

9TH SPECIAL SESSION

MARCH 8, 2013

MAYOR AND CITY COUNCIL

HAGERSTOWN, MARYLAND

9TH SPECIAL SESSION – March 8, 2013

Mayor D. S. Gysberts called this 9th Special Session of the Mayor and City Council to order at 7:33 a.m., Friday, March 8, 2013, in the Council Chamber at City Hall. Present with the Mayor were Councilmembers K. B. Aleshire, M. E. Brubaker, L. C. Metzner, D. F. Munson and P. M. Nigh; City Administrator Bruce Zimmerman, John Urner, City Attorney, William Nairn, City Attorney, Mark Boyer, City Attorney and City Clerk D. K. Spickler.

On a motion duly made by Councilmember D. F. Munson and seconded by Councilmember P. M. Nigh, the Mayor and City Council unanimously agreed by voice vote to meet in Special Session at 7:33 a.m.

Mayor and Council Consideration of Letter from Dane Bauer and Bruce Poole

Dane Bauer, DMW, had provided a letter regarding a Public/Private Partnership opportunity for the Mayor and City Council's consideration. The letter is written as if the City were writing to Mr. Bauer and Mr. Bruce Poole.

Mayor Gysberts asked what this letter commits the City to with this group being an agent of the City. He also asked for a definition of agent.

John Urner, City Attorney, indicated all three City Attorneys reviewed the letter. His opinion is that this document, as written, does not create an agency relationship between the City and these parties. It does not reach the level of a binding legal arrangement. Certain aspects of an agency agreement are not included in this document. It does not deal with whether or not the parties have exclusivity in what they do. An agent relationship authorizes the agent to change legal relationships for the principle. This document does not mention the authority for legal relationships for these parties. There are terms and statements that are vague and indefinite. This does not appear to be a statement of the parameters for which an agent acts on behalf of the principle.

Councilmember Metzner clarified that the opinion of legal counsel is that this document does not create a legally binding relationship and does not bind the City to any terms or provide exclusivity for the parties. With any group, developer or individual, he wants the Board of Education to be aware these groups have been authorized by the City to indicate the City's willingness to work with the County and the Board to revitalize downtown and the City. The terms of the agreement are exacting to the length of time and scope.

Mr. Urner is saying this agreement does not cover any of the normal agent activities. There is nothing gained for Mr. Bauer and Mr. Poole with this letter saying they are an agent of the City. A basic guideline as to what business they can do is not included. Agency agreements are very specific with terms and parameters. This agreement does not include clarity for what the agent is to do.

Councilmember Metzner suggested including agent language in the letter and specifying that they are limited to the eight accomplishments listed. Mr. Urner stated the eight items are not written with clarity and he recommends not changing the language. Mark Boyer, City Attorney, stated the agreement, at the least, looks like an endorsement from the City to this developer. Mr. Boyer pointed out the letter mentions recruiting other team members. This is an open ended statement, with no detail.

Councilmember Munson stated there is no financial obligation to the City with this letter and if the Mayor and Council don't like the product, they don't have to accept it. Mr. Urner indicated Councilmember Munson is correct about the financial obligation. The agreement uses language that could be interpreted to mean the City would be agreeing to accept the end product.

Councilmember Brubaker stated there has not been much time to review this agreement letter. He agrees that a definition of agent needs to be clear. If the City would be required to pay for this agreement, he would want it much tighter. He does not want to limit Mr. Bauer and/or Mr. Poole too much with this agreement letter. He suggested the following language in the last paragraph: "...in the meantime, the Mayor and Council must make clear that any agreements reached by the team acting as "agent" are not binding in whole or in particular to the City of Hagerstown..." Agent should be clearly defined. In the meantime, if a viable product is offered, the City could enter into an agreement with the group at a later date.

Mayor Gysberts stated the contents of this letter do not exclusively bind the City from making any other commitments with other groups. Councilmember Metzner stated the letter indicates the City is not excluding any group or proposal.

Councilmember Brubaker pointed out the letter offers third party services, at no cost to the City. He believes the language in item 2 should be changed to read: "To meet with and obtain support from the Board of Education to locate downtown, with the option of using your Team to provide the vehicle by which their project can be implemented."

Mayor Gysberts wondered if there would be concerns about the ethical lobbying implications. He also wondered if there were expenses that would be expected to be covered at a later date.

Mr. Boyer stated if the team is lobbying, the onus would be on them to follow State of Maryland guidelines. The City's Ethics Code prohibits a City representative from participating in a procurement process in which the representative helped create the plan.

Councilmember Metzner agreed with Councilmember Brubaker's suggested language revisions for exclusivity and limitations.

Councilmember Munson is concerned local business people will not be informed. He understands Peter Perini (a local developer) unsuccessfully tried to meet with Sora Development. The local business people are important to the community and they should

9TH SPECIAL SESSION

MARCH 8, 2013

MAYOR AND CITY COUNCIL

HAGERSTOWN, MARYLAND

be included. He is also concerned that the letter does not make an effort to include staff in the negotiations. Staff needs to be interacting with all the parties. They know the issues. He thinks Bruce Poole's partnership adds credibility to this endeavor.

Councilmember Brubaker wondered if there would be limitations on the partners participating in construction.

Mr. Urner stated an agent deals with third parties. An agent is a person with impeccable credentials. Mr. Bauer and Mr. Poole have not been asked to provide credentials, and there would be no reason for them to do so with this agreement. The term agent has a legal definition, which is not included in this agreement. He recommended removing the word agent; therefore removing the connotations to the public and people they would be working with. One term suggested is representative.

Councilmember Aleshire suggested removing references that refer to master planning. He does not want to create the illusion that they would be representing the City on every project. Instead of "downtown Master Plan" in item 3, it should read "downtown projects." The references to specific entities and approaches in item 4 should be removed. He thinks the individuals who are working under this agreement should be mentioned specifically. Mr. Urner stated the parties should also sign the agreement, as well as the Mayor and Council members.

Councilmember Aleshire stated the document should define the term agent. He pointed out this may or may not be the party that does a project. The document should state these parties cannot create specific contracts.

Councilmember Brubaker thinks this agreement does not commit the City to accepting a master plan developed by these parties. He stated if they want to develop a master plan the Mayor and Council should let them show what they can do.

Councilmember Aleshire stated this does not match the conversation during the Work Session on March 5, 2013. The project was to be specifically the Board of Education relocation.

Councilmember Metzner stated he understood Mr. Poole and Mr. Bauer needed to approach State legislators soon to try to secure funding for a master development plan for Hagerstown.

Mayor Gysberts asked the City's legal counsel to revise the letter that was presented to reflect the discussion during this meeting.

Councilmember Metzner stated he believes the Mayor and Council are in agreement they can approve the letter today, with the revisions discussed and sign it next week.

9TH SPECIAL SESSION

MARCH 8, 2013

MAYOR AND CITY COUNCIL

HAGERSTOWN, MARYLAND

Revisions to be included are: The agreement is not exclusive, staff will be kept up to date and included at all times, the parties will attempt to invite and use local developers for dealings under this agreement.

Mayor Gysberts stated the letter should also be signed by Bruce Poole and Dane Bauer. Councilmember Metzner agreed and indicated if they do not sign the letter, there is no agreement.

Councilmember Metzner accepts Councilmember Aleshire wishes to remove the words “associated team members” from the agreement. He has faith in naming Bruce Poole and Dane Bauer as the City’s agents, but not un-named parties.

Councilmember Brubaker agreed. He pointed out time is of the essence and a draft needs to be reviewed quickly. Mr. Zimmerman suggested the City Attorneys and the City Clerk revise the letter for review immediately following this meeting.

Mr. Zimmerman stated while it would be expected the parties would communicate with staff, it should not imply staff is negotiating with the group. Councilmember Munson made a point that it is important that staff be kept informed of the activities of the parties.

It was agreed to include that a written briefing will be submitted to the City on a weekly basis.

Mr. Urner recommended that the term “agent” not be used in a motion approving this agreement. The term agent carries a defined meaning. Another word will be used to describe the relationship.

Approval of Agreement Designating Bruce Poole and Dane Bauer as City of Hagerstown Representatives

Action: Councilmember L. C. Metzner made a motion to approve an agreement, as provided by Dane Bauer on March 7, 2013, and subsequently amended by the Mayor and City Council on March 8, 2013, to hereby authorize Mr. Bruce Poole, Esquire, and Mr. Dane Bauer, Senior Vice President, to act as the City’s “Representative” commencing on March 8, 2013 and ending one week following the conclusion (Sine Die) of the 2013 Legislative Session. The agreement has additional language inserted. The letter outlines eight areas of focus related to downtown redevelopment in which the above would act as the City’s representative, as discussed during the Mayor and City Council’s March 5, 2013 Work Session. This language would make it clear this agreement, in no way, shape or form, binds or allows the City’s representative to bind the City to any agreement or contract in any way, shape, or form without the prior vote of the City government. This agreement does not give exclusive rights to the representative to deal with anyone in regards to this agreement. The representative will report, in writing, to the City of Hagerstown on a

9TH SPECIAL SESSION

MARCH 8, 2013

MAYOR AND CITY COUNCIL

HAGERSTOWN, MARYLAND

weekly basis indicating the development of their work.

Councilmember Metzner stated this motion only authorizes an agreement with Bruce Poole and Dane Bauer.

Councilmember D. F. Munson seconded the motion. He stated it is time to move forward.

Discussion: Councilmember Nigh hopes Bruce Poole accepts these revisions.

Councilmember Aleshire stated if the term “master plan” is included in the letter he will not voting in favor of the letter. This term was not removed from the letter.

Motion carried, 4-1 with Councilmember K. B. Aleshire voting No.

Councilmember Metzner authorized the City Clerk to sign for him when the letter, with revisions, is complete.

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 8:29 a.m.

Respectfully submitted,

Donna K. Spickler
City Clerk

Approved: April 23, 2013