

100<sup>TH</sup> SPECIAL SESSION AND WORK SESSION – September 13, 2016

Mayor D. S. Gysberts called this 100<sup>th</sup> Special Session and Work Session of the Mayor and City Council to order at 4:04 p.m., Tuesday, September 13, 2016, 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 Clerk D. K. Spickler.

100<sup>TH</sup> SPECIAL SESSION – September 13, 2016

On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to meet in Special Session at 4:03 p.m.

**Approval of a Resolution: Authorization to Apply for a Main Street Improvement Program Grant Application**

**Action:** On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to approve a resolution for the City of Hagerstown to apply for a Main Street Improvement Program grant through Maryland's Department of Housing and Community Development in the amount of \$ 10,000.00. The funding will be used to provide incentives for property owners to improve vacant storefront space to be pop up and/or permanent retail ready.

**Approval of a Resolution: Authorization to Apply for a Technical Assistance Grant through Maryland's Department of Housing and Community Development**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote to approve a resolution for the City of Hagerstown to apply for a Technical Assistance grant through Maryland's Department of Housing and Community Development in the amount of \$ 7,000.00. The funding will be used to provide a Code Analysis Incentive Program to incentivize developers to invest in the Main Street Hagerstown area.

**Approval of a Resolution: Addendum to Contract of Sale for 278 S. Prospect Street**

**Action:** On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution authorizing an addendum to the contract of sale for property located at 278 South

Prospect Street. The property at 278 S. Prospect Street is under contract through the City's Homeownership Program – Catalyst Project #8. The addendum to the contract of sale will extend the required settlement date from August 31, 2016 to October 31, 2016.

The Special Session was closed at 4:06 p.m.

WORK SESSION – September 13, 2016

Proclamation: Economic Development Week

Mayor Gysberts read a proclamation naming September 19-24, 2016 as Economic Development Week in Hagerstown. Randy Gray, City of Hagerstown Business Development Specialist, accepted the proclamation

Proclamation: General Aviation Appreciation Month

Mayor Gysberts read a proclamation recognizing September, 2016 as General Aviation Appreciation Month in Hagerstown. Phil Ridenour, Director, Hagerstown Regional Airport, accepted the proclamation.

Proclamation: National Alcohol and Drug Addiction Recovery Month

Mayor Gysberts read a proclamation naming September, 2016 as National Alcohol and Drug Addiction Recovery Month in Hagerstown. Mayor Gysberts accepted the proclamation on behalf of the entire community.

Lake Dredging Project

Rodney Tissue, City Engineer, and Sepehr Baharlou, BayLand Consultants, were present to provide a briefing on the scope and extent of the proposed City Park Lower Lake Dredging Project.

City Park was created 100 years ago. There are three lakes in City Park but the most visible is the lower lake adjacent to the Museum of Fine Arts, Key Street, and Virginia Avenue. The original depth of the lake is estimated to be 5 to 7 feet deep. This lake has never been dredged although the perimeter walls were rebuilt about 20 years ago.

In 1974, there was botulism outbreak that killed over 100 waterfowl in City Park. At that time the City studied the lake in detail by surveying the lake and developing an elevation plan of the lake bottom.

In October, 2015, the Mayor and Council authorized a City contract with BayLand Consultants and Designers Inc. from Hanover, Maryland to begin the design and permitting of a project to dredge the lower lake. In January of this year, BayLand

completed a survey of the lake bottom and developed a comparison of the accumulated sediment between January 2016 and the 1974 survey data. The accumulated sediment over that 42 year period is approximately 7,000 cubic yards or an average of only 162 cubic yards per year. This sediment is from leaves, waterfowl and fish waste, and minor erosion of lake banks.

Based on their probe into the lake bed, BayLand estimated the original bottom elevations for the lake based on sudden change in soil type from very soft silt to hard soils and hit refusal of hand auger. Based on this, they determined in the 58 years before 1974, the sedimentation rate was higher and approximately an additional 25,000 cubic yards of sediment had accumulated in the lake prior to 1974. Total volume of accumulated sediment in the lake is estimated to be 32,000 cubic yards.

The current annual sedimentation is low but over a long period of time it resulted in the lake becoming quite shallow. The average depth is now 2.4 feet, with significant areas of the lake less than 1.5 feet deep and the deepest part of the lake is only 3.8 feet at the spillway near Key Street. As the lake continues to get shallower, this has resulted in the following:

1. General deterioration of water quality of the lake
2. A fountain can no longer be operated on the lake
3. Sailboat activities have caused staff to increase the lake elevation to the point where there is water on the sidewalk.
4. Limits what additional activities can be done on the lake

Staff worked to stay within the \$ 1,000,000.00 budget that is in the FY16/17 budget. This directly impacts the amount of sediment that can be removed. To stay within budget, staff estimates that up to 18,000 cubic yard of silt can be removed, which will result in a lake that is approximately 4.5 feet deep.

Three alternative dredging methods were evaluated:

1. Option one – Dewater the lake and use conventional equipment
2. Option two – Hydraulically dredge and mechanical dewatering
3. Option three – Mechanical dredging

Option three, mechanical dredging, was selected because it was the most cost effective option with minimal impact to the community and natural resources. This means the sediment will be removed while the water remains in the lake. This method uses conventional excavating equipment from a floating barge. There is no need for onsite dewatering. The material can be removed from the site immediately. There would be minimal on-site impact.

One of the major considerations of this project is the disposal of the silt. Staff is very pleased to have received the cooperation of the Washington County Department of Solid Waste and they developed plans and approved the deposition of the dredged material at the Washington County landfill. This material will be used as daily cover or as topsoil on

the finish slopes of the landfill. The landfill staff also provided the City with the very important area for the water to drain or decant from the dredged material. Trucks used to haul the silt to the landfill will be sealed to prevent leakage onto the roads.

Since water will remain in the lake during dredging, this will decrease smell and impact on waterfowl and fish. The dredging is planned for winter to further minimize impacts to wildlife. Once dredging is complete the deeper lake elevations will provide improved water quality and habitat.

Dredging will directly improve the items listed earlier and specifically:

1. General improvement of water quality
2. A new fountain can be planned
3. Sailboat activities will be unimpeded
4. Staff can keep the water surface off the sidewalks
5. Additional activities can be developed for the lake with City Council approval
6. Improve appearance of lake
7. Remove trash and debris scattered on the bottom of the lake

One of the project permits is from Maryland Dam Safety who requires the oversight of the design engineer along with the City's inspection staff. Daily monitoring of the silt excavation and daily progress meetings are anticipated.

Staff recommends earmarking \$ 100,000.00 for the repair of the perimeter stone walls around the lower lake. This needs to be done in addition to the dredging, but they are not similar projects, so the walls are not viewed as part of the dredging contract. Staff proposed it would be part of the Marsh Run wall repair project that is being planned for the Spring.

Councilmember Munson asked if the other lakes should be dredged at the same time. Mr. Tissue indicated the remaining two lakes are not as affected as the lower lake.

Councilmember Aleshire wondered if this project would affect the springs in the area. He also inquired if adjacent property owners would be notified about possible impacts of the project. Mr. Baharlou stated generally, lake dredging does not affect the lake health and no affect on the springs is anticipated. Mr. Tissue stated a public meeting in that community could be held for additional information.

Since most of the permits are in hand and the plans are being finalized, staff is proposing that the contract be put out to bid in October and review the dredging bids with the Mayor and Council in December, 2016. The anticipated start date would be in early January, 2017, with completion by Spring, 2017. The Mayor and Council agreed with this timeline.

Jim Bender, Assistant City Engineer, and Rodney Tissue, City Engineer, were present to discuss pending information for the City's National Pollutant Discharge Elimination System (NPDES) General Permit for stormwater discharges from the Maryland Department of the Environment (MDE).

The MDE notified the City that a draft version of the new permit is about to be sent to the City; while the exact requirements of the permit are unknown, it is likely to contain specific mandates to reduce stormwater pollution. Previous estimates of the cost of compliance, using tools provided by MDE, have ranged from \$ 40 million to \$ 200 million. The City's Capital Improvement Program budget currently allocates only a fraction of this amount of money to stormwater projects, and it will be difficult to find additional revenue from the General Fund. Earlier this summer, Councilmembers mentioned that one source of funding used by other municipalities is a stormwater fee/stormwater utility, and asked staff to investigate the feasibility of implementation. If Council has interested in pursuing the alternative of a fee, it will take 12 – 18 months to develop the program and execute the necessary legislation prior to implementation.

NPDES Phase I communities consist of larger cities and urbanized areas. The City of Hagerstown and Washington County are classified as Phase II communities. The NPDES stormwater permits and their requirements) for Phase I communities are typically much more stringent than the permits for Phase II communities.

In 2012, the General Assembly approved House Bill 987. This bill required Phase I communities to begin collecting a "Stormwater remediation fee" and establish a "local watershed protection and restoration fund". No legislation has yet been introduced to extend these requirements to Phase II communities.

A "Stormwater Utility" is basically an enterprise fund responsible for addressing stormwater management issues in a community. The Utility is funded through the collection of a fee charged to property owners. As of 2015, there were more than 1600 municipalities across the United States and Canada that operated a Stormwater Utility, and the number is growing rapidly as Federal and State regulation become more stringent.

The process to develop a Utility typically begins with a rate study to determine how much money needs to be collected to fund a municipality's stormwater pollutant reduction efforts. Without a rate study or "business plan" as justification, stormwater fees are open to disputes and legal challenges.

Stormwater fees are not a tax. They are typically a charge that is based upon the amount of impervious surface on a parcel of land. Because most developed properties contain impervious surfaces, the fee applies both to taxable properties and to properties that are normally tax-exempt. It is important to note that the collected fees must be

devoted to operation/maintenance of the stormwater system. The fees cannot be lumped in with other General Fund revenue.

The most common method used for establishing the amount of a stormwater fee is the Equivalent Residential Unit (ERU) method. Based upon survey/GIS analysis, the average amount of impervious area on a typical residential lot is determined and all similar residential lots are then assumed to have this amount of impervious area without any actual measurement on each lot. For non-residential, commercial, and industrial property, the amount of impervious area on the lot is measured. That measurement is then divided by the average amount assumed for a residential lot to get an ERU value.

The stormwater fee charged by a Utility will vary from municipality to municipality, depending upon the results of the rate study. Nationwide, the average monthly fee for an ERU was \$ 61.68 per year. Montgomery County, Maryland charges \$ 95.00 per year per ERU; the City of Frederick charges approximately \$ 43.50 per ERU, and the City of Rockville charges \$ 127.70 per ERU.

Some municipalities, such as Montgomery County, Maryland, have different levels or tiers for their fees. The more impervious area that actually exists on a lot, the higher the fee. This tiered structure, while more equitable to individual property owners, requires more work from the municipality to actually measure impervious surfaces on individual lots. Montgomery County, and some other municipalities, offer fee discounts to non-profit organizations. Others offer discounts or credits to property owners that install stormwater management facilities on their property.

The question has been raised as to whether a fee could be levied on only commercial/non-residential properties. Staff, through its research, was unable to find an example of a “commercial only” stormwater fee. Although this has not been confirmed by legal research, staff feels that a “commercial only” fee would be difficult to implement because (1) without being able to spread the overall stormwater program costs over all properties, the fee charged to the commercial properties would have to disproportionately high, and (2) it would be difficult to establish the fairness of such a system when residential properties were also discharging storm runoff and pollutants into the City’s system without having to pay the fee.

Knowing that a new NPDES permit would eventually be issued to the City, staff has attempted to prepare in advance for the new regulations. Over the past five years, staff has endeavored to obtain grant funding for stormwater studies and the construction of retrofit facilities. Although the City has enjoyed some success in obtaining grant funding for these projects, the issuance of the new NPDES permit may limit the City’s ability to pay for future grants. Many of these programs will only consider projects that are not required for compliance with other permits or mandates.

Councilmember Munson stated he realizes the City is attempting to be prepared for the required stormwater management regulations, but he does not like anything about this mandate. He does not support the City taking the lead with this issue.

Councilmember Brubaker stated the City is continually challenged with mandated fees. Any fees must be implemented considerately.

Mr. Bender stated there are currently no specific requirements for the City's responsibilities. He anticipates the new permit will have a level that must be obtained and will likely include fines for non-compliance.

Mayor Gysberts inquired if stormwater management facilities must all be on site. Mr. Bender indicated the State wants as much to be done on site as possible.

Councilmember Aleshire pointed out corrective actions could be implemented but without consistent buy-in and changes in run off from the north, stormwater will still be an issue. The flow has to be addressed regionally.

Councilmember Brubaker recommended contacting the Maryland Municipal League so they are aware of the pending mandates.

Staff will return to a Work Session for further discussion after the draft permit is received and reviewed.

#### User Agreement for The Life Center International "Community Day" Event

Lauren Metz, Community Events Coordinator, was present at the meeting to discuss a request from The Life Center International for the City's support of the church's Community Day event, scheduled to take place on Saturday, October 1, 2016. This group requested permission to use the parking lot located at 40 West Church Street for their event. This parking lot is currently leased to the Department of Social Services during the week for staff parking and is used as overflow parking for the City Farmers Market on Saturdays.

The event is a way to provide outreach services to support the Hagerstown and Washington County communities. They will be offering free food to the community along with the outreach services. HIV/AIDS testing, blood pressure screening, clothing giveaways, face painting, arts & crafts, basketball, a free concert, and moon bounce are among the activities that will be planned.

It was the general consensus to include approval of the use of the parking lot for this event on the September 27, 2016 Regular Session agenda. The approval includes execution of a Special Event User Agreement.

*Valerie Means, City Administrator* had no additional comments.

**MAYOR AND COUNCIL COMMENTS**

*Councilmember L. C. Metzner* stated the Porch Fest and the Hispanic Festival were nice events this past weekend.

*Councilmember P. M. Nigh* had no additional comments.

*Councilmember D. F. Munson* mentioned the Slide Fest (also held this past weekend) was another great event.

*Councilmember K. B. Aleshire* would like an update on the City Farmers Market, including next steps for improvements to the market. He attended a meeting today to discuss the joint project for the Maryland Theatre.

*Councilmember M. E. Brubaker* toured the Volvo plant earlier today. The representatives of Volvo made excellent points about the importance of I-81 for their business. He believes Transportation Secretary Rahn is supportive of an improvement project for I-81. The State Appropriations Committee has asked about the level of private investment in the Maryland Theatre project. The City's Community Center Plan is a good plan that should be built upon. He noted demolition of the MELP plant continues and now no beams or girders are visible.

*Mayor D. S. Gysberts* stated the above ground structure at MELP is complete. He congratulated the Hagerstown Suns for a good season. He thanked the Antietam Watershed Alliance for organizing the annual rubbish pick up day. Many activities were held last weekend, including the Splash Fest, Porch Fest, Slide Fest, and the Hispanic Festival. Coming events include the annual Fall Fest at City Park, MSO Classics and Crabs, Doleman Black Heritage Museum concert series, and a job hunters exhibition at the Washington County Free Library. He thanked Secretary Rahn and the State Appropriations Committee for their visit to Hagerstown. The Remembrance in the Park is being held at City Park today at 6:30 p.m.

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 5:36 p.m.

Respectfully submitted,

Donna K. Spickler  
City Clerk

Approved: October 25, 2016