

**67<sup>TH</sup> REGULAR SESSION – DECEMBER 18, 2007**

**Mayor R. E. Bruchey, II called this 67<sup>th</sup> Session of the Mayor and City Council to order at 7:06 p.m., Tuesday, December 18, 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 William Nairn and D. K. Spickler, City Clerk.**

The invocation was offered by Mayor Robert E. Bruchey, II. The Pledge of Allegiance was then recited. William Clarence Marshall, III sang the Star Spangled Banner. Mr. Marshall will be performing during the Utility Relief Benefit Concert on December 20, 2007.

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, January 8, 2008, Tuesday, January 15, 2008, Tuesday, January 22, 2008 and the Regular Session on Tuesday, January 29, 2008 at 7:00 p.m. A Public Hearing will be held on Tuesday, January 8, 2008 at 6:00 p.m.

**AWARDS**

Mayor Bruchey presented the Gridiron Classic MVP award to Eric Phillips, South Hagerstown High School. Mr. Phillips was presented with a \$ 250.00 check from the Kiwanis Club.

**GUESTS**

Mayor Bruchey welcomed Jameek Booth, Elta Clarke, Tiffany Ross and Corrine Hornbaker, winners of the If I Were Mayor contest to the meeting. Each winner conducted a portion of the voting portion of the meeting.

**PUBLIC HEARING**

**Proposed Zoning Text Amendment – ZT-2007-02 (Front Yard Fences)**

A Public Hearing was held to receive testimony regarding Zoning Text Amendment to provide for the allowance of fences in residential front yards under certain circumstances. The Planning Commission held a Public Review meeting on October 31, 2007. The Commission recommended against the proposed amendment on November 14, 2007.

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

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

Councilmember Metzner asked what the height restriction would be for fences in front yards. Mr. Bass indicated the height restriction would be 6 feet, the same as for other fences.

The following testimony was presented:

Roy Grady, 820 Marion Street, Hagerstown, Maryland, asked when the ordinance prohibiting front yard fences was enacted. He stated this issue is not about the neighbors, or the fence, it is about the three dogs that own the house. A contractor, who claimed to be following regulations, installed the fence. Mr. Grady stated the fence looks out of place because of the surrounding fences being closer to the street. He stated the neighbors are supportive of the fence. He can't believe the City is trying to make them take the fence down. The house is owned by the dogs. There is a trust fund in place for their care. If the fence is removed, there will be no place for the dogs to run. He stated he would suggest the dogs sell the house and move where they are protected from other dogs and people. He stated he and Karin Anderson are trying to do something to improve the property.

There was no further testimony.

Councilmember Nigh stated the fence is nice and there is a pool in the back yard so there isn't room for a fenced in area for the dogs. She believes fences should be allowed in front yards.

Councilmember Parson-McBean agreed.

Councilmember Cromer asked if the City issued a permit for the fence. Mr. Grady indicated the contractor took care of all the permits. Councilmember Brubaker stated the Board of Zoning Appeals denied a variance for the fence twice.

Councilmember Metzner asked that this be discussed at a work session. He asked for information about the contractor and why the fence was put up without a permit.

Karin Anderson, 820 Marion Street, Hagerstown, Maryland, stated the lot at this location is large. The City wants them to put the fence to the side of the house and this would prohibit them from using the whole lot. She recommended requiring a front yard fence to be ornamental in nature. Mr. Bass stated the proposed language includes this requirement.

The public hearing was then closed. The record will remain open for 10 days for additional comments.

Zoning Map Amendment – ZM-2007-02 – Salem Avenue/Collegiate Acres

A Public Hearing was held to receive testimony regarding Case No. ZM-2007-02, Salem Avenue/Collegiate Acres. The subject property is located off of Salem Avenue, west of I-81. The applicant is proposing a rearrangement of the exiting zoning district to better utilize the property. The net effect is the same and there is no change in the amount of acreage for any one particular zoning district.

Stuart Bass, Comprehensive Planner, stated the submitted rezoning involves properties that were part of two separate annexations that were effective November 8, 2003: The Way of Truth annexation (A-2003-03) and the Interstate Trucking annexation (A-2003-07).

The Way of Truth property totaled 91.18 acres and was zoned C4, R3, and R2 upon annexation. A Plan of development for part of the residential portion has been approved for 83 single family residences and 215 townhomes. This is currently under construction. No plans were ever submitted for the commercial section and it remains undeveloped at this time. The Interstate Trucking facility, an existing business located at 12821 Salem Avenue and totaling 10.66 acres, was zoned IR upon annexation.

The proposed areas of rezoning are reconfigurations of the exiting zoning districts. New districts are not being introduced. The existing development varies near the tract, including residential, commercial, and vacant land. The applicant's request is compatible with the adjacent neighborhoods, which include both commercial and residential uses. All public facilities and services rendered by the City of Hagerstown are available to the site. Approval of Sewer Service for any development will be subject to the Sewer Capacity Allocation plan. Local bus service is provided by the Washington County Commuter.

Staff recommends approval of the proposed rezoning. This request is somewhat unique, in that it involves the reconfiguration of existing zoning districts in an effort to draw more logical and efficient boundaries. Staff accepts the applicant's argument regarding mistake; including (1) that the initial zoning district lines as conceived at the time of annexation were sufficiently vague and are now interfering with a more logical development of the property (2) that the commercial tract was not thoroughly considered for development at the time of annexation, and (3) access to the C4 portion is currently limited to an adjacent residential district. The Planning Commission concurred with Staff and recommended approval of the proposed rezoning based on mistake.

Mr. Bass entered the following as Exhibits:

Exhibit 1: Certificate of Advertisement

- Exhibit 2: Notice to Adjacent Property Owners  
Exhibit 3: Planning Commission File by recorded

Roger Schlossberg, Legal Counsel for the Applicant, distributed larger maps he labeled as Exhibit 1. Steven Zortich, Frederick, Seibert & Associates, was also present. Mr. Schlossberg indicated this rezoning is being requested due to a mistake in the original zoning. None of the parties involved with the annexation and subsequent zoning were not considering industrial development in that area. The zoning resulted in properties with multiple zoning districts. If the rezoning is approved, there will be transfers of land between the current owners. The overall acreage of each zoning district will not change.

The adjacent property is zoned highway interchange and is located outside the City limits.

There was no further testimony presented. The hearing was closed at 7:52 p.m. The record will remain open for ten days for additional comments.

### **CITIZEN COMMENTS**

Mary Haines, 27 Laurel Street, Hagerstown, Maryland, stated a nice place to make Christmas gifts is the bead shop that is downtown. She thanked Councilmember Metzner for his questions about funding from the County Commissioners. She stated the additional firefighters have been needed for many years. The problem with vandalism is increasing. She stated there are not enough police officers to guarantee regular patrols in many neighborhoods. She complained about the existing traffic problems on Potomac Avenue. There is also a large amount of dust being created because of the construction. She stated several residents are concerned that Mills Park is being considered for use as a dog park. She has questioned County Commissioner Aleshire about the leash law. He stated the County does not have any control over the Humane Society. She thanked Eric Deike and the Public Works Department for their work.

Cathy Wantz, 211 W. Irvin Avenue, Hagerstown, Maryland, thanked the Mayor and Council for listening to residents about the Country Club Road quit claim request.

Mark Meany, 1330 Woodland Way, Hagerstown, Maryland, expressed thanks to the Mayor and Council for considering all the pros and cons of the quit claim request for Country Club Road.

Dave Shindle, 839 Florida Avenue, Hagerstown, Maryland, expressed his concern that construction of a taller water tower will create additional pressure on the water lines in the West End. He received a response to his concerns from the consultant. He is still concerned that increased pressure will cause higher bills and more water line breaks. The consultant's response promoted an increase in the flow for fire hydrants. Any increase in water quality is not related to the taller tank, it is because of a new tank with an elaborate mixing system. He handed out information about a water storage tank replacement in

Fort Hill, Maryland. The information stated the tank is to be designed to meet existing conditions. He also provided information for other communities.

### **MINUTES**

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember A. Parson-McBean, the Mayor and City Council unanimously agreed by voice vote to approve the minutes, as presented, for the Mayor and Council meetings held on October 2, 2007, November 6, 2007, November 13, 2007, November 20, 2007 and November 27, 2007.

### **CONSENT AGENDA**

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

A. Public Works:

1. Signal Equipment for Beechwood and Pennsylvania Avenue – Econolite Control Products, Inc. (Hanover, MD) \$ 12,800.00
2. Painting interior spaces of the DLLR Office – Trophy Painting (Sabillsville, MD) \$ 6,762.00
3. Replacement carpeting in the DLLR Office – Abbey Carpet and Floors of Hagerstown (Hagerstown, MD) \$ 38,146.94
4. Relocate office furniture and cubicles in the DLLR Office – Pro Moving & Storage, Inc. (Chambersburg, PA) \$ 4,950.00

B. Light Department: Garage Door Replacement – K & K Door (Waynesboro, MD) \$ 14,340.00

C. Water and Sewer Departments:

- 1.. Portable Generator for Collection System Pump Stations – Pump & Power (Jessop, MD) \$ 22,330.00
2. Rebuilt 400 hp High Service Pump Motor 0 AR & E (Hagerstown, MD) \$ 15,365.50
3. ABB Software License Upgrade – ABB (Warminster, PA) \$ 55,636.00

### **UNFINISHED BUISNESS**

**A. Approval of an Ordinance: Zoning Text Amendment to Modify Parking Regulations, C3 Zoning District, Case No. ZT-2007-01**

**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 adopt an ordinance for a text amendment to the City Code, Chapter 68, Sections 68-18, 68-26, and 68-38 to modify the parking requirements for the C3 (Commercial Central) Zoning District.

**B. Approval of an Ordinance: Amending Chapter 197 of the City Code, Providing an Exemption for Tenants Who Are Related to the Owners of Said Rental Facilities**

**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 approve an ordinance to amend Chapter 197 of the City Code entitled Rental Facilities to provide an exemption of the annual license fee and the interior inspection requirement for single unit rental facilities occupied by tenants who are related within certain degrees to the owners of said rental facilities.

**NEW BUSINESS**

**A. Introduction of an Annexation Resolution: Haven Road II, Case No. A-2007-06**

**Action:** Councilmember M. E. Brubaker made a motion to introduce an Annexation Resolution for Kenneth R. Jordan/KRJ, LLC, property located along the northwest boundary of the City, intended to also clarify the area of a previous annexation, Resolution R-05-41. The property to be annexed is 51.86 acres 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.

**B. Adoption of an Annexation Plan – Haven Road II, Case No. A-2007-06**

**Action:** Councilmember M. E. Brubaker made a motion to adopt an annexation plan for Haven Road II for Kenneth R. Jordan/KRJ, LLC, property located along the northwest boundary of the City, intended to also clarify the area of a previous annexation, Resolution R-05-41. The property to be annexed is 51.86 acres 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.

**C. Resolution: Authorizing the Alley Designated as #5-67 to be named “Lieba Alley”**

**Action:** On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to authorize that the alley designated as #5-67 be named “Lieba Alley.” This alley between Pangborn Boulevard and East Hillcrest Road shall be named in response to a citizens petition from the neighborhood.

**D. Resolution: Approval of 2008 Sewer Capacity Allocation Program (SCAP)**

**Action:** 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 a resolution to create the 2008 Sewer Capacity Allocation Program. As required by the Consent Judgment, the 2008 SCAP has been approved by the Maryland Department of the Environment.

**E. Resolution: Denial of Country Club Road Quit Claim Request**

**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 approve a resolution stating that the City not abandon any interest that it has in the right-of-way of Country Club Road. This decision is based on the fact that this right-of-way may serve a public use in the future.

**F. Approval of Edgewood Drive/Rt. 40 Memorandum of Understanding (MOU)**

Approval of the MOU was postponed until a later date.

**G. Approval of Application for FY 2009 Program Open Space Projects**

**Action:** 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 of an application to Washington County requesting FY 2009 Program Open Space funding of improvements to the City’s recreational facilities as follows:

1. Potterfield Pool – Amenities for Deck; Tube Slide

2. Fairgrounds Park – Irrigation System for (3) Soccer Fields
3. Pangborn Park – Upgrade Existing Restrooms
4. Funkhouser Park – Barrier Free Modular Play System
5. City Park – Park Benches and Picnic Tables
6. Various Parks – Picnic Tables, Benches, Trash Receptacles
7. Fairgrounds Park – Overlay Driveway at Ice Rink
8. Pangborn Park – Fountains for Lake
9. Hellane Park – Storage Building
10. City Park – Improve Parking at Mansion House

**H. Bester Place: Commitment of Community Development Block Grant Funds**

**Action:** 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 to committing up to \$ 500,000 in Community Development Block Grant funds to assist with development of at least eight for-sale, workforce housing units in the 500 block of South Potomac Street. These funds, which will come from the Homeownership funds included in the annual Community Development Block Grant budget, will be lent to Washington County Community Action Council, Inc. at 0% interest and will be repaid to the City upon sale of the housing units.

Discussion: Councilmember Nigh asked that a statement be included in the contracts for the land trust indicating where the repaid money goes to in the City's budget.

**I. Approval for Purchase of 2008 KME Pumper Fire Engine – Kovatch Fire Apparatus (Nesquehoning, PA) \$ 381,011.00**

**Action:** On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to approve the purchase of a 2008 KME Pumper Fire Engine from Kovatch Fire Apparatus for \$ 381,011 with the following sources of funds:

CDBG funds totaling \$ 231,011 will be used, including \$ 150,000 that was originally budgeted and an additional \$ 81,011 to be reprogrammed from the East Antietam Street Storm Drain project.

Western Enterprise Fire Company Engine 4 will provide the remaining \$ 150,000, with \$ 75,000 being paid towards the down payment and the balance of \$ 75,000 over a period of up to five years to the City with interest at the City's cost of funds. It is the City's intent to include these funds as part of a planned bond issue in the spring of 2008. Western



Enterprise will have the option to prepay this loan at any time without any prepayment penalty.

Staff is hereby directed to do what is necessary to move forward with the outlined purchase and financing plan.

Councilmember Metzner had asked that hiring of nine additional fire fighters be added to the December 18, 2007 agenda during the December 11, 2007 meeting. He has asked that this vote be postponed until the January, 2008 meeting.

#### **CITY ADMINISTRATOR'S COMMENTS**

*Bruce Zimmerman, City Administrator*, thanked Officer Bradley Hellman for assisting a man whose wheelchair had been stolen from Walmart last week. Officer Hellman addressed the issue from a police standpoint, as well as from a compassionate standpoint. He thanked the City Light department for their work in limiting potential damage from windstorms.

#### **MAYOR AND COUNCIL COMMENTS**

*Councilmember M. E. Brubaker* stated it has been a privilege to serve on the Council. He thanked the members of the Mayor and Council for providing this opportunity to him. The past year has been interesting and challenging.

*Councilmember A. Parson-McBean* thanked Councilmember Metzner for his pledge of \$ 250.00 to the Utility Relief Benefit Concert. She thanked Sarah Mason, North Hagerstown High School teacher, for inviting her to speak to the sociology class.

*Councilmember L. C. Metzner* was a judge in the "We the People" contest. He would like to see more schools participate in this contest.

*Councilmember K. S. Cromer* had no further comments.

*Councilmember P. M. Nigh* asked everyone to remember those in the armed forces. There is a new traffic pattern on Potomac Avenue that is confusing. People can bring non-perishable food items with them to the benefit concerto help the food bank.

*Mayor R. E. Bruchey, II*, thanked City Light for their quick response to calls. He also thanked all the City departments.

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 8:52 p.m.

67<sup>TH</sup> REGULAR SESSION  
MAYOR AND CITY COUNCIL

DECEMBER 18, 2007  
HAGERSTOWN, MARYLAND

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: January 29, 2008