

REGULAR SESSION - DECEMBER 21, 2004

Mayor W. M. Breichner called this 75th Session of the Mayor and City Council to order at 7:00 p.m., Tuesday, December 21, 2004, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, N. L. Hendershot, L. C. Metzner, C. N. Moller and P. M. Nigh; City Administrator Bruce J. Zimmerman, City Attorney William Nairn and City Clerk D. K. Spickler.

The invocation was offered by Councilmember Penny M. Nigh. Councilmember Nigh thanked everyone for their thoughts for her daughter. The Pledge of Allegiance was then recited.

Mayor Breichner announced the Rules of Procedure for this meeting will be followed as adopted May 28, 2001. 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 11, 2005; January 18, 2005 and the Regular Session on Tuesday, January 25, 2005 at 7:00 p.m.

Mayor Breichner reviewed the citizen rules for testimony and comments.

PRESENTATIONS

Mayor Breichner presented certificates to both Most Valuable Players (MVP) from the annual Gridiron Classic Football Game. Leon Finley was named as MVP from North Hagerstown High School. Mr. Finley was presented with a scholarship from the Kiwanis. Jimbo Harmon is the MVP from South Hagerstown High School. Mr. Harmon received a scholarship check from First United. The MVPs are chosen by the coach and players.

MINUTES

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to approve the minutes for Mayor and City Council meetings held on October 5, 2004, November 2, 2004, November 9, 2004, November 16, 2004 and November 23, 2004.

CONSENT AGENDA

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember K. B. Aleshire, the Mayor and City Council unanimously agreed by voice vote to approve the

Consent Agenda as follows:

- A. Water and Sewer Department:
 - 1. Water Meters - Hughes Supply Inc. (Montross, VA) \$14,017.50
 - 2. Change Order #3 - Phase II WWTP Project - Ulliman Schutte Construction, LLC (Rockville, MD) \$65,000
- B. Light Department: Ornamental Street Lights - Union Metal Corporation \$14,800.00
- C. Fire Department: Biosystems Posicheck 3 Equipment, Allsafe MES (Williamsport, MD) \$18,328.80 (\$16,495.92 from FEMA grant; \$1,832.88 from General Fund)
- D. Community Development: Approval of Rehabilitation Contract - 46 Charles Street - Alfred Hobbs (Hagerstown, MD) \$85,920
- E. Parks & Recreation: Spray Vehicle - GL Cornell Co (Gaithersburg, MD) \$21,865

UNFINISHED BUSINESS

A. Approval of an Ordinance - Rezoning Dahbura Enterprises, LLC Kensington, LLC; Eastern Boulevard Rezoning, R2 to C2 (Case No. ZM-2004-05)

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote to adopt an ordinance for a Zoning Reclassification and Zoning Map amendment, Case No. ZM-2004-05, to rezone 19.33 acres, more or less, of land located off of Eastern Boulevard from R2 (Residential) to C2 (Commercial General).

Discussion: Councilmember Aleshire expressed concern again that the public services supplied by the City to this site may not be available at the time when they are needed. He is concerned that the height of a commercial building will be higher than allowed in this zoning district. A sign at the site shows a tall building. He is also concerned about street connectivity with the surrounding area. He stated he believes these are valid issues to discuss during a rezoning consideration and once the zoning is complete, the opportunity to negotiate is gone. Councilmember Nigh agrees, especially about the height of a building. The commercial aspect does not bother her but the height does.

B. Approval of an Ordinance: Setback Requirements in the C4 (Regional Shopping Center) District

Action: Councilmember L. C. Metzner made a motion to adopt an ordinance amending Chapter 68, Zoning Ordinance, of the City Code, to add setback requirements in the C4 (Regional Shopping Center) District and a definition for the term, "Pad Site." Councilmember N. L. Hendershot seconded the motion.

Discussion: Councilmember Aleshire asked if the minimum aggregate site width means the clearance has to be 20' on each side. Kathleen Maher, Planning Director, stated it does mean that in this instance, because the minimum is 20'. A building could not be closer to the property line on one side than the other. He also suggested he believes the ordinance should require that a buffer zone should be required to start at the parking lot and not the edge of the building.

Motion carried, 3-2 with Councilmember Aleshire and Councilmember Nigh voting No.

C. Approval of an Ordinance: Determination that 446 W. Washington Street is No Longer Needed for a Public Purpose

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote to approve an ordinance determining that the real property known as Parcel "B" part of Parcel No. 2 of Liber 1981, Folio 722 is no longer needed for a public purpose and that it be conveyed to the owner of 446 W. Washington Street without compensation. All costs associated with the transfer shall be the responsibility of the owner of 446 W. Washington Street.

NEW BUSINESS

A. Introduction of an Ordinance: Forest Conservation Amendments

Action: On a motion duly made by Councilmember C. N. Moller and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to amend Chapter 113 of the City Code, Forest Conservation, to increase the payment in lieu rate from 10 cents per square foot to 30 cents per square foot and to modify the language regarding the types of trees which may be planted.

Discussion: Councilmember Aleshire stated he has received several e-mails this

week expressing concern that the Planning Commission will have the ability to waive requirements for developers, in relation to how the Forest Conservation Ordinance is applied.

B. Approval of Contract: BFI Contract Adjustment

Action: Councilmember K. B. Aleshire made a motion to approve a 3% increase in the contract rates with BFI Waste Services effective January 1, 2005. These rates reflect the inflationary adjustment based on the Consumer Price Index. This increase effects the contract rate for the collection of household refuse, mixed paper recycling and yard waste. Councilmember L. C. Metzner seconded the motion.

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

C. Emergency Ordinance: Refuse Fee Adjustment

Action: Councilmember L. C. Metzner made a motion to pass an emergency ordinance to increase the Refuse Service Fee for the collection and disposal of household refuse by the City of Hagerstown, from \$ 24.50 to \$ 25.00 per quarter per residential dwelling unit for all bills rendered after January 1, 2005. Councilmember C. N. Moller seconded the motion.

Discussion: Councilmember Nigh stated she is voting no on this because the Housing Authority and other developers have already been exempted from other fees.

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

D. Introduction of an Ordinance: To Amend Code Chapter 46, Adult Businesses - To Modify Procedures for Obtaining an Adult Business License

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to amend the Code of the City of Hagerstown, amending Chapter 46, *Adult Businesses*, to modify the procedures for obtaining an Adult Business License. The amendment establishes a time frame within which the City Clerk must issue or deny the license, and to specifically identify the right of appeal.

E. Resolution: Norfolk & Southern Railway Company - Eliminate the Annual Payments for Three License Agreements in Exchange for a One-Time Payment

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to amend existing license agreements with Norfolk Southern Railway Company for sewer piping and electric lines that cross railway property to eliminate the annual rental fees in exchange for the City making a one-time payment of \$ 5,769.25 for each of the three (3) agreements, known as ID GA5170, ID T11900, and ID T11902, for a total payment \$ 17,307.75.

F. Resolution: Fairgrounds Park Parcel - Russell L. Harshman Lease

Action: On a motion duly made by Councilmember C. N. Moller and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to extend the lease Agreement with Russell L. Harshman for the portion of unimproved real estate, located along the west side of North Cleveland Avenue, north of and adjacent to 325 North Cleveland Avenue, and south of the Fairgrounds entrance road for the period November 1, 2004 through October 31, 2005.

G. Resolution: Corporation of Assistive Technology Lease

Action: On a motion duly made by Councilmember N. L. Hendershot and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution to extend the Lease Agreement with the Corporation for Assistive Technology, an organization that constructs and installs ramps for homes in Hagerstown and Washington County. Under this User Agreement, the Corporation for Assistive Technology will use a portion of the Claude M. Potterfield Pool Building for storing lumber, modules and construction of ramps. The terms of the agreement shall be for the period from December 1, 2004 to December 1, 2005.

H. Resolution: Gateway Crossing Development - CSX Railroad Track Crossing Agreement

Action: Councilmember K. B. Aleshire made a motion to authorize the execution by the City of two agreements for a portion of the storm water management system for Phase IV of the Gateway Crossing Housing Development. One agreement shall be between the City and CSX Transportation, and the other agreement shall be

between the City, Gateway Crossing Infrastructures Inc., and the Housing Authority of the City of Hagerstown. Final agreements must be approved by the City Attorney. Councilmember L. C. Metzner seconded the motion.

Discussion: Councilmember Nigh expressed concern that the City has to sign the agreement with CSX. She is concerned the City will eventually have to maintain the property.

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

I. Resolution: Acceptance of Street - East Ridge Drive

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to accept the offer of dedication of "East Ridge Drive."

J. Approval of 2 Full-Time Positions in Permits and Inspections

Action: On a motion duly made by Councilmember P. M. Nigh and seconded by Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to approve of two new positions in the Engineering & Inspections Department. One position is an additional Housing Inspector to complete various building inspections and plan reviews. The other position is the Permit Technician to complete the processing of various permits and data entry in the Geographic Information System. The Mayor and City Council further approve allowing an expenditure not-to-exceed \$ 15,000 for vehicles and equipment for these positions. Funding for these positions is from increased permit revenues.

K. Approval of Reinstatement of Police Officer Position

Action: On a motion duly made by Councilmember C. N. Moller and seconded by Councilmember N. L. Hendershot, the Mayor and City Council unanimously agreed by voice vote to approve backfilling a police position that was frozen when a Lieutenant retired in July, 2003. The grant writing and management functions of this position were reassigned, resulting eventually with one less patrol officer. The approval to restore this position will allow a new officer to join the January class of the Western Maryland Police Academy. The \$ 25,000 needed to fund this position for the remainder of the current year will be available by deferring the purchase of one police vehicle.

Discussion: Councilmember Aleshire asked how the position will be paid for

beyond the current fiscal year. Mr. Zimmerman stated it would have to be included in the budget for the coming years and the annualized cost would be included in the proposed budget.

L. Volunteer Snow Removal Program Agreement

This item was removed from the agenda. Staff worked further on this program and have determined there is a better process for implementing it and an agreement won't be necessary.

M. Approval of Contract Extension for City Legal Services

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to approve an agreement with the law firm of Urner, Nairn and Boyer to serve as general counsel for the City of Hagerstown for a contact term commencing on January 1, 2005 and running through December 31, 2007, as outlined in the attached Retainer Agreement.

N. Approval of Contract: IAFF Local 1605

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember C. N. Moller, the Mayor and City Council unanimously agreed by voice vote to approve a collective bargaining agreement between the City of Hagerstown and the International Association of Fire Fighters Local No. 1605. This agreement shall run for a period of two years commencing on July 1, 2004 through July 2, 2006. Under the terms of this agreement, the union shall receive wage adjustments totalling 4.4% retroactive to August 1, 2004 and 2.75% effective July 1, 2005.

Discussion: Councilmember Nigh stated she understands 2/3 of the country is understaffed and governments need to provide safety nets around their citizens.

CITIZEN COMMENTS

Jack Miller and Steve Cromer, Hagerstown Pony League, formally presented their intent to move the Pony League from Jefferson Boulevard to Fairgrounds Park. Mr. Miller stated the Pony League is asking the Mayor and City Council to delay their decision to extend the lease with the Hagerstown Softball League for six months. The delay is being requested to allow the Pony League to develop a formal proposal discussing youth baseball in Hagerstown. The proposal will be very thorough and extensive. Mr. Miller stated the Pony League is just asking for the chance to be heard. The request for a delay will be discussed at a work session in

January. Councilmember Nigh thinks the Pony League would be a good addition to Fairgrounds Park.

Rev. L. J. Guillory, Washington, DC Ombudsman International, stated he is here on behalf of the citizens of Hagerstown. Ombudsman International has named ombudsmen locally for the State of Maryland. He stated he is present to discuss public access. He asked why no action has been taken since he was here four months ago on this issue. There is good coverage for Mayor and City Council meetings but the same has not been done for public access. He stated he has completed his report and will turn it over to the Attorney General.

He stated the Mayor and City Council are not acting in the best interest of the taxpayers because public access was denied. He indicated this may be misrepresenting and misusing public funds. He is not threatening, but admonishing. A studio would have provided an opportunity for citizens to present ideas to the general public and to each other. He thinks citizen comments should be heard before a vote is taken.

He stated it appears the Mayor is using Channel 6 to promote himself. He stated the community has asked the Mayor for access to the public access channel and they are being denied something that their tax dollars are paying for. He stated the Franchise Agreement with Antietam Cable Television indicates it was important to those signing it that a public access channel be provided, complete with a studio and full color broadcast. There are people in the community who are not interested in running for public office but would be interested in other information. He stated the Mayor denying that access is not appropriate. He is amazed it took two months to get minutes approved.

Councilmember Metzner stated a public attack is not appropriate. Rev. Guillory said this is not a personal attack. Councilmember Metzner stated it appears to be.

Frank B. Nobles, 66 W. North Avenue, Hagerstown, Maryland, presented a public notice, dated December 21, 2004, from Ombudsman International. He stated they have launched a campaign to address teen drunken driving in order to help control this increasing tragedy. The announcements are being created by non-drinking teens. Mr. Nobles stated Ruth Monroe was recently honored for her contribution to humanity and the community. There were 250 people in attendance, including E. J. Fuller, Avery Carey and Robert Bruchey, who served as Mayor from 1997 to 2001. A dinner reception was held and was sponsored in part by Elbro, Inc. and the Jonathan Street community.

James Odoms, 66 W. Morgan Avenue, Hagerstown, Maryland, withdrew his request to speak.

Paul Muldowney, 1001 Oak Hill Avenue, Hagerstown, Maryland, stated he was disappointed by what transpired at a work session discussion regarding the Alarm Ordinance. He feels as though nothing was resolved. He received a bill for two violations for false alarms. The amount

was for more than 10% of his property taxes. He finds the ordinance to be anti-citizen. It talks about punishment. Councilmember Metzner stated the Council realizes the citizens haven't been given notice of their appeal rights. Councilmember Metzner stated the City has not done well in the operation of this ordinance. Staff is reviewing now. Mr. Muldowney stated there was no notification of the appeal process. Councilmember Metzner stated he understands people were not notified they could prepay the fine and significantly reduce the fees. Mr. Muldowney stated the term "prepayment" is not listed in definitions and it should say that you could reduce the amount and file an appeal. Councilmember Metzner stated the Council wants to make sure the citizens know they have the right to appeal. There is no discretionary authority given to anyone in this ordinance and there should be. Councilmember Metzner stated the Mayor and City Council are trying to rectify this problem.

Jim Laird, 1903 Maplewood Drive, Hagerstown, Maryland, stated he thought there would be a public hearing for the forest conservation ordinance. He stated that while the Mayor and City Council are considering the proposed amendment, they should address the Planning Commission's refusal to enforce the basic intent of the ordinance. State law indicated a municipality can adopt their own ordinance but it can't be less stringent than the State Ordinance. It appears to him that the City's ordinance is less stringent. The State law provides an option of a payment in lieu of planting trees, if planting is not reasonably accomplished. He stated the City's Planning Commission listens to weak excuses. He would suggest a higher per foot price. He stated there are many dirty, ugly towns in the United States. He doesn't want to see Hagerstown in that category.

John Parsons, 484 Thames Street, Hagerstown, Maryland, stated he is concerned about citizen comments being heard after the vote on an ordinance. He is concerned that no public hearing was held for the Forest Conservation Ordinance amendment. He asked the Mayor and City Council to push the Planning Commission to uphold the ordinances of the City. He asked that they make sure developers are required to abide by the Forest Conservation ordinance requirements. He stated he thinks the Planning Commission issues waivers too quickly. In the past 12 months, he has seen the property at the Lowe's Distribution Center turn from a dense forest into a fenced in yard where you can't even see the building. This is not attractive and most of the trees planted are already dead. Councilmember Aleshire pointed out the amendments have not been approved yet, the ordinance has only been introduced.

CITY ADMINISTRATOR COMMENTS

Bruce Zimmerman, City Administrator, stated this is the last meeting of a full year. He hopes the Mayor and City Council feel it has been a productive year. He wished everyone a good holiday season.

COUNCIL COMMENTS

Councilmember K. B. Aleshire responded to the comments made about the Forest Conservation Ordinance Amendments. He stated he believes the trees planted are required to have a 75% survival rate. If the trees die, they have to be replanted and re-established. He agrees that planting on-site would be better. He stated it appears that the Feinstein building changes were not approved by the PDDC. He would hope requests made for development in downtown would be given greater consideration. The PDDC also needs to weigh the integrity of existing structures. The Board of Zoning Appeals (BZA) recently denied a request, by unanimous vote, made by a drinking establishment to locate behind the proposed school for the arts. He thanked the BZA members for realizing the possible effects of this type of business in that location. He stated he was glad to see the Herald Mail newspaper noticed that Blue Cross/Blue Shield has asked to be named as an interested party in the hospital's Certificate of Need (CON) request. Mr. Hamill had indicated Blue Cross/Blue Shield was not in opposition to the relocation, but this appears to indicate otherwise.

Councilmember N. L. Hendershot expressed the same sentiments about the hospital relocation. The questions raised are not about land development, but about affordable health care for the community. Blue Cross/Blue Shield stated the same. He thanked the BZA for recognizing this was not an appropriate place for a drinking establishment. Snow volunteers are still needed. Anyone who would like to participate in the volunteer program may contact John Lestitian at extension 195 to sign up. He stated he feels the meeting with the Washington County Delegation was outstanding. A majority of the Delegation was present and the discussion was excellent. He stated the outpouring of support from the community and the City staff to Pam McKoy's family is truly a tribute to her memory. He thanked and honored Ruth Monroe for her contributions to the community. He thanked the people at the Martin Luther King Center for making arrangements so he could attend. He wished everyone a Merry Christmas and Happy Holidays. Mayor Breichner stated he thought Brett McKoy's words were a beautiful honor for his wife, Pam.

Councilmember P. M. Nigh asked the members of the Pony League directors to contact her. She stated the Central Booking issue should have been higher on the priority list for Washington County and the City. She stated there will be about \$ 5 million spent on the A & E Parking Deck when it is complete. At one time this garage was to be located on Washington Street and when the developer came in, it was moved. Bob Maginnis, Herald Mail newspaper, wrote article about people not wanting to walk. She asked how people can see the businesses if they aren't willing to walk. She agrees with Commissioner William Wivell who stated the deck won't pay for itself. Commissioner Wivell indicated decks are built if there are excess funds. She stated she doesn't see excess funds for the County. She asked why the City can't wait for someone to put their own money in to this project.

Councilmember Nigh stated her daughter, Danielle, has started radiation treatments for her cancer. There were some swelling problems and she had to be hospitalized for two days.

Councilmember C. N. Moller urged everyone to reach out to their neighbors during this Christmas season.

Councilmember L. C. Metzner stated Friday and Saturday were sad days following the passing of Pam McKoy. He was uplifted on Sunday when Ruth Monroe was honored. He stated when you see the renaissance in the Jonathan Street area, you realize how productive the community has become. The young people who are returning to the area are a tribute to Ruth Monroe's contribution. He wished everyone a Merry Christmas and a Happy New Year.

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 N. L. Hendershot, the meeting was adjourned at 8:30 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: January 25, 2005