

63RD REGULAR SESSION – JANUARY 29, 2019

Mayor R. E. Bruchey, II called this 63rd Regular Session of the Mayor and City Council to order at 7:02 p.m., Tuesday, January 29, 2019, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, A. Heffernan, E. Keller, L. C. Metzner, and S. McIntire, Interim City Administrator Michael Spiker, City Attorney Jason Morton, and City Clerk D. K. Spickler.

The invocation was offered by Councilmember Kristin B. Aleshire. The Pledge of Allegiance was then recited and led by Aiden McCall and Gabe Cassesa, members of Cub Scout Troop 103 (Paramount Elementary School).

Mayor Bruchey announced the Rules of Procedure for this meeting will be followed as adopted December 20, 2016. It was announced that the use of cell phones during meetings is restricted and that all correspondence for distribution to elected officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.

The next scheduled meetings are: Work Sessions beginning at 4:00 p.m. on Tuesday, February 5, 2019, Tuesday, February 12, 2019, and Tuesday, February 19, 2019, and the Regular Session on Tuesday, February 26, 2019.

Mayor Bruchey welcomed the following members of Scout Troop 26 (St. Mark's Lutheran Church) to the meeting: Johnathan Fox, Dave Fox, Dylan Elliott, Matt Elliott, Joseph Fox, Braden Foster, and John Kauffman (Scoutmaster).

APPOINTMENTS

On a motion duly made Councilmember L. C. Metzner and seconded by Councilmember S. McIntire, the Mayor and City Council unanimously agreed by voice vote to appoint Robert E. Powell to the Historic District Commission. Mr. Powell's term will expire on July 23, 2020.

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember E. Keller, the Mayor and City Council unanimously agreed by voice vote to appoint Howard Bowers, Kathleen O'Connell, and Rev. Katie O'Hern to the Community Development Block Grant Public Service Review Committee. The terms for all three members will expire on January 28, 2020.

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember E. Keller, the Mayor and City Council unanimously agreed by voice vote to re-appoint James Stouffer, Jr. to the Board of Zoning Appeals. Mr. Stouffer's term will expire on January 31, 2022.

CITIZEN COMMENTS

Andy Wyatt, WDVm Manager, 13 E. Washington Street, Hagerstown, Maryland, stated it has been a month since WDVm was removed from Antietam Cable Television's

line up. He reported Antietam has refused to negotiate with WDVM. The City of Hagerstown receives a percentage of the customer fees paid to Antietam through a franchise agreement. Even though City officials say they don't have a say in the negotiations, they could get involved and make the community better. Both WDVM and Antietam support the community and provide jobs. If everyone works together, great things can happen in the community. He asked the Mayor and Council members to support WDVM and make a phone call asking that the contract be discussed.

Mark Kraham, WDVM, 13 E. Washington Street, Hagerstown, Maryland, reported the station is still doing news every day, as they have for the last 25 years. They have covered victories and celebrations and the community. The community misses seeing Lou Scally every day. WDVM is a major public agent for the City. He knows many people are disappointed they aren't on Antietam Cable. He has not been able to get either side back to the negotiating table. He asked the Mayor and City Council to urge the two sides to meet again to negotiate a deal for WDVM to be back on the Antietam Cable.

Lou Scally, WDVM, 13 E. Washington Street, Hagerstown, Maryland, is a proud taxpayer in the City of Hagerstown. He thinks one of the great things in this community is the local television station. Without a flow of information from several sources, viewers only get one point of view. He asked the Mayor and City Council to please look into this situation and ask Antietam Cable to come back to the table for a fair and equitable discussion. There is a lot of growth in Hagerstown and more than one media company is needed. A full time television station is important to the community.

Patrick Prudhomme, 136 N. Mulberry Street, Hagerstown, Maryland, has been cleaning seven blocks near his home. He wondered why the City employees are not cleaning the streets. He wondered why the former City Administrator left. He expressed his concern about limited inspections on vacant structures. He was told City employees cannot enter the buildings. He is concerned about the condition of many vacant structures. He asked that City Codes be enforced as written.

PUBLIC HEARINGS

Annexation of Foggy Bottom Farm and Other Lands

Stephen Bockmiller, Development Review Planner/Zoning Administrator, reported the Mayor and City Council introduced a resolution to annex three properties on November 27, 2018. They also adopted an annexation plan for the properties on November 27, 2018. This annexation has been pursued pursuant to State Code stipulations for City-initiated annexations, which permits the City to annex lands with the permission of the owners of 25% of the assessed value of real estate within the area to be annexed and permission of 25% of the registered voters of the subject area. Permission was obtained from the owners of 93.17 percent of the assessed value of real estate and 100 percent of registered voters. Approval is subject to a referendum provision.

The following three parcels are affected by this annexation:

1. Parcel 1587 – Foggy Bottom Farm, owned by the City of Hagerstown, area totaling 12.07 acres. These lands are improved with a dwelling, barn, several out buildings and a cell tower.
2. Parcel 1718 – Lands owned by Meritus, area totaling 78.18 acres. These lands are unimproved.
3. Parcel 1755 – Lands owned by Washington County, area totaling 10.78 acres. These lands are used for a stormwater management facility.

There are no developer agreements involved in this proposal.

An extension of Yale Drive has been constructed south of the annexation area. A proposed new road connecting Professional Court and Yale Drive, to be named Professional Boulevard, is under design by the County and is scheduled for construction in the near future. This road also includes a new bridge spanning Antietam Creek.

The City and County have been in negotiations regarding the City participating in this development by completing widening of the entire length of existing Professional Court to be consistent with the new road connecting to it. The City has not yet committed to participate in this project.

Professional Boulevard will not be constructed to City standards, although County staff informs the City that the road will be built to AASHTO standards. The road will have curb and gutter, and will have a mixed-use trail along one side of the road. Utilities such as streetlights serving the road will also not be completely compliant with City standards.

Pursuant to State Code, the following bodies were provided with notice of this hearing:

1. Maryland Department of Planning
2. Washington County Board of County Commissioners
3. Tri-County Council
4. Hagerstown-Eastern Panhandle Metropolitan Planning Organization

This hearing was advertised in the Herald Mail four times, pursuant to Maryland State law on December 12 and 22, 2018 and January 2 and 11, 2019.

Lands currently zoned ORI in the County are proposed to be assigned to the I-MU Zoning District upon inclusion in the City. Lands currently zoned RT in the County are proposed to be assigned to the AT zoning district, with a potential landmark designation, since the house on the RT zoned property is included on the County's historic properties inventory.

It is the City's position that the proposed I-MU and AT zoning for these properties are consistent with the County's ORI and RT districts.

State law states that for five years after the annexation, land cannot be developed for uses or densities substantially different from the existing County-assigned zoning, unless

the Board of County Commissioners provides expressed consent of the newly assigned district, or approves of a development proposal.

In 2015, the City amended its zoning ordinance to make adjustments to the list of permitted uses in the I-MU Zoning District to be more consistent with the County's ORI District in anticipation of future annexation of this area. Some inconsistencies remain, but the two districts are approximately 80% consistent with one another.

Staff has met with a representative of Meritus regarding the zoning change and some potential concerns regarding uses currently permitted in the ORI District that are not permitted in the I-MU District. Most of the uses discussed seemed potentially reasonable to add to the I-MU District and could be addressed through an additional text amendment process.

As of this date, no official response has been received from the County regarding the issue of zoning consistency.

County staff presented the proposal to the Board of County Commissioners on January 15, 2019. City staff participated in the discussion. The Board has provided a letter to the City stating that the County supports the annexation, however has concerns with the Annexation Plan's statement that public infrastructure, including the existing storm water management facility, and proposed road and bridge would remain the property of the County. The Board also determined to resume discussion of the issue of the proposed I-MU Zoning at its meeting on February 12, 2019.

Infrastructure options include:

1. Proceed as proposed, accepting no responsibility for the road, bridge or stormwater management facility.
2. Accept the road for City ownership with a County warranty as recommended by the County's letter (subject to negotiation).
3. Accept the bridge with written commitment from the County to share in cost of repairs during periods of substantial renovation or reconstruction.
4. Accept responsibly for the future of the stormwater management pond under the current terms of the MOU. This would require CHIEF to maintain the pond for 10 years as agreed to with the County. Subdivision and development of land in the annexed area could be conditioned on the developer establishing a property owners' association that assesses each lot owner a share of the cost of maintenance. This would relieve the City of the cost of maintaining it.

The following Exhibits were entered into the record:

Exhibit 1 – Letter from Washington County Commissioners

Exhibit 2 - Certification of Publication and the official file by reference

Mr. Bockmiller noted that Rodney Tissue, City Engineer, was also present for the hearing.

Andrew Eshleman, Washington County Director of Public Works, 100 W. Washington Street, Hagerstown, Maryland, stated the County supports the annexation. The growth of the tax base is beneficial to both the City of Hagerstown and Washington County. There are concerns about the acceptance of the infrastructure. Even though the road will be constructed by the County, there are practical difficulties to a dual jurisdiction approach. Such a time could be when it comes time for property development and the required stormwater pond. This regional pond serves the larger community. If the County is required to maintain the pond, it may create unnecessary confusion for residents, businesses and the community with regard to construction standards. The County is not asking that the City take on this burden. The planned bridge will be eligible for Federal funding.

Jason Divelbiss, JD Law Co., Inc. 11125 Bemisderfer Road, Greencastle, Pennsylvania, represents Meritus Medical Center, Inc. (Meritus). Meritus is the owner of the approximately 75.71 acre property located on the west side of Yale Drive, which is included in the proposed 101.03 acre annexation.

Despite being the owner of 75% of the geographic area to be annexed, consent to the Annexation Resolution was not requested from Meritus. For that reason, as well as additional reasons, Meritus is opposed to the proposed annexation of the Meritus Property as part of Annexation Resolution A-2018-01 – Foggy Bottom and other lands.

In July 2106, following discussions with City staff, a detailed proposal to annex +/- 115 acres of undeveloped land owned by Meritus including the subject +/- 75.71 acre property, was outlined and presented to the City. That proposal was never followed up on by the City.

Additional reasons Meritus opposes the annexation are:

1. The Annexation Resolution recommends I-MU zoning for the Meritus Property. As has been communicated to City staff, there are certain health care related uses which could foreseeably be part of future development plans for the Meritus property which are not permitted.
2. Lack of Express Approval of Washington County – At its January 15, 2019 meeting, the Board of County Commissioners for Washington county failed to take a position as to whether express approval is required, or if required, whether they will grant said express approval.
3. City owned property not eligible to be included in consent – In the case of *City of Salisbury v. Banker's Life Co.*, (1974), the Maryland Court of Special Appeals found that “only those who were to bear the financial burdens of a city government by the payment of real property taxes were to be allowed a voice in the annexation of real property to the municipal corporation”. The City of Hagerstown clearly does not fit into the category of a party who “bears the financial burdens of a city government by the payment of real property taxes”. Therefore, the City was not eligible to count its property or its consent in order to meet the minimum threshold of 25% of the assessed valuation of real property within the area to be annexed and the Annexation Resolution does not meet the MD Code, Local Gov't. §4-43 requirements.

There was no testimony presented in favor of the annexation.

The following additional testimony was presented against the annexation:

Patrick Prudhomme, 136 N. Mulberry Street, Hagerstown, Maryland, is opposed to the annexation. He stated other lands should not be annexed when things are not taken care of in the existing City limits.

Councilmember Aleshire asked Mr. Divelbiss if the 2016 proposal is still relevant. Mr. Divelbiss stated it is and he would be willing to discuss it again. Councilmember Aleshire wondered how much could realistically be accomplished within five years (the amount of restricted time for developing without express consent) for a development that currently has no road constructed, no utilities in place, and no approved development plan. Given these facts, he noted it would likely be at least six years before construction would start. This is privately used property, with a private commercial component.

Councilmember Aleshire is surprised the County provided detail about the development and infrastructure but not on their ability to weigh-in on the express consent. Publicly owned infrastructure has been multi-jurisdictional for a long time. He does not think there would be confusion in this area. The City of Hagerstown stands to lose if growth occurs in that part of the County without it being within the City limits. As development occurs, the City will still have to provide water service. The City is simply doing what other municipalities in Maryland do, which is grow. He finds this to be a normal process in order to provide City services.

Mr. Bockmiller noted the City can only annex land to which it is adjacent. There are pre-annexation agreements in place that will make other land adjacent to the City if this annexation is approved.

There was no additional testimony or questions.

The record will remain open until February 15, 2019 for additional comments. This will provide time for the County Commissioners to discuss at a future meeting.

Annexation of Antietam Creek Creek Bed

Stephen Bockmiller, Development Review Planner/Zoning Administrator, reported the Mayor and City Council introduced a resolution annexation to annex un-owned land in the amount of 1.47 acres on November 27, 2018. They also adopted an annexation plan for the land on November 27, 2018. The purpose of this annexation is to regularize the City boundary, should annexation case A-2018-01 be approved. Otherwise, this area would be a narrow sliver of County jurisdiction wedged between two properties that will be in the City. No one owns or resides in the area to be annexed. Approval is subject to a referendum provision.

The annexation involves 1.47 acres of area that is located just east of the Saylor House in Kiwanis Park. Based on survey research of adjacent properties, it appears as no part of a recorded lot or parcel and is unowned. This is likely due to imperfections in surveys of

the adjacent properties in the 19th and early 20th century when surveyors called out “center of the creek” or one of the banks as a boundary. The surveys don’t match up, falling short of the adjacent property. This results in a “no man’s land” that is unowned, unused, untaxed and unrecorded in the land records.

Much of the area to be annexed is within the actual creek itself. Some lands along the bank are also included, but these are within the floodplain and floodway. There are no improvements and the area can only be accessed by adjacent properties or navigating the creek.

Pursuant to State Code, the following bodies were provided with notice of this hearing:

5. Maryland Department of Planning
6. Washington County Board of County Commissioners
7. Tri-County Council
8. Hagerstown-Eastern Panhandle Metropolitan Planning Organization

This hearing was advertised in the Herald Mail four times, pursuant to Maryland State law on December 12 and 22, 2018 and January 2 and 11, 2019.

All lands are to be assigned a zoning classification – even if they are undevelopable. The area is currently RT in the County and is proposed to be assigned to the AT zoning district. It is the City’s position that the proposed AT zoning is consistent with the County’s RT districts. The City of Hagerstown Planning Commission considered the proposed zoning and concurs with what has already been put forth.

State law states that for five years after the annexation, land cannot be developed for uses or densities substantially different from the existing County-assigned zoning, unless the Board of County Commissioners provides expressed consent of the newly assigned district, or approves of a development proposal.

The following Exhibits were entered into the record:

- Exhibit 1 – Letter from Washington County Commissioners
- Exhibit 2 - Certification of Publication and the official file by reference

No comments were submitted by the Washington County Commissioners or County staff.

The following testimony was present:

Jason Divelbiss, JD Law Co., Inc. 11125 Bemisderfer Road, Greencastle, Pennsylvania, stated this annexation makes sense as does annexing the property owned by the City of Hagerstown. Annexations that don’t have permission of the property owner are not typical.

There was no other testimony presented or other questions.

The record will remain open until February 15, 2019 for additional comments.

CITY ADMINISTRATOR'S COMMENTS

Michael Spiker, Interim City Administrator, informed the Mayor and City Council that a wellness survey has been forwarded to City employees. He congratulated Chief Kifer and Hagerstown Police Department officers for handling a myriad of issues during the last week. He congratulated Rik's Café, 1065 Maryland Avenue, Hagerstown, Maryland, on their five year anniversary. Day in Annapolis is being held on January 30, 2019. Many of the elected officials and City staff will be attending this all day event.

MAYOR AND COUNCIL COMMENTS

Councilmember K. B. Aleshire had no additional comments.

Councilmember A. Heffernan had no additional comments.

Councilmember E. Keller thanked Mr. Spiker and City employees for working together during the transition in the City Administrator's position. She noted that 47 overdoses have been reported since January 1, 2019, four of which were fatal. Addiction is affecting all aspects of the community. Most of the petty crime activity is related to drugs. It affects economic development efforts. Schools are also dealing with the problems. The situation will get worse if the community doesn't start educating kids. An epidemic can't be stopped if you don't talk to kids. She hopes people stop looking at other people as addicts. She hopes the big picture is seen. She is proud and ready to lead the way to fight this.

Councilmember Keller stated WDVM is a privately owned business. It is not part of her responsibilities as an elected official to be involved in a privately owned business dispute. Urging viewers to contact the City was frustrating. She is also frustrated that comments on Facebook were hidden. She thinks all parties should return to negotiations. She appreciates what WDVM does for the community.

She reiterated that she is accessible to everyone. She encouraged people to contact her if they have questions or concerns. The City government is not against citizens.

Councilmember L. C. Metzner thinks Mr. Wyatt, Mr. Kraham, and Mr. Scally made a reasonable request in asking that the Mayor and City Council ask the parties (WDVM and Antietam Cable) to get back to the table to discuss an agreement. He will do his part. He thanked City staff for their work during snowstorms.

Councilmember S. McIntire had no additional comments.

Mayor R. E. Bruchey, II visited Paramount Elementary School today to talk about the Maryland Municipal League's "If I Were Mayor" contest. He hopes to choose some local winners. He has contacted Antietam Cable, as requested by Mr. Wyatt. As Mayor or a citizen, he has no involvement in the contract between the two private entities. He hopes they can come together and find a resolution.

MINUTES

On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember S. McIntire, the Mayor and City Council unanimously agreed by voice vote to approve the minutes, as presented, for the Mayor and Council meetings held on September 13, 2018, December 4, 2018, December 11, 2018, and December 18, 2018.

CONSENT AGENDA

On a motion duly made by Councilmember E. Keller and seconded by Councilmember L. C. Metzner, the Consent Agenda was approved as follows:

- A. Department of Community and Economic Development:
 - 1. Street Closure Requests – 2019 Events

- B. Department of Parks and Engineering:
 - 1. Phase II Stormwater Utility Development – Wood Environment & Infrastructure, Inc. (Chicago, IL) \$ 127,747.00
 - 2. Handicap Ramps – MIM Construction (Frederick, MD) NTE \$ 120,000.00

- C. Utilities Department:
 - 1. Water – Ford F-450 with Dura-Box Body – Keystone Ford (Chambersburg, PA) \$ 50,948.00
 - 2. Wastewater – Muffin Monster for Primary Sludge Pumps – JWC Environmental (Santa Ana, CA) \$ 22,077.00

UNFINISHED BUSINESS

A. Approval of a Resolution: Parking Rate Amendments (Tabled November 26, 2018)

Action: On a motion duly made by Councilmember L. C. Metzner and seconded by Councilmember S. McIntire, the resolution was removed from the table.

Councilmember L. C. Metzner made a motion to approve a resolution approving specific revisions to the schedule of parking facilities rates and fees, effective January 1, 2019, or as herein noted per the schedule. Any rate not specifically addressed in the attached resolution will be as approved in Resolution R-18-27, passed on June 26, 2018. Councilmember S. McIntire seconded the motion.

Motion failed by a unanimous No vote.

NEW BUSINESS

A. Introdcuion of an Ordinance: Changes in the City Police and Fire Employees' Retirement Plan- Amendment 13 to Plan

Action: On a motion duly made by Councilmember E. Keller and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance for the following changes to the Police and Fire Retirement Plan effective March 28, 2019:

1. Add to the definition of "Covered Employee", the job classifications Police Officer Trainee and Police Cadet.
2. Job classifications of Police Officer Trainee and Police Cadet will not be eligible for the line of duty disability until they become a sworn officer.

B. Approval of a Resolution: Revised Student Parking Rates

Action: Councilmember K. B. Aleshire made a motion to approve a resolution approving specific revisions to the schedule of parking facilities rates and fees, effective February 1, 2019, or as herein noted per the schedule. Any rate not specifically addressed in the attached resolution will be as approved in Resolution R-18-27, passed on June 26, 2018. Councilmember L. C. Metzner seconded the motion.

Discussion: Councilmember Heffernan clarified that this action does not impact the bulk discount rates. Mayor Bruchey stated that is correct. If the bulk discount is not amended by July 1, 2019, the bulk discount will be eliminated.

Motion carried 4-1 with Councilmember E. Keller voting No.

C. Approval of a Resolution: Execution of a Lease Agreement for a Portion of the City of Hagerstown Property Known as BuroBox Located at 60 West Washington Street

Action: On a motion duly made by Councilmember A. Heffernan and seconded by Councilmember L. C. Metzner, the Mayor and City Council unanimously agreed by voice vote to approve a resolution authorizing the execution of a Lease Agreement for a portion of the City of Hagerstown property known as BuroBox located at 60 West Washington Street in Hagerstown, Maryland. The lease will be between the City of Hagerstown and ATR Advantage and shall be in effect from February 1, 2019 to January 31, 2020.

D. Approval of Hagerstown Suns Fireworks Schedule for 2019

Action: On a motion duly made by Councilmember E. Keller and seconded by Councilmember A. Heffernan, the Mayor and City Council unanimously agreed by voice vote to approve three regular season fireworks shows after Hagerstown Suns baseball games on 06/14/2019, 07/03/2019, and 08/23/2019 during the 2019 season and that the Mayor and Council's approval will exempt these shows from the City of Hagerstown's Noise Ordinance under Section 155-5 of the Code of the City of Hagerstown.

E. Approval of Funding to Discovery Station

Action: On a motion duly made by Councilmember S. McIntire and seconded by Councilmember A. Heffernan, the Mayor and City Council unanimously agreed by voice vote to approve of \$ 7,500 in City funding to support the Discovery Station's Discovery Town project. The Discovery Station sent a request to Mayor and Council on September 7, 2018 and requested funding for its new learning area project. This \$ 7,500 would be paid over a three year period as follows:

- FY19 - \$ 2,500 from General Fund Agency Contribution- Unspecified in February 2019
- FY20 - \$ 2,500 from General Fund Agency Contribution – Unspecified in July 2019
- FY21 - \$ 2,500 from General Fund Agency Contribution – Unspecified in July 2020

F. Approval of Utilities Department Electric Distribution Transformer Purchases for the Remainder of FY 2019

Action: On a motion duly made by Councilmember K. B. Aleshire and seconded by A. Heffernan, the Mayor and City Council unanimously agreed by voice vote to approve expenditures for electric distribution transformers of varying types and sizes for the purpose of reliable operation and maintenance of the electric distribution system. This approval will provide for the purchase of electric distribution transformers on an as needed basis as identified by the department through the remainder of Fiscal Year 2019. The fiscal year budgeted amount of \$ 125,000 is based on historical expenditures; actual expenditures will be determined by unit cost and the actual total quantities of each unit required each year based customer needs, identified loading issues, and equipment failures. The actual cost of each unit may vary each quarter based on the fluctuation of metal values as determined by the manufacturer. The City of Hagerstown competitively bid B1638.18 for electric distribution transformers and awarded to National Transformer Sales. This contract is valid through June 30, 2019.

G. Approval of a Memorandum of Understanding – Washington County Police Academy

Action: On a motion duly made by Councilmember A. Heffernan and seconded by Councilmember S. McIntire, the Mayor and City Council unanimously agreed by voice vote to approve a Memorandum of Understanding with the Washington County Sheriff’s Department and the Hagerstown Community College for the purposes of establishing a joint Washington County Police Academy.

This MOU will terminate and replace the previously entered into MOU dated December 19, 2018.

The term of this agreement shall be for a period of one year from January 29, 2019 through December 31, 2019, and will automatically renew unless otherwise terminated as set forth hereinafter.

H. Approval of License Agreement for Temporary Installation of Public Art

Action: On a motion duly made by Councilmember S. McIntire and seconded by Councilmember E. Keller, the Mayor and City Council unanimously agreed by voice vote to approve a license agreement between the City of Hagerstown and Scott Lobaido for the temporary art installation in the public right-of-way on the northwest corner of Maryland Avenue and Downsville Road. The installation shall take place on March 22, 2019 and the exhibit shall be removed on March 24, 2019.

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 8:40 p.m.

Respectfully submitted,

Original signed by D. K. Spickler

Donna K. Spickler
City Clerk

Approved: February 26, 2019