

EXECUTIVE SESSION – September 23, 2014

On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember D. F. Munson, the Mayor and City Council unanimously agreed by voice vote of all members present to meet in closed session to consult with counsel to obtain legal advice, #7 (Section 10-508(a)) at 3:04 p.m. in Room 407, 4th Floor, City Hall, Hagerstown, Maryland. The following people were in attendance: Mayor D. S. Gysberts, Councilmember K. B. Aleshire (arrived after the vote), Councilmember M. E. Brubaker, Councilmember L. C. Metzner, Councilmember D. F. Munson, Councilmember P. M. Nigh, City Administrator Bruce Zimmerman, City Attorney Mark Boyer, Karen Paulson, Director of Human Resources, John Lestitian, Director of Department of Community and Economic Development, Captain Paul Kifer, Hagerstown Police Department, Jonathan Kerns, Community Development Manager, and Donna K. Spickler, City Clerk. The meeting was held to discuss the use of City funds and City rental incentive programs. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the executive session was adjourned at 3:43 p.m.

WORK SESSION – September 23, 2014

Mayor D. S. Gysberts called this Work Session and Executive Session of the Mayor and City Council to order at 4:00 p.m., Tuesday, September 23, 2014, 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, City Attorney Mark Boyer, City Attorney William Nairn and City Clerk D. K. Spickler.

Proclamation – General Aviation Appreciation Month

Mayor Gysberts read a proclamation recognizing September, 2014 as General Aviation Appreciation Month. Phil Ridenour, Director of the Hagerstown Regional Airport, accepted the proclamation.

Preliminary Agenda Review

Consent Agenda

A. Department of Community and Economic Development:

1. Application Permit for Wind Down Maryland Theatre Event – October 17, 2014, 6:00 p.m. to 9:00 p.m.
2. Barbara Ingram School for the Arts Foundation Street Lamp Holiday Program

B. Police Department:

1. Tasers and Taser Cartridges – TASER (Scottsdale, AZ) \$ 22,958.20
2. Network Cameras – Skyline Technology Solutions (Glen Burnie, MD) \$ 29,129.10

3. HPD 2nd Floor Building Renovation – Milton Stamper (Hagerstown, MD) \$ 32,415.00
4. Mobile Police Radios – Washington County Government, Division of Information Services, Dept. of Wireless Communications (Hagerstown, MD) \$ 15,866.64
5. Mobile Data Terminals for New Cruisers – HGCI Hartford, Inc. (Columbia, MD) \$ 18,920.00

C. Department of Utilities:

1. Wastewater: Grinder Pump – Fluid Solutions, Inc. (Westminster, MD) \$ 57,200.00
2. Wastewater: 2014 Utility Vehicle to Replace # 501 – Hertrich Fleet Services, Inc. (Denton, MD) \$ 25,262.00

D. Parks and Engineering:

1. Replacement of Alley Mat for Alley #5-10 and Alley #5-37 (North of Hillcrest) – Concrete Central, LLC (Hagerstown, MD) \$ 81,869.00

Introduction of an Ordinance: Amending Chapter 79, Curfew for Juveniles

This amendment will revise the definition of a juvenile to include persons under 17 years of age.

Approval of a Resolution: Approval and Support of US Bicycle Route 11

Rodney Tissue, City Engineer, and Alex Rohrbaugh, Planner, were present to discuss the US Bicycle Route 11 through the City of Hagerstown. The Maryland Department of Transportation (MDOT) is submitting an application to the American Association of State Highway and Transportation Officials (AASHTO) for Maryland' portion of US Bicycle Route 11. The application requires the City's endorsement by October 3, 2014. Staff was given very short notice on the Application submittal date.

US Bicycle Route 11 (not to be confused with US Route 11) will cross through Washington County – starting from Harper's Ferry, WV then north through Boonsboro, Funkstown, Hagerstown, and Maugansville to the PA state line. Virginia, West Virginia, and Pennsylvania are also working to develop their portions of 11. Working with City Staff, MDOT has developed an alignment through Hagerstown. The proposed alignment will use existing SHA-designated bike routes (40 and ALT 40) as well as some City streets. If approved, MDOT will be seeking State funding for route signage through Hagerstown, and City staff would be responsible for installing the signage.

Bicycling tourism is increasing in North America – approximately \$ 47 billion annually – and the interstate U. S. Bicycle Route system undoubtedly plays a role. By having the US Bicycle Route 11 designation, staff sees this as an opportunity to increase tourism and spending in Hagerstown, particularly because the route will come through the City center and the Arts & Entertainment District.

Councilmember Brubaker hopes there is not confusion about the name being similar to State Route 11.

Approval of a Resolution: Authorizing Three-Year Contract with Fireworks Extravaganza – 2015, 2016 and 2017

Karen Giffin, Community Affairs Manager, was present to discuss a three year contract for fireworks shows. Pursuant to Section 10.17 of the City Purchasing Policy, the Mayor and City Council may waive the requirement for competitive bidding for supplies, materials, equipment and contractual services when it is determined to be in the best interest of the City by a majority of the City Council. The Department of Community and Economic Development coordinates the contract for firework services for the annual Fourth of July event. An additional requirement of Section 10.17 is for the user department to submit a “Justification and Recommendation” for waiving the competitive bidding process.

In February 2012, the Mayor and City Council approved a three-year fireworks contract with Fireworks Extravaganza for the City’s Fireworks at Fairgrounds Park Event. The fireworks display had been competitively bid, and two companies submitted bids for the display. Fireworks Extravaganza was significantly lower. The contract was for July 4, 2012, 2013 and 2014.

On July 15, 2014 Fireworks Event Chair Ted Bodnar and staff discussed a strategy for the upcoming 2015, 2016 and 2017 fireworks display with the Mayor and City Council. Staff was directed to work with Fireworks Extravaganza for a price for a three-year contract. The reasons cited for the waiver of the competitive bidding included the good relations with the company and the artistic quality of the show. The cost is \$ 20,000 per year for three years. This represents an increase in the contract price of 12.5% from the last three year contract.

License Agreement for Eastbound Downtown Gateway Sign

Rodney Tissue, City Engineer, was present to discuss a license agreement for the downtown gateway sign on West Washington Street. This License Agreement allows the City to install a gateway sign in the southwest corner of the property that is a parking lot owned by St. Mary’s Catholic Church. The church has already approved the agreement. Staff will install the sign and lighting. There is no rent or fee of any kind proposed to be paid to the Catholic Church. This is a license agreement (in lieu of an easement). In reality, if the sign would ever have to be moved, it is a matter of unbolting the foot plate from the foundation and relocating; however, staff finds the likelihood of that happening low.

If the agreement is approved, staff anticipates that the Public Works Department will have the sign installed in November, 2014.

Approval of Memorandum of Understanding for Arts Gallery

Karen Giffin, Community Affairs Manager, discussed a memorandum of understanding for the Arts Gallery. Barbara Ingram School of the Arts Foundation (BISFA) worked with the City of Hagerstown and Cassandra Latimer of Citi to make application to The Citi Foundation, a private non-profit entity, for grant funds to be utilized for the renovation of the property and to provide a stipend for gallery management and internships at 36-40 North Potomac Street. BISFA Foundation has been awarded \$ 50,000.00 in grant funds from The Citi Foundation. They would like to transfer the \$ 50,000.00 grant award and any additional amount awarded pursuant to the grant to the City.

Mr. Zimmerman acknowledged BISFA's assistance in being the conduit for the grant. He stated the City appreciates their assistance.

Approval of After School Program: Robert W. Johnson Community Center

Chief Mark Holtzman stated an after school program is proposed by Karen Cook, Executive Director, Robert W. Johnson Community Center, Inc. at the Center. This program was originally funded under the C-Safe grant but, in recent years, has been funded through the City's general fund.

The Robert W. Johnson Community Center provides a variety of constructive after school programs to area youth. This program runs for the 2014-2015 school year at a cost of \$ 18,200.00.

Approval of Catalyst Project #8: Authorizing Two New Full-time Positions to Support Neighborhoods Through the Vacant Structures Program

Kathleen Maher, Planning Director, and John Lestitian, Director of Department of Community and Economic Development, were present to discuss the addition of two full-time Code Administration positions: one inspector/coordinator for the program and one administrative position. These positions are necessary to support the City's neighborhoods through the vacant structures program. These positions will be funded by an increase in the annual vacant structure fees.

Approval of Contract for Street Trees – Aspen Landscape Contractors, Inc. (Silver Spring, MD) Amount Not to Exceed \$ 167,000.00

Rodney Tissue, City Engineer, was present to discuss a contract for planting street trees on public streets in sidewalk areas and in public parks. Staff would like to plant a large number of trees in City Park and Fairgrounds Park to replace the many Ash trees that have been infected by the Emerald Ash Borer and will need to be removed over several years.

Funding is from two sources: Chesapeake Bay Trust Greening Grant of \$ 95,000.00 (which has to be spent this year) and Forest Conservation Act Fund grant of \$ 72,000.00.

Approval of Purchase: Four 2015 Ford Interceptor Police Vehicles – Brekford (Hanover, MD) \$ 131,406.00

Scott Nicewarner, Director of Information Technology and Support Services, reported the cost of the annual renewal of licensing and support for the City's financial system is \$ 176,576.23. This support is crucial to maintaining operations of the system.

It was the general consensus to include approval for all items listed on the preliminary agenda on the September 30, 2014 agenda, unless otherwise noted.

This completed the preliminary agenda review.

WLR Holding Company – First-Third City Center Grant Application

Andrew Sargent, Downtown Manager, was present to discuss an application for the First-Third Grant Program. Chad Bohn, Acquisition Manager for WLR Holding Group, was also present.

Per the approved guidelines for the First-Third Grant Program, applications seeking funding greater than \$ 50,000 are to be reviewed by the Mayor and City Council.

WLR Holding Company has submitted an application for assistance with funding for renovations at 43-45 South Potomac Street. The project includes replacing and renovating the interior and mechanical components to revive a dilapidated mixed-use building to offer attractive, professional residential and commercial space in the City Center. Each of the 12 units will have two bedrooms (existing units have three bedrooms) and one bathroom, totaling 8,451 square feet of newly renovated residential space. Improvements to the infrastructure of the existing commercial space complete the project. It is important to note that WLR has received approval to participate in the Partners in Economic Progress program at this address as well. The total projected cost is \$ 792,500. WLR is seeking a grant of \$ 250,000 through the First-Third program.

The Committee believes the upgrades proposed for 43-45 South Potomac Street could have significant impact on the quality of available downtown residential units. Currently, there are few nicely renovated apartment rentals available in the downtown and renovating 8,451 square feet of residential space could offer an abundance of that product. The application is complete with a project management scope, milestones and an impressive plan for marketing the apartments when they are available. The First-Third Committee has met and considers this business proposal worthy of consideration by the Mayor and City Council for First-Third Grant Funding.

Councilmember Aleshire envisions the First Third Funding as assistance for commercial rehabilitation, rather than for residential. He wants assurance that the units will not be subsidized rentals.

Councilmember Munson asked what the anticipated rent will be for these units. Mr. Bohn indicated \$ 800.00 per month, plus utilities. Councilmember Munson asked if these units would fit within the student housing possibilities. Mr. Bohn indicated that could be considered.

The project would be eligible for fast tracking of permits and could be completed within nine months.

Councilmember Brubaker agrees with Councilmember Aleshire's concerns. He asked if there is any provision restricting future use of programs such as Section 8 housing subsidies. Mr. Sargent indicated there are no conditions tied to the use of the property after the construction is completed.

Mayor Gysberts believes there would be students very interested in renting these apartments.

Councilmember Brubaker would prefer to have young adults with income rent these apartments. He asked that a discussion be scheduled to address limiting subsidized housing for renovations completed with City incentive program funding.

Approval of the application will be included on the September 30, 2014 Regular Session agenda.

City Center Residency Initiative

Jonathan Kerns, Community Development Manager, and John Lestitian, Director of Community and Economic Development, reviewed the potential addition of Hagerstown Community College (HCC) students as an eligible applicant category for the City Center Residency Initiative (CCRI).

The City Center Residency Initiative Program was created in order to attract a more diversified population to live in the City Center. The program has two distinct components which offer financial incentives for eligible applicants that choose to reside in the current City Center Residency Initiative area:

1. Down Payment Assistance Component: Provides a \$ 10,000 loan to grant for an eligible homebuyer to purchase a home to be utilized as their primary residence. Funds can be applied to down payment, select home repairs in conjunction with acquisition, or a combination of both. After a five year residency commitment is fulfilled, the \$ 10,000 loan is forgiven.

2. Rental Subsidy Component: Provides a \$ 150.00 or \$ 300.00 per month rental subsidy per dwelling unit for an eligible applicant renting a home or apartment for one year. The subsidy is in the form of a loan that is forgiven after a one year residency commitment is fulfilled.

Each component described above reflects the updates and enhancements recently adopted by the Mayor and City Council.

Current program guidelines require eligible applicants to fall within one of the following categories: recent college graduates, active members of the military, USMH employees or students, government employees, degree-holding professionals and households with income exceeding 80% of the area median.

Staff have participated in discussions with Hagerstown Community College representatives regarding the possibility of adding full time HCC students as an eligible applicant category for the CCRI program. Discussions have been positive as this potential program update would create a unique partnership between the City of Hagerstown and HCC.

The current CCRI guidelines include USMH students as an eligible category and the addition of HCC students would provide the opportunity to attract additional college students to live in the downtown. Coupled with the recent CCRI enhancements adopted by the Mayor and City Council, the addition of full time HCC students could significantly boost participation in the rental subsidy component of the CCRI program.

It was the general consensus of the Mayor and City Council to amend the eligibility requirements to include HCC students. Councilmember Metzner suggested including part time students working toward a degree as eligible for the incentive.

Mr. Lestitian provided an update of the USMH Student Housing (which is included in Catalyst Project #3). Several buildings are being evaluated for the project. A meeting will be held with Mark Halsey at USMH to discuss the specific needs of the students.

Councilmember Nigh would like to know who owns the buildings being evaluated.

Sustainable Maryland Certified (SMC) Program

Rodney Tissue, City Engineer, and Mike Hunninghake, University of Maryland, discussed the Sustainable Maryland Certified (SMC) Program. Sustainable Maryland is a free and voluntary certification program for municipalities in Maryland that want to “go green”, save money, and take steps to sustain their quality of life. The mission of Sustainable Maryland is to enhance livability for all Marylanders by helping municipalities choose a direction for their sustainability efforts; improve access to resources needed to implement the action; measure their progress; and gain recognition for their accomplishments.

Incorporated municipalities in Maryland form a “GREEN TEAM” which works on completing sustainability projects from a menu of actions. Each action is worth 5-20 points, and 150 points are required for certification in the program. The benefits of the certification include access to technical assistance from the University of Maryland, mobilizing residents to use their professional expertise for the betterment of the community, serving as a model for other communities and statewide recognition of the community’s efforts.

In reality, the City of Hagerstown is already doing many of the actions required for certification including: housing a farmer’s market; Tree City USA designation; schools in the Maryland Green School program (Western Heights Middle School); businesses participating in the Maryland Green Registry program (Venice, Copy Quik, and others); a green purchasing policy; an active Stormwater Management program; and developing a Community Garden program.

Councilmember Brubaker stated additional points for an extensive program were discussed previously. The City of Hagerstown could be the first municipality in Washington county to be Sustainable Maryland certified.

It was the general consensus of the Mayor and City Council to move forward with seeking certifications through Sustainable Maryland and a resolution will be scheduled for approval at the September 30, 2014 meeting stating the City’s intent to seek SMC designation and designating a primary contact for the City.

MELP Release and Settlement Agreement

Michael Spiker, Director of Utilities, reported the City of Hagerstown and Partners Marketing, LLP/Hagerstown Commodities, LLC have negotiated a Release and Settlement Agreement in the amount of \$650,000 for the sale of the MELP property and as a contribution for the associated remediation projects. The property transfer will occur at the end of the demolition project, after the restoration of the property has occurred, per the terms of the Agreement. The tentative completion date for the transfer is July 2015. Included below are the main points of the draft of the Release and Settlement Agreement:

1. The agreement with Partners Marketing, LLP, which will be owned by Hagerstown Commodities, LLC, is for 2.9633 acres of property known as the MELP.
2. The protection of City owned easements and the associated Utilities assets contained within the MELP property are extremely vital and important to the continued operation by the Utilities Department.
3. The Agreement will resolve the pending Washington County Circuit Court Case Number 21-C-14-50621 (Eminent Domain) between the two parties.
4. The \$650,000 purchase price will allow for the transfer of the title to the City and a contribution by the City for remediation projects.
5. The Settlement Closing will occur within 30 days of the satisfactory completion of the Agreement provisions and closing costs will be shared equally.

6. All demolition work will be in accordance with the provisions of the City approved Demolition Plan which will be reviewed and approved by the City Engineer, Director of Utilities and other agencies.
7. All of the remediation (asbestos and PCB) will be completed under the MDE approved permits which are to be supplied to the City.
8. The demolition contractor will remove the HLD owned coal tipple and utilize soil from adjacent HLD owned property as fill/cover for the site.
9. Protection of all City Utilities will be provided at the expense of the owner and will be approved by the Director of Utilities.
10. Partners Marketing, LLP/Hagerstown Commodities, LLC will supply a Surety/Performance Bond in the amount of \$850,000 to ensure the completion of the project per the Agreement provisions.
11. Partners Marketing, LLP/Hagerstown Commodities, LLC will provide for all mechanics lien releases and liable for all costs incurred for any failure to do so.
12. Each party has the right under the Default Provisions to exercise all rights and remedies available, specifically the City right to execute the Surety/Performance Bond.

Financing for the project will be accommodated through a future City Bond request. The Demolition Plan and the associated Demolition Permit are in the final stages of the required original Mylar signature approvals and will be affixed to the final Agreement.

Councilmember Munson stated demolition of the MELP building has been discussed for decades. It took courage for the Mayor and Council to pursue the demolition.

Councilmember Aleshire stated the demolition of the building and return of the property to the City creates a redevelopment opportunity.

Councilmember Metzner stated members of at least three administrations have been participating in this process. This Mayor and City Council pursued the project and worked through the details.

Councilmember Nigh pointed out the City sold the property many years ago and now will be taking back ownership.

Councilmember Brubaker stated the City will be receiving a property without a dilapidated building, unless the environmental issues are not addressed.

Mayor Gysberts is looking forward to the demolition being completed.

Mark Boyer, City Attorney, stated acceptance of the agreement will be scheduled to be approved by Resolution, since the Mayor and City Council approved the purchase of the property last year.

Councilmember Brubaker thanked everyone who has continued to work on this project.

The final, signed Agreement and the associated motion will be presented as a New Business Item on the September 30, 2014 Regular Session Meeting agenda.

Community's City Center Plan Implementation - #8 Neighborhood Support – Vacant Structures Program

John Lestitian, Director of the Department of Community and Economic Development, Kathleen Maher, Planning Director, and William Nairn, City Attorney, were present to discuss minor adjustments to the Vacant Residential and Vacant Non-Residential Structure ordinances of property ownership, especially during foreclosure proceedings, staff revised the definition of “owner” to match the definitions in the Rental Facilities Code and Property Maintenance Code:

OWNER – Any person, partnership, association, company, corporation or other entity having a legal or equitable interest in or control of real property. “Owner” shall also mean any person who, alone, jointly or severally, shall have the charge, care or control of any premises as executor, administrator, trustee or guardian of the state of the owner. “Owner” shall also mean any person having any interest in a partnership, association, company, corporation or other entity which owns or has any ownership interest or control of the premises. Any person, firm, partnership, association, company, corporation or other entity whose name appears on the deed or property tax bill for the premises shall be deemed to be the owner of the premises.

The City Attorney maintains that it is permissible under the appropriate circumstances to pursue mortgagees for violations of the City Code regarding the condition of properties and compliance with other property related regulations. While Maryland law is not settled on the point, the degree of control over foreclosed properties exercised by lenders at certain stages of the process, likely subject such lenders to the code requirements. This is especially true when the title owner has been displaced by the foreclosure process. This definition of “Owner” includes a party which has a legal or equitable interest in the property and exercises control over the property.

Mr. Nairn discussed the foreclosure process. A notice of default is sent to the property owner, indicating the at-fault party, the total amount due and a number of other details. A suit can be filed at the end of 45 days, and when the payments are 90 days delinquent. The property owner has the right to request mediation, which seldom occurs. Eventually the property is sold at an auction. After the property is sold, the trustee files a report of the sale and notices are placed in the newspaper giving those with an objection to the sale 30 days to respond.

Councilmember Metzner asked what fines and abatements are attached to with foreclosed offices. Mr. Nairn stated it would be attached to the tax bill and considered part of the bill. A new customer would not be able to receive utility service until the back amount is paid.

Jason Morton, Attorney, was also present. He has been working with Mr. Nairn and City staff on this issue. He stated the owner of a foreclosure is typically the lender. He believes that the lender would be the responsible party at the moment of the sale.

Councilmember Metzner asked if the lender has control of the property when the previous owner moves out after receiving a notice of the default of the loan. He is concerned about the party the City would be taking action against. Someone could be working through a bankruptcy situation.

Mr. Nairn indicated a bankruptcy filing places the foreclosure process on hold.

Mr. Lestitian indicated staff realizes there will be many questions and unique situations to be worked through during the implementation of the vacant structure regulations.

Councilmember Aleshire stated the definition of owner is inclusive. He expects there will be challenges presented as the regulations take effect.

Councilmember Aleshire asked what happens if the property is blighted but the building is not. Mr. Lestitian and Ms. Maher indicated the entire building has to be blighted to be covered by the regulations.

Councilmember Aleshire stated he does not support the crime prevention provision. He stated many home owners have ornamental landscaping to enhance their privacy. He can walk around his neighborhood and see without dusk to dawn lights.

Councilmember Metzner suggested the language define the end result of the provision, rather require specific structures. An example would be that a goal such as the front of the property must be visible by police rather than specifying that dusk to dawn lights must be installed.

Councilmember Aleshire stated enforcement has to be consistent.

Councilmember Brubaker stated he understands the concerns raised; however, at some point the Council has to pass the regulations and move on.

Mayor Gysberts suggested continuing this discussion at a Work Session prior to the Regular Session on September 30, 2014. A red-lined version of the ordinances will be available for the discussion.

CITY ADMINISTRATOR'S COMMENTS

Bruce Zimmerman, City Administrator, had no additional comments.

MAYOR AND COUNCIL COMMENTS

Councilmember P. M. Nigh had no additional comments.

Councilmember L. C. Metzner stated the events at the City Park last weekend were great. He is impressed with the Fishing Lesson sculpture and Amanda Miller's book.

Councilmember K. B. Aleshire left the meeting prior to comments.

Councilmember D. F. Munson stated protecting neighborhoods in municipalities is what governments are charged with. The Code Compliance division deserves a big thank you for their efforts to eliminate a difficult situation at a vacant house in the North End. The activities at the house were creating significant neighborhood issues.

Mayor D. S. Gysberts thanked everyone involved with the successful Fall Fest at City Park, the anniversary of the Hager House celebration and the unveiling of the Fishing Lesson sculpture at City Park. Thunder in the Square will be held in Hagerstown on Friday, September 26, 2014.

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: October 28, 2014