

EXECUTIVE SESSION – June 19, 2012

On a motion duly made by Councilmember W. M. Breichner and seconded by Councilmember F. W. Easton, 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, (Section 10-508(a) #4) and to consult with counsel to obtain legal advice, (Section 10-508(a) #7) at 5:35 p.m. in Room 407, 4<sup>th</sup> 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, City Administrator Bruce Zimmerman, City Attorney Mark Boyer, Jill Estavillo, Economic Development Manager and D. K. Spickler, City Clerk. Councilmember L. C. Metzner participated by telephone. The meeting was held to discuss a substantial private investment in the downtown area. No formal action was taken at the meeting. On a motion duly made, seconded and passed, the meeting was adjourned at 6:24 p.m.

74<sup>th</sup> REGULAR SESSION – June 19, 2012

**Mayor R. E. Bruchey, II called this 74<sup>th</sup> Regular Session of the Mayor and City Council to order at 7:04 p.m., Tuesday, June 19, 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; City Administrator Bruce Zimmerman, City Attorney Mark Boyer and D. K. Spickler, City Clerk. Councilmember L. C. Metzner was not present.**

The invocation was offered by Mayor Robert E. Bruchey, II.

Mayor Bruchey announced the Rules of Procedure for this meeting will be followed as adopted June 23, 2009. It was announced that the use of cell phones and electronic devices during meetings is restricted and that all correspondence for distribution to elected officials should be provided to the City Clerk and should include a copy for the City Clerk for inclusion in the official record.

The next scheduled meetings are: Work Sessions beginning at 4:00 p.m. on Tuesday, July 10, 2012, and Tuesday, July 17, 2012, and the Regular Session on Tuesday, July 24, 2012 at 7:00 p.m.

Mayor Bruchey presented a Proclamation to Donnie Barton, Wastewater Operations Manager, who is retiring June 30, 2012 after 34 years of service with the City of Hagerstown.

APPOINTMENTS

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 of all members present to appoint the following people to the Historic District Commission:

Sally Dozier, Term to Expire June 30, 2014  
Monika Wertman, Term to Expire June 30, 2014  
Daniel Matonak, Term to Expire June 30, 2015  
Michael Gehr, Term to Expire June 30, 2015  
Steven Silas, Term to Expire June 30, 2015  
Vickie Hrabal, Term to Expire June 30, 2016  
Tracy Carr-Kretzer, Term to Expire June 30, 2016  
G. David Pembroke, Term to Expire June 30, 2016

Councilmember Brubaker mentioned there were a number of people not reappointed to the Historic District Commission. He thanked them for their dedication and service to the City of Hagerstown.

### **CITIZEN COMMENTS**

Chris Kloman, 427 N. Church Street, Hagerstown, Maryland, received a notice about his sidewalk. He asked if he would be eligible for assistance for the work. Rodney Tissue, City Engineer, will discuss this with him.

### **PUBLIC HEARING**

#### **ZM-2012-01, Rezoning – East First Street**

Alex Rohrbaugh, Planner, stated this public hearing is being held to receive testimony for the requested rezoning for property on East First Street.

Three property owners (Kline Associated Roofing Contractors, Inc., Hagerstown Block Co., and Lycher, Inc.) have filed applications for rezoning. The properties included in the rezoning are 350 E. First Street, 448 E. First Street, a parcel on the west side of Oak Street, 645 E. First Street, and 701 E. First Street. For conventional purposes, 350 & 448 E. First Street as well as the parcel on Oak Street will be referred to as “Area 1”, and 645 and 701 E. First Street will be referred to as “Area 2”.

Both Areas 1 & 2 were originally zoned R1 (Residential) during the 1977 comprehensive rezoning. Historically, these properties have generally been used as industrial and office uses, although Area 1 does include a single-family residential dwelling. The properties in Area 1 are requesting IG (Industrial General), and the properties in Area 2 are requesting POM (Professional Office Mixed). The total acreage of the rezoning requests is approximately 5.5 acres.

The applicants are requesting the rezonings based on the argument that there was a mistake in the existing zoning classification because the City did not consider the fact that these properties were used non-residentially or whether the existing zoning was appropriate, and as a result these areas were inadvertently overlooked on the Future Land

Use Map of the 2008 Comprehensive Plan and, subsequently, the Comprehensive Rezoning.

The Planning Commission held its Public Review Meeting on April 25, 2012. At the meeting, the Commission heard testimony from two of the applicants in which they each provided a brief history on their respective properties, and, subsequently, restated that they are in favor of the rezonings of Area 1 and Area 2. Testimony was also presented from two residents from the Kenwood subdivision (adjacent to Area 2) in which they expressed their concerns about the proposed rezoning of Area 2 to POM. Their primary concern was over the possibility of future use of the properties for light industrial. During the 10 day post-hearing period, staff also received a letter from one of the Kenwood Drive property owners represented at the meeting expressing similar concerns.

At the May 9, 2012 meeting, the Planning Commission considered the rezoning proposal and the public testimony provided at the Public Review Meeting and during the 10 days after the hearing. The Commission determined that light industrial use of Area 2 properties was remote given the configuration of the sites and building and the need for Board of Zoning Appeals approval of a special exception. The Planning Commission found in favor the applicant's arguments for mistake in the existing zoning classifications for both Areas 1 & 2 and in favor of the appropriateness of the requested rezonings and; therefore, recommended approval of the rezonings.

The following Exhibits were entered into the record:

1. Certificate of Advertisement
2. Planning Commission file by reference

The following testimony was presented:

Fred Fredericks, Frederick, Seibert and Associates, 128 S. Potomac Street, Hagerstown, Maryland, spoke on behalf of the three applicants. Doy Sneckenberger, 1115 Murdock Avenue, Hagerstown, Maryland represented Hagerstown Block Company. Ken Kline of Kline Associated Roofing was also present.

The impacted neighborhood for Area 1 is bounded by Rose Hill Cemetery to the north, Frederick Street to the east, East Wilson Boulevard to the south, and Rose Hill Avenue to the west. Area 2 is bounded on the north by Capital Building Supply, and the Ag Center to the south and west.

Mr. Fredericks stated Mr. Kline has operated a roofing contractor business at this location since the 1980's. Other commercial uses have also been in place. The City did not consider the fact that these buildings have been used non-residentially for many years, well before the Comprehensive Rezoning of 2010 and even before the comprehensive rezoning of 1977. These businesses are operating as non-conforming uses and as such, are not able to make changes without a Board of Zoning Appeals exception. Banks will not make loans to businesses that are considered non-conforming uses. Mr. Fredericks reiterated there are no changes planned for these properties.

He stated the City did not consider the fact that these buildings have been used non-residentially for many years, well before the Comprehensive Rezoning of 2010 and even before the comprehensive rezoning of 1977. When drafting the 2008 Comprehensive Plan, the Planning Commission did not take into account the existing uses in both Area 1 and Area 2.

Mr. Sneckenberger stated Hagerstown Block has been located in this area since 1946. There have not been any zoning issues; however, they wish to run the business without it being considered a non-conforming use. There are no changes with the buildings being considered.

Mr. Kline indicated Kline Roofing has been there for 35 years. No changes are planned for the business.

Councilmember Brubaker asked how properties in Area 2 would be protected if future plans include the property being redeveloped. Mr. Fredericks indicated the property is not vacant. If the rezoning is approved, the zoning will match the actual use of the property. Due to the size of the properties, they are not suited for any kind of industrial use. He believes that POM zoning will allow the best use of the property. POM provides a buffer for the adjacent properties. The existing homes would be protected from an industrial use of the property by POM zoning.

There was no further testimony presented.

The hearing was closed at 7:53 p.m. The record will be held open for 10 days for additional comment.

## **MINUTES**

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 of all members present to approve the minutes, as presented for the Mayor and Council meetings held on May 1, 2012, May 8, 2012, May 15, 2012 and May 22, 2012.

## **CONSENT AGENDA**

On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed by voice vote to approve the Consent Agenda as follows:

- A. Department of Parks and Engineering:
  - 1. 2012 Handicapped Ramp Contract – Concrete Central, LLC (Hagerstown, MD) Not to Exceed \$ 40,000.00
  - 2. Park Circle Traffic Improvements – Concrete Central, LLC (Hagerstown, MD) Not to Exceed \$ 36,000.00

- B. Department of Utilities:
  - 1. Light: Transformer Purchase – National Transformer Sales (Raleigh, NC)  
\$ 75,034.00
  - 2. Wastewater: Local Limits Study Project – Gannett Fleming, Inc.,  
(Baltimore, MD) \$ 50,000.00
  
- C. Human Resources: Dental Insurance – Carefirst Administrators (Baltimore,  
MD) \$ 34,651.00

**UNFINISHED BUSINESS**

There was no unfinished business.

**NEW BUSINESS**

Items A through H were approved with one motion, covering all eight residential leases as listed.

- A. Approval of a Resolution: Residential Lease Agreement for Property at 12727 Ritchie Road**
  
- B. Approval of a Resolution: Residential Lease Agreement for Property at 23510 Warner Hollow Road**
  
- C. Approval of a Resolution: Residential Lease Agreement for Property at 10831 Water Works Road**
  
- D. Approval of a Resolution: Residential Lease Agreement for Property Located at 12140 Crystal Falls Road**
  
- E. Approval of a Resolution: Residential Lease Agreement for Property at 280 Mill Street**
  
- F. Approval of a Resolution: Residential Lease Agreement for Property at 728 Frederick Street**
  
- G. Approval of a Resolution: Residential Lease Agreement for Property at 570 Jefferson Street**
  
- H. Approval of a Resolution: Residential Lease Agreement for Property at 124 Charles Street**

**Action:** On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote of all members present to approve a resolution to authorize the execution and delivery of leases between the City of Hagerstown and:

- A. Bradley Luhn and Shannon Luhn for the residence located at 12727 Ritchie Road, Smithsburg, Maryland.
- B. John Rinehart and Michelle Rinehart for the residence located at 23510 Warner Hollow Road, Smithsburg, Maryland.
- C. Ricky L. DeLauter for the residence located at 10831 Water Works Road, Williamsport, Maryland.
- D. Charles Henson and Laurie Henson for the residence located at 12140 Crystal Falls Road, Smithsburg, Maryland.
- E. Eric Hastings for the residence located at 280 Mill Street, Hagerstown, Maryland.
- F. Lewie Thomas, III for the residence located at 728 Frederick Street, Hagerstown, Maryland.
- G. Gerald Bernhisel for the residence located at 570 Jefferson Street, Hagerstown, Maryland.
- H. Timothy Shafer and Tina Shafer for the residence located at 124 Charles Street, Hagerstown, Maryland.

**I. Approval of a Resolution: Lease Agreement with Valley Art Association**

**Action:** On a motion duly made by Councilmember A. C. Haywood and seconded by Councilmember M. E. Brubaker, the Mayor and City Council unanimously agreed by voice vote of all members present to approve a resolution to lease the Mansion House at 501 Highland Way, Hagerstown, Maryland to the Valley Art Association from July 1, 2012 and terminating on June 30, 2015.

**J. Approval of Water Residential Meter Purchase – L/B Water Service, Inc. (Chambersburg, PA) \$ 897,166.00**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote of all members present to approve the expenditure of \$ 897,166.00 of Water Division Inventory funds for the purchase of radio read meters for the residential meter replacement program. Water Fund Inventory Account Number 52-130000 (MSWF) CIP Control Number C0653 currently has \$ 1,170,000.00 budgeted for FY 13.

**K. Approval of Administration of Medical Claims for FY 2012-13 – Carefirst Administration (Baltimore, MD) \$ 418,496**

**Action:** On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed by voice vote of all members present to move that Carefirst Administrators administer the medical claims for FY 2012-13. Carefirst Administrators is the only Maryland carrier to administer the national Blue Cross network for the City's health insurance plan.

**L. Approval of Fiscal 2013 Liability/Property Insurance – Local Government Insurance Trust Fund (LGIT) (Hanover, MD) \$ 381,691**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember F. W. Easton, the Mayor and City Council unanimously agreed by voice vote of all members present to approve the Fiscal 2013 renewal of insurance coverage with the Local Government Insurance Trust (LGIT) for liability and property insurance in the amount of \$ 381,691.

**M. Approval of Fiscal 2013 Workers Compensation Insurance – Injured Workers Insurance Fund (IWIF) \$ 1,073,561**

**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 of all members present to approve the coverage with the Injured Workers' Insurance Fund for workers' compensation coverage and broker fees in the amount of \$ 1,973,561.

**N. Approval of Construction of Memorial Park – Phase I**

**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 of all members present to approve the expenditure of funds for the construction of Memorial Park – Phase I in the amount of \$ 71,000.00. Project is fully funded by Community Development Block Grant funds. The Mayor and City Council further authorized staff to complete the work and enter into contracts for trade-type work. Phase I includes grading, walking paths, landscaping, lighting, improvements to Marsh Run and provides for a future plaza and a future memorial wall.

**O. Approval of License Agreement: Washington County Board of Education Construction Trailers at Bester Elementary School**

**Action:** On a motion duly made by Councilmember M. E. Brubaker and seconded by Councilmember W. M. Breichner, the Mayor and City Council unanimously agreed by voice vote of all members present to authorize the execution of a license agreement between the City of Hagerstown and the Washington County Board of Education for the installation of temporary construction trailers in the right-of-way of Mill Street during the construction of the new Bester Elementary School.

**P. Approval Of Loan Program for Curb and Sidewalk Installation**

**Action:** On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember A. C. Haywood, the Mayor and City Council unanimously agreed by voice vote of all members present to approve a loan program for curbs and sidewalks installations. The program allows a maximum amount of \$ 30,000 annually for curb and sidewalk replacement loans on a first-come, first-serve basis. There are no income eligibility requirements or credit requirements. The interest rate will be 5% and the terms would be from 2 to 4 years with monthly payments, based on the amount of the loan.

**Q. Approval of a Memorandum of Understanding for Broadfording Road**

**Action:** Councilmember M. E. Brubaker made a motion to approve a Memorandum of Understanding (MOU) with 2003 Salem Avenue, LLC and Bowman Hollyhock, LLC for the reconstruction and widening of Broadfording Road from MD Rt. 58 to Hollyhock Drive. This MOU obligates the developers to fund the upgrades as described herein, and with the road upgrades in place, allows their developments to proceed without making any other offsite road improvements or contributions. Councilmember F. W. Easton seconded the motion.

Discussion: Councilmember Brubaker stated the MOU has to be fully executed (signed by all parties) before the construction begins.

Motion carried, 3-1 with Councilmember A. C. Haywood voting No.

**R. Approval of Contract for Broadfording Road Improvements**

**Action:** Councilmember M. E. Brubaker made a motion to approve Contract No. 11-11-ST-5 with Craig Paving Inc. for improvements to Broadfording Road in the amount of \$ 1,776,129.00 conditioned upon the following:  
Execution of Memorandum of Understanding by all parties,  
The County transfer \$ 616,934 to the City before work begins,

The developers acquire any easements,  
The developers obtain SHA access permit to widen Broadfording  
Road at Rt. 58.

Funding for the project is from Washington County and developers. No  
City funds are anticipated to be used unless, in the event of cost overruns,  
staff will use excise tax collected from development to fund any shortfall.  
Councilmember W. M. Breichner seconded the motion.

Discussion: Councilmember Haywood stated she is not supportive of  
additional “big box” stores at the detriment of small businesses.

Motion carried, 3-1 with Councilmember A. C. Haywood voting No.

**S. Approval of the Hagerstown Suns Fireworks Show for June 23, 2012**

**Action:** On a motion duly made by Councilmember F. W. Easton and seconded by  
Councilmember A. C. Haywood, the Mayor and City Council  
unanimously agreed by voice vote of all members present to approve of a  
fireworks show for Saturday, June 23, 2012. This show is rescheduled  
from the original date of June 1, 2012, which was canceled due to  
inclement weather. The Mayor and Council’s approval will exempt the  
event from the City of Hagerstown’s Noise Ordinance under section 155-3  
of the City Code.

**T. Approval of Purchase of Six Patrol Vehicles – Brekford (Hanover, MD)  
\$ 204,018.00**

**Approval:** On a motion duly made by Councilmember A. C. Haywood and seconded  
by Councilmember M. E. Brubaker, the Mayor and City Council  
unanimously agreed by voice vote of all members present to approve the  
purchase of six marked patrol vehicles from Brekford (Hanover, MD) in  
the amount of \$ 204,018.00. This purchase will utilize FY13 CIP funds.

**U. Approval of Watershed Implementation Plan (WIP) Report and Statement**

**Action:** On a motion duly made by Councilmember A. C. Haywood and seconded  
by Councilmember W. M. Breichner, the Mayor and City Council  
unanimously agreed by voice vote of all members present to approve the  
submittal of Washington County’s Phase II Watershed Implementation  
Plan to the Maryland Department of the Environment, along with the  
attached Position Statement. This statement, which expresses the  
Council’s concern over the estimated cost of the required stormwater  
practices, only commits the City to expenditures that are already  
contemplated in the Capital Improvement Project budget, or to projects  
that are determined to be financially feasible on a yearly basis.

Discussion: Councilmember Brubaker will attempt to discuss the WIP with State official at the MML Convention next week. The objectives are good but are difficult for local and county governments to fund.

**V. Approval of Liquor License Application and Service of Alcohol at the Greens at Hamilton Run**

**Action:** On a motion duly made by Councilmember F. W. Easton and seconded by Councilmember W. M. Breichner the Mayor and City Council unanimously agreed by voice vote of all members present to authorize the staff of the City of Hagerstown to obtain a Class "C" (Golf Course) Liquor License form the Board of Liquor License Commissioners for Washington County, Maryland for the City's golf course, the "greens at Hamilton Run". I authorize the City's resident agent for the application to be the City Clerk, and authorize only the sale of beer.

The Mayor and City Council further authorized caterers at the golf course to serve beer and wine under the conditions of their liquor license when catering tournaments at the golf course.

Discussion: Councilmember Brubaker stated this needs to be monitored carefully. He hopes the availability of beer helps get the golf course on a profitable path.

**CITY ADMINISTRATOR'S COMMENTS**

*Bruce Zimmerman, City Administrator*, announced George Kearns, Public Works, is the newly elected president of AFSCME 1540. He thanked everyone who organized the First Call weekend. This was a nice way to kick off the Sesquicentennial Civil War recognition.

**MAYOR AND COUNCIL COMMENTS**

*Councilmember W. M. Breichner* had no additional comments.

*Councilmember M. E. Brubaker* thanked staff for their efforts with all the events this past weekend. He thanked everyone who attended these events.

*Councilmember F. W. Easton* had no additional comments.

*Councilmember A. C. Haywood* had no additional comments.

*Mayor R. E. Bruchey, II* reported the Executive Session earlier today involved updates of what is happening with the lease with the Hagerstown Suns. There is no signed lease at this time. He thanked everyone who helped with the Civil War Anniversary and

Bicycle Criterion race this past weekend. The Miss Maryland pageant is being held this week. He encouraged everyone to attend the fireworks at Fairgrounds Park on July 4, 2012. The next Mayor and City Council meeting will be held on July 10, 2012.

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 8:08 p.m.

Respectfully submitted,



Donna K. Spickler, City Clerk

Approved: July 24, 2012