

EXECUTIVE SESSION - December 7, 2004

On a motion duly made and seconded, the Mayor and City Council unanimously agreed by voice vote to meet in closed session at 3:30 p.m. in accordance with the provisions of the Annotated Code of Maryland, State Government Article, Section 10-508(a) #9 to conduct collective bargaining negotiations or consider matters that relate to the negotiations; #7 to obtain legal advice; and #1 to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction. No formal action was taken at the session. The meeting was held in Room 407, 4th Floor at the City Hall. The meeting was adjourned at 5:00 p.m.

WORK SESSION - December 7, 2004

Mayor William M. Breichner called this Work Session of the Mayor and City Council to order at 5:00 p.m., Tuesday, December 7, 2004 in the Council Chambers at the City Hall. Present was Mayor Breichner; City Council Members K. B. Aleshire, N. L. Hendershot, L. C. Metzner, C. N. Moller, P. M. Nigh; City Administrator Bruce Zimmerman and City Attorney William Nairn.

Draft Broadband Power Line Request for Proposal (RFP)

Michael Spiker, Hagerstown Light Department Manager, was present to discuss additional items that are to be included in the Broadband Power Line Request for Proposal.

The additional items are:

1. Type and Term of Agreement: 10 year initial term with the Franchise Fee based on an 8% annual percentage of gross receipts. It is anticipated this will add a minimum of \$ 70,000.00 in the Technology Fund each year.
2. Performance Security of Bond: Performance Security or Bond in the amount of two hundred fifty thousand dollars (\$ 250,000.00) the first year of the contract, decreasing by fifty thousand dollars (\$ 50,000.00) per year for five years.
3. Free Accounts to the City of Hagerstown: Twenty five (25) free internet accounts and 3 WIFI hot spot areas.
4. Free Accounts to the City of Hagerstown: An Outage Management Component shall be provided to the Hagerstown Light Department.

5. Grantee Office in Hagerstown: An office must be maintained in the downtown area of the City of Hagerstown within sixty days of the execution of the Franchise Agreement and must remain opened and staffed during regular business hours for at least eighteen (18) months after opening. Councilmember Aleshire stated eighteen months seems rather short. It was the general consensus of the Mayor and City Council to increase the time to twenty four (24) months.

Councilmember Hendershot asked how long it will be before this service is offered to residents. Mr. Spiker stated the program should be in place within three months after the bids are received.

Interim School Impact Policy

Kathleen Maher, Planning Director, Alfred Martin, Finance Director, Rodney Tissue, City Engineer and William Nairn, City Attorney, presented an Interim School Impact Policy for the Mayor and City Council's review. Washington County Commissioner James Kercheval was also present. The Policy will allow for developer contributions to the School System from development projects within the City of Hagerstown. This interim measure anticipates that a longer term solution for a County-wide school fee will be developed, as proposed by the 2+2 Committee, with the assistance of the Delegation.

The recommendations are:

1. Effective Date: The effective date will be the date of the resolution.
2. Sunset Date: In anticipation of a long-term, County-wide solution through State legislation, it is proposed that the Interim School Impact Policy sunset on July 1, 2005. It will be important for the City to participate in the development of any longer term solution created through State legislative action.
3. Collection of Fee at Building Permit: Because the Washington County School System has advised staff that all elementary schools serving City children are at or above capacity, it is proposed to require payment of the County's APFO school fee, plus a 2% administrative fee for all building permits for new residential dwelling units in the City. This total payment would then be reduced by the amount of the County's excise tax collected for that dwelling unit.
4. Exemption from Fee: Because the development community may already have lots sold without anticipation of the significant fee increase contemplated in this interim policy, it is proposed to provide an exemption period (to sunset on

February 1, 2005) for lots with a notarized contract, dated prior to the effective date of the resolution, to build single-family, two-family, townhouse, or condominium units.

5. Use of Fee: Because the City has a desire to ensure that any school fee collected within the City is used to improve schools serving City residents, the interim policy specifies that the school fee be transferred to the County “for the purpose of school capacity expansion for schools within the Hagerstown Urban Growth Area that serve City residents.”
6. Annexation Agreements: Because proposed mega-sized residential developments could have the potential to overwhelm the School System prior to any possible school expansion or construction projects, it is recommended that developers explore land donation or school construction solutions with the School System as matters for consideration by the Mayor and City Council during an annexation process involving new residential development.
7. Approval of New Residential Projects: Since new residential development projects in the City will be paying County excise taxes, County APFO fees, and County property taxes for School System contributions, this interim policy states that the City will not deny a residential subdivision plat or residential site plan based on capacity of school facilities.

This will be an interim policy until Washington County is able to work with the Delegation to put in place a school construction fee. During this time, the City will collect the County’s APFO fees on building permits.

It is anticipated the City will need a means of protecting the City’s Building Permits staff from a deluge of permit requests prior to the effective date of the proposed interim policy. In response to this potential problem, staff will implement an administrative policy to limit the number of residential building permits which may be submitted to the City to six permits per week per builder, until the policy becomes effective.

Councilmember Metzner asked if an emergency meeting could be held to adopt this policy next week. It was the general consensus of the Mayor and City Council to hold a special session on December 14, 2004 to adopt the policy.

Councilmember Aleshire asked how many people will be able to obtain a notarized contract between now and the adoption of the resolution. He is concerned that there may be a large number of contracts in order to beat the deadline. Mr. Nairn stated contracts could be obtained

but it may be difficult. There was discussion about making the deadline for notarized contracts December 8, 2004. Mr. Nairn expressed concern that someone who has a signed contract will be negatively impacted by this fee after the paperwork was completed. Councilmember Aleshire indicated if the developer doesn't pay this fee, the schools will be negatively impacted.

It was the general consensus to make the deadline for a signed contract 11:59 p.m. on December 8, 2004.

Councilmember Aleshire expressed his concern that there may be a conflict with the statement in reference to the City not holding up development. He stated this is something the Mayor and City Council know at this time but there may be a different policy in place as of July, 2005.

Demolition of Condemned Property - 572 - 574 Pen Mar Avenue

John Lestitian, Chief Inspector, stated 572 - 574 Pen Mar Avenue is a vacant single family residential structure. The structure had suffered significant damage several years ago but has recently deteriorated to the point in which part of the structure has collapsed. Staff have obtained and executed an Administrative Search warrant. As a result of this inspection, staff condemned the structure and ordered demolition. The cost of demolition will be substantial. The low proposal for demolition is \$ 13,500.00 from Milton Stamper Builders. A lien will be placed against the property but it is unlikely that all the funds will be recovered.

Jonathan Kerns, Inspector, presented photographs of the property. The property is owned by Stanford Taylor, who resides at Potomac Towers. It appears the building was a duplex at one time. Mr. Taylor agreed the building should come down and he stated the City could do a better job of demolishing it than he could.

It was the general consensus of the Mayor and City Council to proceed with the demolition since it is public safety hazard.

Mr. Lestitian reported there is a similar situation at 15/17 Elizabeth Street. The back wall of this structure has collapsed and it will be taken down. The cost for this demolition will be substantially less.

Councilmember Nigh asked where the money will be coming from to cover the costs of the demolition. Mr. Tissue stated he will include the funding source in the approval documents. This will be included on the Special Session agenda for approval on December 14, 2004.

Arts and Entertainment District Parking Deck Status Report

Bruce Zimmerman, City Administrator, and Rodney Tissue, City Engineer, provided a status report of the design of the Arts & Entertainment District Parking Deck.

The Mayor and Council approved the Phase I design contract at the April 27, 2004 work session. This award allowed Bowman Development Corp. (BDC) to proceed with the actual architectural and structure designs of the deck. This work is now substantially complete.

As part of the Council approval on April 27, 2004, a Part II contract (construction) was approved conditioned on the “satisfactory completion” of the Part I design. The estimated costs and deck design was based on preliminary analysis, based on conventional design assumptions. However, significant unusual and unforeseen issues have arisen during the design that have delayed the project and have cost implications to the City. Those issues are:

1. Geotechnical borings show that there is a lack of competent or solid rock on site to allow conventional spread footings. The rock bed is more than 28' below the surface at one point. An alternative foundation design utilizing a piling system is required at significantly more cost to the City.
2. Improved access from Washington Street cannot be developed at this time. Attempts to purchase 23 and 25/27 West Washington Street to allow widening (two way) access are complicated by tenant lease issues which will delay alley widening until after December 31, 2008. Therefore, access will be limited to the existing one-way alley system.

The foundation design issue was discussed in further detail. On April 27, 2004, Council approved the contracts with BDC as described earlier. Staff pointed out to Council at that time that the price was fixed except the risk of dealing with “concealed conditions”, unknown site conditions stipulated as “related to the foundation of the parking deck.” These additional foundation costs would be the responsibility of the owner (City). Borings were completed in June 2004, and little bedrock exists close to the surface. The structural engineer, Dan Matonak, and the Geotechnical Engineering Company, Hillis Carnes, assessed the results of the borings and determined that a conventional spread footing would not work due to the lack of rock. In July and August, various designs were reviewed. In September, BDC bid the deck using a “minipile” foundation design. The bid results were reported in general terms to Council in late September as being \$ 300,000 to \$ 500,000 over the original cost estimates. To minimize the costs, BDC was asked to “value engineer” the foundation design using input from contractors. Additional contractors were asked to provide bids for the high-dollar concrete and foundation work. The final costs are estimated to be \$ 2,699,747.00. Efforts to significantly lower the

foundation costs proved ineffective. The foundation costs have increased \$ 601,450, and are the City's responsibility.

BDC has offered two cost-sharing proposals. Several portions of the project are lower than estimated in April. Although not bound by contract to do so, BDC has agreed to pass the \$ 104,173 in savings along to the City. BDC has agreed that, in the event the 300+ pilings must be drilled deeper than estimated from the borings (they must be founded 7 feet into competent bedrock), BDC will assume this additional cost up to \$ 100,000. These cost reduction proposals were included in the new estimated cost of \$ 2,699,747.00.

To fund the \$ 497,277 additional cost, staff proposed two sources: \$ 200,000 included in the recently approved Ordinance to authorize City General Obligation Bond and \$ 300,000 requested commitment from Washington County. These funds are expected to be available in 2006.

The existing alleys serving the deck site are only one-way. Two-way access to the deck has always been an important consideration. In September, BDC secured a contract to purchase the under utilized and blighted buildings at 23 and 25/27 East Washington Street to allow for the widening of the existing alley to a two-way street and to revitalize the remaining building.

Unfortunately, the tenant at 23 East Washington Street (the Adult Bookstore), has a lease with the owner until December 31, 2008. Only minimal improvements can be made to the alley until the 23 East Washington Street building can be removed. Assuming the deck completion in late 2005, only one-way access will exist for 3 ½ years until mid-2009.

Other relevant issues on the project include a closed circuit camera system, parking equipment, alley improvements and utility work, and vibration monitoring and construction observation. The 10' wide private alley between the "Walker House" and the former Shindle Rohrer building is split and owned one-half by each owner. An easement must be obtained to replace the existing surface with brick pavers. In addition, a portion of the parking lot just east of the deck should be acquired to provide two-way circulation of traffic. As discussed with representatives of the Masonic Temple in April, the Temple desires handicapped access to their ballroom adjacent to the deck. The City will provide the elevator shaft and rear-loading car to serve the building and the cost is included in the contract with BDC. The Masonic Temple must make all modifications to their building to meet Code and accept the elevator "stop". In January, the City transferred the Tri-State building to Bowman 2000, LLC. Therefore, Bowman owns the Walker House property and Tri-State building. BDC will prepare the final plat and process it through the Planning Department. Council has previously authorized legislation to "swap" the parcels, and the plats and deeds are being prepared. Numerous cross easements are needed to provide utility and access service to the various properties. The deck will have a brick veneer on the alley side and also where the front face of the deck is exposed behind the "Walker House."

All other surfaces will be concrete.

Five proposals were received for the bond issue. The interest rates in the low proposal is 3.36%, which is a very low interest rate.

The Mayor and City Council will need to re-authorize the construction component (Phase II) of the contract with Bowman Development Corp. due to significant changes discovered during the Phase I design phase. Staff anticipates that if Council desires to proceed with the amended Phase II Agreement, that would occur in a special session on December 14, 2004. This timing is needed to "lock-in" materials and contract costs. If the Part II contract is approved in December, the deck construction will commence early in 2005 and be completed by the end of calendar year 2005.

Mayor Breichner indicated there have been letters of support from the County Economic Development Commission and the Chamber of Commerce.

Councilmember Nigh asked why the City has to take on this monetary responsibility since a developer had made a proposal to build an underground parking deck. She asked why that proposal was not accepted. It was stated this proposal was not a formal proposal. Councilmember Nigh asked where in an agreement with Bowman Development does it state that the City would take the financial responsibility for unforeseen problems. Mr. Zimmerman stated the agreement was approved by the Mayor and City Council in April, 2004 and the agreement included a clause to this effect. Councilmember Nigh expressed concern that Bowman Development Company has benefited greatly from the City's generosity through transferring of property. She is also concerned that the City will hold the title for 23 E. Washington Street, where there won't be a building. She is concerned that the taxpayers are being taken advantage of through this project and others like it.

Councilmember Aleshire asked if the costs for the camera system, parking meters and the possible \$ 100,000 addition are outside the additional costs for the pilings. This is correct, but the costs were included in the overall plan for the deck. He suggested negotiating with Mr. Bowman to cover some of the additional smaller costs. He asked how much the \$ 200,000 will add to the City's payment for the bond issue. Mr. Martin stated it would be approximately \$ 17,000 per year. Councilmember Aleshire asked if it was included in the proposal for the deck that the cost to the general fund for the deck would not be greater than \$ 75,000. He asked specifically if the \$ 17,000 is included in the \$ 75,000. Mr. Martin stated this payment would be included in the not to exceed cost. Mr. Martin stated the Parking Fund is now starting to show some improvement.

Councilmember Aleshire stated he was opposed to the idea of funding a new stadium when he

first came in to office. However, the cost for a new stadium has now doubled. He stated it would be more cost effective to continue with the construction of the deck.

Councilmember Hendershot stated the deck is needed for the Arts and Entertainment area to thrive. He is concerned with the access limitations to the deck. He stated additional lighting will be needed. He suggested looking at the possibility of locating the deck at the corner of Antietam and Potomac Streets. There are three buildings on the corner and it may be a better location. This location may provide better access. Mr. Tissue stated in order to located the same size parking deck on this corner would require more space than the three buildings would provide.

Mayor Breichner stated the deck in the current proposed location would be a better location, since it is in the middle of the A & E District. This location gives a critical advantage in the improvements that are planned on E. Washington Street.

It was the general consensus of the Mayor and City Council to move forward with the A & Deck proposal.

Mr. Nairn left the meeting at this time.

Request to Add Permit and Inspections Staff

Rodney Tissue, City Engineer, presented a request to add permit and inspection staff. The regional development boom, particularly in the housing market, is expected to continue into 2005. Continued construction in Greenwich Park, Cortland Manor, Hager's Crossing, Gateway Crossing, Park Overlook, Pangborn, Fairchild Heights and Kensington Villas along with new developments, Collegiate Estates and Hillside Manor, will exceed the available staff resources of the Permit and Inspection section of the Engineering Department. Mary Reichert, Permit Coordinator, and Mike Heyser, Building Inspector, were present also.

In approximately two years, building construction inspections have increased from an average of 12-14 inspections per day per inspector to 23-25 inspections per day. The percentage of permits involving numerous inspections has increased. In order to meet these increasing demands, assistance is being provided from other departments and other inspectors. Additional contractual help can be secured as needed.

Up until about two years ago, permit applications were processed in two to three weeks. This is now five to six weeks due to the volume of applications. There is little or no time to "close out" old permits that never requested a "final" building inspection. The Permits Coordinator has seen a tremendous increase in the demand on her time. Overtime is offered to help meet this

demand. In addition, the Contracts Specialist provides additional services with permits and a contract employee has been hired to assist with clerical activities.

Plans are currently reviewed only by the Building Inspector. Mr. Tissue strongly recommended having an inspector cross trained in plan review. The department is not currently positioned well to have only one plan reviewer.

Staff proposes to add an additional "Housing Inspector" (anticipated cost, with benefits - \$ 51,654) and an additional "permit processing" person (anticipated cost, with benefits - \$ 42,181). Funding for this plan is proposed to be taken from the increased permit revenues, projected to be \$ 312,000 over budget this year.

Mr. Zimmerman commended Ms. Reichert and Mr. Heyser for their hard work as permit needs increased. The level of Customer Service has remained the same, even though the work load has increased significantly.

It was the general consensus of the Mayor and City Council to advertise for these new positions.

North Potomac Street (MD Route 60) and Eastern Boulevard Traffic Issues

Rodney Tissue, City Engineer, was present to review the status of traffic-related issues in the general area of North Potomac Street (MD Route 60) and Eastern Boulevard.

The City has been collecting funds from Cortland Park for road improvements because of the impact the increased traffic has in that area. These funds are considered to be "earmarked" for the Eastern Boulevard North construction by the County. This road's construction is critical since it will divert traffic from the Potomac Street/MD Rt. 60 and Eastern Boulevard intersection and provides secondary access for Cortland Park.

While the residential part of the development is participating in this road funding plan, the United States Post Office has refused based on a law exempting them. Although they indicated they may assist with the signal funding, they will not participate in road improvements. There will be a \$ 210,000 shortfall due to their lack of participation. The Post Office will generate 1,882 additional daily trips.

Short term improvements are needed at the Potomac Street/MD Rt. 60 and Eastern Boulevard intersection. Two improvements, with minimal costs, will be completed in the Spring. A signal timing optimization plan was developed that will improve the Level of Service at the intersection. The southbound lanes will be re-stripped to greatly increase the length of the left turn

onto Eastern Boulevard. This improvement will minimize some of the longest delays in the intersection.

Mr. Tissue stressed the need to continue asking the Washington County Commissioners to include the bypass road for this intersection in the CIP budget.

Mr. Tissue stated the residents at Cortland Park have petitioned the State Highway Administration to install a signal light at the entrance. The State has approved the signal light. The cost for the light is fully the responsibility of the developer.

Councilmember Aleshire thanked the developers of Cortland Park for recognizing the need to provide funding for road improvements that are required due to development. He read part of the memo stating the Post Office will not participate in funding their share of the road improvements. He recommended people should keep this refusal in mind when they consider using this new post office.

Councilmember Aleshire stated every time development is approved in the Joint Service Area, there are water and sewer services extended at no reimbursement from tax revenue.

Councilmember Hendershot asked if the Post Office is being constructed by the Federal government. Mr. Tissue stated he does not know the answer to that question. The land was conveyed to the Post Office.

Councilmember Nigh asked if the Rosewood Development would need access through the Antietam Creek Bridge. Mr. Tissue stated if Mt. Aetna Farms is developed that access will be needed.

City Administrator's Comments

Bruce Zimmerman, *City Administrator*, stated there is a serious challenge is getting a water main repaired that broke on Friday, due to the location at the edge of the Conococheague Creek. The repair will take some time but the two plants are performing very well. He commended staff for their response to the initial problem on Friday. The Breichner plant was activated and water pressure and service was restored to customers.

Councilmember Aleshire asked how old the line is. Mr. Zimmerman stated it was constructed in 1928 or 1929. He stated replacement of the line is included in the CIP budget in the next two years.

The Downtown Holiday Open House will be held this coming weekend. He invited everyone

to attend.

Mayor and City Council Comments

Councilmember L. C. Metzner is reminded of all service people on this anniversary of the bombing of Pearl Harbor.

Councilmember C. N. Moller stated the Park Lighting was very well attended and everything was very pretty. She thanked everyone for attending.

Councilmember K. B. Aleshire stated the Park Lighting was excellent this year. He suggested looking at the possibility of providing other recycling pick up (bottles, cans, plastic). Mr. Tissue stated prices could be reviewed.

Councilmember Aleshire stated the hospital has indicated they will proceed through the Certificate of Need process without obtaining zoning approval. He is concerned this is not the best way to proceed. He thinks the hospital may be waiting for the City election.

Councilmember N. L. Hendershot stated many, many people attended the Park Lighting. There were more than 400 cups of hot chocolate served.

Councilmember Hendershot expressed his sympathy on the passing of Buddy Morris. He stated the second issue of Hagerstown magazine is now available.

There is a meeting of the Board of Zoning Appeals next week to consider the location of a drinking establishment to the rear of the Maryland Theater. He thinks this location is not appropriate and he asked the Council to consider attending the meeting and expressing their concerns.

He stated the Maryland Historical Trust will be holding their convention in Hagerstown in 2006. This will be the first time for this event in Hagerstown.

Councilmember P. M. Nigh asked if the correspondence from the Potomac Riverkeepers means there is another lawsuit pending. Mayor Breichner stated the City is working with the Maryland Department of the Environment on this.

Councilmember Nigh asked if there is a joint meeting scheduled to discuss the central booking and communications with the County. Mayor Breichner stated a joint meeting with the Washington County Delegation will be held on December 16, 2004 at the County Office building at 11:00 a.m. These items will be discussed at that time.

Councilmember Nigh stated there was a suspicious person at the South End Shopping Center. It turned out the man was a sex offender who was living at Turning Point. She expressed her concern that the Day Shelter hours have been shortened and there are more suspicious people in Hagerstown.

Councilmember Nigh addressed a concern that was expressed in Mail Call stating she should serve meals to transients. She stated she and her husband have served meals to transients through a program at Christ Reformed Church, but she will not be a party to subsidizing a transient's gravy train.

Councilmember Nigh thanked everyone for the prayers, phone calls and cards following her daughter's cancer diagnosis. She asked for continued prayers.

Mayor W. M. Breichner stated there was remembrance ceremony held today at the Elk's Club. Unfortunately the meeting schedule today did not permit him to attend.

There being no further business to come before the Mayor and City Council, on a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the meeting was adjourned.

Respectfully submitted,

Donna K. Spickler, City Clerk
(by video)

Approved: January 25, 2005