

59TH SPECIAL SESSION, WORK SESSION AND EXECUTIVE SESSION –
DECEMBER 6, 2011

Mayor R. E. Bruchey, II called this 59th Special Session, Work Session and Executive Session of the Mayor and City Council to order at 4:14 p.m., Tuesday, December 6, 2011, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers W. M. Breichner, M. E. Brubaker, F. W. Easton, A. C. Haywood, L. C. Metzner; City Administrator Bruce Zimmerman, City Attorney John Urner and City Clerk D. K. Spickler.

WORK SESSION – December 6, 2011

Joint Meeting with Washington County Delegation

A joint meeting with members of the Washington County Delegation and the Mayor and City Council was held. Delegate Andrew Serafini and Senator Christopher Shank were present. Delegate John Donoghue was delayed in traffic and was unable to attend the meeting. Delegate George Edwards was attending a similar meeting in Cumberland.

Mayor Bruchey welcomed the members of Spring Ward's government class from Hagerstown Community College.

Delegate Serafini provided copies of the Spending Affordability Briefing to those in attendance. The impact of Federal fund reductions to the State will trickle down to local governments. Maryland is one of five states that are specifically dependent on federal funding. The City and the County have done a good job of diversifying the employment base.

The Maryland Department of Transportation's (MDOT) Special Fund Capital program could be \$ 1.1 billion less based upon the Department of Legislative Services (DLS) forecast. New revenues for transportation could include a 15-cent motor fuel tax increase and increased MVA fees.

The State is reaching its debt limits. Bond funding will not be as large as in past years. Debt service costs are rising and tax receipts are falling. The State is facing a dire situation. State legislators have been looking at ways to increase jobs. Some of the things the City is trying to do are applauded by the Washington County Delegation.

Councilmember Breichner asked what effect the increase in tolls and title fees will have. Senator Shank stated the original proposal was reduced. The current recommendation is to increase the gas tax by 15 cents over a three year period and to significantly increase title fees. A large amount of transportation funding goes toward mass transit services.

Delegate Serafini is concerned that higher taxes will be detrimental to rural communities. He supports mass transit but it is not practical for travelers.

Councilmember Brubaker asked if accelerating General Obligations bonds could capture federal money. Senator Shank indicated he does not see any further federal funding coming to the State.

Councilmember Easton asked if the State has considered reducing funding for infrastructure projects, such as excessive facilities at rest areas.

Senator Shank stated alternatives have been proposed in the Senate and House. Increased commitments to social programs account for a significant amount of funding.

Councilmember Brubaker discussed the Washington County Community Lobbying Coalition's agenda. The agenda includes:

1. Professional Court Bridge and Extension
2. Funding to Market the Sesquicentennial Anniversary of The Battle of Antietam and other local civil war events
3. Amendments to One Maryland Tax Credit
4. Creation of a "Small Business" new jobs tax credit

Councilmember Brubaker indicated opportunities for renovations of Municipal Stadium are on the watch list of the coalition. It seems every community has benefited from a new stadium. It will be difficult to renovate the stadium without State funding.

Mayor Bruchey thinks the funding for a stadium needs to be moved to the agenda list. He will have more information after a meeting with the Suns owners next week.

Councilmember Haywood stated regulations and penalties for domestic violence must be stricter. Senator Shank stated there is a disparity between a peace order and protective order and how these are understood. He is working with District Court on how complaints are handled. Councilmember Metzner urged victims of domestic violence to call the police at the start of an incident. A piece of paper restricting contact may not be enough to stop some people.

Councilmember Haywood wants to work with the state to promote revitalization of buildings.

Councilmember Brubaker stated a bond bill was submitted last session for bond funding for the relocation of Engine 2 to Potomac Avenue. The City received correspondence from members of the delegation opposing the request. He was concerned that no contact was made to the Mayor and Council prior to opposing the project. He asked that the Washington County Delegation give consideration to local requests and to seek additional information if they are not familiar with the project.

Delegate Serafini stated he and Delegate Myers were the ones opposed to the project. They only information that came with the bond request was from those in opposition. The Fire and Rescue Association indicated this was not the way to fund the relocation.

They had no contact from anyone else. He stated his opposition was not against the project.

Mayor Bruchey stated a correspondence explaining this would have been helpful.

Delegate Serafini stated the delegation supports the Professional Court Bridge. They have discussed the project with the State Transportation board. The State will not be able to make any changes to the existing project.

Delegate Serafini explained that renovated/new stadiums in other communities have been cooperative efforts with local and county governments. The Delegation needs to see unity with the City and the County before moving forward with funding requests.

The Delegation supports education and believes any expansion at the University System of Maryland – Hagerstown site would be beneficial.

Delegate Serafini indicated the Delegation is concerned that Hagerstown is seen as a place to send people for social services and this needs to be addressed.

Delegate Serafini stated it is important for the Delegation to know what the revenue stream is for any project. He would like to participate in discussions about renovations at Municipal Stadium.

A five minute recess was observed.

Mt. Aetna Farms Update from Gregory Snook

Gregory Snook, President of the Washington County Industrial Foundation (CHIEF), presented an update of the Mt. Aetna Farms project. Jill Estavillo, Economic Development Manager, was also present.

Mr. Snook indicated one of his goals as president is to increase communication between CHIEF, the County, the City and the Delegation.

Mt. Aetna Farms is a 173-acre parcel of land near the Hagerstown Community College (HCC) and the Meritus Medical Campus which CHIEF purchased from Diakon Senior Living in June 2011. Plans for the site include the development of a Technology Business Park to support and attract bio-science, technology and cyber security companies to the region.

The first step in the development is to provide road access through the site with the extension of Yale Drive from Medical Campus Road to HCC's Scholar Drive. Washington County has secured two consecutive \$ 600,000 grants from the Appalachian Regional Commission to support the road extension project.

Mr. Snook, a former County Commissioner, took over as President of CHIEF in August 2011 having most recently served as President-Elect and a member of the Board of Directors.

Mr. Snook stated CHIEF has requested a right of way from Meritus Medical Center for construction of a road to the Diakon property. There will be four round-a-bouts in this area, with most being constructed to City design standards. After an agreement is signed, engineering for the road will begin. The estimated time for completion of the road – from engineering to construction – is two years. The project must be placed on the State CIP before any funding can be allocated. One of CHIEF's lobbying requests will be to get on the State CIP list. The plan for the new road includes a second entrance/exit to Hagerstown Community College. CHIEF has been discussing broadband service to this site, as well as other organizations in the area.

Councilmember Brubaker indicated the Mt. Aetna property is not contiguous to the site. Before the City can invest in the project, he would need to have some assurance of some kind of return for the support.

Mr. Snook stated he intends to discuss annexation with the owners after the concept plan is developed. They are looking at a regional stormwater plan.

Councilmember Brubaker would like to find a way for CHIEF to be involved downtown and helping it be the prime economic area it should be.

Councilmember Haywood indicated there are services and features the City can provide in the Mt. Aetna area and she looks forward to a conversation with CHIEF about this.

Program Open Space (POS) Proposed Projects for FY 2013

Junior Mason, Parks Superintendent, reported applications for POS funding are now being accepted for FY 2013.

The suggested projects are:

1. Potterfield Pool Pavilion - \$ 9,000
2. Portable Metal Bleachers for Various Parks - \$ 7,200
3. Hellane Park Walkway Improvements - \$ 36,000
4. Golf Cart Storage - \$ 19,800
5. Memorial Park, Phase II - \$ 49,500

In July 2011, the City submitted a request for Community Parks & Playgrounds funding for Items #1 and #3; however, notice of award will not be received until April 2012 or later.

Councilmember Haywood wondered if the \$ 19,800 included for golf cart storage would be better suited for another project on the list, especially since the City leases the

golf carts. She would like more discussion about the golf course. Mr. Zimmerman indicated there will be further discussion during next week's work session.

It was the general consensus to remove the Golf Cart Storage from the list of projects. Four projects will be included in the funding request.

Urban Greening Grant Program Application to the Chesapeake Bay Trust

Kathy Saxman, Development Funding Specialist, Tim Young, City Engineering Designer II, and Jim Bender, Assistant City Engineer, were present to request authorization to submit an Urban Greening Grant Program Application for \$ 35,000 to the Chesapeake Bay Trust.

The Mayor and City Council approved an Urban Tree Canopy Coverage Goal of 30% in the City by 2050. The City was awarded two previous grants through the Urban Greening Grant Program. Through these awards, a total of 423 trees have been planted, with 102 on private property. The property owners maintain these trees. Trees were also planted at participating schools. In total, 118 students and 8 teachers assisted with the planting of 56 trees at three schools during the 2009 and 2010 school years.

In 2009-2010, trees were planted at the triangle that is located at the Summit Avenue/Virginia Avenue intersection. In 2010-2011, trees were planted at Potterfield Pool and Fairground Park.

Staff recommends a match of \$ 10,000 in order to submit a competitive application. The \$ 10,000 in matching funds will be General Fund – CIP Contingency/Carryover. Staff proposes to use the \$ 35,000 grant and matching funds to acquire and plant approximately 200 trees. The trees will be planted along the streets and in the front yards of homes in targeted locations of the city, several public parks and at Martin Luther King Building and Memorial Recreation. If funded, the tree planting would occur in the fall of 2012.

Councilmember Haywood informed everyone the Chesapeake Bay Trust offers volunteer opportunities for assistance with planting.

It was the general consensus to move forward with the application.

The proposal for a new after school program was then discussed.

Proposal for New After School Program at the Memorial Recreation Center (MRC)

Chief Arthur Smith, Hagerstown Police Department, Officer Gerard Kendle and Ms. Loretta Wright, Memorial Recreation Center (MRC), were present to discuss a proposal for an after school program.

The proposal would utilize the majority of the remaining funding which had been intended to support after school programs formerly run by the C-SAFE Coordinator. The requested amount is \$ 17,921. This program is intended to provide a variety of constructive activities for youth to be run out of the Center.

The Memorial Recreation Center, Inc. has a need to expand the After School Program. With the program as it is now, they are limited in their ability to meet the needs of the children they serve. Children arrive to the program from 2:15 to 5:15 p.m. They had planned to take walking field trips and field trips that would require travel. They are unable to leave for trips, because they have no staff coverage if two teachers leave. The After School Program needs an additional teacher to stay with the late arriving children or accompany these students on the field trips.

The program activities include tap dance, piano lessons, Abrakadoodle Remarkable Art, physical exercise, community garden activities, community presenters, MAN UP, D.I.V.A.S. and Girl Up mentoring programs and video photography lessons.

It was the general consensus to accept the proposal.

Discussion of Rezoning – Pangborn Property, ZM-2011-02 and Annexation – Pangborn Annexation, A-2011-03

Kathleen Maher, Planning Director, and Alex Rohrbaugh, Planner, were present. The purpose of the discussion was to review public input received during the November 22, 2011 Public Hearing for the proposed Pangborn property rezoning from N-MU to POM and determine intended action on the rezoning request.

During the Public Hearing, Pangborn's attorney explained in detail the applicant's request for a rezoning based on both change in the character of the neighborhood and a mistake in the existing N-MU zoning classification. A representative from the Pangborn Corporation also provided testimony concerning the history of the site. No one testified in opposition to the rezoning. The public record was held open for 10 days following the Public Hearing. No additional comments were received during the period.

This rezoning is also being requested in conjunction with the applicant's petition of annexation for a 5.16 acre portion of the Pangborn property that is currently outside the City limits. The applicant has requested POM zoning for the portion of property to be annexed. The Planning Commission reviewed the appropriateness of zoning for the annexation on September 14, 2011 and recommended to the Mayor and City Council that POM zoning was appropriate for the annexation. The County granted express approval of the requested zoning change to POM on November 8, 2011.

The Public Hearing for the proposed annexation was held on November 22, 2011. Staff did not receive any comment from the County, although the County Commissioners granted express approval of a zoning change to POM on November 8, 2011. Routine comments were received from the State concerning Priority Funding Area (PFA)

certification if the property is annexed. Pangborn's attorney was the only individual who commented at the Hearing, and he spoke in favor of the annexation.

The record was held open for a period of 10 days after the Public Hearing. Staff has not received any public comment during the period.

As required by State Law, there were two published notices advertising the Hearing at no less than weekly intervals. The Annexation Plan was provided to the appropriate County, Regional, and State Planning Agencies, at least 30 days prior to the Public Hearing. After the Public Hearing, the Mayor and Council may pass or reject the annexation resolution. If the resolution is passed the annexation becomes effective in forty-five days.

Councilmember Breichner thinks change in the character of the neighborhood is the more appropriate reason for rezoning.

Councilmember Metzner asked for an opinion from the City Attorney if change in character of the neighborhood is appropriate if the change occurred due to the applicant's demolition of buildings on the property.

Councilmember Haywood pointed out the zoning classification applied to the property during the Comprehensive Rezoning was chosen with the assumption the buildings would be remaining on the property.

John Urner, City Attorney, stated there was a case in Salisbury that the court found not to be meritorious. In that case, the business was no longer viable. There is no evidence in that case to rely upon for this request.

Councilmember Metzner stated a mistake in zoning does not seem appropriate because the City did not make a mistake in the original zoning. The designated zoning was based on the existence of the buildings on the property.

Mr. Urner indicated a mistake must be a mistake made by the governing body that sets the zoning classification. He stated this case is a mistake by the property owner asking for the N-MU zoning classification at the time of the Comprehensive Rezoning. He stated he did not find any of the cases noted during the testimony at the public hearing to be relevant for this case. The decision made by the City for the zoning classification protected the residential areas surrounding the property. Adaptive reuse of the property was not discussed in the Comprehensive Rezoning findings. Mr. Urner stated there is not a legally sufficient case for either reason for rezoning.

Councilmember Easton asked if these two reasons are the only way to rezone property.

Councilmember Metzner indicated the only other way to rezone property is through a Comprehensive Rezoning.

Mr. Urner stated the applicant did not carry his burden of proof on either of the reasons. The question for the rezoning consideration is whether or not the Mayor and City Council made a mistake in the original zoning or if there was a change in the character of the neighborhood. The change in the neighborhood occurred when the property owner removed the buildings. Proof of mistake has to be proven for rezoning and that has not been done.

Councilmember Brubaker pointed out that Mr. Urner's opinions were not presented to the Planning Commission when they considered this request.

Mr. Urner stated he has provided his opinion that the legal arguments don't satisfy the law regarding rezoning to Staff.

Councilmember Metzner asked that copies of the cases presented during the applicant's testimony be provided to all Mayor and City Council members to review. The decision is ultimately up to the Council.

Mayor Bruchey clarified that Mr. Urner's opinion is that demolition of the buildings on the property does not constitute a change in the character of the neighborhood. Mr. Urner stated that is correct.

Mayor Bruchey clarified that staff's recommendation is that the property be rezoned to POM. Ms. Maher indicated that is correct, but staff's recommendation was provided prior to the court cases being discussed.

Councilmember Brubaker stated there are different legal opinions from reviewing case law. He also asked for copies of the cases that were noted during the public hearing.

Mr. Urner stated in this case, neither the change in character of the neighborhood or mistake in the original zoning is applicable.

Councilmember Metzner stated he respects Mr. Urner's opinion but wants to read the cases. He encouraged the applicant to send the Mayor and City Council all pertinent information for consideration of this rezoning request.

In summary, copies of the case law will be provided to the Mayor and City Council by Mr. Urner. The applicant will be asked send contrary case law for consideration. This request will be discussed at a work session in January.

Mr. Urner left the meeting.

FY 11 Comprehensive Annual Financial Report (CAFR)

Michelle Burkner, Director of Finance, and Bill Seymour, SB & Company, LLC presented the City's audited financial statements for FY 2011. The presentation provided an overview of the City's financial health at the end of FY 11, including:

SB & Company, LLC's comments and recommendations
Factors affecting financial condition
Long-term financial planning
Financial analysis – general funds and enterprise funds
Budgetary analysis

Ms. Burkner thanked the Finance Department for their hard work in getting the audit completed. Mr. Seymour thanked City management for getting them the needed information in a timely manner so the audit could be completed by the deadline of November 1, 2011.

Mr. Seymour reported SBC issues unqualified opinions for the audit of the June 30, 2011 Financial Statements and performance of the OMB Circular A-133 Single Audit. Unqualified opinions are essentially clean opinions, with no concerns noted. SBC's evaluation and assessment of the Control Environment indicated effective controls are in place. They found that effective operations are in place for the key processes, which include treasury, payroll, expenditures and revenue.

The City's total net assets for governmental activities was \$ 77,739,835 in 2011. Revenue (governmental activities) for 2011 was \$ 41,610,621 and expenditures were \$ 37,468,910.

The single audit opinion is there are no material weaknesses. The City of Hagerstown was considered a high risk audit (due to prior year findings); however, prior year audit findings were resolved.

The Audit includes the following observations:

1. Standard and Poor's Municipal Bond downgrades
2. Municipal and County bankruptcies and potential impact on debt market
3. Aging infrastructure
4. Management and the Council should be aware that because of the present economic times and slow down in the economy, there will be greater financial pressures on the City's employees and potential customers which increases the City's risk of fraud from its employees and customers
5. Risk management concerns related to employees have become an issue among local governments. Governments should be proactive in initiating risk management policies to minimize liability exposure.

Ms. Burkner provided the following financial highlights from the Comprehensive Annual Financial Report:

1. The City's assets exceeded its liabilities at the close of the most recent fiscal year by \$243.6 million. Approximately 63.1% of this amount is attributable to the City's three utilities. Of the total net assets, \$ 21.3 million may be used to meet ongoing obligations to citizens and creditors, \$ 10.2 million is restricted for specific

- purposes and \$ 212.0 million is invested in capital assets, net of related debt.
2. As of the close of the current fiscal year, the City's governmental funds reported combined ending fund balances of \$ 19.0 million. Of this total amount \$ 7.9 million is unreserved and represents working capital available to support governmental operating needs and future years' expenditures.
 3. The City's total bonded debt increased by \$ 1.5 million during the current fiscal year from \$ 62.3 million to \$ 63.8 million. A total of \$ 6.4 million of Maryland Water Quality Revolving Loan Fund Debt was drawn in 2010/2011 from prior year's authorizations. The City's adherence to its amortization schedules for existing debt reduced its debt by \$ 4.9 million in 2010/2011.
 4. The General Fund on a current financial resource basis, reported revenues in excess of expenditures and other financial sources and uses by \$0.2 million after making a \$0.7 million transfer to the Capital Projects Fund and operating transfers of \$ 0.3 million to the Golf Course Fund, \$0.3 million to the Economic Redevelopment Fund, \$0.3 million to the Grant Revenue Fund, and \$0.6 million to the Property Management Fund.
 5. At the end of the current fiscal year, unreserved fund balance of the General Fund was \$7.9 million or 22.4% of total General Fund expenditures (excluding the transfers to other funds described above). This represents slightly over two and a half months of General Fund expenditures and complies with the City financial policy requiring a minimum undesignated fund balance of 10% of the General Fund operating expenditures.

Mr. Seymour indicated many municipalities have not dealt with the OPEB funding. The City of Hagerstown anticipated the requirements and dealt with the funding needs prior to the deadline. This places the City in a better situation than many State and local governments.

Mr. Zimmerman thanked Ms. Burker, Angie Ludeman and the Finance Department for their efforts in completing the annual audit in a timely manner.

59TH SPECIAL SESSION – December 6, 2011

On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to meet in Special Session at 7:04 p.m.

Approval of a Resolution: Bond Reprogramming

Action: On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember M. E. Brubaker, the Mayor and City Council

unanimously agreed by voice to approve a resolution supplementing and amending Resolution R-09-42 originally adopted and effective on September 1, 2009 authorizing the City of Hagerstown to issue and sell \$ 17,995,000 in general obligation bonds originally designated as the City of Hagerstown Public Facilities Bonds of 2009.

As required by the supplemental ordinance O-11-21, Bond Reprogramming, introduced on October 25, 2011, adopted on November 22, 2011 and which becomes effective on December 23, 2011, the City has either achieved cost savings, cannot spend, or determined not to fund certain original projects from the proceeds of the 2009 Bonds. The purpose of this resolution is to supplement and amend the original resolution to reallocate \$ 1,431,000 of the original issue to finance or reimburse costs of additional public purpose projects of the City as identified in the included document. The resolution provides that the full faith and credit and unlimited taxing power of the City of Hagerstown shall be irrevocably pledged to the payment of principal and interest on the bonds. Appropriate City officials are hereby authorized to take the actions necessary to proceed with the reprogramming of the 2009 Bond proceeds.

On a motion duly made, seconded and passed, the special session was closed at 7:06 p.m.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, reported the last yard waste for the year will be collected on December 13, 2011. Pickup will resume in the Spring.

MAYOR AND COUNCIL COMMENTS

Councilmember M. E. Brubaker stated the Christmas tree lighting was great. He is glad the City has been able to continue to do things that add to the quality of life in Hagerstown.

Councilmember W. M. Breichner had no additional comments.

Councilmember L. C. Metzner had no additional comments.

Councilmember A. C. Haywood had no additional comments.

Councilmember F. W. Easton mentioned downtown and City Park look wonderful.

Mayor R. E. Bruchey, II attended the tree lighting at City Park and it was well attended.

EXECUTIVE SESSION – December 6, 2011

It was the general consensus to begin scheduling a discussion of executive session items, if appropriate, during a work session prior to a voting session.

On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote 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, to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4 and to consider the acquisition of real property for a public purpose and matters directly related thereto, #3 at 7:09 p.m. in the Council Chamber, 2nd Floor, City Hall, Hagerstown, Maryland. The following people were in attendance: Mayor R. E. Bruchey, II, Councilmember W. M. Breichner, Councilmember M. E. Brubaker, Councilmember F. W. Easton, Councilmember A. C. Haywood, Councilmember L. C. Metzner, City Administrator Bruce Zimmerman, Chief Arthur Smith, John Lestitian, Department of Community and Economic Development Director, Jonathan Kerns, Community Development Manager, and Donna K. Spickler, City Clerk. The meeting was held to discuss possible hiring incentives, amendments to an existing loan and acquisition of property. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the meeting was adjourned at 8:01 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: January 31, 2012