. Disque stated the City's match could be the cost of the property acquisition. Kathleen Maher, Planning Director, informed the Council that a match is not required, but it does help in competing for funding.

Councilmember Nigh asked if the Maryland Theater would be the owner of the building. She is concerned that there will be a significant amount of City money invested in the project.

Ms. Disque stated the most likely outcome would be that this building become home to a significant anchor in the Arts and Entertainment District.

John Urner, City Attorney, stated the agreement indicates CHIEF would sell the property, at a mutually deemed appropriate time, to a property owner that would keep the theme of the Arts and Entertainment District. He asked if the Maryland Theater is the

anticipated end owner. Ms. Disque stated not without the Maryland Theater Board approval. This could cause an amendment to this agreement.

Mayor Bruchey asked if CHIEF had ever tried to sell this building. Ms. Disque is not aware CHIEF did this.

Councilmember Brubaker asked how this coordinates with what might happen with the Maryland Theater.

Mr. Zimmerman stated endorsing the application for Community Legacy grant funding would not commit the City into funding for the project.

Councilmember Parson-McBean believes there are other projects that would take precedence over this project.

There was a consensus to endorse the application.

Property Maintenance Code Requirements for Existing Building Minimum Ceiling Height

John Lestitian, Director of Code Administration, addressed the Mayor and Council in reference to prevailing code requirements for minimum ceiling heights for habitable spaces in existing residential structures. The current minimum ceiling height requirement for existing buildings is seven feet. This is delineated in the Property Maintenance Code of the City of Hagerstown. The current requirement for new construction is seven-foot six-inches.

The 1927 Edition of the Building Code of the City of Hagerstown required that every room in tenement houses have a ceiling height minimum of eight feet. Since that time, the City has relaxed the standard for existing structures to be seven foot minimum ceiling heights. In large measure this lessening of the requirement was adopted to deal with the magnitude of structures illegally altered or constructed. The seven foot standard maintains the minimal level of safety.

The City's Property Maintenance Code is based on the International Property Maintenance Code. The International Code Council in adopting its standards ensured that their established standards for ceiling heights were not in conflict with the standards established by the national Fire Protection Association. The respective organizations do have some differences on the application of the standard. However, according to both organizations, the rationale for establishing minimum ceiling heights is to provide an area for smoke to accumulate in order to facilitate egress. The rationale for setting minimum ceiling height requirements centers on life safety.

Code Administration staff regularly inspect existing structures. Violations of this Property Maintenance Code requirement are typically found in basement apartments. Occasionally, ceiling height violations are found in other sections of the structures (attic

spaces converted to apartments, and additions added to structures). Typically, such conversions were conducted without permits.

In practice, code officials review the totality of the circumstances and if a unique circumstance exists may allow for a slight modification as authorized in Property Maintenance Code Section 105.1 Modifications. Code officials may permit such a modification for an existing structure with an original intended use, provided that requirements for other life safety codes are exceeded.

Staff evaluates these cases and makes the best determination for the safety of residents and staff. A change lessening the minimum ceiling height requirement would pose a significant risk to residents and first responders. Staff strongly recommends that the City's current required minimum ceiling height of seven feet for existing buildings remain in full effect.

Councilmember Cromer asked what happens with existing buildings that have a lower ceiling height. Mr. Lestitian stated many rooms are altered illegally. Code officials have to provide for the safety of residents and first responders. They would work with property owners to add additional safety features. From an economic development stand point, he stated the City needs to look at the structures and determine what is good for the City.

Councilmember Cromer asked how many structures have significantly lower ceilings. Mr. Lestitian estimated there are fewer than 100 such units. Councilmember Cromer asked what a landlord is supposed to do if there are tenants in an apartment with lower ceilings. Mr. Lestitian stated there are cost effective ways that a property owner could make these units safer. Councilmember Cromer suggested that these properties be altered through attrition – after existing tenants move. She agreed that safety is important. Landlords are going to have to spend a substantial amount of money to make the units meet the code.

Mayor Bruchey stated you can't put a value on someone's life and safety.

Memorandum of Understanding

Michael Spiker, Director of Utilities, was present to discuss a memorandum of understanding and the economic issues related to the requested infrastructure upgrades related to the Washington County Hospital Project.

The Utilities Department Staff and the Mayor and Council have recently discussed issues related to the proposed cost sharing capacity related upgrades of the Conrad Court Wastewater Pump Station. City Staff has worked with Hospital Staff, Frederick Seibert and Associates, and ARRO Consulting in regard to the wastewater infrastructure needs of the new hospital. Staff has recommended a cost sharing proposal whereas the Wastewater Division would be responsible for the cost difference between a 600,000

gallon per day pump station and a 2.5 million gallon per day pump station and also the difference between 10 inch wastewater force main and a 16 inch force main.

The Utilities Department Staff and Financial Staff share the concerns of the Mayor and Council regarding the recent economic turmoil and uncertainty that the recent downturns in the financial markets have brought forth. Staff offers to employ a more conservative fiscal approach and feels that it is prudent to reconsider the long range goal of designing a system using a fifty year outlook, where each new individual customer would assist in the cost sharing, versus a short term view utilizing the requirements of new development as a major contributor to any future upgrades.

Mr. Spiker proposed the following (which would exclude the City of Hagerstown and the wastewater customers from any major financial commitment regarding this project):

1. Design and construct wastewater infrastructure utilizing existing flow data that was initially developed for the Hospital. No extra cost for pump station construction will be absorbed by the City.
2. The Wastewater Department would be responsible for the cost differential associated with the force main upgrade from 10 inches to 16 inches. This section of the project is approximately 4567 feet in length and the estimated cost difference is \$ 150,000.
3. The Utilities Department budgeted \$ 2,550,000 in regard to the requested upgrades of the wastewater main and pump station replacement. Approximately \$1.7 million was designated for non-city contributions and \$800,000 was designated for Wastewater Division contributions utilizing existing benefit charges. There is currently \$4.1 million in the benefit charge fund.
4. Staff will continue negotiations with the American Red Cross for the purchase of the .51 acres required for construction of the wastewater pump station.
5. Staff will continue to meet with all project participants in regard to regulatory requirements, the MDE process, permitting requirements, easements and rights-of-ways, and the finalization of the engineering process.
6. Staff will utilize the existing method of requiring the financial cost of future system upgrades be borne by the project that exceeds the existing system capacity.

Councilmember Brubaker stated this is a sensible funding plan for the current economy.

Councilmember Metzner commended staff for their efforts in developing this proposal. The plan provides for the immediate needs of the upgrades. He thanked the Hospital officials for their cooperation.

It was the general consensus to proceed with the MOU and to include the requirements for the capacity of the pumping station and the gravity main.

City Bond Financing Status Update

Al Martin, Director of Finance, stated there is a significant amount of financial uncertainty in the credit markets including the municipal finance markets. However, the City needs to move forward with the bond financing process if the City wants to consider issuing debt before the end of the current calendar year. Many projects are under way or under contract that are to be funded by future bond financings.

The process and time table to issue debt indicates that the Mayor and Council will need to introduce an enabling bond financing ordinance at the October 28, 2008 meeting and then approve it the following week at a special meeting on November 4, 2008. This will allow for an effective date for the ordinance of December 5, 2008. The bonds would not be able to be sold until after the effective date of the ordinance. Prior to actually selling the bonds, staff would come back to the Mayor and Council with a detailed bond resolution spelling out the details of the bond sale to actually sell and close on the bonds.

It was the general consensus to proceed with the bond financing process.

SPECIAL MEETING – October 21, 2008

Introduction of Annexation Resolution: S & H Partnership/Summit Ridge, LLC, Case No. A-2008-06 (Washington St./Hump Road)

Action: Councilmember L. C. Metzner made a motion to introduce an annexation resolution known as the S & H Partnership/Summit Ridge, LLC Annexation for property located off of West Washington Street and Hump Road. The property to be annexed is approximately 7.73 acres in size and is intended to be added to and made part of the adjacent municipal lands. Councilmember M. E. Brubaker seconded the motion.

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

Adoption of an Annexation Plan: S & H Partnership/Summit Ridge, LLC, Case No. A-2008-06 (Washington St./Hump Road)

Action: Councilmember L. C. Metzner made a motion to adopt an annexation plan for the S & H Partnership/Summit Ridge, LLC (A-2008-06) Annexation. Councilmember K. S. Cromer seconded the motion.

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

Introduction of Annexation Resolution: Kenneth L. Jordan – 938 Harwood Road, Case No. A-2008-07

Action: Councilmember M. E. Brubaker made a motion to introduce an annexation resolution known as the Jordan Annexation for property located at 938 Harwood Road. The property to be annexed is approximately 20,000 square feet in size and is intended to be added to and made part of the adjacent municipal lands. Councilmember L. C. Metzner seconded the motion.

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

Adoption of an Annexation Plan: Kenneth L. Jordan – 938 Harwood Road, Case No. A-2008-07

Action: Councilmember M. E. Brubaker made a motion to adopt an annexation plan for the Kenneth L. Jordan, Harwood Road (A-2008-07) Annexation. Councilmember L. C. Metzner seconded the motion.

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

Introduction of Annexation Resolution: Williamsport Storage Bins, Inc. – Valley Car Wash, Case No. A-2008-09

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 annexation resolution known as the Valley Car Wash for property located at the intersection of Eastern Boulevard and Diamond Drive. The property to be annexed is approximately 1.19 acres in size and is intended to be added to and made part of the adjacent municipal lands.

Adoption of Annexation Resolution: Williamsport Storage Bins, Inc. – Valley Car Wash, Case No. A-2008-09

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember K. S. Cromer, the Mayor and City Council unanimously agreed by voice vote to adopt an annexation plan for the Valley Car Wash (A-2008-09) Annexation.

Approval of Resolution: City of Hagerstown Community Legacy Grant Application

Action: On a motion duly made by Councilmember K. S. Cromer and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to adopt a resolution of support of the City's Community Legacy Grant Application and authorize staff to submit this grant application to the Maryland Department of Housing and Community Development for \$ 390,000 for four proposed projects: a Revolving Loan Fund for Upper Floor Renovations downtown, a Façade Restoration Grant Program for downtown, expanding the Sidewalk Café District to N. Potomac Street, and enhancing the courtyard adjacent to the rear entrance of the Barbara Ingram School for the Arts. Matching funds would be provided from the FY 2009 General Fund budget and from bond funds.

Approval of Resolution: Hagerstown Neighborhood Development Partnership, Inc.'s Community Legacy Grant Application

Action: Councilmember L. C. Metzner made a motion to adopt a resolution of support for Hagerstown Neighborhood Development Partnership, Inc.'s Community Legacy Grant Application to the Maryland Department of Housing and Community Development for \$ 175,000 for a proposed project to rehabilitate the upper floors of 25-27 S. Potomac Street for housing. No commitment of City funds are made by this resolution of support. Councilmember K. S. Cromer seconded the motion.

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

The special session was then closed.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, had no additional comments.

MAYOR AND CITY COUNCIL COMMENTS

Councilmember A. Parson-McBean thanked everyone for their support of the Doleman Black Heritage Museum fundraiser held on October 19, 2008. She thanked the sponsors of the event.

Councilmember M. E. Brubaker will be representing the City at the MML Fall Conference next week.

Councilmember K. S. Cromer clarified that the fountain at the circle at City Park will be placed there without using any taxpayer money. More than one third of the cost is being donated by the garden club. The remainder of the funding is from the Community Development Block Grant program. She congratulated Bulls and Bears on their opening.

Councilmember L. C. Metzner stated the funds for the fountain are also restricted funds. He thanked everyone who attended the Doleman Black Heritage Museum fundraiser. He anticipates the Veteran's trip tomorrow will be enjoyable for all who attend. City and County residents will be attending. He thanked the sponsors. He encouraged everyone to vote on Election Day.

Councilmember P. M. Nigh stated an off duty police officer helped recover a stolen vehicle recently. Children in Need is seeking donations of boys and mens clothing. Donations can be dropped off at City Hall. Tickets for seats at the Alsatia parade are now on sale. She thanked Kim Buchanan for her artwork for posters.

Mayor R. E. Bruchey, II thanked Councilmember Brubaker for attending the MML Fall conference. He informed the Council that the County Commissioners voted against giving express approval for the Doub Farm project. Downtown Live will be held on October 25, 2008.

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.

Respectfully submitted,

Donna K. Spickler, City Clerk
(by video)

Approved: January 27, 2009