

77TH SPECIAL SESSION, WORK SESSION AND EXECUTIVE SESSION – AUGUST 21, 2012

EXECUTIVE SESSION – August 21, 2012

On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote to meet in closed session to consult with counsel to obtain legal advice, #7 (Section 10-508(a)7), to discuss the appointment, employment, assignment, promotion, discipline, demotion, compensation, removal, resignation or performance evaluation of appointees, employees, or officials over whom it has jurisdiction, #1 (Section 10-508(a)1 (i)) and to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State, #4 (Section 10-508(a) 4) and to consult with counsel to obtain legal advice, #7 (Section 10-508(a) 7) at 3:04 p.m. in Room 407, 4th 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, City Attorney John Urner, Gary McGuigan, Maryland Stadium Authority, Rodney Tissue, City Engineer, Michael Spiker, Director of Utilities, Jill Estavillo, Economic Development Manager, Michelle Burkner, Director of Finance, and Donna K. Spickler, City Clerk. The meeting was held to discuss pending litigation, an appointment to the Board of Traffic and Parking, a lease with the Hagerstown Suns and a substantial private investment in the downtown. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the meeting was adjourned at 4:51 p.m.

76TH SPECIAL SESSION – August 21, 2012

Mayor R. E. Bruchey, II called this 76th Special Session, Work Session and Executive Session of the Mayor and City Council to order at 5:09 p.m., Tuesday, August 21, 2012, 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, and City Clerk D. K. Spickler.

Councilmember Metzner stated the Executive Session discussion included private funding for a substantial percentage of the MUSEC project and the monetary portion of the proposed lease with the Suns. The process has been time consuming; however, the Mayor and City Council have developed hard proposals of the numbers to include in the lease.

On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to meet in Special Session at 5:11 p.m.

Introduction of an Ordinance: Amending the City Code: Chapter 64 Building Construction, Article I, Building Standards, Including Sprinkler Requirements

Action: On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote to introduce an ordinance to amend the Code of the City of Hagerstown, Chapter 64, Building Construction, Article I, to provide for updated Building Standards which includes a requirement of the installation of a residential sprinkler system in newly constructed one and two family dwellings. This requirement will become effective for building permit applications received on or after September 28, 2012.

On a motion duly made, seconded and passed, the special session was closed at 5:12 p.m.

WORK SESSION – August 21, 2012

Preliminary Agenda Review

Consent Agenda

A. Department of Utilities:

1. Water:
 - a. 2012 Ford Super Duty Truck to Replace Unit 206 – Hagerstown Ford (Hagerstown, MD) \$ 69,357.00
 - b. 2012 Ford Super Duty Truck to Replace Unit 216 – Hagerstown Ford (Hagerstown, MD) \$ 69,357.00
 - c. Increase Remote Input/Output Panel for SCADA – ABB, Inc. (Wickliffe, OH) \$ 20,134.00
2. Wastewater: Grinder Pumps – Fluid Solutions (Westminster, MD) \$ 69,984.00

B. Department of Community and Economic Development

1. Thunder in the Square Street Closure – September 28, 2012
2. 250th Anniversary Street Fest – September 29, 2012
3. Street Lamp Holiday Program – Barbara Ingram School for the Arts Foundation

Councilmember Breichner noted that Williamsport Mayor James McCleaf was present representing the Alsatia Club for Thunder in the Square.

C. Department of Parks and Engineering:

1. 2012 Chevy Silverado for Parks and Recreation to Replace Unit 371 – Criswell Auto Fleet Sales (Gaithersburg, MD) \$ 28,550.02
2. 2012 Chevy Silverado for Golf Course to Replace Unit 330 – Criswell Auto Fleet Sales (Gaithersburg, MD) \$ 28,550.02

D. Hagerstown Police Department: Laptops for Police Patrol Cars – Brekford (Hanover, MD) \$ 27,330.00

Introduction of an Ordinance: Amendment to the City of Hagerstown Police and Fire Employees' Retirement Plan

Karen Paulson, Director of Human Resources, presented an amendment to the Police and Fire Employees' Retirement Plan for the Mayor and City Council's review. The amendment reflects changes in the laws of the United States governing retirement plans and updates Section 38-19. This amendment addresses credit for pre-employment military service.

Approval of a Resolution: Mutual Aid Agreement between Hagerstown Police Department, Washington County Sheriff's Office and Frederick City Police

Chief Arthur Smith stated this agreement was approved by the Mayor and City Council on February 23, 2010. Due to the recent G-8 Summit at Camp David resulting in significant activity in Frederick City, the agreements were reviewed per normal practice. It was discovered at that time that Frederick had not signed the agreement. Since that time a new mayor has been elected in Frederick and their City Attorney requested a new agreement for them to sign with the current Mayor's name on the same. This agreement has been redrafted, with the current information, for a second approval.

Approval of a Resolution: Acceptance of Offer of Dedication – Bartow Drive at Roundabout Intersection with Hagers Crossing Drive

Rodney Tissue, City Engineer, stated the City Council previously accepted the rights-of-way of Hagers Crossing Drive and Bartow Drive in the Hagers Crossing residential development. However, staff discovered that a small portion of the right-of-way for Bartow Drive at the roundabout where these two streets intersect was not included in the Council's acceptance. With the Washington County Board of Education's interest in potentially developing a school site immediately adjacent to the roundabout, staff feels that it is appropriate to accept the dedication of this right-of-way to avoid any future questions of the limits of the City's maintenance responsibilities.

Approval of a Resolution: Amended Lease Agreement with Hagerstown Neighborhood Development Partnership for 21-23 East Franklin Street

John Lestitian, Director of Department of Community and Economic Development, presented a lease extension for HNPD to continue to lease 21-23 East Franklin Street. The term of the lease is to be year-to-year. The lease provides a six month notice to terminate tenancy.

Approval of a Resolution: University System of Maryland – Hagerstown (USMH), 60 W. Washington Street and Approval of Change Order and Cost Sharing Plan for USMH

Jonathan Kerns, Community Development Manager, discussed two related actions with the Mayor and City Council. The first requested action will be a motion to approve a change order for the rear anchor tenant area at 60 W. Washington Street and the second

requested action will be the approval of the lease agreement.

Staff met with the Mayor and Council on August 7, 2012 to discuss the change order for the rear anchor tenant space. The change order includes the building of individual rooms and related electric, HVAC and fire suppression systems. The change order does not include the low voltage wiring of fiber optic, telephone and computer lines. USMH is paying for those building improvements separately.

Staff originally estimated that the change order would be approximately \$ 50,000. The revised estimate is \$ 99,000. Staff and USMH officials have met and developed a plan to offset the cost difference. Staff recommends that this be accomplished through an increase in rent. The initial rent was to be \$ 10.00 per square foot. The new initial rent amount is recommended to be \$ 11.20 per square foot. This rent increase equates to an additional \$ 3,240 per year or \$ 48,600 over the course of fifteen years (three 5 year terms.).

As previously discussed, Community Development Block Grant funds which are either unallocated or the result of project savings are available to fund this portion of the project.

Staff met with the Mayor and Council on July 17, 2012 to discuss the lease agreement with USMH. Subsequently, there have been discussions between the City Attorney and attorneys for the University System on language in the indemnification clauses. These items have been resolved.

A summary of the lease provisions is as follows:

1. Initial lease term: September 1, 2012 to August 31, 2017 (Option to renew for 2 five year terms)
2. \$ 30,240 annual rent
3. \$ 2,520 monthly rent
4. \$ 11.20 per square foot at 2,700 square feet of useable space
5. Option to renew for two additional five year periods at approximately 5% increase
6. Non-exclusive use of the adjacent common area
7. Tenant is responsible for janitorial and cleaning services

Approval of a Resolution: Easement with American Legion for Mills Park Trail

Rodney Tissue, City Engineer, presented an easement agreement for Mills Park Trail for the Mayor and City Council's consideration. In December of 2011, the Mayor and Council approved a Memorandum of Understanding (MOU) with the State Highway Administration for a \$ 24,640 grant for the construction of the Phase II Trail at Mills Park. This Phase II Trail will cross from the City property at Mills Park onto the American Legion property, across Hamilton Run, and connect to the Northern Avenue sidewalk. The goal for the project would be to provide more visibility of the walkway

system into Mills Park and to encourage the residents of the neighborhood to utilize Mills Park more.

Staff has worked out an arrangement with the American Legion which addresses several concerns that they have while obtaining easements that are important for the project. Mr. Tissue thanked Denny Nave and Kevin Poole (American Legion) for their efforts with this project. To ensure the neighborhood is aware of the project, staff met with the Neighborhoods 1st Group on May 23, 2012 and reviewed the plat with them.

Staff recommends approval of the legal documents.

Approval of Grant Acceptance: Accepting \$ 1.5 Million of MDE Grant Funding for the RC Willson Phase IV Project

Michael Spiker, Director of Utilities, reported the City was notified on July 27, 2012 by the Maryland Department of the Environment (MDE) that the City was selected to receive \$ 1.5 million in Grant funding associated with the application that was submitted in January, 2011. This award is in addition to the FY 11 Principal Forgiveness award of \$ 1.5 million.

Per a conversation with Gary Magaziner, MDE, this is a new/additional grant for the Phase IV Project bringing the total Principal Forgiveness and Grant amount to \$ 3,000,000 for this project. Staff anticipates the loan (after principal forgiveness) to be \$ 6,160,000. The actual loan amount will be based on the combination of the Construction Bid for a General Contractor and Construction Management Services Bid for Engineering Contract Management and Inspection, subject to MDE approval.

The design, bidding and construction milestones described in MDE correspondence do not apply unless the City chooses to forfeit the Principal Loan Forgiveness. The City must meet the more stringent deadlines associated with the FY11 Principal Forgiveness award – to date these milestones have been met. The next deadline is the Notice to Proceed for Construction no later than December 2, 2012. The current schedule will allow the City to meet this milestone, and, as such, the City will also meet the FY13 Grant milestones.

This project will result in the necessary upgrades at the R.C. Willson Treatment Plant to achieve compliance with the Disinfectant By-Product Rule 2, the Backwash Recycle Rule and continued compliance with NPDES requirements.

Approval of Hagerstown Suns Non-Game Event

Rodney Tissue, City Engineer, stated on Sunday, September 23, 2012, the Hagerstown Suns would like to host The Hagerstown Suns First Annual Tailgate Picnic Party and invite the community to join them for a picnic party/tailgate on the outfield grass while the Suns show the Redskins and Nationals game on the video board. Admission would be free and people would be able to bring their own food. The Suns would sell beverages (soda, water, beer and wine). There would be other activities including a bouncy house

for kids, a Punt, Pass and Kick competition for all ages, and possibly a band for halftime and an hour after the game. The event would begin at 1:00 p.m. and continue until approximately 5:00 p.m.

The Mayor and City Council must approve the non-baseball event requests that need a waiver of the Noise Ordinance. The Suns are responsible to obtain appropriate permits for additional alcohol sales from the Board of License Commissioners.

Approval of South Prospect Streetscape Project Contract

Rodney Tissue, City Engineer, stated staff has completed the design and bidding of a project that would improve the sidewalks and street trees in the three blocks of South Prospect Street. The South Prospect Street neighborhood is an outstanding and beautiful historical neighborhood, and adding to the charm of this neighborhood are the sidewalks that are typically brick and much of the curb is granite or limestone. However, a major issue on this street is the sidewalk damage caused by the street trees, which are the City's responsibility to address.

The scope of the proposed work includes:

1. The removal and placement of 15 trees; preservation of 18 trees, installation of approximately 43 new trees
2. Resetting brick sidewalks damaged by street trees
3. Addressing sidewalk repairs that are the responsibility of the adjoining property owner (the non-street tree issues) by fronting the funds and completing the work as part of the overall contract, and then assessing the property owners. All property owners were notified in early June of the work that is needed and they were given approximately 90-days to complete the work themselves. Anything that has not been completed, the City will address as part of this contract, and bill the owners.
4. When the project is complete, all driveway entrances will look the same (all will be brick instead of some being concrete), all driveway radii will be eliminated, and all will have depressed curbs sloping at ADA requirements. The existing bricks will be reused where provided, but if bricks fall short, the contractor will mix in new paver bricks.
5. Brick patterns will match existing patterns where possible
6. Work zones will be limited to approximately one-half block at a time, on one side only.

Staff is requesting Mayor and City Council approval of the contractor for the reconstruction of the South Prospect Streetscape project. Staff is also requesting direction on the installation of iron tree boxes at each tree. The Neighborhood group has requested that the City install iron tree boxes around all the trees. The cost of three-sided boxes for the 76 trees would use the \$ 53,990 the project is below budget.

Approval of Police Officer Recruitment and Retention Incentives

Karen Paulson, Director of Human Resources, and Chief Arthur Smith, requested Mayor and City Council approval to proceed with the Police Officer recruitment and retention incentives as follows:

1. Expand the current \$ 5,000 hiring incentive to include new hires that are hired under the COPS grant.
2. Increase employee referral bonus from \$ 500 to \$ 1,500 to current employees if they refer and the City hires a police officer candidate who is currently certified or hired under the COPS grant.
3. Offer a housing allowance of \$100/month for sworn officers who reside within Hagerstown's city limits.
4. Initiate a \$ 1,000 bilingual bonus
5. Military Service Credit: This recommended change is applicable to eligible Police and Fire personnel and includes allowing up to three years credit. It will not change the eligibility requirements to retire.

A Cadet program will be discussed with the Mayor and City Council at a later date. The Housing Allowance will be presented for approval as originally discussed. Revisions may be made after further review.

Approval of the work for the Memorial Boulevard underdrain will be included on the Consent Agenda for August 28, 2012.

This completed the preliminary agenda review. All items will be included on the August 28, 2012 agenda.

Land Management Code Amendments – Definitions (Junkyards, Warehouses and Recycling)

Kathleen Maher, Planning Director, provided revised definitions for the Land Management Code Amendments as directed by the Mayor and City Council at the August 14, 2012 work session review.

The existing Land Management Code does not include definitions for “Junkyard” or “Warehouse”. The proposed amendments include definitions for the two; however, improvements could be made it make a clearer distinction between the two when it comes to operations such as what has been discussed on N. Prospect Street. Staff has developed revisions for the Mayor and Council's consideration. Staff review of these two definitions sparked discussion on whether these definitions would prohibit a recycling business and whether that would be acceptable, so staff are also offering for consideration af new definition for “Recycling”. Staff suggests limiting it to IG zoning districts as a permitted use.

The proposed definitions are as follows (stated as it would appear if amended):

1. Junkyard – A parcel of land on which waste materials, such as metals, glass, paper, plastics, rags and rubber tires, also including discarded or inoperable vehicles, are collected, processed, sorted, salvaged or sold. A lot on which three or more inoperable vehicles are stored shall be deemed a junkyard. This does not include hazardous materials or spent nuclear fuels.
2. Warehouse – A building and/or open area that is used for the temporary storage of materials or merchandise in an organized manner before their export or distribution for sale, or for the long-term storage of personal property with no definite plans for the future disposition of that property. A warehouse shall not include the processing or sorting of recyclables, scrap, or rubbish for distribution back into the chain of re-manufacture, or the bulk storage of fuels or junked automobiles and their parts.
3. Recycling – An operation conducted entirely indoors which accepts recyclable materials and processes or sorts these materials for distribution back into an off-site re-manufacturing operation. This does not include operations which undertake curbside collection of recyclable materials nor the storage of a fleet of vehicles for such operations.

Councilmember Metzner asked why storage is not included in the definition of a junkyard. Ms. Maher indicated the definition of warehouse includes the storage or accumulation of scrap or rubble. If the items are being processed, the use is not a junkyard. A junkyard would be a temporary storage location. A permanent storage use would be a landfill, which is only permitted in the IG District by Special Exception.

It was the general consensus to include introduction of an ordinance to amend the Land Management Code on the August 28, 2012 agenda.

Investment Policy – Revised

Michelle Burkner, Director of Finance, was present to discuss a revised Investment Policy. Staff met with the Mayor and Council on July 17, 2012 to present staff recommended revisions to the City's current Investment Policy. The current investment policy was last revised on July 23, 1996. The policy is intended to provide rules and guidance with regard to investing the financial assets of all funds except those that are specifically excluded by Mayor and Council action, restrictive covenants of a bond or other City agreements.

Councilmember Brubaker requested that the discussion be tabled. He has asked Ms. Burkner to review the language regarding the investment officer. He thinks the investment committee should include a member from outside the finance functions of the City.

Councilmember Breichner pointed out all department heads are involved in finance functions. Councilmember Brubaker indicated one of the members should be from outside the finance department.

The investment policy will be reviewed again in September, 2012.

Proposed Dog Park

Rodney Tissue, City Engineer, Junior Mason, Superintendent of Parks, and Paul Miller, Executive Director of the Humane Society of Washington County, were present to discuss a proposed dog park. The idea of dog parks is probably over 30 years old in the United States and the first official dog park to open in the United States was in 1979. There are an estimated 1,200 dog parks in the United States and there are dog parks in Chambersburg, Frostburg, Frederick, and other local towns. A “dog park” is a park that is designed with amenities that make it clear that dogs are not just permitted, but invited for exercise, socialization, and play. Dog owners are a substantial group of park users and if Hagerstown is like the rest of the United States, 39% of households own dogs and many own multiple dogs. A case can be made that dog parks increase the sense of community, that dogs benefit the local economy, and dog ownership can provide health benefits for humans. In reality, dog parks are not for dogs, but for dog owners.

Staff is presenting this proposal to obtain Mayor and Council direction if they should pursue the project. If the Mayor and Council wishes to move forward, staff will further the development of the plans, have further discussions with the community, and come back within a month or two for a final approval by the Mayor and Council to construct the park.

Staff has focused on a site they feel provides many amenities while minimizing conflict with residences. A plan was provided showing a dog park located in the northeast corner of Hager Park near Municipal Stadium. Although the park is slighter smaller than recommended, staff feel this is an excellent location for the following reasons:

1. There are no residences in the area (other than City-owned residence in Hager Park) that will be impacted by the park.
2. There are about 25 parking spaces adjacent to the proposed dog park in Hager Park.
3. There are public restrooms within about 200 feet of the park.
4. There is a pavilion within 100 feet of the park where people can eat to hopefully keep food out of the proposed dog park.
5. There is a play area within 100 feet of the dog park where children can play.

Staff completed considerable research into the amenities of a successful dog park. Some of the features of any dog park built in the City include a fence around the perimeter, fence that separates the area into two cells, significant amount of waste stations, shade trees, public water supply, mulch or grass surface and extensive rules (posted at the park).

Staff estimates the cost to completely implement the dog park as shown at \$ 35,000.00. Staffing of the park would not be required but a general cleanup once per week would be necessary.

One item that should be considered is the use of the park by permit holders only. If a card swipe system was implemented, only permit holders could enter the park.

Councilmember Haywood stated space for a garden would be available in the play area in the park and a dog park in the proposed location would not interfere with that.

Councilmember Easton wondered what liability the City would have for dog bites. He also asked who cleans up the park. Mr. Tissue stated self policing for clean up at a dog park is essential. There would be generous amounts of cans, mitts and signs for cleaning up. The City would provide maintenance once per week. Users would be strongly encouraged to be responsible and clean up after their pets. Mr. Tissue stated there would be no liability issues because there would not be an admission fee to use the park. People would be responsible for their own dogs.

Councilmember Haywood asked about the feasibility of issuing permits for users. Only those holding permits would be able to enter the park. Mr. Tissue indicated a permitting process may include determining if dogs have received all vaccines and rabies shots.

Mr. Miller suggested not having separate areas for bold or timid dogs. He suggested separating the areas by size of the dog. A timid dog could be overwhelmed by larger dogs in the first scenario. He believes this area would be suitable for a dog park, even though it is smaller than recommended. Fencing should be higher than four feet. He cautioned the City against having a multi-use park (people park and dog park) in one area. The Humane Society may be able to partner with the City and assist with financing to establish a dog park. Some people may wish to make a memorial donation in the name of their pet.

Councilmember Brubaker stated donations would help provide additional amenities. He stated this area is centrally located and would not put a burden on one neighborhood.

A dog park is a Program Open Space eligible project.

Staff was asked to review the location and the placement of playground equipment at Hager Park to determine if there could be enough space between the two uses. Additional information will be provided to the Mayor and City Council.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, had no additional comments.

MAYOR AND COUNCIL COMMENTS

Councilmember F. W. Easton had no additional comments.

Councilmember A. C. Haywood had no additional comments.

Councilmember L. C. Metzner attended a ceremony on August 18, 2012 at the softball field at Fairgrounds Park. The field lighting project will start in September, 2012.

Councilmember W. M. Breichner had no additional comments.

Councilmember M. E. Brubaker also attended the ceremony on August 18, 2012 at Fairgrounds Park. Volvo is bringing more jobs to Hagerstown in the coming months.

Mayor R. E. Bruchey, II welcomed Dallin Warner from Boy Scout Troop 265 to the meeting.

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 5:58 p.m.

Respectfully submitted,

Donna K. Spickler, City Clerk

Approved: September 25, 2012