

WORK SESSION AND EXECUTIVE SESSION – November 1, 2016

EXECUTIVE SESSION – November 1, 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 of all members present to consult with counsel to obtain legal advice, #7, (Section 3-305(b)), before a contract is awarded or bids are opened, discuss a matter directly related to a negotiation strategy or the contents of a bid or proposal, if public discussion or disclosure would adversely impact the ability of the public body to participate in the competitive bidding or proposal process, #14, (Section 3-305(b)), to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4, (Section 3-305(b)), and 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 3-305(b)), on Tuesday, November 1, 2016 at 4:30 p.m. in Room 407, 4th floor, City Hall, Hagerstown, Maryland.

The following people were in attendance: Mayor D. S. Gysberts, Councilmember K. B. Aleshire, Councilmember M. E. Brubaker, Councilmember L. C. Metzner, Councilmember D. F. Munson, City Administrator Valerie Means, City Attorney Mark Boyer, Police Chief Victor V. Britto, Michelle Hepburn, Director of Finance, Captain Paul Kifer, Michael Spiker, Director of Utilities, Nathan Fridinger, Electric Operations Manager, Jill Frick, Director of Community and Economic Development, Kathleen Maher, Director of Planning and Code Administration, Jonathan Kerns, Community Development Manager, Randy Gray, Business Development Specialist, and D. K. Spickler, City Clerk. Councilmember P. M. Nigh was not present.

The meeting was held to discuss pending litigation, the potential renewal of a contract, a business proposal, and the City Attorney's contract. No formal action was taken at the meeting. On a motion duly made, seconded, and passed, the Executive Session was adjourned at 5:30 p.m.

WORK SESSION – November 1, 2016

Mayor D. S. Gysberts called this Work Session and Executive Session of the Mayor and City Council to order at 5:37 p.m., Tuesday, November 1, 2016, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, M. E. Brubaker, L. C. Metzner, and D. F. Munson, City Administrator Valerie Means, City Attorney Mark Boyer, City Attorney Jennifer Keefer and City Clerk D. K. Spickler. Councilmember P. M. Nigh was not present.

Neighborhood Protection – Abatement of High Weeds and Rubbish Update

Eric Deike, Director of Public Works, and Paul Fulk, Inspection Manager, were present to provide an update on the Planning and Code Administration in-house abatement of high weeds and rubbish being conducted by the Public Works Department.

Since 2002, the City's Code Administration Office has contracted with a private contractor to abate high weeds and rubbish violations on properties. In recent years, the response time, quality of work, and billing by the abatement contractor were causing complaints by neighborhood residents, property owners, and City staff. Inspection staff would direct the abatement contractor to abate violations and the contractor response times would vary between 10-45 days after the request. At times, work would be done unsatisfactorily and require a second trip by the contractor. Bills would be high for the work performed and bills would be submitted weeks or months after the work was completed. This delay would cause aggravation for surrounding property owners and hardship to the City when billing the property owner – sometimes the property would be sold leaving the City with the inability to collect fees for services performed. Staff had been unable to attract bids from other contractors who would provide improved service on these issues of high weeds and rubbish abatement work.

Planning and Code Administration staff presented recommendations to the Mayor and City Council during the December 8, 2015 work session, recommending an in-house crew in Public Works perform the abatement of high weeds and rubbish. The recommendation was approved and authorized to begin on April 1, 2016 after the expiration of the private contractor's contract. The recommendation was cost neutral to the budget since funds had been allocated for high weeds and rubbish abatements.

The Planning and Code Administration inspection staff will respond to a concern by a citizen or identify a property with high weeds or rubbish during routine patrols. Depending on the conditions of the property, inspection staff posts the property with a notice of violation to abate the violation and establish a deadline of 7 days, 5 days, or 1 day. Inspectors re-inspect the property after the deadline has passed. If the property owner failed to abate the high weeds and/or rubbish violation, inspectors submit a work order request to the Public Works Department. The Public Works Department then abates the violations at the property based on the work order request and submits a bill for their services to the Planning and Code Administration Department (PCAD). PCAD Administrative staff bill the property owner for the services rendered plus an administrative and technology fee. Bills that are not paid within 30 days are placed as a tax lien on the property.

The assessment of the in-house abatement during the first 6 months has shown:

1. A decrease in abatement costs
2. A decrease in completion and invoice time from initial request
3. Response time from "contractor" has shortened
4. An increase in communication between "contractor" and PCAD staff

5. A decrease in call volume from citizens about City's response time
6. City staff time has become more efficient
7. Compliments from citizens on work performed by Public Works

On average, in 2016 85% of the requested abatements were completed by the contractor (Public Works). The cost per abatement decreased from \$ 197.41 in 2015 to \$ 104.42 in 2016. The number of days to complete the abatement (from the time requested to being completed) in 2016 was approximately 5 days.

It was noted that some abatements occur on vacant properties. However, others are occupied properties.

Councilmember Brubaker asked if any liens placed on taxes for unpaid abatements have been paid. If the money is not recouped, it is not fair to the taxpayers. Staff will provide this information.

Councilmember Munson noted the property across from North Hagerstown High School has been well maintained by Public Works employees.

Mr. Deike pointed out the majority of abatement requests are for high grass and weeds.

It was the general consensus to continue using this method of property abatements.

Proposed Amendments to Rental Facilities Code and Administrative Policy

Kathleen Maher, Director of Planning and Code Administration (PCAD), and Paul Fulk, Inspection Manager, were present to discuss proposed minor amendments to Chapter 197, Rental Facilities, of the City Code and a provide revision to the Planning and Code Administration Department's Administrative policy for acceptance of Hagerstown Housing Authority interior inspections.

Revocation of Residential Operator Certification – This proposed amendment is in response to a concern raised by a member of the real estate investment community on how the ordinance is written versus applied relative to revocation of residential operator certificates. The way Chapter 197 is written it could be interpreted that if a residential operator (owner or property manager) is in violation of the Crime-Free Provisions, the residential operator license would be revoked for all properties owned or managed by that operator. In practice, staff applies this revocation provision only to the property where the violation is in effect.

The concern expressed to staff is that new investors and new property management companies are uncertain whether the current administrative practice will continue or whether a stricter interpretation of the code could occur in the future. According to the

concern expressed, this uncertainty deters some investors or property management companies from real estate opportunities in Hagerstown.

Staff are fine with minor amendments to Chapter 197 that clarifies that any such revocation would be limited to the property where the violations of Sections 197-9 and 197-10 occurred. The City Attorney recommends that a definition be created for “certified crime-free housing residential operator” – an undefined term used in Section 197-12.

Acceptance of Hagerstown Housing Authority’s (HHA) Interior Inspections – The proposed amendment is intended to address staff concerns about situations which may arise where an interior inspection by the City would be preferable to acceptance of an HHA Tenant-based Section 8 inspection.

Currently, Chapter 197, Rental Facilities, states that the City “may” accept an HHA interior inspection in place of a City inspection for rental licensing process. PCAD has an existing administrative policy for “Acceptance of Hagerstown Housing Authority’s Interior Inspections” which state the department “shall” accept the HHA inspection.

At times situations arise with a prospective Section 8 rental unit where City inspection would be preferable such as:

1. The property has never been licensed under Chapter 197, Rental Facilities
2. The unit or structure has previously been condemned or deemed uninhabitable by the City, or
3. Building permits have not been finalized by PCAD or non-permitted work has occurred at the property.

Approval of amendments to Chapter 197 intended:

1. To be responsive to a raised concern by the business community by providing clarity on how the City intends to administer the residential operator certification revocation process, and
2. To protect new residents in circumstances where the units have previously been condemned or otherwise deemed uninhabitable, work has been done without a permit or without a final inspection of a permit, or the property has never been in the program by outlining the circumstances under which a Hagerstown Housing Authority interior inspection would not be accepted in lieu of City inspections.

If the proposed recommendations are acceptable, a Special Session will be scheduled for November 15, 2016 to introduce the ordinance. Approval of the ordinance would then be scheduled for November 22, 2016.

PCAD’s administrative policies are authorized and approved by the Department head. If the Code is amended, staff will revise PCAD Policy 166 for consistency with Chapter 197’s provisions regarding acceptance of HHA interior inspections.

Councilmember Metzner stated he has been told some landlords have threatened their tenants with eviction if they complain about Section 8 housing conditions.

The Hagerstown Housing Authority conducts annual inspections. Councilmember Aleshire stated checks and balances are needed for third party inspections, whether or not the HHA is the direct owner.

Councilmember Munson will get additional information from the HHA at the next meeting of the board.

It was the general consensus of the Mayor and City Council to include introduction of an ordinance to amend Chapter 197, Rental Facilities, at a Special Session scheduled for November 15, 2016.

Inspections of Non-profit Housing

Kathleen Maher, Director of Planning and Code Administration (PCAD), and Paul Fulk, Inspections Manager, provided the Mayor and City Council with a report on their assessment of the inspection checklists utilized for non-profit supported housing not in the City's Rental Licensing program. This is in follow-up to a prior discussion on this topic with the Mayor and City Council on August 23, 2016. Concerns had been expressed in the past by Councilmember Aleshire as to whether sheltered housing was subject to the same or similar inspection standards as rental housing to ensure the safety of the residents.

Chapter 197 of the City Code outlines the licensing and inspection requirements for the City's Rental Facilities Program. This code was adopted by the Mayor and City Council in 2003 for the purpose of protecting and promoting the public health, safety and welfare of the citizens of Hagerstown, establishing rights and obligations of the landlords and tenants in the rental of dwelling units, and encouraging the landlords and tenants to maintain and improve the quality of rental housing within the community. An additional purpose is promoting and assuring the safety, health and habitability in the housing conditions in rental facilities in the City' preventing deterioration of rental facilities in the City, supporting property values, and encouraging responsible management and use of rental facilities through licensing and inspection.

Chapter 197 requires any structure containing one or more dwelling units to be licensed with the City and subject to periodic inspections for compliance with the City's Property Maintenance Code. Rooming houses are considered rental facilities under this code. Exceptions are provided to owner-occupied structures containing no more than one rental unit (owner plus one) and to rental facilities owned and operated by the Hagerstown Housing Authority (HHA). The exception for HHA is because it was determined their inspection standards were comparable to the City's standards.

Chapter 197 excludes traditional hotels, motels, bed-and-breakfasts, nursing homes and hospitals from the definition of “rental facility.” The first three are “rented” on a very transient basis by travelers passing through the community, and any hotel or motel operating under the flag of a national chain would be subject to the operational and maintenance standards to remain under that flag. The last two are subject to oversight by the State of Maryland.

PCAD Administration staff have excluded homeless shelters due to their hotel-like transiency and assumption of oversight by the State of Maryland or other authority, residential treatment facilities due to on-site care and oversight by others, ARC of Washington County houses due to in-home nursing care and other oversight, and assisted living facilities due to nursing care and other oversight.

While a number of housing facilities owned or managed by non-profit entities are already licensed in the City’s Rental Facilities program, another 118 units and 247 beds (in addition to the 118 units) in non-profit supported housing are not licensed by the City and subject to the inspections. In mid-September, letters were sent to the seven providers with facilities not in the Rental Facilities program, and to date inspections checklists have been received from five of those providers. It is staff’s determination that none of the checklists received provide for a comparable inspection to the City’s inspection for compliance with the Property Maintenance Code. A large percentage of the standards on the checklists reviewed are more medical or social service in nature than building safety.

If the Mayor and City Council would be interested in amending the Rental Facilities ordinance to incorporate the sheltered housing types not currently subject to the ordinance (e.g. dormitories, homeless shelters, residential treatment facilities), the City Attorney’s Office has indicated that further research is necessary to determine if the City is preempted from such regulatory oversight of facilities also regulated by the State and/or Federal government. As expressed by Councilmember Aleshire in the past, the intent of any such local effort is to ensure that the housing provided to the most vulnerable residents of the community are inspected the same or by a higher standard as other non-owner occupied housing in Hagerstown.

Ms. Keefer noted some of these organizations may be regulated by federal or state laws which cannot be circumvented by local laws.

Mayor Gysberts stated the Mayor and City Council want to protect the City’s most vulnerable residents.

Councilmember Aleshire stated he believes there are many more non-profit agencies than those identified during this discussion. There will be entities that won’t be amenable to the consistency of inspections the City would like to see. The standards have to be applied to all entities in order to ensure the basic requirements are being met. Rental inspections should be consistent for every single rental unit in Hagerstown.

Ms. Maher pointed out the City Code is silent on homeless shelters. Nursing homes are exempted from the inspection regulations. Transitional housing as dwellings is addressed in the Code.

Councilmember Aleshire stated dormitories should also be subject to inspections.

Councilmember Metzner stated inspections for smoke and CO2 detectors should also occur.

Staff will continue researching this issue and discussing inspections with non-profit organizations.

Proposed Policy Change to Sidewalk Display Standards

Kathleen Maher, Director of Planning and Code Administration, and Jill Frick, Director of Community and Economic Development, were present to obtain direction on any amendments to the Standards and Conditions for display of merchandise on the sidewalk, based on input received during Citizen Comments on October 25, 2016.

The proposed policy change which sparked Citizen Comments is that displays shall be limited to a single row of merchandise against the wall of the business and not be hung from the building or awning. In addition, the policy states that the display shall not be anchored or affixed to a tree, post, sign, parking meter, or other structure.

Input received during Citizen Comments included examples provided of obstacles in the sidewalk (e.g., utility pit covers, sidewalk defects, etc.) which merchants felt would make alternative display locations more appropriate to protect pedestrian movement – such as in bump outs near the street or hanging from the awning. It was mentioned if merchants cannot anchor displays to the building or sidewalk, the wind could shift the merchandise racks away from the frontage of the store.

Councilmember Metzner suggested discussing this topic with the new administration in December.

Councilmember Aleshire stated he understands that the merchants are trying to attract customers. He could support allowing merchandise to be displayed on awnings and canopies but not on the building or City property, i.e. lamp poles, meters, etc. A four foot path must also be maintained for pedestrian traffic.

Councilmember Metzner agreed.

Councilmember Brubaker thinks allowing a single row of merchandise would be appropriate.

Ms. Maher noted these proposed regulations apply to the City Center businesses.

It was the general consensus to modify the regulations to include allowing merchandise to be displayed from awnings and canopies. The regulations will also include a statement that the business must possess a valid business license.

Approval of the amended regulations will be scheduled for November 15, 2016.

Competitive Negotiated Sale (CNS) Program Update (Sale of City-Owned Properties)

Randy Gray, Business Development Specialist, and Jonathan Kerns, Community Development Manager, were present to provide an update on the City's Competitive Negotiated Sale (CNS) program. This program was developed in 2013.

The CNS is a process that facilitates the sale of City-owned properties. The City of Hagerstown makes real estate available for purchase and redevelopment. The Department of Community and Economic Development (DCED) coordinates the process and accepts purchase applications. The Mayor and City Council identify properties to be offered for sale and ultimately approve any development concept and purchase.

Any entity or individual may qualify to purchase City property through this process except that some restrictions may apply to City of Hagerstown employees. The purchaser must provide a project plan and budget and be able to demonstrate the financial ability and experience necessary to complete the purchase, the proposed development plan and/or other operation and proper maintenance of the property.

The following properties are currently available through CNS:

1. Alms House, 239 N. Locust Street
2. Massey Building, 28 E. Baltimore Street
3. Nicodemus House, 170 W. Washington Street
4. Roslyn Building, 17-25 E. Franklin Street
5. Updegraff building, 43-53 W. Washington Street

Applicants must submit a completed CNS application form, along with all required supporting documents to DCED. A cross-department staff committee reviews all application submittals and recommends complete and viable applications to the Mayor and City Council. Competitive proposals are accepted on an ongoing basis. During committee review of CNS proposals, the development plan is weighed equally if not more importantly than the proposed sale price. The goal is to find the highest and best use of each CNS property.

CNS properties are marketed through the City of Hagerstown's (DCED) website, through free real estate websites such as Co-Star, by local realtors and developers and through signage on the buildings.

CNS properties acquired or rehabilitated with State Community Legacy funds may restrict the types of uses for the property. For example, Community Legacy funded buildings cannot be used for the following: pawn shops, gun shops, tanning salons,

massage parlors, adult video/book shops, adult entertainment facilities, check cashing facilities, gambling facilities, tattoo parlors or liquor stores.

CNS properties acquired or rehabilitated with CDBG funds typically require sale proceeds to return to the CDBG program.

DCED staff maintains documentation concerning other aspects of CNS properties where applicable, such as code overviews and environmental assessment reports.

Since its inception, three properties have been sold in the CNS program:

1. 11-16 Public Square was sold on August 28, 2013 for \$ 240,000.00. This commercial property continues to be used as restaurant and office space
2. 278 S. Prospect Street was sold for \$ 75,000.000 on October 6, 2016 through the City's Home Ownership Program to be used as an owner occupied residence.
3. 10-21-23 West Antietam Street was sold on October 21, 2014 for \$ 1.00 to initiate the demolition of a fire-damaged building and redevelopment of the property.

Councilmember Aleshire noted the City purchased many of these properties in an effort to remove blight and to remove the buildings that contribute to degradation downtown.

Mayor Gysberts noted this program did not exist before this administration.

Mr. Kerns pointed out the CDBG homeownership properties have different funding limits.

Mayor Gysberts stated the City does not want to be the developer. The Mayor and Council's intent is to create visible change and increase investor confidence.

Councilmember Brubaker stated proposals submitted need to be viable. The City's duty is to help turn these programs into successful incentives.

Applications must be complete before they can be seriously considered.

Proposed Sale of 43-53 W. Washington Street

Jonathan Kerns, Community Development Manger, and Randy Gray, Business Development Specialist, were present to discuss the potential sale of City owned property located at 43-53 West Washington Street. Paul Crampton, Jr., John Barr, and Greg Snook (doing business as Hager 5 LLC) have submitted a proposal to purchase the property through the City's Competitive Negotiated Sale (CNS) process. The proposed project plans include new construction and renovation to create commercial and residential occupancies at 43-53 West Washington Street.

In April of 2013, the City acquired the property at 43-53 West Washington Street from Hagerstown Table Corporation (Vincent Groh). The property presents a significant opportunity for an impactful Downtown redevelopment project due to its proximity to the USMH campus and location within the Arts & Entertainment District.

The City utilized \$ 100,000.00 in State Community Legacy grant funds and \$ 220,000.00 in Community Development Block Grant (CDBG) funds to acquire the property for a purchase price of \$ 320,000.00. Utilizing a combination of CDBG funds and property management funds, the City demolished the property's two-story rear wing and reconstructed the rear wall in 2014-2015. This work eliminated a major barrier to redevelopment.

The City has received a CNS application from Hager 5 LLC proposing to purchase the property at 43-53 West Washington Street. The proposed purchase price for the property is \$ 150,000.00.

The concept plan for revitalization of the property includes the following:

1. Retention of the Potomac Bead Company as a tenant in their existing space with possible expansion by Potomac Bead Company into other areas of the structure
2. Renovation of 49-53 West Washington as mixed use space with student housing units on the upper floors
3. Demolition of 43-47 West Washington Street structure to allow for construction of a new building creating additional commercial and residential occupancies
4. Hager 5 LLC also owns adjacent property located at 55-59 West Washington Street (demolition and renovation activities have begun at this property)
5. Project to include a pedestrian walkway or walking trail connecting the rear of the property to West Washington Street.
6. Project to occur in phases over the next 12 to 48 months. Initial Phase: demolition of 43-47 West Washington Street. Future phases: renovation of 49-53 West Washington Street and construction of a new building with pedestrian walkway on lot at 43-47 West Washington Street (order of future phases to be determined).
7. Preliminary project estimate of \$ 1.5 million

The draft Purchase Agreement has been prepared by City Attorney Mark Boyer. Highlights include: purchase price of \$ 150,000.00 with \$ 5,000.00 deposit due at execution of Purchase Agreement, buyer is required to obtain a waiver of the Option and Right of First Refusal Agreement currently enjoyed by the Potomac Bead Company, LLC, an elaborated final development plan must be approved by the Mayor and Council prior to settlement, closing costs are the responsibility of the Buyer, and settlement to occur on or before March 31, 2017.

The DCED review committee has reviewed the aforementioned Hager 5 LLC CNS proposal and the committee recommends the proposal be approved by Mayor and Council. Staff request that the Mayor and Council introduce and approve an ordinance to enter into a purchase agreement with Hager 5 LLC.

Mayor Gysberts thanked the applicant for including some elements the City had considered, i.e. a walkway through the building. Mr. Boyer pointed out the property will be conveyed subject to a ten foot public walking trail easement retained by the Seller.

Greg Snook, a partner in Hager 5 LLC, indicated the group has considered utilizing this property to complement the Urban Improvement Project and a potential project at the University System of Maryland Hagerstown. They are open to suggestions for the best amenities for this property to enhance the area.

Councilmember Aleshire stated there have been multiple projects discussed for downtown. It is important to connect areas of downtown with the Cultural Trail.

Councilmember Munson thinks this project will greatly enhance the downtown experience for visitors.

It was the general consensus of the Mayor and City Council to schedule the introduction of an ordinance to sell the property for November 15, 2016. Approval will then be scheduled for November 22, 2016.

CITY ADMINISTRATOR'S COMMENTS

Valerie Means, City Administrator, congratulated the community for another successful Alsatia Mummer's Parade.

MAYOR AND COUNCIL COMMENTS

Councilmember M. E. Brubaker reminded everyone that results from the upcoming election will not fix all problems. If votes support Question A, the next question will be where the funding comes from to meet an arbitration. The budget shortfall the City is facing is not from waste and inefficiency. This administration attempts to develop reasonable options for solving issues.

Councilmember K. B. Aleshire had no additional comments.

Councilmember D. F. Munson hopes people remember this administration has made incredible progress. The current administration works well together and could continue working together on the projects if they are re-elected.

Councilmember L. C. Metzner thanked the Alsatia Club and the driver of the antique fire truck for making the parade enjoyable. He hopes citizens vote. He believes the

discussions during this work session are setting the tone for the future of Hagerstown. Property is changing hands and a new environment is coming to downtown. The Hamilton Hotel has been repainted and looks much better. The Governor's recent cabinet meeting in Hagerstown was positive.

Mayor D. S. Gysberts stressed the importance of voting. Voting is a way for your voice to be heard. He thanked the Alsatia Club and everyone involved for a successful Mummer's Parade. He hopes that the participants of the Howl-O-Ween Dog parade will join the Mummer's Parade in the future. He attended the 90th Anniversary celebration of the Potomac Playmakers earlier today.

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 7:33 p.m.

Respectfully submitted,

Donna K. Spickler
City Clerk

Approved: December 20, 2016