

# **Mayor and Council**

## **102nd Special Session and Work Session**

### **October 11, 2016**

### **Agenda**

*"A diverse, business-friendly, and sustainable community with clean, safe and strong neighborhoods."  
"Providing the most efficient and highest-quality services as the municipal location of choice for all customers."*

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"People grow through experience if they meet life honestly and courageously. This is how character is built."

Eleanor Roosevelt

#### **4:00 PM SPECIAL SESSION**

1. Approval of a Memorandum of Understanding: Hagerstown Police Department and FBI Child Exploitation Task Force
2. Approval of Amendment of the City's Water and Wastewater Policy

#### **4:00 PM WORK SESSION**

1. Proclamation: Character Counts! Week
- 4:20 PM** 2. Western Maryland Blues Fest 2017 Proposed Budget - *Lauren Metz, Community Events Coordinator*
- 4:30 PM** 3. Hopewell Manor Request for Water - Exemption #8 in the City Water and Wastewater Policy - *Kathleen Maher, Director of Planning and Code Administration*
- 4:45 PM** 4. Rezoning - Burhans Village LLC, west of Burhans Blvd. N. - *Alex Rohrbaugh, Planner*

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

#### **MAYOR AND COUNCIL COMMENTS**

#### **ADJOURN**

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Approval of a Memorandum of Understanding: Hagerstown Police Department and FBI Child Exploitation Task Force

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

**Description**

Approval\_of\_MOU\_with\_FBI\_Child\_Exploitation\_Task\_Force.pdf

Motion

## REQUIRED MOTION

### MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND

**Date:** October 11, 2016

**TOPIC:** Approval of a Memorandum of Understanding between the City of Hagerstown and the Federal Bureau of Investigation Child Exploitation Task Force (CETF)

Charter Amendment	_____
Code Amendment	_____
Ordinance	_____
Resolution	_____
Other	<u>  X  </u>

**MOTION:** I hereby move for Mayor and Council approval to enter into a Memorandum of Understanding with the Federal Bureau of Investigation Child Exploitation Task Force.

There is no cost to the City of Hagerstown and overtime and other expenses will be reimbursed by the federal government of the United States.

DATE OF INTRODUCTION: October 11, 2016

DATE OF PASSAGE: October 11, 2016

EFFECTIVE DATE: October 11, 2016




## CITY OF HAGERSTOWN MARYLAND

DEPARTMENT OF POLICE  
50 N. Burhans Blvd.

Non-Emergency 301-790-3700  
Emergency 240-313-4345  
Fax 301-733-5513

September 21, 2016

To: Valerie Means  
City Administrator

From: Victor Brito   
Chief of Police

Ref: FBI -- Child Exploitation Task Force Memorandum of Understanding

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The Hagerstown Police Department is seeking Mayor and Council approval to enter into a Memorandum of Understanding with the Federal Bureau of Investigation Child Exploitation Task Force.

Two officers from the Hagerstown Police Department will be assigned to assist the FBI on certain cases and need to be deputized since some investigations will cross state lines.

There is no cost to the City of Hagerstown and overtime and other expenses will be reimbursed by the federal government of the United States.



**FEDERAL BUREAU OF INVESTIGATION  
CHILD EXPLOITATION TASK FORCE (CETF)  
Memorandum of Understanding (MOU)**

**PARTIES**

1. This Memorandum of Understanding (MOU) is entered into by the following "Participating Agencies":
  - a. **Federal Bureau of Investigation (FBI)**
  - b. **City of Hagerstown**

**AUTHORITIES**

2. Authority for the FBI to enter into this agreement can be found at Title 28, United States Code (U.S.C.), Section (§) 533; 42 U.S.C. § 3771; Title 28, Code of Federal Regulations (C.F.R.), § 0.85; and applicable United States Attorney General's Guidelines.

**PURPOSE**

3. The purpose of this MOU is to delineate the responsibilities of Maryland Child Exploitation Task Force (CETF) participants, maximize inter-agency cooperation, and formalize relationships between the participating agencies for policy guidance, planning, training, public and media relations. This MOU is not intended, and should not be construed, to create any right or benefit, substantive or procedural, enforceable at law or otherwise by any third party against the parties, the United States, or the officers, employees, agents, or other associated personnel thereof. The MOU also outlines the mission and procedures for the CETF, which are described in greater detail in the Standard Operating Procedures (SOP) utilized by the CETF.

**MISSION**

4. The mission of the CETF is to provide a rapid, proactive, and intelligence-driven investigative response to the sexual victimization of children and other crimes against children within the FBI's jurisdiction; to identify and rescue child victims; to reduce the vulnerability of children to sexual exploitation and abuse; to reduce the negative impact of domestic and international parental rights disputes; and to strengthen the capabilities of the FBI and federal, state, local, and international law enforcement through training, intelligence-sharing, technical support, and investigative assistance.

**SUPERVISION AND CONTROL**

5. Overall management of the CETF shall be the responsibility of the Special Agent in Charge (SAC) of the Baltimore Division of the FBI and/or their designee.
6. The SAC shall designate one Supervisory Special Agent (SSA) to supervise day-to-day operational and investigative matters pertaining to the CETF.
7. For the purposes of this MOU, a CETF member is considered full-time when that member is primarily assigned duties aligned with the defined priority threats that are dedicated to the mission of the CETF on a full-time basis. On a case-by-case basis, SSAs may authorize CETF members to temporarily support other priority FBI matters as necessary.

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Official Law Enforcement Use Only

Child Exploitation Task Force  
Memorandum Of Understanding (2012)

*This document contains neither recommendations nor conclusions of the FBI. This document is the property of the FBI and is loaned to your agency; it and its contents are not to be distributed outside your agency.*

8. Responsibility for conduct, not under the direction of the SAC or SSA, of each CETF member, both personally and professionally, shall remain with the respective agency head and each agency shall be responsible for the actions of its respective employees.
9. Each CETF member will be subject to the laws, regulations, policies, and personnel rules applicable to those of his or her respective agency.
10. FBI participants will continue to adhere to the Bureau's ethical standards, including Department of Justice (DOJ)/FBI regulations relating to outside employment and prepublication review matters, and will remain subject to the Supplemental Standards of Ethical Conduct for employees of the DOJ.
11. Each CETF member will continue to report to his or her respective agency head for non-investigative administrative matters not detailed in this MOU or SOP.
12. Continued assignment to the CETF will be based on performance and at the discretion of each CETF member's respective supervisor. The FBI SAC/SSA will also retain discretion to remove any member from the CETF.
13. The defined priority threats that are aligned with the mission of the CETFs are:
  - a. **Child Abductions**
    - Non-ransom child abductions
    - Domestic parental kidnapping
  - b. **Sexual Exploitation of Children Enterprises**
    - Domestic Child Prostitution
    - Online Networks and Enterprises
  - c. **Contact Offenses Against Children**
    - Domestic travel with intent to engage in illegal sexual activity with a minor
    - Child Sex Tourism – travel abroad to engage in commercial sexual exploitation of a child under the age of 18
    - Production of Child Pornography
    - Coercion/enticement of a minor
  - d. **Trafficking of Child Pornography**
    - Mass Distribution of Child Pornography
    - Possession of Child Pornography
  - e. **International Parental Kidnapping**
    - International Parental Kidnapping
  - f. **Other Crimes Against Children**
    - All other crimes against children violations within the FBI's jurisdiction should be investigated in accordance with available resources

## **RESOURCE CONTROL**

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14. The head of each Participating Agency shall retain control of resources dedicated by that agency to the CETF, including personnel, as well as the continued dedication of those resources. The Participating Agency head or designee shall be kept fully apprised of all investigative developments by his or her subordinates.

#### **REPORTS AND RECORDS**

15. All investigative reporting will be prepared in compliance with existing FBI policy. Subject to pertinent legal and/or policy restrictions, copies of pertinent documents created by each member of the CETF will be made available for inclusion in the respective investigative agencies' files as appropriate.

#### **SALARY/OVERTIME COMPENSATION**

16. The FBI and Participating Agency agree to assume all personnel costs for their CETF representatives, including salaries, overtime payments and fringe benefits consistent with their respective agency.
17. Subject to funding availability and legislative authorization, the FBI may reimburse to Participating Agency the cost of overtime worked by non-federal CETF members assigned full-time to CETF, provided overtime expenses were incurred as a result of CETF-related duties. A separate Cost Reimbursement Agreement (CRA) must be executed between the FBI and Participating Agency for full-time employee(s) assigned to CETF, consistent with regulations and policy. Otherwise, overtime shall be compensated in accordance with applicable Participating Agency overtime provisions and shall be subject to the prior approval of appropriate personnel.

#### **LIABILITY**

18. The Participating Agencies acknowledge that this MOU does not alter the applicable law governing civil liability, if any, arising from the conduct of personnel assigned to the CETF.
19. The Participating Agency shall immediately notify the FBI of any civil, administrative, or criminal claim, complaint, discovery request, or other request for information of which the agency receives notice, concerning or arising from the conduct of personnel assigned to the CETF or otherwise relating to the CETF.
20. In the event that a civil claim or complaint is brought against a state or local officer assigned to the CETF, the officer may request legal representation and/or defense by DOJ, under the circumstances and pursuant to the statutes and regulations identified below.

#### **DURATION**

21. The term of this MOU is for the duration of the CETF's operations, contingent upon approval of necessary funding, but may be terminated at any time upon written mutual consent of the agency involved.
22. Any Participating Agency may withdraw from the CETF at any time by written notification to the SSA with designated oversight for investigative and personnel matters or program manager of the CETF Program (FBI HQ) at least 30 days prior to withdrawal.
23. Upon termination of this MOU, all equipment provided to the CETF will be returned to the supplying agency/agencies. In addition, when an entity withdraws from the MOU, the entity will return equipment to the supplying agency/agencies. Similarly, remaining agencies will return to a withdrawing agency any unexpended equipment supplied by the withdrawing agency during any CETF participation.

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## MODIFICATIONS

24. Modifications/amendments to this MOU and corresponding SOP shall be brought in writing to the attention of each Participating Agency.
25. Participating Agencies and their assignees are bound by the terms of the MOU and SOP, as modified from time to time, although a Participating Agency may terminate its participation with the CETF pursuant to the terms related to the SOP.
26. Participating Agency will not be bound by any amended terms of the MOU or SOP during notice period (currently 30 days) required by the MOU prior to terminating participation.

## SIGNATORIES

\_\_\_\_\_  
Print Name:  
Title: **SAC**  
Organization: **FBI**  
Date:

\_\_\_\_\_  
Print Name:  
Title: Chief of Police, Hagerstown Police Department  
Organization: City of Hagerstown  
Date:

\_\_\_\_\_  
Print Name:  
Title:  
Organization:  
Date:

\_\_\_\_\_  
Print Name:  
Title:  
Organization:  
Date:

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Print Name:  
Title: **Program Manager**  
Organization: **FBI/CID**  
Date:

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Memorandum Of Understanding (2012)

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**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Approval of Amendment of the City's Water and Wastewater Policy

**Mayor and City Council Action Required:**

Approval of amendments to the City's Water and Wastewater Policy.

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

I hereby move that the Mayor and City Council approve the attached amended City of Hagerstown Water and Wastewater Policy. These amendments clarify that Exception #3 applies only to single-family and two-family dwellings on a lot of record in existence prior to certain dates and it adds a new Exception #8 for affordable housing projects located in close proximity to economic development target areas and adjacent to development served by City water and/or wastewater.

**Action Dates:**

Discussion - October 4th

Approval - Special Session on October 11th

**ATTACHMENTS:**

**File Name**

Motion\_Water\_\_\_Wastewater\_Policy\_Amendments\_101116.pdf

Water\_and\_Wastewater\_Policy\_Amendments\_Oct\_11\_2016.pdf

**Description**

Motion - Amendment to  
Water & Wastewater Policy

Policy - Amendment to  
Water & Wastewater Policy

## **REQUIRED MOTION**

### **MAYOR AND CITY COUNCIL HAGERSTOWN, MARYLAND**

**DATE:**       **October 11, 2016**

**TOPIC:**       **Amendment of the City's Water and Wastewater Policy.**

Charter Amendment	<input type="checkbox"/>
Code Amendment	<input type="checkbox"/>
Ordinance	<input type="checkbox"/>
Resolution	<input type="checkbox"/>
Other	<input checked="" type="checkbox"/>

**MOTION:**    I hereby move that the Mayor and City Council approve the attached amended City of Hagerstown Water and Wastewater Policy. These amendments clarify that Exception #3 applies only to single-family and two-family dwellings on a lot of record in existence prior to certain dates and it adds a new Exception #8 for affordable housing projects located in close proximity to economic development target areas and adjacent to development served by City water and/or wastewater.

DATE OF INTRODUCTION: 10/11/16

DATE OF PASSAGE: 10/11/16

EFFECTIVE DATE: 10/11/16

**City of Hagerstown**  
**Water and Wastewater Policy**

**Adopted: February 24, 2004**

**Amended: July 29, 2008**

**Amended: September 22, 2009**

**Amended: October 11, 2016**

The City of Hagerstown will not extend or expand water or wastewater services beyond the Hagerstown Medium-Range Growth Area or the Hagerstown Long-Range Growth Area as defined in the City's Annexation Policy, and shall not allow new connections to the existing lines located outside the Hagerstown Medium-Range Growth Area or Long-Range Growth Area. Reference: City of Hagerstown 2008 Comprehensive Plan, Policy 4-4. The following eight exceptions may be granted:

1.     Condemnation or Impending Failure of an Existing Private Water or Septic System. The governing health authority has provided a request with documentation or certification to the Utilities Department that, to obtain a water or wastewater service connection, the existing private water or wastewater system for an existing dwelling or nonresidential building has been condemned, or has impending failure, and a reasonable alternate system is otherwise not available. Service approved by the Utilities Department using this exception is contingent upon acceptance and signing of a service contract by the owner providing for the allocation of costs of extending and maintaining the service to the property and that such service shall be subject to all applicable policies, procedures and practices. Reference: City of Hagerstown 2008 Comprehensive Plan, Policy 4-4.
2.     System Improvement. Upon the recommendation of the Director of Utilities to, and approval by, the Mayor and Council, a system extension would provide a vital improvement or enhancement to the operation or efficiency of the water and/or wastewater system.
3.     Connection to an Existing Lot of Record for a Single-Family or Two-Family Dwelling. Service approval by the Utilities Department is contingent upon the following: (a) outside the Long-Range Growth Area, lot was an existing lot of record prior to February 24, 2004; (b) between the Medium-Range Growth Area and Long-Range Growth Area boundaries, lot was an existing lot of record prior to April 22, 2008; (c) lot is contiguous to a right-of-way containing a City water or wastewater line that was in existence at the time the property became a lot of record. Any exception the Utilities Department may determine is warranted will be given with the following limitations and conditions: (a) the maximum allocation shall not exceed two hundred (200) gallons per day for one dwelling unit, or 400 gpd for a two-family dwelling if allowed by County zoning and if it does not involve a subdivision; and b) service is contingent upon acceptance and signing of a service contract by the owner providing for the allocation of costs of extending and maintaining the service to the property and that such service shall be subject to all applicable policies, procedures and practices.

4. Redevelopment of a Property Containing an Existing Customer. Service approval by the Utilities Department using this exception is contingent upon there being no addition of land area to the existing lot(s) of record containing the existing customer(s) and there being no increase in the existing allocation as a result of the redevelopment.
5. Pre-existing Water or Wastewater Agreement. Service approval by the Utilities Department using this exception is contingent upon a water or wastewater agreement having been in place prior to July 29, 2008, which guaranteed water or wastewater service to this property as a condition of the construction and/or provision of land for the construction of the water or wastewater line at issue.
6. Economic Development Project. Service approval using this exception is contingent upon recommendation of the County Commissioners, the City and County Economic Development Directors, and the City Director of Utilities to, and approval by, the Mayor and Council, for a vital economic development project located in a targeted area for industrial and/or non-retail commercial development.
7. Pre-Annexation Agreement. Service approval by the Utilities Department using this exception is contingent upon a pre-annexation agreement having been approved by the Planning and Code Administration Division and recorded in the County Courthouse prior to April 22, 2008.
8. Affordable Housing Project. Service approval using this exception is contingent upon recommendation of the County Commissioners, the City Administrator or designee, the County Administrator or designee, and the City Director of Utilities to, and approval by, the Mayor and City Council, for an affordable housing project restricted to households with annual incomes up to 80% of AMI (Area Median Income) and located in close proximity to economic development target areas and adjacent to development served by City water and/or wastewater.

The granting of exceptions one through five and eight above is contingent upon the property owner submitting a pre-annexation agreement to the City of Hagerstown that offers the property for annexation at such time as the corporate boundaries of the City reach the property and the Mayor and City Council determines annexation to be advantageous to the City of Hagerstown. For exception number six above, this pre-annexation agreement requirement may be subject to negotiation between the City of Hagerstown and Washington County.

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Proclamation: Character Counts! Week

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Western Maryland Blues Fest 2017 Proposed Budget - *Lauren Metz, Community Events Coordinator*

**Mayor and City Council Action Required:**

City staff seek Mayor and City Council approval for an authorization of the 2017 Western Maryland Blues Fest budget. Pending discussion, the 2017 budget will be approved by formal action at the October 25, 2016 Regular Session and authorize any financial support or in-kind services to be supplied by the City.

**Discussion:**

At the October 11, 2016 Work Session as per the special events policy approved on March 27, 2001 and revised on January 8, 2002, the Western Maryland Blues Fest is submitting a tentative budget of revenue and expenses for the 2017 event. The Western Maryland Blues Fest is scheduled to be held June 1-4, 2017 and 2017 will mark the 22<sup>nd</sup> year for the event.

Please note this is a working fluid budget for the committee pending venue selections and contract negotiations. Also if the committee finds they have additional revenue and believe additions to the program would enhance the event, this budget could be amended. Please note the \$52,000 for City Services will be included in the current fiscal year's Public Functions Account, but are not shown in the Blues Fest budget attached.

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

MCC\_Budget\_Memo\_-\_10182016.pdf

**Description**

Memo: 2017 Blues Fest  
Proposed Budget

Blues\_Fest\_2017\_Proposed\_Budget.pdf

2017 Proposed Blues Fest  
Budget



# **CITY OF HAGERSTOWN, MARYLAND**

Department of Community & Economic Development

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TO: Valerie Means, City Administrator

FROM: Lauren Metz, Community Events Coordinator

DATE: September 29, 2016

SUBJECT: Western Maryland Blues Fest 2017 Proposed Budget

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Background:

At the October 11, 2016 Work Session as per the special events policy approved on March 27, 2001 and revised on January 8, 2002, the Western Maryland Blues Fest is submitting a tentative budget of revenue and expenses for the 2017 event. The Western Maryland Blues Fest is scheduled to be held June 1-4, 2017 and 2017 will mark the 22<sup>nd</sup> year for the event.

Mayor and City Council Action Requested:

City staff seek Mayor and City Council approval for an authorization of the 2017 Western Maryland Blues Fest budget. Pending discussion, the 2017 budget will be approved by formal action at the October 25, 2016 Regular Session and authorize any financial support or in-kind services to be supplied by the City.

Please note this is a working fluid budget for the committee pending venue selections and contract negotiations. Also if the committee finds they have additional revenue and believe additions to the program would enhance the event, this budget could be amended. Please note the \$52,000 for City Services will be included in the current fiscal year's Public Functions Account, but are not shown in the Blues Fest budget attached.

c:

Jill Frick, Director of Community and Economic Development

Carl Disque, Western Maryland Blues Fest

Julie Donat, Western Maryland Blues Fest



## Blues Fest 2017 Budget

<b>REVENUES</b>	<b>2017 PROPOSED</b>
Admissions	\$65,000.00
Other Revenue – Beer, Vendors, Merchandise	\$43,292.00
Sponsorships	\$96,021.00
Washington County Arts Council Grant	\$1,500.00
Maryland State Arts Council Grant	\$19,487.00
<b>Total Revenue</b>	<b>\$225,300.00</b>
<b>EXPENSES</b>	
Musical Artists	\$58,400.00
Technical Fees	\$40,000.00
Educational Outreach	\$5,500.00
Outside Services – Merchandise	\$13,700.00
Outside Services – Tent/Fencing	\$13,700.00
Artist Lodging/Hospitality	\$8,000.00
Other – Hospitality, Insurance, Supplies, etc.	\$40,500.00
Marketing	\$45,500.00
<b>Total Expense</b>	<b>\$225,300.00</b>

**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Hopewell Manor Request for Water - Exception #8 in the City Water and Wastewater Policy -  
*Kathleen Maher, Director of Planning and Code Administration*

**Mayor and City Council Action Required:**

Begin review on October 11<sup>th</sup> of the request for water to expand the Hopewell Manor affordable housing development outside the Medium Range Growth Area (MRGA) in anticipation of successful approval of the amendments to the Water and Wastewater Policy at a special session that afternoon.

**Discussion:**

**Amendments to City Water and Wastewater Policy**

A special session is scheduled for October 11<sup>th</sup> to amend the City's Water and Wastewater Policy to:

1. make a couple of clarification amendments to the preamble and Exception #3 to remove confusion;
2. add an 8<sup>th</sup> exception for affordable housing projects recommended by the County Commissioners and other officials where the project would be limited to households with incomes up to 80% of area median income and where the project is located in close proximity to economic development target areas and adjacent to development served by water and/or wastewater.

Attached is the proposed amended policy.

**Request for Water to Expand Hopewell Manor**

The City received a request for water service to allow for the expansion of Hopewell Manor, an affordable housing development located outside the MRGA. Hopewell Manor is an existing 64 unit affordable housing development served by City water located across I-70 from the Hopewell Valley economic development target area (see attached map). The plan is to upgrade the existing 64 units and add another 60 units on an adjacent tract. The developer has requested water service for the new units utilizing the new Exception #8 of the City's Water and Wastewater Policy for affordable housing. The developer has confirmed that the units will be restricted to households with no more than 80% of the area median income (AMI), in fact many of the households will be restricted to 60% AMI.

**Financial Impact:**

**Recommendation:**

Provided the Water and Wastewater Policy is amended and the Hopewell Manor developer collects the required letters of recommendation per new Exception #8, staff recommends approval of the request to serve 60 new units of affordable housing at Hopewell Manor – an existing development served by City, located in proximity to the Hopewell Valley economic development target area, with existing and new units (on an adjacent tract) restricted to households making up to 80% of area median income. This approval should be upon the condition that a pre-annexation agreement is provided.

**NEXT STEPS**

If the conditions in the Staff Recommendation are met and the Mayor and City Council wish to approve the request for water for this development, a motion of approval would be acted upon at the next available regular or special session.

**Motion:****Action Dates:**

Discussion - during review of Water & Wastewater Policy Amendments discussion on October 4th

Discussion - October 11

**ATTACHMENTS:****File Name**

Hopewell\_Manor\_map.pdf

Hopewell\_Manor\_Request\_for\_Water\_Oct\_11\_2016.pdf

Letter\_from\_Developer\_of\_Hopewell\_Manor.pdf

**Description**

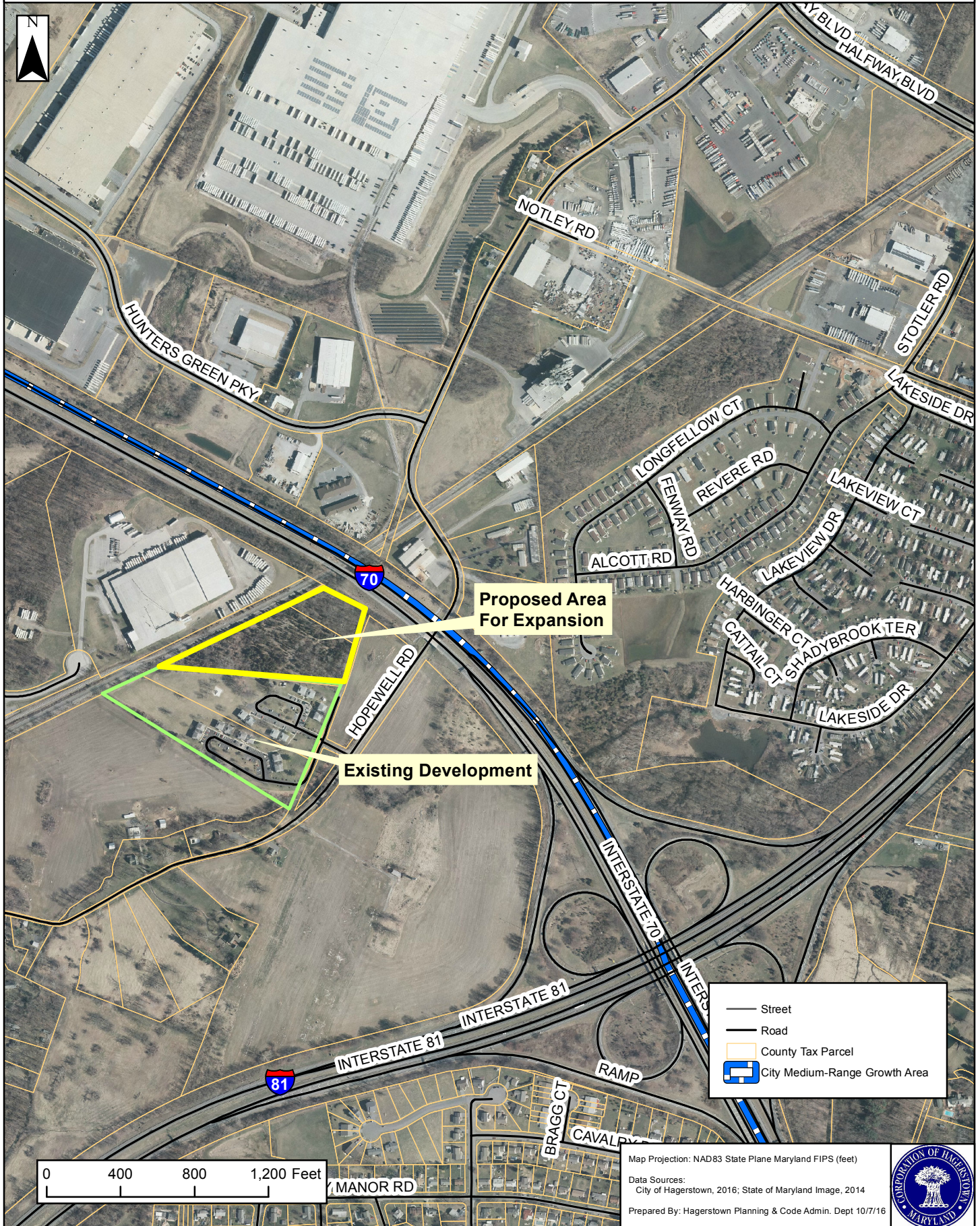
Map - Hopewell Manor  
Request for Water

Memo - Hopewell Manor  
Request for Water

Developer Request -  
Hopewell Manor



# Location of Hopewell Manor








# CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

## MEMORANDUM

TO: Valerie Means, City Administrator

FROM: Kathleen A. Maher, Director of Planning & Code Administration 

DATE: October 7, 2016

SUBJECT: Hopewell Manor Request for Water – Exception #8 in the City Water & Wastewater Policy

### MAYOR AND CITY COUNCIL ACTION REQUESTED

Begin review on October 11<sup>th</sup> of the request for water to expand the Hopewell Manor affordable housing development outside the Medium Range Growth Area (MRGA) in anticipation of successful approval of the amendments to the Water and Wastewater Policy at a special session that afternoon.

### Amendments to City Water and Wastewater Policy

A special session is scheduled for October 11<sup>th</sup> to amend the City's Water and Wastewater Policy to:

1. make a couple of clarification amendments to the preamble and Exception #3 to remove confusion;
2. add an 8<sup>th</sup> exception for affordable housing projects recommended by the County Commissioners and other officials where the project would be limited to households with incomes up to 80% of area median income and where the project is located in close proximity to economic development target areas and adjacent to development served by water and/or wastewater.

Attached is the proposed amended policy.

### Request for Water to Expand Hopewell Manor

The City received a request for water service to allow for the expansion of Hopewell Manor, an affordable housing development located outside the MRGA. Hopewell Manor is an existing 64 unit affordable housing development served by City water located across I-70 from the Hopewell Valley economic development target area (see attached map). The plan is to upgrade the existing 64 units and add another 60 units on an adjacent tract. The developer has

requested water service for the new units utilizing the new Exception #8 of the City's Water and Wastewater Policy for affordable housing. The developer has confirmed that the units will be restricted to households with no more than 80% of the area median income (AMI), in fact many of the households will be restricted to 60% AMI.

### **STAFF RECOMMENDATION**

Provided the Water and Wastewater Policy is amended and the Hopewell Manor developer collects the required letters of recommendation per new Exception #8, staff recommends approval of the request to serve 60 new units of affordable housing at Hopewell Manor – an existing development served by City, located in proximity to the Hopewell Valley economic development target area, with existing and new units (on an adjacent tract) restricted to households making up to 80% of area median income. This approval should be upon the condition that a pre-annexation agreement is provided.

### **NEXT STEPS**

If the conditions in the Staff Recommendation are met and the Mayor and City Council wish to approve the request for water for this development, a motion of approval would be acted upon at the next available regular or special session.

### **Attachments**

C:     Mike Spiker, Utilities Director  
       Jill Frick, Director of Department of Community & Economic Development  
       Mark Boyer, City Attorney  
       Jason Divelbiss  
       Jeff Paxson, Hopewell Manor  
       Tim Lung, Washington County  
       Julie Pippel, Washington County



October 7, 2016

Kathleen Maher  
Director, Planning & Code Administration  
City of Hagerstown  
One East Franklin Street, Room 300  
Hagerstown, MD 21740

Michel S. Spiker  
Director of Utilities  
City of Hagerstown  
425 East Baltimore Street  
Hagerstown, MD 21740

**Re: Request for New Connection to Existing City Water Line for Redevelopment and Expansion of Hopewell Manor**

Dear Kathy & Mike:

On behalf of the project developer, Pax-Edwards, LLC, please accept this letter as a formal request for a new connection to an existing City of Hagerstown water line for the purpose of redeveloping and expanding the Hopewell Manor apartment project.

The existing Hopewell Manor, 64-unit apartment community is located on +/- 12.5 ac. (TM 48, Parcels 792 & 525) adjacent to the north side of Hopewell Road just to the west of I-70. Hopewell Manor is currently served by City of Hagerstown public water service.

The proposed four (4) building expansion, for which the new connection is needed, consists of an additional 60 apartment units located on the +/- 8.5 ac. (TM 48, Parcels 594 & 30) adjacent to Hopewell Manor and directly abutting I-70.

Although the expansion project is located outside the Hagerstown Medium-Range Growth Area, it meets the requirements of the new Exception #8 to the City's Water and Wastewater Policy namely: 1) is an affordable housing project restricted to households with annual incomes equal to or less than 80% of the Area Median Income (AMI); 2) is

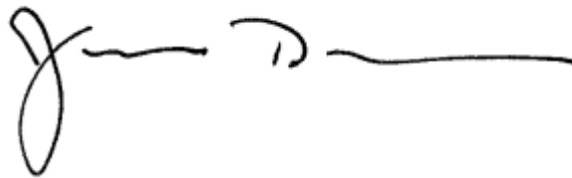
located in close proximity to the Hopewell Valley economic development target area; and 3) is located adjacent to existing City water infrastructure.

Consistent with Exception #8, in addition to the approval of the Mayor and City Council, the developer will request the input and recommendation of 1) the Washington County Board of County Commissioners; 2) Washington County Administrator; and 3) City of Hagerstown Administrator, with regard to this new connection request.

In the event this request for new public water connection is approved, the developer will work the Director of Utilities regarding the size and location of infrastructure needed to serve the project.

Please do not hesitate to let me know if any additional information is needed or desired and, as always, thank you for your consideration in this matter.

Very truly yours,  
**Divelbiss & Wilkinson**

A handwritten signature in black ink, appearing to read 'J. M. Divelbiss', with a long horizontal line extending to the right.

Jason M. Divelbiss  
*Attorney at Law*

Email: [jdivelbiss@divelbisslaw.com](mailto:jdivelbiss@divelbisslaw.com)



**REQUIRED MOTION  
MAYOR AND CITY COUNCIL  
HAGERSTOWN, MARYLAND**

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**Topic:**

Rezoning - Burhans Village LLC, west of Burhans Blvd. N. - *Alex Rohrbaugh, Planner*

**Mayor and City Council Action Required:**

This item is scheduled for discussion at the October 11th Work Session. The purpose is to follow up on the September 27th Public Hearing for the proposed rezoning and get direction on how the Mayor & Council would like to proceed for the October 25th Regular Session. Currently Staff has Introduction of Rezoning scheduled for October 25 and Approval/Denial of Rezoning for November 22.

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

**File Name**

MCC\_Memo\_10-6-16.pdf

ZM-2016-02\_PH\_Staff\_Analysis.pdf

Rezoning\_Map.pdf

**Description**

Cover Memo

Staff Analysis of Rezoning

Map of Rezoning



# CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

## MEMORANDUM

TO: Valerie Means, City Administrator

FROM: Alex W. Rohrbaugh, AICP, Planner *AWR*

DATE: October 6, 2016

SUBJECT: ZM-2016-02: Rezoning - Burhans Village LLC, west of Burhans Blvd N

### **Mayor and City Council Action Requested**

This item is scheduled for discussion at the October 11<sup>th</sup> Work Session. The purpose is to follow up on the September 27<sup>th</sup> Public Hearing for the proposed rezoning and get direction on how the Mayor & Council would like to proceed for the October 25<sup>th</sup> Regular Session. Currently Staff has Introduction of Rezoning scheduled for October 25 and Approval/Denial of Rezoning for November 22.

### **Discussion**

The Public Hearing on the proposed rezoning was held on September 27. The applicant's engineer and attorney provided testimony on why they believe the property should be rezoned to RH based on mistake in the existing classification. They provided an exhibit showing a townhouse subdivision concept (with overlapping lot lines) in order to illustrate the applicant's argument that it would be difficult to develop under RMED zoning and still be economically feasible. They also had concerns about rezoning the property for a Planned Unit Development (PUD) overlay due to the requirement for commercial uses for PUDs. The applicant's representation also discussed that if RH zoning were approved the property could be developed for workforce housing.

The Mayor & Council also took testimony from a resident who had questions about traffic through the property, sidewalk requirements along Burhans Boulevard, the provision of open space in the development, and impact on the surrounding neighborhood. As of the date of this memorandum, Staff has not received any additional public comment.

During the Hearing, members of the Mayor & Council raised concerns about development of this property under RH zoning, including further concentration of multi-family housing and a lack of homeownership opportunities should the property be developed for multi-family housing.

### **"Mistake" Justification for Rezoning**

Under Maryland Law, a piecemeal rezoning of an individual property can be considered only if there was a substantial change in the character of the neighborhood where the property is located or that there was a mistake in the existing zoning classification. The applicant is requesting the rezoning on the argument that there was a mistake in the existing zoning classification that did not take into account "i) the negative impact of surrounding land uses on future homeownership, ii) the need for transition zoning between industrial and less dense residential zoning and land uses, iii) the unique and difficult to develop site in conjunction with the requirements of the Land Management Code, and iv) it (the City) failed to accommodate needs that had been expressly recognized as existing in the 2008 Comprehensive Plan and that existed at the time of the comprehensive rezoning".

**Planning Commission Recommendation**

At their September 14<sup>th</sup> Meeting, the Planning Commission considered the rezoning proposal and the testimony provided at the Public Review Meeting. The Commission determined in its deliberations that there was a mistake in the existing RMED zoning classification based on the following:

- 1) The rezoning to R2 during the 2010 Comprehensive Rezoning was a result of the existing PUD and not as a result of analysis of the appropriateness of the zoning.
- 2) Barriers to homeownership at this location (i.e. proximity to rail line and industrial lands) were not considered during the 2010 Comprehensive Rezoning
- 3) During the 2010 Comprehensive Rezoning, it was not contemplated that, should the PUD overlay expire, development of single- and two-family dwellings under RMED zoning would not have been economically viable after the removal of developable land for infrastructure and setback requirements
- 4) It was not foreseen at the time of the 2010 Comprehensive Rezoning that the City would subsequently amend PUD requirements so that another PUD plan would not be feasible on this property.

The Planning Commission found the RH zoning would be appropriate for this site because:

- a) The 2008 Comprehensive Plan anticipated residential in this area, and commercial or industrial do not work given the site configuration and the setback requirements;
- b) Residential is appropriate given the factors stated above and high density is the best option given the limitations of the site stated above and the fact that the surrounding RMED land is developed at a higher density than current design standards would allow a new multi-family development to achieve.

For these reasons, the Planning Commission recommended the property be rezoned to RH based on the mistake in the existing zoning classification for the reasons stated above.

Attachments: Vicinity Map, Staff Analysis

C: Kathleen Maher, Director, PCAD  
Mark Boyer, City Attorney



# CITY OF HAGERSTOWN, MARYLAND

Planning and Code Administration Department

## REZONING STAFF ANALYSIS

Parcels A,B,C,D – West of Burhans Blvd N, Case No. ZM-2016-02

Prepared for Planning Commission

August 24, 2016

**APPLICANT:** Burhans Village LLC

**LOCATION:** Parcels A, B, C, and D – E of Burhans Boulevard North & W of Mitchell Avenue (Formerly Deerfield Knolls tract)

**EXISTING USES:** Vacant Land

**AREA:** 6.21 acres +/-

**EXISTING ZONING:** RMED (Residential Medium Density)

**PROPOSED ZONING:** RH (Residential High Density)

### ADJACENT LAND USES:

North – Norfolk Southern active railroad line, zoned RMED and IG (Industrial General).

West – Primarily single- and two-family residential dwellings fronting on Mitchell Avenue, zoned RMED, and warehouse facility fronting on Langdon Street, zoned POM (Professional Office Mixed)

South – Single- and two-family residential dwellings fronting on Freemont Street and Carrollton Avenue, zoned RMED

East – Burhans Boulevard right-of-way and Industrial use (TBH Concrete) on east side of Burhans Boulevard North, zoned IR (Industrial Restricted)

### ZONING HISTORY:

Historically this property was split-zoned Residential Medium Density (formerly R2) and Commercial General (formerly C2). During the height of the housing boom in 2006, the owner at the time requested and received a Planned Unit Development (PUD) zone overlay for ~80 unit townhouse development that was known as Deerfield Knolls. A site plan for the Deerfield Knolls development was approved in 2007, and a revised grading plan for the development was approved in 2008. Although some clearing occurred on the site at the time, the development never came to fruition. When no further action on the development happened, the PUD overlay expired two years later in 2010. The area was also reviewed during the 2008-2010 Comprehensive Rezoning and rezoned entirely to R2 (RMED's predecessor) during Phase III rezonings in 2010. As reflected in the Findings of Fact for the Comprehensive Rezoning, the basis for the rezoning of the property was the following:

“It is proposed to rezone this area from C2 (Commercial General) to R2 (Residential). This area is currently vacant but a site plan for a townhouse development (Deerfield Knolls) was approved in 2007. A PUD overlay exists on this area, and would remain with a rezoning to R2. An R2 rezoning would be consistent with the existing residential neighborhoods immediately to the west of this area, as well as the approved PUD. The 2008 Comprehensive Plan overlooked this change which occurred following the completion of the draft plan.”

Shortly thereafter, also in 2010, the PUD overlay zone expired for the property.

#### **ANALYSIS:**

The following staff analysis is structured to address the information that the Mayor and Council must consider according to the Zoning Ordinance and the Annotated Code of the State of Maryland.

1. *Relationship of the proposed map amendment to the Comprehensive Plan.*

The area proposed for rezoning is designated for “Medium Density Residential” and “Commercial General” future land uses in the 2008 Comprehensive Plan. This future land use designated followed existing zoning classification lines at the time.

2. *Suitability of proposed zoning district classification.*

The property is currently zoned RMED. Due to its relatively small size (6.2 acres) and its unusual shape and topography, the zoning and land development requirements for RMED (5 units/acre or less) make this property challenging to develop. RH zoning provides for areas of high-density residential development (10 – 16 units/acre), and may make the property more suitable for development.

3. *Compatibility of proposed zoning district classification.*

The property is currently consists of vacant land. For the reasons stated above in #2, a rezoning to RH may make the property more suitable for development. The property is surrounded by primarily single- and two-family residential dwellings on small lots on the western and southern sides (Mitchell Avenue and Freemont Street). The residential density of these residential properties is estimated at about 18 units/acre (2.19 aggregate acres of adjacent residential divided by 40 units). If the property in question were developed under the proposed RH zoning, the overall residential density would be generally compatible to that of the surrounding residential area.

4. *Availability of public facilities.*

All public facilities and services rendered by the City of Hagerstown are available to the site and currently serving the existing businesses.

5. *Population change.*

It is estimated that development on the property was increase the city’s population by

242 persons. This figure is based on the following assumptions: 1) the property is rezoned to RH, 2) the property is developed to a maximum density of 99 units (16 dwelling units/acre X 6.21 acres), and 3) each unit is occupied at the city's average household size of 2.44 persons/dwelling unit.

6. Transportation patterns.

It is anticipated that development on this site will have access to both Burhans Boulevard North to the east and Mitchell Avenue to the west. Burhans Boulevard North experiences daily traffic counts of about 12,165 vehicles per day, and Mitchell Avenue experiences less than 2,500 vehicles per day. It is estimated that a multi-family development on this site could generate a maximum of 643 vehicles per day. This figure is based on the following assumptions: 1) the property is rezoned to RH, 2) the property is developed to a maximum density of 99 units (16 dwelling units/acre X 6.21 acres), and 3) a rate of 6.47 vehicle trips per day per unit.

7. Change or mistake criteria.

Whether or not a zoning reclassification has merit in the State of Maryland depends first upon the applicant establishing to the satisfaction of the Planning Commission and the Mayor and Council, strong evidence of mistake in the original zoning or evidence of substantial change in the character of the neighborhood since the last comprehensive rezoning of the City in 2010. Once this is established, the question turns to the appropriate zoning classification.

"In order to establish a change in the character of the neighborhood a person seeking a zoning reclassification under this rule must present evidence demonstrating at least the following: (a) What area reasonably constituted the 'neighborhood' of the subject property; (b) The changes which have occurred in that neighborhood since the original or last comprehensive zoning affected that property; ( c ) That these changes resulted in a change in the character of the neighborhood which would justify reclassification to the category requested." Montgomery Bd. of Commissioners for Prince George's County, 256 Md. 597(1970).

"In order to assess the evidence before the Board, it is necessary to understand the inherent nature of the terms 'mistake' or 'error' as they are used in zoning law. A perusal of cases . . . indicates that the presumption of validity accorded to a comprehensive zoning is overcome and error or evidence to show that the assumptions or premises relied upon by the Council at the time of the comprehensive rezoning were invalid. Error can be established by showing that at the time of the comprehensive zoning the Council failed to take into account then existing facts, or projects or trends which were reasonably foreseeable of fruition in the future, so that the Council's action was premised initially on a misapprehension . . . . Error or mistake may also be established by showing that events occurring subsequent to the comprehensive zoning have proven that the Council's initial premises were incorrect." Boyce v. Sembly, 25 Md. App. 43(1975) at 50 and 51.

The Planning Commission determined in its deliberations that there was a mistake in the existing RMED zoning classification based on the following:

- A) The rezoning to R2 during the 2010 Comprehensive Rezoning was a result of the existing PUD and not as a result of analysis of the appropriateness of the zoning.
- B) Barriers to homeownership at this location (i.e. proximity to rail line and industrial lands) were not considered during the 2010 Comprehensive Rezoning
- C) During the 2010 Comprehensive Rezoning, it was not contemplated that, should the PUD overlay expire, development of single- and two-family dwellings under RMED zoning would not have been economically viable after the removal of developable land for infrastructure and setback requirements
- D) It was not foreseen at the time of the 2010 Comprehensive Rezoning that the City would subsequently amend PUD requirements so that another PUD plan would not be feasible on this property.

Additionally, The Planning Commission found the RH zoning would be appropriate for this site because:

- E) The 2008 Comprehensive Plan anticipated residential in this area, and commercial or industrial do not work given the site configuration and the setback requirements;
- F) Residential is appropriate given the factors stated above and high density is the best option given the limitations of the site stated above and the fact that the surrounding RMED land is developed at a higher density than current design standards would allow a new multi-family development to achieve.

8. Planning Commission Recommendation:

Based upon the findings of fact and reasons set forth above, the Planning Commission finds that a mistake was made in the existing RMED zoning classification and finds that RH would be appropriate for the site. Therefore, the Planning Commission recommends that these property be rezoned from RMED (Residential-Medium Density) to RH (Residential-High Density).



# ZM-2016-02, Burhans Village LLC Rezoning

