

105<sup>TH</sup> SPECIAL SESSION, WORK SESSION, AND EXECUTIVE SESSION – July 14, 2020

EXECUTIVE SESSION – July 14, 2020

On a motion duly made by Councilmember E. Keller and seconded by Councilmember S. McIntire, the Mayor and City Council unanimously agreed by voice vote to meet in closed session to consider a matter that concerns the proposal for a business or industrial organization to locate, expand, or remain in the State; #4, and to 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 3-305(b)), on Tuesday, July 14, 2020 at 3:04 p.m. in the Council Chamber, 2<sup>nd</sup> floor, City Hall, Hagerstown, Maryland.

The following people were in attendance: Mayor R. E. Bruchey, II, Councilmember K. B. Aleshire, Councilmember A. Heffernan, Councilmember E. Keller, Councilmember L. C. Metzner, Councilmember S. McIntire, City Administrator Scott Nicewarner, Michelle Hepburn, Director of Finance, Jill Thompson, Director of Community and Economic Development, Jonathan Kerns, Community Development Manager, Doug Reaser, Business Development Specialist, and Donna K. Spickler, City Clerk.

The meeting was held to discuss a business proposal and the City Administrator evaluation. No formal action was taken at the meeting. On a motion duly made, seconded, and passed, the meeting was adjourned at 3:37 p.m.

105<sup>TH</sup> SPECIAL SESSION AND WORK SESSION – July 14, 2020

Mayor R. E. Bruchey, II called this 105<sup>th</sup> Special Session and Work Session of the Mayor and City Council to order at 4:00 p.m., Tuesday, July 14, 2020 in the Council Chamber at City Hall. Participating with the Mayor were Councilmembers K. B. Aleshire, A. Heffernan, E. Keller, L. C. Metzner, and S. McIntire, City Administrator Scott A. Nicewarner, City Attorney Jennifer Keefer, and City Clerk D. K. Spickler.

105<sup>th</sup> SPEICAL SESSION – July 14, 2020

On a motion duly made by Councilmember A. Heffernan and seconded by Councilmember E. Keller, the Mayor and City Council unanimously agreed by voice vote to meet in Special Sesion at 4:01 p.m.

**Approval of Amendment to Community Development Block Grant (CDBG) Program Year 2019 (City Fiscal Year 2020) Annual Action Plan for CDBG-CV Funding Allocations**

**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 amend the Program Year 2019 Community Development Block Grant Annual Action Plan in order to receive \$ 472,845 of CDBG-CV Cares Act funding and further authorizing the Mayor to execute all other documents relating to the City's CDBG-CV funding. This funding will be allocated for CDBG eligible Public Service activities that help to prevent, prepare for, and respond to the COVID-19 pandemic. Details of the CDBG-CV amendment and CDBG-CV allocations were attached.

The Special Session was closed at 4:02 p.m.

WORK SESSION – July 14, 2020

Suns Rent Subsidy/MUSEF Status

Scott Nicewarner, City Administrator, and Rodney Tissue, City Engineer, were present to provide updates on the Suns Rent and Utility Bill Abatement and the MUSEF (Multi-Use Stadium and Event Facility) project.

Suns Rent and Utility Bill Abatement:

The City is obligated to refund the entire rent amount of \$ 35,000 now that the MiLB season has been cancelled. If the Suns return next season, the maximum capital improvements the City will do on the site will be \$ 15,000 per an agreement dated May 13, 2020. The City has paid over \$ 7,500 in utility bills since March. Since baseball will not be played, the City is also floodproofing the clubhouse and is in the process of shutting down all of the systems needed for baseball. Staff believes that the City should ramp up its efforts to have more alternative uses in this facility, such as cultural events, as the use for baseball in this facility in the future appears to be in jeopardy.

MUSEF Update:

The COVID pandemic significantly impacted the timeline originally provided by RK&K for Phase II of this project. To date, there have been two project tasks that staff have been involved in:

1. RK&K contracted ERT, Inc. out of Baltimore to perform geotesting of the proposed site of the event center. This work was completed two weeks ago.
2. Staff participated in a conference call with RK&K and Populous to discuss initial thoughts on what an events center would look like as they prepare for architectural design work.

The question that needs to be considered at this point is necessitated by events of the last two weeks regarding the Hagerstown Suns. The first is the cancellation of the 2020 season as referenced above. The second is increasing reports of the contraction of MiLB baseball to include the dropping of the Suns from affiliated baseball. Mr. Tissue and Mr.

Nicewarner participated in a conference call with the Maryland Stadium Authority last week. Several options were discussed.

To date, \$ 9,943.75 has been paid to RK&K by the Maryland Stadium Authority.

Mr. Nicewarner stated he and Mr. Tissue agreed that continuing the civil engineering study at the site will be helpful, no matter what happens there. They asked that the architectural design be put on hold pending this discussion. The COVID-19 pandemic has significantly delayed the project.

Councilmember Aleshire asked if the City holds the bond money and pays invoices directly to a vendor. Mr. Nicewarner stated the project is listed under the City of Hagerstown but the City does not hold the funds. The Maryland Stadium Authority holds the money and issues the checks to RK&K. The City has to approve the invoice before a check is issued.

Councilmember Aleshire asked what entity will receive the report for the completed part of the project. Mr. Nicewarner stated as deliverables are completed they are provided to the MSA and the MSA sends the information to the City.

Councilmember Aleshire asked if the MSA selected the subcontractors. Mr. Nicewarner stated RK&K submitted their team (including subcontractors) with their bid. If the project is stopped, RK&K will submit an invoice and the MSA would pay it.

Councilmember Aleshire asked if the State authorized funding is earmarked to spend within the current fiscal year. Mr. Nicewarner stated it has to be spent within two fiscal years.

Councilmember Aleshire asked if the City has the ability to choose an ending point in the project or is that decision up to the local Delegation since the funding came from their request. Mr. Nicewarner noted the Governor can take the funding back at any time. The MSA will follow the City's recommendation. They are aware the project might not continue if there is not an expected tenant. He does not think the local Delegation can stop the project.

Councilmember Aleshire pointed out some members of the local Delegation have not been supportive of the Governor's response to the pandemic. He wondered if that will have an impact on the funding for the MSA project. Mr. Nicewarner stated he does not think it would affect the current amount but he does not know if Phase 3 would be affected. He pointed out that the scope of the project can't be changed, for example changing to an amphitheater or arena, without reapplying for approval. The City is able stop this phase and the State would get the money back. He stated it doesn't seem wise to continue with the architectural design if there isn't a team.

Mr. Nicewarner stated the consideration of eliminating 40 teams from the minor league baseball roster seem to be escalating.

Councilmember Keller noted once again, the City focused on one project and it now appears its not going to happen. The Mayor and City Council need to have a frank discussion about future projects and what the next big catalyst project might be. It has to be something that will benefit all citizens.

Mr. Nicewarner reminded the group that the \$ 300,000 could not be used for anything other than a baseball stadium study without the State's review and approval of a different project. Mayor Bruchey stated a new bond bill could be passed through the legislature and could be used for a different study. Councilmember Aleshire reminded the group the City did not request the original bond bill.

#### Amended Recommendations for Disposal of Gamewell Fire Alarm Boxes

Chief Steven Lohr was present to discuss an amended recommendation for disposal of the Gamewell Fire Alarm boxes and accessories originally presented by Battalion Chief Adam Hopkins on June 10, 2020. The memo from that work session was provided for reference.

In response to the various concerns raised after the June 10, 2020 work session, Chief Lohr updated the Mayor and Councilmember with a revised proposal, and asked for final approval and direction based upon the recommendation to close this project out.

Mr. Lloyd Thoburn (Coin Op Warehouse) has inspected the inventory of boxes, partial boxes, and pole hangers. He has offered \$ 16,000.00 for the entire inventory or, \$ 14,000.00, if the fire department keeps 10 boxes as Councilmember Aleshire has recommended. This equates to \$ 200.00/box even though more than a few are missing components necessary to make them fully restorable. Mr. Thoburn has no intention of restoring any of the boxes, but rather flip them for what he can get through his normal business practices. He has identified that a small portion (8-10) of the oldest boxes may have more value than the others.

Chief Lohr asked if Mr. Thoburn would accommodate the group of employees, retirees, and volunteers who may be interested in a box as included in the June 10, 2020. He agreed to establish a two-week sunset date and charge anyone in our approved group based upon the HFD roster with any anomalies directed to Chief Hopkins for verification. Mr. Thoburn has agreed to sell the boxes in as-is condition for: \$ 300.00/box if the buyer cherry picks their own box; or \$ 250.00/box if he can select which box the buyer receives.

Chief Lohr and fire department staff agree that this is more than fair and gets the HFD out of any self-serving proprietary implications of determining who gets what and when. It also relieves the HFD of processing up to 80 payments and such with all the complications that go with the sale.

Finance has approved this recommendation contingent upon Mayor and Council review and approval. Staff is requesting a decision on two items:

1. Should the HFD keep up to ten boxes for further restoration and archiving?
2. Will Mayor and Council accept Mr. Thoburn's bid for \$ 200.00/box?

Councilmember Heffernan asked if the City should keep 10 boxes, with the possibility of restoring them.

Councilmember McIntire asked if these would be appreciated as a retirement gift. Chief Lohr stated they have sentimental value for firefighters who ran the calls at that time.

Michelle Hepburn, Director of Finance, indicated the City does not have a specific policy for disposing of City property. Typically, items are listed on the governmental surplus auction site. If items are not listed where the public can access the bid on them, the disposal is discussed with the Mayor and City Council for consideration.

Chief Lohr stated he thinks this is a much better deal, because in his experience, items listed on government auction websites don't sell for full value.

It was the general consensus of the Mayor and City Council to accept Mr. Thoburn's offer and include formal acceptance of the offer on the July 28, 2020 Regular Session agenda.

A-2020-04, Annexation of Valley Mall Road Properties – Discussion of Public Input Received

Megan Flick, Planner, and Kathleen Maher, Director of Planning and Code Administration, were present to review the public input received for Case No. A-2020-04, the annexation of Valley Mall Road properties.

The City of Hagerstown has initiated annexation Case No. A-2020-04 by activating pre-annexation agreement Case No. WS-2005-20. The property owners signed the pre-annexation agreement, which states that the City has the right to annex when the property becomes contiguous to the corporate boundary, in exchange for water service.

The proposed annexation was introduced on April 28, 2020 and the Annexation Plan was also adopted at that time. The public hearing was held on June 23, 2020. The properties proposed for annexation consist of properties including: Marriott Spring Hill Suites; Marriott Courtyard; and Restaurant, totaling approximately 4.88 acres. Currently, the properties are zoned PB (Planned Business) in the County and are proposed to be zoned CR (Commercial Regional) in the City.

Staff received a letter from the property owner and their representative on June 19, 2020 before the public hearing. A copy of the letter was attached with the packet documents and is summarized as follows:

The owner's representative states that the COVID-19 pandemic resulted in financial hardships for the two Marriott Hotels and the Restaurant, causing the businesses to suffer greatly. They argue that business will not return to normal for quite some time. Given the circumstances, they do not think it makes sense for the City to impose a real estate tax increase. Instead, they propose a gradual increase of real estate taxes over time.

The owners are not in a position to oppose the annexation, but they are requesting relief from the increase in real estate taxes imposed by the proposed annexation. They request a postponement of the annexation to allow for further discussion of a phased-in approach of the taxes associated with the proposed annexation. The official request from the representation of the property owner is to table the resolution for 90 days to allow time to discuss options for a phased-in approach of the taxes.

At the public hearing, the property owner's representation reiterated the financial hardships faced by the hotels and restaurant due to decreased business caused by the COVID-19 pandemic. They request a delay of the annexation and a phased-in approach of City property taxes over a 10 year period.

Jennifer Keefer, City Attorney, has been in contact with the owner's representation. After internal discussions, she communicated the following proposal suggested by staff:

1. Phase-In of City real property taxes
  - a. FY2021: 0%
  - b. FY2022: 50%
  - c. FY2023: 100%
2. Tax obligation will be based off of the current assessed value and owner agrees to refrain from either appealing the assessment or seeking other reduction in its tax obligation to the City or the City can clawback any reduction previously received and the full tax liability will be reinstated.

The City received another letter from the property owner's representation noting the offer communicated by Ms. Keefer does not provide enough relief.

City staff recommend that the City move forward with annexation with the offered three-year phase-in of City real property taxes. The inside City water rates will go into effect September 10, 2020. An analysis of the effect of annexation on property taxes and water rates for those three properties was provided. Recommended Terms and Conditions to be attached with the annexation resolution were also provided.

The County Commissioners will review the proposed zoning for this annexation at an upcoming meeting. Staff hope to receive feedback before the approval of the resolution at the end of July.

Mayor Bruchey clarified that, if the property is annexed now, the property owner would not receive a City of Hagerstown tax bill until July, 2021. This is correct.

Councilmember Heffernan stated he thinks a three year phase-in is reasonable. He thinks a 10 year phase-in is too long.

Councilmember Aleshire suggested a standard phase-in of five years. This would eliminate each owner asking for special consideration and they would know what to expect when the property is annexed under a pre-annexation agreement.

Mayor Bruchey noted the owner should realize the implications of future taxes when they sign the pre-annexation agreement.

Councilmember Aleshire stated he is comfortable with a five year phase-in, and there should be fairness and consistency with future annexations.

Councilmember McIntire suggested a smaller percentage phase-in, since the property owner has indicated all rooms at the hotel have to be fully rented throughout July just to have enough revenue to pay the taxes.

Councilmember Metzner noted the property owner is also using the diner tenant's reduced income as consideration. He pointed out the tenant is not asking the City for relief. He wondered if the property owner is providing the same relief to the tenant.

Mayor Bruchey asked if the property owners in the upcoming Cole Road property annexation have requested a tax phase-in. Ms. Maher stated they have not at this point.

Councilmember Metzner pointed out the owner is essentially asking the City not to act to annex the properties, and if they are annexed, to not tax for more than 10 years.

Councilmember Aleshire stated he needs to decide where he feels comfortable with where to fairly annex as growth occurs and ensuring the City is not being landlocked anywhere on the border.

Mayor Bruchey asked if there is consensus for the original, three year phase-in that was proposed.

Councilmember Keller anticipates there will be similar requests and the Council should discuss how to handle those requests.

Mayor Bruchey noted there is a proposal up for consideration and all future annexations should be treated the same. The property owner signed a pre-annexation agreement in order to received City water and wastewater service.

Councilmember Aleshire noted the three year phase-in is a staff proposal.

Councilmember Metzner stated the owner is asking the City to delay the annexation because it doesn't work for them.

Mayor Bruchey stated the City is able to provide an incentive to properties that immediately annex when the City has authority over the zoning and site plans. For this annexation, the City is annexing the property as it is.

Councilmember Heffernan stated property owners signing a pre-annexation agreement know that at some point the property will be annexed. He thinks the three year phase-in proposal is reasonable but only due to the pandemic.

Councilmember McIntire asked when a 10 year phase-in was proposed. Ms. Flick indicated this was mentioned during the public hearing on June 23, 2020.

Ms. Maher stated the City does offer an incentive if there is raw land between parcels in order to annex.

Mayor Bruchey indicated there is a consensus to move forward with a three year phase-in of taxes for this property. Approval of the Annexation Resolution will be included on the July 28, 2020 Regular Session agenda.

#### Request to Renew Rent Guarantee Agreement for Patterson Hall Student Housing Project

Jonathan Kerns, Community Development Manager, was present to discuss renewal of the Development and Rent Guarantee agreement, with modified terms, for the Patterson Hall student housing project. The current Development and Rent Guarantee Agreement is set to expire on July 31, 2020.

The goal of City Center Plan Catalyst Project #3 (USMH Expansion Support) is to support the growth of USMH from 500 to 750 students, and to support the addition of facilities for new educational programs including physician assistant, culinary arts, tourism and hospitality. To date, private-public partnerships have resulted in two model student housing projects being completed: Blackwell 2, LLC's Patterson Hall project at 100 N. Potomac Street and WLR Investment's 140 West Antietam Street project. Each of these projects included a Development and Rent Guarantee Agreement among the Development, the City of Hagerstown and the University System of Maryland at Hagerstown (USMH).

The current Patterson Hall Development and Rent Guarantee Agreement term began on August 15, 2015. Blackwell 2, LLC constructed four, two-bedroom apartments creating a total of 8 student units reserved solely for USMH students. Student unit monthly rent amounts began at \$ 475 and have increased to \$ 515 per month. If a student unit or units remained vacant during a given semester, USMH and the City of Hagerstown provided Blackwell 2, LLC a rent guarantee payment to cover rental income loss for the vacancy. USMH and the City of Hagerstown paid an equal share for student unit vacancies (50% of student unit rent paid by the City, 50% of student unit rent paid by USMH). Student unit vacancies at Patterson Hall have been minimal. Over the course of the agreement, the total rent guarantee payment expenses incurred by the City has been

\$ 5,164.11. It should be noted the majority of these payment were tied to vacancy that occurred during the first semester of the agreement resulting in a payment of \$ 3,738.70 from the City for the period of August, 2015 through January, 2016. After expiration of the current agreement, Blackwell 2, LLC is no longer required to reserve units for USMH students.

DCED staff and the management member of Blackwell 2, LLC (Taylor Bowen) have been in communication regarding the current Blackwell 2, LLC agreement's impending expiration and the possibility of renewing the agreement. DCED staff have also been in communication with USMH Executive Director Mark Halsey regarding the situation. All discussions have been positive and the parties involved agree it would be ideal for student housing units to remain at Patterson Hall for the foreseeable future.

One required modification for a potential renewed agreement with Blackwell 2, LLC will be the removal of the USMH rent guarantee payments. Per Mr. Halsey, he has been advised by the University System of Maryland that USMH will no longer be approved for participation in future rent guarantee agreements after expiration of the current agreements with Blackwell 2, LLC and WLR Investment.

Even if a renewed agreement does not include the USMH rent guarantee payments, Blackwell 2, LLC has expressed a desire to keep the Patterson hall property reserved for student housing. Blackwell 2, LLC has communicated they are willing to continue reserving all Patterson Hall units for students if the City of Hagerstown would agree to provide a rent guarantee that would pay 50% of the current rent amount if a vacancy occurred in a student unit. Essentially, the rent guarantee agreement and total liability for the City would remain the same as in the current agreement. Blackwell 2, LLC is willing to forgo the other 50% rent vacancy payment previously guaranteed by USMH.

Highlights of the proposed renewed Patterson Hall Development and Rent Guarantee Agreement are:

1. Term from August 1, 2020 to July 31, 2025
2. Blackwell 2, LLC to maintain 8 student units reserved solely for USMH students
3. City of Hagerstown provides a rent guarantee of 50% of rent for qualifying vacancies in each student unit as in the first agreement – assumes student unit rents are \$ 540 per month so a vacant student unit would receive \$ 270 per months from the City
4. USMH still assists in coordinating and referring available students but USMH has no rent guarantee involvement
5. If USMH enrollment would fall under 300, the City can terminate the agreement with no further obligations.

Staff believe the City, USMH, and the private developer all benefit if the units at Patterson Hall remain student units and staff recommend moving forward with a renewed Student Housing agreement. Since the demand for Patterson Hall student units has remained high and vacancies have been minimal, the financial liability for a 50% rent

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guarantee from the City is relatively low. Representatives from USMH and Blackwell 2, LLC have agreed with the general terms proposed of the draft renewed agreement. Staff anticipates USMH and Blackwell 2, LLC will complete a final legal review of the draft agreement this month and the renewed agreement will be scheduled for the Mayor and City Council approval during the July Regular Session.

Councilmember Metzner wondered what the likelihood is there will be students at USMH in the fall. Mr. Kerns indicated USMH has said classes will be a mix of online and on-site.

Councilmember Metzner asked what the City's maximum obligation throughout the term. Mr. Kerns stated the maximum obligation would be approximately \$ 24,000.

Councilmember Heffernan is concerned the City is at risk if there is no incentive for USMH to actively try to back fill vacancies. Mr. Kerns indicated USMH participates in a general partnership with the City and they want to keep projects and programs moving forward.

Mayor Bruchey asked if there is a rent subsidy agreement for the student housing at 140 W. Antietam Street. Mr. Kerns indicated there is for six of the ten apartments.

It was the general consensus of the Mayor and City Council to include renewal of the rent guarantee agreement as discussed on the July 28, 2020 Regular Session agenda.

#### Review Request Transfer of Financial Incentive Agreement – ConAgra Foods Packaged Foods

Doug Reaser, Business Development Specialist, was present to review a request from ConAgra Foods Packaged Foods, LLC to clarify respective rights with a previously executed financial incentive agreement.

The City and Pinnacle Foods, LLC entered into a financial incentive agreement on July 8, 2016. On May 27, 2019, Pinnacle Foods, LLC had been transferred to ConAgra Foods Packaged Foods, LLC. The addendum clarifies ConAgra Foods Packaged Foods, LLC as the successor of the agreement with all of the rights and obligations.

It was the general consensus to accept the addendum and to schedule formal approval for the July 28, 2020 Regular Session.

#### **CITY ADMINISTRATOR'S COMMENTS**

*Scott A. Nicewarner, City Administrator*, noted City of Hagerstown buildings are now open to the public. Many departments are operating on an appointment only basis. Visitors to City Hall are required to wear face coverings and social distancing is practiced. There are several ways for customers to pay their utility and tax bills – on-line, by phone, by mail, or in person. Approximately 200 people attended the outdoor movie

at City Park (Aladdin) on Saturday, July 12, 2020. Everyone followed the CDC guidelines. This week's movie is Frozen II.

He stated several requests have been made recently for monetary or in-kind service contributions from the City for events. City staff is not opposed to promising any particular funding or service if there is a signed agreement to provide the service or contribution. The event business will not be a priority for the City for the foreseeable future. There are too many unknowns with the pandemic and economic situation to make long term commitments. City staff is doing everything possible to ensure safety for people attending events.

**MAYOR AND COUNCIL COMMENTS**

*Councilmember S. McIntire* had no additional comments.

*Councilmember L. C. Metzner* had no additional comments.

*Councilmember E. Keller* announced she will be attending a virtual town hall meeting with Congressman David Trone on July 15, 2020 at 6:30 p.m. The topic will be the opioid epidemic. There will be a lot of good information provided.

*Councilmember A. Heffernan* had no additional comments.

*Councilmember K. B. Aleshire* had no additional comments.

*Mayor R. E. Bruchey, II* had no additional comments.

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 5:09 p.m.

Respectfully submitted,

*Original signed by D. K. Spickler*

Donna K. Spickler  
City Clerk

Approved: August 25, 2020