

62ND REGULAR SESSION – OCTOBER 23, 2007

Mayor R. E. Bruchey, II called this 62nd Session of the Mayor and City Council to order at 7:01 p.m., Tuesday, October 23, 2007, 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, City Attorney Mark Boyer and D. K. Spickler, City Clerk.

The invocation was offered by Councilmember Kelly S. Cromer. The Pledge of Allegiance was then recited.

Mayor Bruchey announced the Rules of Procedure for this meeting will be followed as adopted March 28, 2006. 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: Work Sessions beginning at 4:00 p.m. on Tuesday, November 6, 2007, Tuesday, November 13, 2007, Tuesday, November 20, 2007 and the Regular Session on Tuesday, November 27, 2007 at 7:00 p.m. A Public Hearing will be held on Tuesday, November 6, 2007 at 6:00 p.m.

PUBLIC HEARING

C3 (Downtown) Parking Requirements Text Amendment ZT-2007-01

A Public Hearing was held to receive testimony regarding Zoning Text Amendments to revise C3 (Downtown) Parking Requirements. The proposal would require one parking space for a one bedroom unit, with an additional half space then required for each additional bedroom for new construction, and deletes language requiring off street parking for residential conversions. The Planning Commission held a Public Review meeting on August 29, 2007. The Commission is forwarding this proposed text amendment to the City Council with a positive recommendation for adoption.

Current parking requirements (two per unit, with a third required by Engineering) exceed the norms for residential parking requirements and are hindering the redevelopment of the exiting building stock for housing. This point was noted during the Design Workshop by the American Institute of Architect's Assessment Team in the Fall of '06, and was subsequently endorsed by the development community. Excessive off street parking requirements can reduce the amount of available land, limit the possibilities for adaptive reuse, and increase the cost of housing. The nature of the Downtown warrants consideration of lower residential parking ratios.

Many communities have reduced parking requirements for the Central Business District or have, in some cases, eliminated these requirements altogether.

Stuart Bass, Comprehensive Planner, entered the following as Exhibits:

- Exhibit 1: Certificate of Advertisement
- Exhibit 2: Planning Commission File

No testimony was presented, either in favor of or against the proposed text amendments. However, four letters were submitted to the Planning Department and the Planning Commission in favor of the amendments.

The record will remain open for 10 days for additional comment. The hearing was closed at 7:08 p.m.

CITIZEN COMMENTS

Mary Haines, 27 Laurel Street, Hagerstown, Maryland, urged the Mayor and City Council to continue moving toward a leash law and pooper scooper law for Hagerstown. She stated Hagerstown was mentioned in the Washington Post recently, but not positively. In order to make sure renters have decent places to live, the rental registration program must remain in place. She stated, if the City is going to widen and repair sidewalks in one area, it should be done throughout the City. Many homeowners do not have the resources to repair their sidewalks without securing a loan.

Cathy Ridenour, Hagerstown, Maryland, asked Ms. Haines to read a letter for her. The letter expressed Ms. Ridenour's concerns that immigrants, refugees and migrant workers are competing with local residents for the limited jobs in the area. When companies move or close their operations, the displaced workers often have to work multiple jobs to make the same wage. Ms. Ridenour then stated she doesn't think the sidewalk on S. Potomac Street should be widened using taxpayers' money. She is concerned wider sidewalks will promote public drinking because there are bars located in this block of S. Potomac St.

Louise Dawson, 542 Guilford Avenue, Hagerstown, Maryland, could hear the Downtown Live event from her home. She feels residents and taxpayers should have the opportunity to vote on the exemption from the liquor license for this event. She doesn't think taxpayers should be paying for widening the sidewalks on S. Potomac Street. If the businesses want wider sidewalks, they should pay for them. She also stated the rental licensing program should remain as it is.

Mayor Bruchey stated the rental registration issue is not to remove the program. The issue is whether or not to remove the Sunset Provision from the ordinance prior to June, 2008.

Brian Sullivan, 19224 Paradise Manor, Hagerstown, Maryland, thanked the Mayor and City Council for their hard work. Mr. Sullivan is the Executive Director of the Maryland Theater. He stated widening the sidewalks in the Arts and Entertainment

District will increase the quality of life for people in Hagerstown. More people are coming to Hagerstown for entertainment and meals.

Allan Johnson, 11510 Greenberry Road, Hagerstown, Maryland, is president of the Landlord and Property Owner Association. He stated the Association and the City agreed four years ago, when the Rental License Ordinance was passed, that the Sunset Clause would be addressed in the Spring of 2008, after the program was reviewed and evaluated. The Association and the City worked together in developing codes that would work for the buildings in Hagerstown. He asked why the Sunset Clause is being considered at this time. He suggested postponing the vote on removing the clause until after a comprehensive report is presented and the code is revised.

Michael Stanford, 12709 Bradbury Avenue, Smithsburg, Maryland, stated many people in the audience at this meeting are in opposition to the removal of the Sunset Clause at this time.

Gordon Bartels, 139 S. Mulberry Street, Hagerstown, Maryland, is in favor of removing the Sunset Clause at this time. He thinks the program is working to benefit all citizens of Hagerstown. He and his wife, Janet, took advantage of the pre-inspection service offered through the Code Compliance Office. He is opposed to using tax dollars to subsidize wider sidewalks for businesses on S. Potomac Street. Homeowner's should be subsidized at the same level for sidewalk repairs. If the project is approved, he asked that construction not begin until after the holiday season. He and his wife attended a street festival in Shepherdstown that was a family event. There was no admission charge and there were many activities. They visited local businesses while they were there. He stated they avoided downtown Hagerstown during the Downtown Live event.

MINUTES

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 approve the minutes, as presented, for the Mayor and Council meetings held on September 11, 2007, September 18, 2007 and September 25, 2007.

CONSENT AGENDA

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. S. Cromer, the Mayor and City Council unanimously agreed by voice vote to approve the consent agenda as follows:

A. Public Works:

1. ¾ Ton Pickup Truck – Miller Brothers Ford, Inc. (Ellicott City, MD)
\$ 19,343.00
2. Bulk Road Salt – Cargill Incorporated (Olmstead, OH) \$ 57.03 per ton

B. Water and Sewer:

1. Design and Construction Engineering Services for Headworks Improvement Project - Black & Veatch (Gaithersburg, MD)
\$ 438,300.00
2. Turnkey Project to Replace PSA Control System – Mixing and Mass Transfer Technologies, LLC (Peekskill, NY) \$ 77,425.00
3. ¾ Ton Pickup Truck – Miller Brothers Ford, Inc. (Ellicott City, MD)
\$ 20,702.00
4. Replenish Water Fund Inventory – HD Supply Waterworks, LTD (Martinsburg, WV) \$ 31,724.98
5. Water Meters and Parts – HD Supply Waterworks, LTD (Martinsburg, WV) \$ 107,577.72
6. Lagoon Cleaning – Synagro (Baltimore, MD) \$ 215,913.00
7. Design, Bidding and Construction Phase Services for Second Tank at West End (Amendment to Existing Contract) Hazen and Sawyer (Baltimore, MD) \$ 610,077.00

C. Engineering:

1. Demolition of 337 N. Jonathan Street – Allegany Wrecking (Hagerstown, MD) \$ 14,700.00
2. Street Tree Contract – Botanica Enterprises (Funkstown, MD)
\$ 38,500.00

D. Community Affairs: Application/Permit – Augustoberfest Charitable Foundation, Inc. – Salute to the Schmankerl Stube Bavarian Restaurant 20th Anniversary – May 16, 2008

OLD BUSINESS

A. Approval of an Ordinance: To Remove Sunset from Rental Licensing Program

Action: Councilmember L. C. Metzner made a motion to remove from the table the approval of an ordinance to remove the sunset from the Rental Licensing Program. Councilmember M. E. Brubaker seconded the motion.

Discussion: Councilmember Cromer disagrees with removing the sunset before June, 2008. She reiterated this vote is not for the removal of the program. It is for the sunset clause. She thinks the City should honor the agreement with the Landlord Association that included not removing the sunset prior to June, 2008. The City needs to maintain its integrity.

Councilmember Metzner stated he resented the implication that the Council is giving up their integrity. The agreement does not exist. It was

agreed that a future administration would make the decision to remove the sunset clause. Staff needs to be assured the program will be continued.

Councilmember Nigh stated Dave Jordan, Community Action Council, supports the rental license program and has sent a letter indicating this.

Councilmember Brubaker has reviewed the documents and did not find anything that requires the City to honor a specific time frame. He stated the City is operating in good faith, for tenants and staff. He encouraged people to make recommendations to improve the program.

Motion carried, 4-1 with Councilmember K. S. Cromer voting No to remove from the table.

The motion to approve the ordinance made by Councilmember Nigh and seconded by Councilmember Parson-McBean on September 24, 2007 was considered. The motion, as made and seconded on September 25, 2007 is as follows:

... To approve an Ordinance to amend the City Code, Chapter 197, to repeal Section 197-11, Expiration, thereby removing the automatic expiration provision of the Rental Facilities Ordinance.

Motion carried, 4-1 with Councilmember K. S. Cromer voting No.

Councilmember Metzner asked that a confidential memo from the City Attorney be released. The memo discusses whether or not the Mayor and City Council were held to a specific time frame when considering removal of the sunset clause.

B. Approval of an Ordinance: To Amend the City Code, Chapter 223-13, Residential Rehabilitation Tax Credit Program

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance to amend the City Code, Chapter 223-13, Residential Rehabilitation Tax Credit Program to allow new units created through adaptive re-use projects to be eligible for the program.

C. Approval of an Ordinance: Amending the Code of the City of Hagerstown, Chapter 98, Fire Prevention

Action: On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember K. S. Cromer, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance to amend the Code of the City of Hagerstown, revising Chapter 98, *Fire Prevention*, to update the Municipal Infraction section to match the identification numbers that

recently changed in the national codes, to address legal and illegal fireworks and to change the title of Assistant Fire Marshall to Deputy Fire Marshall.

D. Approval of an Ordinance: Quit Claim of a Portion of Alley 4-31 Parallel to Wayside Avenue

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 an ordinance to quit claim a portion of Alley 4-31 running east/west parallel to Wayside Avenue. It is further moved to convey any City interest in the alley to the adjoining property owner Associated Builders and Contractors, Inc. (ABC). The section of Alley 4-31 that runs north-south and connects to Wayside Avenue will remain a public alley.

NEW BUSINESS

A. Introduction of an Ordinance: Accepting an Offer to Purchase and Authorizing the Sale of Lot No. 7, Eldridge Drive

Action: On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember A. Parson-McBean, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance accepting an offer to purchase and authorizing the sale of the property known as Lot No. 7, Eldridge Drive in the Hagerstown Industrial Park.

Discussion: Deborah Everhart, Director of Economic Development, stated the original language in the contract of sale indicates the lot would not be buildable. However, some building would be permitted. Section 7 discloses that the property was once a dumping area and could not support a footer requirement.

B. Resolution: Approval of Lease for Municipal Stadium with MBP-Hagerstown Baseball, LLC

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to enter into a new lease for Municipal Stadium with MBP-Hagerstown Baseball, LLC to lease the premises for two (2) years, with the option to extend the lease for three (3) additional periods of one (1) year.

Mayor Bruchey stated the County Commissioners awarded funding of \$ 10,500 from the hotel/motel tax to the Hagerstown Suns. Another

\$ 5,000 will be funded in 2009. He thanked the Commissioners for this funding.

D. Approval of Downtown Holiday Parking Program

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to approve the recommended downtown holiday parking plan to allow from Monday, November 19, 2007, the date of HollyFest, through Christmas Day, two hours free parking in the North and South Potomac Street parking decks on weekdays and free parking in the decks in the evenings after 7 p.m. and all day Saturday and Sunday.

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

Also, the officially designated holidays for exceptions to parking enforcement of the parking meters in the downtown area are to be clarified as the same official holidays that City Hall is closed for business.

D. Approval of Memorandum of Agreement with the General Services Administration – Telework Center

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 affirm the Mayor and Council's earlier verbal approval on October 2, 2007 of the Memorandum of Agreement with the Federal General Services Administration and the City of Hagerstown for the continued operation of the downtown telework center in the Elizabeth Hager Building. The City operates the telework center as a special revenue fund with the operating costs fully self supported by the federal government or other users.

The Mayor, City Administrator and other appropriate City staff are hereby authorized to enter into the agreement and to continue the operation of the Telework Center as a special revenue fund of the City.

E. Approval of a Contract for South Potomac Street Streetscape Improvements – Milton Stamper Builders (Hagerstown, MD) \$ 425,823.00

Action: Councilmember L. C. Metzner made a motion to award a contract to Milton Stamper Building in the amount of \$ 425,823.00 for improvements to the "000" Block of South Potomac Street plus allowances for

contingencies and lighting improvements. These improvements are consistent with the 1996 "Downtown Enhancement Plan" prepared by LDR and the scope of work and funding plan are included in the October 11, 2007 memo. Councilmember M. E. Brubaker seconded the motion.

Discussion: Councilmember Parson-McBean stated the Council needs to listen to those who oppose this project. She also has questions about the project. She is not saying, in the long run, that it should not be done. She is angry that when she mentioned she had questions, the person she was talking with stated they didn't want to hear about the Jonathan Street project. She understands there is a difference between the two projects. The Jonathan Street Project is primarily a utility project in an area that has been neglected. The S. Potomac Street Project is primarily a beatification project. She asked if the businesses in the area are at capacity and need extra seating. She understands there may be a time when this is the case, but she is not certain this is the time.

Councilmember Brubaker asked when the bid expires. Rodney Tissue, City Engineer, stated the bid will remain valid for 90 days.

Councilmember Nigh stated there is a parking deck in that block which has cost more than \$ 5 million. There are developers who own more than one building on S. Potomac Street. She is concerned that taxpayers are being asked to fund this project. She believes the developers who have made the investment in the area have the resources to also fund this sidewalk project.

Councilmember Cromer likes the idea of the outdoor café atmosphere. She feels this project is worthwhile and in line with the vision of a viable downtown. Any reduction in parking spaces will be alleviated with the availability of the Arts and Entertainment District Parking Deck. This project will benefit all of Hagerstown, not just the businesses in the first block of S. Potomac Street. Citizens will have a nice place to go and enjoy a variety of restaurants and shops. She is concerned, however, that the contributions from the businesses are not higher. She recommended asking the businesses for additional contributions toward the project. She also recommended asking the County Commissioners for funding assistance. Mr. Tissue indicated two grants were awarded to assist with approximately half of the cost of this project. A portion of the funding is included in the 2006 bond financing.

Councilmember Nigh is concerned that only the Maryland Theater and the new Barbara Ingram School for the Arts are the only art venues in this location. She is concerned that art is not the focus. Councilmember Cromer pointed out the district is called the Arts & Entertainment District and the restaurants and lounges would be considered entertainment.

Councilmember Cromer stated she has received relatively few complaints. Councilmember Nigh stated many residents have complained to her. She feels if the City expands this sidewalk, it should repair other sidewalks for the property owners.

Councilmember Metzner stated this is a project that has been discussed for many years. It was part of a consultant's recommendation that included an arts school, a university and additional green space downtown. This is not a new concept. The Council had approved widening the sidewalk on one side of the street. The Mayor stated one side should not be torn up now and the other side later. He recommended doing both sides of the sidewalk at the same time so there would be less disruption for the businesses and for visitors. There have been many times in which the Mayor and City Council decided to spend tax dollars in order to make the City better for residents and increase the quality of life. Examples include the new fountain at Pangborn Park and the purchase of Fairgrounds Park. He noted the Board of Traffic and Parking unanimously supported the project. If the project is not approved, he asked that the original east side sidewalk widening project be completed.

Councilmember Brubaker stated the library is located in the A & E District also. He thinks this project is an economic development project. Many central business districts are struggling because of the way development has occurred. Many are being updated through public and private partnerships. He thinks this project will contribute to the rehabilitation and renewal of downtown. He stated the Mayor and council need to actively take steps to encourage renewal and to keep it moving forward.

Councilmember Parson-McBean stated there are successful downtown revitalization projects across the country. They are successful when there is a public/private partnership. The businesses downtown must be successful before the sidewalk widening is considered. There should be a full plan for a public/private partnership.

Mr. Tissue stated if the project is not done, grants from Maryland Heritage (\$ 55,000) and from the State of Maryland (\$ 130,000) would be lost.

Councilmember Parson-McBean stated the question was raised about what was going to be done on the private side. The downtown needs to be a place where families want to go. She stated the Jonathan Street project is long overdue and was discussed before she was elected. These two projects are completely different and should not be compared.

Mayor Bruchey stated the enhanced tax revenues from projects on S. Potomac Street range from \$ 19,000 to \$ 125,844 per year. An additional

\$ 200,000 of bond financing would cost \$ 20,000 per year. He doesn't see this as a project using taxpayers money. He stated the amounts listed from the business owners were used as part of a potential funding plan. The owners were not approached about donating these amounts. This investment, as well as the private sector investments, will enhance the A & E District.

Councilmember Cromer stated additional funding from the downtown beautification fund could be used and no more money would need to be borrowed.

Councilmember Nigh stated this is still taxpayer's money.

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

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, asked if the Mayor and City Council wished to release the City Attorney's legal opinion regarding the timing of the removal of the sunset provision of the Rental Registration Ordinance. It was the general consensus to do so.

Mr. Zimmerman provided a memorandum, prepared by Michael Spiker and Alfred Martin, in response to County Commissioner William Wivell's recent letter to the editor regarding the flow transfer rates and agreement and his belief that the rates charged to customers are incorrect. A copy of the memorandum will be forwarded to Greg Murray, County Administrator.

Mr. Zimmerman thanked Staff for their hard work and support with the annual Alsatia Mummer's Parade.

MAYOR AND COUNCIL COMMENTS

Councilmember P. M. Nigh extended sympathy to the family of a Frederick State Trooper. She expressed concern about the language of one of the announcers at the Downtown Live event. She wondered what opinion of Hagerstown this provided to visitors. She mentioned there were more than 20 arrests during the time of the event.

Councilmember K. S. Cromer stated there were 16 arrests that day, but only 1 of those was at the event. More than 5,000 people attended the event. She was not able to attend, but she asked that it be more family oriented. She wondered if the people who attended the event would come back and spend money in Hagerstown. Downtown Live is not a City sponsored event. The organizers pay for all the services.

Councilmember L. C. Metzner stated he did not attend Downtown Live; however, he understands it is a big event in Hagerstown. He stated the number of arrests made during the Alsatia Mummer's Parade exceed the number of arrests during Downtown Live. The downtown is alive and active. He understands events can be an inconvenience but they are good for Hagerstown.

Councilmember A. Parson-McBean stated the downtown was thriving until the Valley Mall was built. Many people live downtown out of necessity, not choice. The City must be responsible and make certain these residents have a good quality of life. She was at the event and walked the perimeter of the area. She is concerned the music was so loud she could hear it from several blocks away. She stated the number of arrests may have been due to the festival. The City needs to be responsible with the requirements for events such as this. She thinks a \$ 5.00 parking fee in the parking deck is too low. The Memorial Recreation Center is experiencing financial difficulties and needs everyone's help.

Councilmember M. E. Brubaker observed that business was booming during Downtown Live, both inside the perimeter and outside. He agreed if the requirements need to be changed, it should be done. If nothing is done downtown, nothing is going to happen downtown. The revitalization of downtown will require active participation from the City. He encouraged everyone to think of positive things to encourage people in the City of Hagerstown.

Mayor R. E. Bruchey, II pointed out changes are continually made with the BluesFest and Augustoberfest to make them even better. He expects this would happen with all events. The organizers of Downtown Live paid for 25 police officers, along with their own personal security. He stated the event was under control when he was there. He wants to see the upper vacant floors in downtown utilized. Downtown will be a vibrant place to be.

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 8:56 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: November 27, 2007