

WORK SESSION AND EXECUTIVE SESSION – July 21, 2015

EXECUTIVE SESSION – July 21, 2015

On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember K. B. Aleshire, the Mayor and City Council unanimously agreed by voice vote of all members present to meet in closed session 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, #1 (Section 10-508(a)) and an administrative function, #15 (Section 10-508(a)), on Tuesday, July 21, 2015, at 3:05 p.m. in Room 407, 4<sup>th</sup> Floor, City Hall, Hagerstown, Maryland.

The following people were in attendance: Mayor D. S. Gysberts, Councilmember K. B. Aleshire, Councilmember M. E. Brubaker, Councilmember D. F. Munson, Councilmember P. M. Nigh, City Administrator Valerie Means, Michelle Hepburn, Director of Finance, and Karen Paulson, Director of Finance. Councilmember L. C. Metzner was not present. The meeting was held to discuss various personnel issues. No formal action was taken at the meeting. On a motion duly made, seconded, and passed, the executive session was adjourned at 3:45 p.m.

Work Session – July 21, 2015

Mayor D. S. Gysberts called this Work Session and Executive Session of the Mayor and Council to order at ??? p.m., Tuesday, July 21, 2015, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, M. E. Brubaker, L. C. Metzner, D. F. Munson, and P. M. Nigh; City Administrator Valerie Means, City Attorney Mark Boyer, and City Attorney Jennifer Keefer.

Preliminary Agenda Review

**Consent Agenda**

- A. Department of Community and Economic Development:
  - 1. Application Permit for Downtown Summer Slide Festival – August 29, 2015, Maryland Theatre at University Plaza
  - 2. Application Permit for Augustoberfest – August 22, 2015 and August 23, 2015, Augustoberfest Charitable Foundation, Inc. at Central Parking Lot
  
- B. Department of Parks and Engineering:
  - 1. Replacement of Alley 3-36 and 5-11 – Huntzberry Brothers, Inc. (Smithsburg, MD) \$ 88,992.00
  
- C. Public Works:
  - 1. Purchase of Two Trucks to Replace Trucks No. 03 and 45 – Hertrich Fleet

- Services, Inc. (Denton, MD) \$ 44,407.00
- 2. City Hall Observation Tower Painting – Earn Contractors (Gaithersburg, MD) \$ 46,500.00

D. Police Department:

- 1. Purchase of Unmarked 2016 Ford Interceptor Police Utility Vehicle – Brekford (Hanover, MD) \$ 36,162.50
- 2. Purchase of Marked 2016 Ford Interceptor Police Utility Vehicle – Brekford (Hanover, MD) \$ 33,173.50
- 3. Approval of Keystone Software Maintenance for the HPD Police Mobile – Sole Source Vendor (Maple Shade, NJ) \$ 39,789.00
- 4. Approval of Keystone Software Maintenance for the HPD Records Management System – Sole Source Vendor (Maple Shade, NJ) \$ 36,381.00

E. Utilities:

- 1. Purchase of Chemicals Poly-Orthophosphate – Shannon Chemical Corporation (Exton, PA) \$ 58,440.00

Michelle Hepburn, Director of Finance, stated in order to obtain the pricing listed for the two Public Works vehicles, the order must be placed on Wednesday, July 22, 2015. The Mayor and Council agreed to allow the order to be placed on July 22, 2015 and formally approve the purchase on July 28, 2015.

**Approval of Resolutions to Support the Maryland Department of Housing and Community Development’s Neighborhood Business Works Program Financing for RAW, LLC and Harbin & Gibson, LLC**

The Maryland Department of Housing and Community Development (DHCD) provides gap financing for businesses through their Neighborhood Business Works Program (NBWP). Two businesses have applied for the financing, and support and approval from the governing body of the locality in which the project is situated is required.

RAW, LLC is purchasing and renovating the office building located at 134 West Washington Street for their own use and occupancy. They will also be seeking additional tenants for the building.

Harbin & Gibson, LLC is purchasing and renovating the office building located at 111 North Potomac Street for their own use and occupancy. Three professional jobs are being retained in downtown Hagerstown as a result of this loan.

It was the general consensus to include approval of the resolutions on the July 28, 2015 Regular Session agenda.

This completed the preliminary agenda review.

Hagerstown-Washington County Convention and Visitors Bureau (CVB) – Discussion of the Sports Tourism Economy

Jill Frick, Economic Development Manager, and Dan Spedden, President of the Hagerstown-Washington County Convention and Visitors Bureau (CVB), were present to discuss the sports tourism economy.

Ms. Frick indicated the CVB is proposing that Urban Partners be contracted to complete a study exploring the opportunities for the community to develop and retain sports tourism.

Urban Partners is the consulting firm that developed the 10-year Community's City Center Plan. Jim Hartling and Chris Lankenau of Urban Partners provided extensive community engagement in the development of the Community's City Center Plan. The Hagerstown-Washington County CVB believes Urban Partners could further assist the community related to implementation strategies to support the sports tourism economy.

Councilmember Aleshire inquired if this request is associated with the Economic Development Commission's prior recommendation of a local sports authority. Ms. Frick indicated it is not specifically associated with or generated from the recommendation.

Mr. Spedden stressed the importance of sports tourism to the local and regional economy. Hagerstown is celebrating 35 consecutive years of professional baseball. The CVB believes Urban Partners can facilitate a community conversation about the future of sports tourism and develop strategic directions for retaining and growing this sector of the economy. The CVB is recommending that Urban Partners be re-engaged to restart the conversation about baseball, and if warranted, include a baseball facility in the City Center Plan. The Board of Directors of the CVB have approved funding of \$ 15,000 to be used toward this study. The CVB asks that the City of Hagerstown match this amount. The Hagerstown Suns fan club has approved the expenditure of \$ 5,000 for cost overruns that may be selected to improve the final outcome.

Mayor Gysberts has not given up on this endeavor and is trying to keep conversations going in the community. This proposal is not a specific discussion about the Hagerstown Suns. They may be included, but it is not exclusively about the Suns. It is important to have an ownership group that wants to be in Hagerstown. Engaging Urban Partners is important because they used a process that led to good analysis and action items for the City and the community. If the City moves forward, the study will be completed for the community, not for a particular business. The end users of a facility have to make that venue financially feasible. A sports project could be an investment for the community for the next 100 years. He supports the Council making this commitment, even with the financial struggles the City is facing. Urban Partners is a trustworthy group that led the City through a process of developing quality projects.

Mr. Spedden mentioned some communities have partnerships with educational facilities that maintain professional stadiums. He mentioned a partnership with Hagerstown Community College may be a possibility.

Councilmember Munson stated he has a great deal of respect for Urban Partners and he supports approval of the funding request.

Mayor Gysberts stated a venue for 5,000 people would add value to any community. He mentioned the Suns have attracted up to 150,000 people per season in the past. If Urban Partners are engaged to complete a study, he recommends using the Sustainable Community Area as the main geographic boundary for the study, with flexibility to allow other locations to be considered.

Councilmember Aleshire stated the first thing to be determined is if the Council is interested in providing funding for another study. Urban Partners had a wide range of resources to work with in the community and they contacted as many stakeholders as possible. They determined 8 projects were feasible and none of which included a stadium. The projects included \$ 125 million worth of projects, with 75% of the investment being privately funded. Resources are limited. He expects another stadium study will provide the same analysis – a stadium can be built, it will be profitable and it will benefit the community. However, there is no public support for a new stadium. The private investment has not been offered, and there is no political will to move forward. He does not want to have attention taken away from the investment goals for an idea that is largely unfunded. He would support a project if another entity wants to pay for and complete another study. He believes the key for downtown is education and that should be the focus. If he agrees to spend the taxpayer's money on athletic offerings, it will be for youth athletics and for a broader view than professional baseball.

Mayor Gysberts stated he asked Urban Partners to not include consideration of a stadium in their review because it was a sore subject at that time and the City needed a plan for something other than baseball for downtown. Mr. Hartling stated that if a stadium was not considered, the City needed to build a neighborhood. The A & E Trail is part of the plan for building a neighborhood. The community needs an objective, unbiased facilitator to come in and bring stakeholders together to determine if there is an investor willing to move forward with a stadium.

Councilmember Metzner stated countless hours have been spent studying the new stadium question. Past administrations have supported a new stadium but couldn't support spending the \$ 40 to \$ 50 million it would cost. He supports minor league baseball in the community. If this is to be a community effort, the City shouldn't be the only entity asked for funding. He realizes the Suns operation supports local businesses.

Mayor Gysberts indicated the City could jump forward and seek out investors for this business retention effort. If the City Council doesn't take the lead and say what they want for the City, it will be more difficult for other entities to join the effort.

Councilmember Metzner stated there were times when supporters were not willing to participate if the team was anything other than a Class A team. He is supportive of having an independent team in Hagerstown. There are many teams in the market if there is a new stadium involved. What the City has been through in the last several years with the stadium discussion divided the City. Winchester, Fredericksburg, and Spotsylvania have also experienced difficulties with their efforts to bring the Suns to their communities.

Mayor Gysberts pointed out these communities don't have a team but Hagerstown does. The existing stadium is not in good condition and does not have consumer aesthetics. It does have historical character but needs major renovations.

Councilmember Aleshire does not think the stadium issue divided the community. He believes it created solidarity among the voters. They collectively indicated a stadium is not a priority for the investment of public dollars.

Councilmember Brubaker was hoping a Scope of Services would be included in the information for this meeting. He wondered if the end report would provide a plan for steps needed for organized baseball in Hagerstown and a plan for securing the funding. There has not been any indication from the private sector that they would be involved in this effort. The previous County Commissioner administration supported the downtown stadium concept. He is not sure the current administration would support a different location. He wondered who would administer a contract with Urban Partners.

Councilmember Metzner pointed out there is a professional team in Hagerstown at least through the 2016 season. He suggested asking the Suns owners if they intend to request a lease extension through 2017. He noted many teams want new stadiums. A minority owner of the Suns developed a \$ 12 million plan that the majority owner did not support. He thinks Councilmember Aleshire's idea of a youth indoor sports complex is worth considering.

Councilmember Brubaker pointed out amenities are needed at the existing stadium to make it a family experience. It will take a large sum of money to complete renovations to improve the experience at the stadium. He suggested asking private investors to provide \$ 5,000 each toward the study. This could be an indication of support for the project.

Councilmember Metzner stated entities other than government could be involved. He thinks the current site could work in conjunction with a youth facility.

Councilmember Munson stated if the study is to be for a downtown site he, will not support it. He is prepared to vote against a downtown stadium. Voters were opposed to a downtown stadium, not to the Hagerstown Suns. He agrees a discussion should be held with the ownership of the Suns. If this study would include a wider location area, he would support rebuilding the current stadium.

Mayor Gysberts pointed out the current site is reclaimed swamp land, which is why there are flooding issues and issues with the ground.

Councilmember Brubaker hopes an analysis would include potential funding sources. Other communities have had funding through a major investor. He wondered what partners may be interested in this project. He would support the City providing \$ 5,000 toward the study.

Councilmember Munson agrees with Councilmember Aleshire that Urban Partners provided a report with value. It provides a focus and plan for the City to follow. He does not want the argument about a baseball stadium to reach the level it did prior to the last election.

Councilmember Nigh noted the current owner of the Hagerstown Suns keeps saying the team will leave if something is not done to improve the stadium. Mayor Gysberts noted the improvements he is referring to is due to player development standards. Councilmember Nigh stated she enjoys baseball. If someone enjoys a sport, they will go anywhere to watch it. The condition of the stadium does not keep people from attending if they truly enjoy the game. The stadium could have been renovated with all the money that has been spent throughout the years on maintenance. If baseball stays in Hagerstown, it will be because the people want it. She does not think another study is needed, especially with the budget situation. She stated the City has not looked at the possibility of having other teams play in Hagerstown.

Mayor Gysberts stated the process affects the product. The infrastructure is failing. A decision has to be made if the City is going to continue to invest in the stadium as an amenity for the community.

Mr. Spedden stated a third party is needed for intervention. He is not suggesting a new study be compiled. His request is for a study revision. The American Legion State Championship was held in Hagerstown recently at Municipal Stadium. Other groups have used the stadium also. He mentioned other communities have new stadiums and the residents are excited and the communities are happy with the stadiums. Hagerstown is now ranked as the worst stadium in the South Atlantic League. He asked the Council to imagine the economic impact that a new group and new facility would have for Hagerstown.

Councilmember Aleshire stated City of Aberdeen officials have not been happy with the stadium there.

Mr. Spedden visited Waldorf recently, which is the site of the newest stadium in Maryland. In most locations, the owner of the team is responsible for obtaining one-third of the total investment.

Councilmember Brubaker indicated the one-third private investment is difficult to secure. The City had funding secured for two-thirds of the cost for a stadium several years ago.

Councilmember Aleshire stated that this body needs to make a competent decision, not a courageous one. The money is not available and public support is not evident. He is confident in making the decision to not support this request.

Councilmember Metzner agrees with a funding plan of three equal parts. Funding for a downtown stadium was to be one-third from the State of Maryland, one-third from the County and one-third from private investment. The State and the County were committed to the funding but no private investment was offered. He stated this issue has been studied to death.

Councilmember Aleshire pointed out it is unfortunate the City is spinning its wheels discussing this when the team is spinning its wheels trying to locate, especially when there are so many more significant issues facing the City.

Mayor Gysberts noted a broader analysis could be completed if the vision for baseball in Hagerstown is not about a specific team. He believes Urban Partners can assist with developing a plan for how to reach the City's goals for baseball.

Councilmember Brubaker pointed out no one has supported his suggestion of the City providing \$ 5,000 toward a study.

Mayor Gysberts stated he believes the unwillingness of the Council to not make a bold decision to move forward with this effort to make an economic impact in Hagerstown is a failure of leadership.

Councilmember Nigh believes the City has been limited with options because of the agreement with the Hagerstown Suns.

Councilmember Brubaker stated three Councilmembers have indicated they support a major project, if it is done as a community wide project. He is not sure how this can be completed.

Mr. Spedden pointed out the request also includes funding from the CVB and from the private sector (Fan Club). Tourism in the County will circumvent the City of Hagerstown if baseball leaves. Closed hotels will create additional blight.

Councilmember Aleshire does not appreciate the implication that there is no thought for redevelopment in the East End. He has repeatedly talked about an indoor youth athletic facility. Many residents travel outside the City every day to participate in youth sports. He believes there is enough interest in this amenity to make this project successful. The City owns land in the East End that could be part of its contribution to

the project. It is ridiculous to think nothing will ever occur at the Municipal Stadium site if it is not used for baseball.

Councilmember Metzner agrees with the vision for a sports complex. No one is saying they don't want professional baseball in Hagerstown. A major discussion point is the overall cost. The City's commitment for a new stadium could be \$ 15 million to \$ 20 million. He wondered if there would be a better use of taxpayers' dollars for other projects and economic incentives.

Mayor Gysberts thanked Mr. Spedden for his efforts to discuss this project and proposed study. This can be discussed again if a Scope of Services is developed for the Council's consideration and if other partners commit to funding for a study.

#### FY 16 General Fund Agency Contributions

Michelle Hepburn, Director of Finance, was present to discuss FY 16 Agency Contributions. The Mayor and City Council have reviewed these potential contributions during several work sessions. Based on previous discussions, Ms. Hepburn presented a list of the agencies that were determined not to be core agencies and four options for possible funding for these agencies. The options include no funding, a percentage of the amount requested, a flat contribution for all agencies, and a specified amount of funding for individual agencies.

Mayor Gysberts stated a decision should be made regarding these contributions so the agencies have an idea of what they can expect from the City of Hagerstown as they work through their own budgets.

Ms. Hepburn noted these are certainly not the only options, but they reflect what has been suggested to her since the discussion in June, 2015.

Councilmember Brubaker has not reconsidered his original recommendation of not making any contributions beyond those to the core agencies. The remaining \$ 15,000 should be kept in a Contingency Fund, with the understanding that the City Administrator would be able to use these funds to help the City of Hagerstown get through FY16 if necessary.

Councilmember Nigh thought the consensus was that the \$ 15,000 would remain in contingency and if any of these agencies were experiencing budget shortfalls, after soliciting other funding sources, they could request funding from the City.

Councilmember Metzner recommended holding the \$ 15,000 in contingency and if any remains at the end of the fiscal year, the Council could discuss the possibility of providing funds to the agencies.

Councilmember Munson stated none of the options are ideal. However, he would support Option 2, which provides the agencies with \$ 1,000 each, leaving a contingency of \$ 6,000.

The general consensus of the Mayor and Council is to hold the \$ 15,000 remaining in the Agency Contributions line in contingency. The funding will be available if additional revenue is needed to meet the FY 16 budget. This plan is noted as Option 1.

Ms. Hepburn pointed out there is a draft motion in the meeting packet for approval of funding for the bas relief art at the Washington County Free Library. The Capital Budget includes \$ 5,000 that could be used for this funding.

Councilmember Aleshire stated he supports the library but does not support this expenditure because the City has provided significant funding to improve the space already.

#### Assistance to Firefighters Grant

Chief Steve Lohr was present to discuss a grant that was recently awarded to the Hagerstown Fire Department. The grant is a 2014 Assistance to Firefighters Grant in the amount of \$ 169,000. The grant funds will be used to purchase 65 sets of turnout gear. The local share obligation is \$ 15,363, and is included in the FY16 budget.

Hagerstown, like most fire departments, strives to replace gear after ten years of service life. This is an industry recommended best practice based on many factors. Many of the 78 firefighters have gear that will soon exceed the out-of-date criteria.

A formal contract for this equipment has not been in place for some time. If the grant is accepted, requests for bids would be issued.

It was the general consensus to move forward with accepting the terms and conditions of the grant and include approval on the July 28, 2015 Regular Session Agenda.

#### Transportation Priorities

Rodney Tissue, City Engineer, stated the Maryland Secretary of Transportation and Department of Transportation (MDOT) staff tours the State to present planned transportation improvements and obtain priorities from the local jurisdictions. The actual tour will be conducted with Secretary Pete Rahn and State Highway officials in October.

Mr. Tissue noted that Secretary Rahn met with Councilmember Brubaker, City Administrator Means, and him last week.

Staff will send to MDOT the priorities from the City elected officials. Staff offers the following items as suggested proprieties:

1. Highway User Revenues: Continue funding or increase to former levels. The average is approximately \$ 300,000.
2. Eastern Boulevard Corridor Improvements – Staff support this Washington County led, multi-phase project that consists of a multi-modal transportation system connecting US Route 40, Maryland Route 64, and Maryland Route 60. Future phases include construction of new streets to disperse traffic and reducing traffic volumes on State roads. One such route is the construction of Professional Court extended.
3. I-81 Widening – Staff understand SHA is planning widening of the Potomac River bridge and widening to approximately Route 11. Staff request updates on this project and advocate for the widening to the Pennsylvania line over the next ten years.
4. Continue to fund Retrofit Sidewalk Installation, Bikeway Grants, Transportation Alternatives Program for the Marsh Run Trail, and Safe Routes to School Program which the City has used in the past.
5. Dual Highway – Support the State’s initiative to improve pedestrian safety on the Dual Highway.

Washington County Engineering staff provided a letter listing their priorities that also includes the MD 65/ I-70 interchange and access management plan, the Professional Boulevard and Roadway project and other initiatives. This list was approved by the County Commissioners recently.

Councilmember Aleshire noted the Eastern Boulevard project will expand the opportunity for private development. The City’s boundaries should be expanded to include that development since City utilities will be requested. There has been discord on annexation and the associated development. The City’s portion of the improvements on Eastern Boulevard have been completed. The remaining work will be completed by Washington County. The City may not be providing additional funding for this project but there will be City utilities to consider. It has to be understood on the State and Local level that funding should not be taken from the Professional Court project to provide some other infrastructure.

Councilmember Brubaker would only support City funding if there is a revenue source from the properties located across the Antietam Creek. There needs to be a commitment to annex, not just a future promise.

Councilmember Aleshire stated the widening of I-81 will help Washington County attract economic development because of the accessibility provided by wider roadways.

It was the general consensus to send the following list to the State of Maryland (in priority order):

1. Highway User Revenue
2. I-81 Widening

3. Eastern Boulevard Corridor Improvements
4. Continue grant programs

Councilmember Brubaker pointed out the Dual Highway is a State maintained highway and is the State's responsibility.

#### A & E Trail: Project Status

Rodney Tissue, City Engineer, was present to provide an update of the A & E Trail Project.

The City received a \$ 100,000 downtown planning grant from the State of Maryland Department of Business and Economic Development. The goal was to create a reality-based, road map for downtown Hagerstown by identifying a set of achievable projects. In the Fall of 2013, the City hired Urban Partners (UP) from Philadelphia as the consultant. Urban Partners and the City hosted public meetings at the library during the plan development process. All told, UP spent 130 hours gathering public input in one way or another. The final presentation was to the Mayor and City Council on June 17, 2014.

Urban Partners developed a list of eight catalytic projects. Catalytic Project #5 is Linking City Park and the A & E District with a trail and new housing. The southwest area of the City Center has a relatively healthy housing market. There is an opportunity to connect City Park with the Arts & Entertainment District. The target for housing development in this area should be quality upper floor apartments and new owner-occupied townhomes. The general alignment of the Pedestrian/Bike Trail Connection was recommended by UP. Multiple locations for phased or new rehabilitated housing has been identified at the following locations:

1. Dagmar Hotel
2. W. Antietam Street historic buildings
3. Publicly-owned property, followed by privately-owned property

Mr. Tissue stated Art Trails are becoming more popular in communities of all sizes. A public meeting was held in October, 2014 to obtain design input and to discuss the route. Ideas from this meeting were incorporated in the final design.

Phase I of the project would be Antietam Street to Park Circle. Funding of \$ 2,065,000 is included in the FY 15/16 approved budget. The funding plan is a combination of Maryland Program Open Space funds, pending Maryland Heritage Areas Funds, and City of Hagerstown funds. The project can be bid as soon as the land is obtained. Future phases include connection to Washington Street and an improved green space on the large island near Park Circle.

To complete the trail, land is needed from several property owners. These include the Herald Mail, Hagerstown Housing Authority, Ellsworth Electric, and Antietam Paper, LLC.

The park design has three areas – a natural area, a gathering area, and a kid friendly/art feature area. The art feature area is to include a splash pad.

There will be approximately 50 lights along the trail. The design will be different from other lights throughout the City. The light is bright white and is four times the recommended standard for trail lighting. It will be well lit.

The design proposes the placement of 18 cameras along the length of the trail. A Rails-to-Trails study showed the crime rate on urban trails is very low. Trail safety begins with thoughtful engineering and design “Crime Prevention through Environmental Design (CPTED)”. Other ways to enhance safety include signs to identify the user’s location, signs for trail etiquette and safety, and a dedicated trail patrol.

After meeting with the manager of Americans for the Arts (Washington, DC), an RFP for an art consultant to guide the art component of the trail project was issued. The committee of community members reviewed the bids and are recommending Cochran Studios of Frederick, Maryland. This will be an interactive process where the public will be invited to be part of the design and the consultant will plan art and manage the “call for artists”. The budget for the actual art is \$ 162,000. Art would include sculptures, sidewalk art, interactive art, and many other mediums.

The trail would be concrete pavers in a herringbone pattern to create an inviting look. It would be stormwater friendly.

Decorative crosswalk designs are planned for the seven street crossings between Antietam Street and City Park. There will be five mid-block crosswalks along the trail. These crosswalks would not be at signaled intersections. Mr. Tissue stated recommendations are being included to make these crosswalks as safe as possible.

Staff has submitted a draft plan to CSX to allow the City to improve the crossing.

Trail signs are being reviewed for placement and content along the trail.

Staff is still working at a final recommendation for a name. The A & E Trail is considered a working name. Several names have been considered. They are: Art Link, Art Hagerstown Connect, Hagerstown Arts Trail, and Hagerstown Cultural Connector.

Next steps and schedule is as follows:

1. Finalize land acquisitions and approve ordinance (August-October)
2. Public Art process is including community engagement, master plan, and call for artists (August-May, 2016)

3. Bid construction contract (mid-September)
4. Approve construction contract, and separate contracts including:
  - 1) Installation of splash pad, 2) signs, 3) security cameras, 4) trail amenities (benches, cans, dog stations), and 5) purchase of lights (November)
5. Construction (2016)

Mr. Tissue stated these items would be presented to the Mayor and City Council for approval during the fall, with the anticipation that construction would begin in the Spring, as weather permits.

Councilmember Munson asked if any of the art will be removable and replaceable. Mr. Tissue stated some will be permanent and some would be displays that would be replaceable (changeable).

Councilmember Munson asked how vehicles will be kept off the trail. Mr. Tissue indicated gates or barriers of some kind would be at all possible access locations so that unauthorized vehicles would not be able to travel on the trail.

Councilmember Brubaker clarified the Council is being asked to approve the consultant part of the proposal and not the entire \$ 162,000. Mr. Tissue indicated that is correct so the process to design the art can begin.

Councilmember Brubaker asked where the northern most point is on the trail anticipated to be. Mr. Tissue stated this phase has that point being at the German restaurant. The ultimate goal is to construct the trail along the west side of District Court and through the property at 43-53 W. Washington Street in order to meet the trail that leads to the Farmer's Market.

Councilmember Brubaker asked for photos of how crosswalks look on other urban trails. Mr. Tissue will provide additional renderings to the Mayor and Council.

Councilmember Aleshire noted the trail in the Catalyst Project list was estimated to be a \$ 700,000 project. Now the estimated cost is \$ 2 million. He asked why this has occurred. Mr. Tissue indicated the original plan utilized the existing sidewalks and not creating a new trail. He thinks new construction will have a greater impact for the project. The original plan did not include security measures or lighting, which increased the estimated cost considerably.

Councilmember Aleshire wondered if hiring an art consultant before the needed properties are secured is the best way to move forward. He asked if there is an expectation that the property owners mentioned will soon agree with the City's requests.

Mr. Tissue indicated there have been discussions with the private sector about future housing. They have the plan and know that, ultimately, the trail is not the end of the

project. He feels they are on board with the overall plan. If the art consultant is hired now, they could start the design work, with the expectation that the art would be ready to be installed when the trail is complete. The Herald Mail has not approved the City's request yet.

Mayor Gysberts indicated the trail is a certainty and the Herald Mail should be on board.

Mr. Tissue indicated the legal documents have been submitted to the property owners for the needed land. He is confident the other three property owners are on board with the project and will sign the documents.

Councilmember Brubaker suggested approving the contract with the art consultant, contingent on confirmation from the Herald Mail they will grant the City's request.

The request for land from the four property owners was discussed with them in March of this year. Official requests were sent in June.

Councilmember Aleshire does not want other items on the catalytic project list to be delayed because of a situation where partners involved in another project aren't participating to the level the City expects in order to accomplish the plan.

Mayor Gysberts stated approval of the art consultant will be included on the agenda for July 28, 2015. Councilmember Brubaker will not be at the meeting; however he would support approval, contingent upon positive action from the Herald Mail Company.

The Mayor and City Council thanked Mr. Tissue and other staff for their extensive work with the project.

#### Land Management Code Amendments

Kathleen Maher, Planning Director, and Stephen Bockmiller, Zoning Administrator/Development Review Planner, were present to review comments presented during the June 23, 2015 Public Hearing regarding the Land Management Code Amendments.

Several issues were raised during the comment period. The issues and relevant responses are listed below:

##### Storefront Protection Zone (SPZ)

- A. How does occupancy compare to vacancy in the proposed SPZ? There were 182 storefronts in September, 2014, with a 30% vacancy rate.
- B. How do first floor spaces without direct access to the sidewalk fit within the definition? If the space has display windows on the sidewalk, it meets the proposed definition for storefront. A possible revision is to exclude leased

spaces without direct access to the front sidewalk from the definition of storefront space.

Councilmember Aleshire clarified that the proposal will prohibit professional offices from being located within a storefront, even though an office may have been located there previously. Ms. Maher stated that is correct, if the space is vacant for a period of time.

Councilmember Aleshire would be comfortable with a more defined area for the SPZ.

Ms. Maher indicated staff had identified a smaller area while discussing the SPZ with the Planning Commission.

Mayor Gysberts pointed out that professional offices do not generate the kind of pedestrian foot traffic that benefits the economy.

Councilmember Metzner stated there are not many retail businesses downtown. He feels these regulations may create more vacant storefronts.

Councilmember Aleshire stated it may be clearer if certain uses are specifically prohibited. Not every space within all the streets is conducive to retail uses.

Mayor Gysberts is concerned that retailers won't consider locating in downtown if there is not a retail environment in place.

Councilmember Brubaker asked if there is a way to differentiate between the types of professional offices.

Councilmember Aleshire pointed out zoning regulations typically establish land uses that are beneficial and compatible with the neighborhoods. These amendments are not taking into consideration the established uses in these areas.

Councilmember Brubaker stated the regulations are an attempt to avoid having large areas of institutional uses.

Mr. Bockmiller stated if more storefronts are lost, it will be more difficult to draw businesses downtown in part because like uses create synergy.

Ms. Maher pointed out it is difficult for cultural entities to thrive in an office park and people don't want to live in an office park.

Mayor Gysberts stated no one is saying that lawyers and accountants are not wanted downtown. These businesses would be perfect tenants for upper floors.

Councilmember Metzner thinks this legislation is appropriate when development is overwhelming, not when the retail component is struggling. He is concerned with the unintended consequences of this legislation.

- C. Can the City regulate hours of operation, actual sale of items, etc.? Provisions that get into the details of how permitted businesses operate is not the purview of zoning.
- D. Would people be able to brick in their storefronts? The text requires that storefronts in the CC-MU be retained on existing buildings in-full or to a minimum of 40 feet in depth. The provision could be strengthened by additional requirements for window glazing openings.
- E. Jason Divelbiss, representing the owner of 44-46 N. Potomac Street, questioned the legality of the SPZ proposal and opposed several provisions. Staff are of the opinion, with City Attorney input, that there is no legal impediment to the proposed SPZ provision.
- F. Jill Frick, Economic Development Manager, has requested that the Mayor and City Council consider making a minor amendment to the list of uses permitted in the SPZ to adjust "Visitor Welcome Centers" to "Visitor and Business Welcome Centers."
- G. Staff believe the SPZ provision is necessary at this stage of the downtown revitalization effort to support the current and on-going initiatives to bring greater vitality to the downtown.

It was the general consensus to continue working on the SPZ regulations.

#### Historic District Commission (HDC) Hardship Provision

- A. Request for a map of ranked resources in downtown - provided

Mr. Bockmiller stated the hardship provision establishes a process for the HDC to officially weigh the economic benefit of demolition of a building for a business proposal.

#### Graphics

- A. Is it too much to expect window graphics to fall within maximum square footage requirements for building mounted signs? The Planning Commission struggled with this issue and decided not to include it in the amendments packet. The HDC is proposing an amendment to their design guidelines that states no more than 50% of the glass may be covered by window graphics and that only certain aspects of the graphics should be opaque and thus block visibility into the space. A revision idea is to remove the window graphics from the maximum square footage requirements and instead add a provision that allows them in a manner that matches the HDC recommendations.

- B. Is there support for Temporary Graphics? The text identifies the types of temporary signs that are exempt.
- C. Are the maximum size formulas appropriate for wall-mounted graphics?

Staff conducted research on how other jurisdictions regulate sign area and inventoried a large number of existing sign conditions to determine how the proposed sign area formulas would affect them. It was staff's and the Planning Commission's determination that the proposed provisions were a reasonable system to control the proliferation of signage in the business districts and along the arterial roadways.

Councilmember Metzner wants to make sure the businesses that will be affected by these regulations have been contacted.

Mayor Gysberts asked if the graphics regulations restrict free speech, like the regulations for unattended donation boxes reference.

Mark Boyer, City Attorney, noted there are different protections for commercial free speech and charitable free speech.

Mayor Gysberts asked what is the health, safety, and welfare benefit for graphic regulations. Ms. Maher indicated regulations reduce driver distraction and aesthetics.

Councilmember Aleshire noted many businesses place signs on equipment within the store for advertising, not just on the window.

Councilmember Metzner and Councilmember Brubaker are concerned these regulations will set the tone that the City is not business friendly.

Councilmember Nigh expressed her concern that people believe the City is passive with regulations and they ignore them.

Councilmember Aleshire is interested in information regarding the percentage of businesses that comply with the proposed regulations at this time.

Ms. Maher asked if there is support for the temporary signs regulations. Mr. Bockmiller indicated currently temporary signs are prohibited, except for specific signs.

#### Strickler Signs Testimony

- A. They would prefer the City regulations match the County regulations, particularly on the Dual Highway. Staff can see an argument for comparable regulations for areas with comparable developing intensity on either side of the corporate boundary. A revision idea is to allow 150 sf freestanding signs to match the County maximum for a two-sided freestanding sign.
- B. Feel that sign poles and frames should not be included in the square footage maximum. Staff feel any symbol for advertising attached to the building or

erected on the site should be considered a sign and fall under the square footage maximums for that district.

- C. Not in favor of window graphics proposal. Washington County ordinance includes window graphics in sign area maximum. County staff acknowledge it is a difficult issue to enforce, since the signs are constantly changing.
- D. Would the entire shopping center be given a certain amount of wall-mounted square footage and then its first come, first served for tenants to be able to get a sign? Each tenant storefront space in a shopping center has a certain amount of square footage permitted based on the width of its individual frontage.

#### Clarification Question

- A. On the issue of “Quality of Construction”, would tarps over roofs be permissible? This is not permitted by the Property Maintenance Code. Any time inspectors see this or receive complaints about this, a citation is issued. However, gaining compliance is difficult.

Staff was directed to incorporate the feedback into a revised draft and return for further discussion.

#### Historic District Commission Downtown Design Guidelines Revisions

Kathleen Maher, Planning Director, and Stephen Bockmiller, Zoning Administrator/Development Review Planner, were present to discuss updates to the Historic District Commission’s guidelines.

There are two provisions in the pending Land Management Code updates which require updating the HDC’s Downtown District Design Guidelines to implement the proposed amendments. Mayor and Council approval of design guidelines is required for them to be in effect. However, unlike the amendments to the Land Management Code, a public hearing is not required for adopting or revising the design guidelines.

The HDC presented draft guidelines to the Mayor and City Council for their consideration. It is advisable to process the amendments concurrently with the pending text amendments so they can be in place when the revisions to the LMC take effect.

The two issues are as follows:

Window Graphics – the proposed LMC amendments would extend the authority of the HDC to regulate window graphics directly applied to the inside of windows, and/or within 1 foot of windows intended to be seen from the outside. Currently, only window graphics applied to the exterior of the windows are subject to review. This has led to confusion over what signs are subject to review and which are not. Also, the existing guidelines don’t provide much guidance on how to address window graphics.

The HDC developed 8 general points that capitalize on the designs of the best window graphics in the Downtown Historic District.

Economic Development Demolition – The HDC’s primary mission is protecting historic resources from unnecessary loss. There is a provision in the Zoning Ordinance that allows for consideration of demolition when it is “not in the best interest of the majority of the persons in the community.” The current language is quite vague and, as such, the HDC must defer to its primary mission (preservation) in the absence of more detailed guidance. The HDC is aware of and supports the City’s redoubled efforts to revitalize the downtown area. The HDC desires to be a constructive partner in this process. The existing language in the Ordinance does not provide sufficient guidance on how to do this, and, as such, a decision is generally incompatible with their primary mission of preservation.

On its own initiative, the HDC crafted proposed revisions to the “hardship” provisions in the Zoning Ordinance to provide it greater (and more defined) guidance in such situations. These proposals are based around the concept of the bona-fide “Major Economic Development Opportunity” as would be defined in Article 3 of the Land Management Code. It allows the City government to directly advise the HDC that a specific project is very important and the benefits outweigh the normal preservation priorities. This is based on a use proposal – not merely a building proposal.

The HDC desires to be a proactive partner in revitalization of the downtown area and has crafted this process in order to allow it to be so in an innovative manner –one that is consistent with its primary mission. As such, the HDC recommends approval of the proposed text amendment, but only if accompanied by the design guideline updates, which are necessary to balance the HDC’s primary role of preserving historic resources, with its desire to cooperate with the attraction of businesses and uses that will revitalize the downtown area.

It was the general consensus to include the guideline revisions with approval of the LMC revisions.

#### Unattended Donation Bins

Kathleen Maher, Planning Director, Paul Fulk, Inspections Manager, and Jennifer Keefer, City Attorney, were present discuss proposed City Code amendments to address the location of Unattended Donation Bins in Hagerstown.

Based on analysis of recent case law, the City Attorney recommends that the City repeal Chapter 183, Nuisance – Unattended Donation Containers, which bans these containers in the City. A recent federal court decision found that bans of these charitable donation containers are a violation Free Speech and as such a local ordinance that banned the containers was unconstitutional.

The City Attorney has advised staff that while this decision prevented the ban of the containers in that community, it did not remove the community's right to address the condition of the containers or to address any other concerns related to safety and quality of life issues.

On June 16, 2015, the Mayor and City Council considered the recommendation to repeal Chapter 183, Nuisance –Unattended Donation Containers, and the possibility of a future adoption of regulations on location of such bins in Hagerstown. Staff were directed to prepare a draft Code Amendment to address location of the bins to aid in consideration of a repeal of the existing Code provisions.

The proposed amendment is intended to protect the community from nuisances which can arise with poorly managed bins and inappropriate bin locations, while also being cognizant of the issues raised in the Federal court case related to protection of Free Speech for charitable donations.

The proposal would require:

1. An initial and annual registration of these bins to include information related to owner consent, details on the owner of the bin, and pictorial illustration of the planned location of the bin
2. Limitation of bins to commercial and industrial zoning districts
3. Bins not be located in certain areas that may cause hazardous conditions or constitute a threat to public safety
4. Limitation on the number of bins per property based on acreage
5. Bins be constructed of non-combustible materials with securely closing lid
6. Bins be marked with certain information about the bin owners and notice that no items or materials are to be left outside of the bin
7. Limitation on the size of bins to no more than seven feet in height and five feet in width on any side
8. Compliance with maintenance expectations.

Mayor Gysberts noted the initial fee to register the containers is \$ 200.00 each, followed by an annual renewal fee of \$ 100.00

Councilmember Munson stated he thinks the initial fee of \$ 200.00 is too low. Mr. Boyer stated the fee has to be justifiable and reasonable.

Councilmember Aleshire asked how many times the City will have to abate the debris around the container before that bin is prohibited. He asked who the violation is issued to.

Mayor Gysberts stated free speech protections do not give someone the right to create a nuisance.

Councilmember Aleshire asked if the free speech regulations are for non-profit organizations. Some for-profit organizations partner with non-profit organizations for collection of items.

Ms. Keefer stated solicitation is constitutionally protected and is not limited by an organization's tax status. The proposed City regulations require the containers to include information about the organization. Mayor Gysberts stated this information should be easily read.

Councilmember Metzner stated since fines are levied against the land owner, rather than the organization, it will be effective. Conditions for removal could be established during court hearings of the violations.

Ordinances to repeal Chapter 183, Nuisance –Unattended Donation Bins and to add Chapter 89, Donation Bins will be scheduled for action on the Regular Session on July 28, 2015.

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

*Valerie Means, City Administrator*, thanked the Mayor and City Council for working through the issues presented during this meeting.

### **MAYOR AND COUNCIL COMMENTS**

*Councilmember L. C. Metzner* attended the MML Convention this year and found it to be very informative and well planned.

Mayor Gysberts congratulated Councilmember Metzner for his 20 years of service as an elected official. Councilmember Metzner was recognized during the MML Convention.

*Councilmember P. M. Nigh* thanked the City for allowing the military banners to be hung. Many of the traffic islands are overgrown with weeds. She wondered if the work release program would provide the needed assistance to keep the traffic islands maintained. She is concerned that Code Enforcement is not enforcing the codes adequately. Funding for a stadium could be used more effectively in other areas.

*Councilmember D. F. Munson* had no additional comments.

*Councilmember K. B. Aleshire* stated the City needs to have another discussion about amore aggressive abatement program to address the foreclosed properties. He stated it is clear to him that people think the City is seeking their input for reuse of the Alms House because plans are being considered. There are no plans to do anything at the Alms House at this time.

*Councilmember M. E. Brubaker* congratulated Councilmember Metzner for his 20 year recognition. He attended the MML Convention and had the opportunity to discuss Hagerstown's issues with State representatives.

*Mayor D. S. Gysberts* thanked Karen Giffin, Community Affairs Manager, and Ted and Vicky Bodnar for their efforts with the Fireworks at Fairgrounds Park. He had the opportunity to make Krumpe's Donuts last night. He thanked everyone involved in the recent fatal child abuse case and urged anyone who suspects child abuse to report it to the authorities.

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 8:00 p.m.

Respectfully submitted,

*Original signed by D. K. Spickler*

Donna K. Spickler  
City Clerk  
(From the video recording)

Approved: September 29, 2015