Mayor and Council

February 18, 2020
Agenda

"The City of Hagerstown will promote a diverse, business-friendly, and sustainable community with clean, safe, and strong neighborhoods."

"The City of Hagerstown shall be the model provider of the most efficient and highest quality customer services to be known as the municipal location of choice for all”

“You can do what you have to do, and sometimes you can do it even better than you think you can.” - Jimmy Carter

EXECUTIVE SESSION

3:00 PM  1.  EXECUTIVE SESSION

4:00 PM WORK SESSION

1.  Preliminary Agenda Review

4:15 PM  2.  Northpoint Development: Wesel Boulevard Roadway Improvements – Jill Thompson, Director of Community & Economic Development, and Rodney Tissue, City Engineer, and Brent Miles, Chief Marketing Officer & Founding Partner

4:30 PM  3.  Stormwater Program – Implementation Phase – Rodney Tissue, City Engineer

5:00 PM  4.  Loan Portfolio Update – Jonathan Kerns, Community Development Manager, and Ashley Newcomer, Business/Community Development Finance Specialist

5:15 PM  5.  State of Maryland Request for Comment – Low Income Housing Tax Credit Application for Alexander House – Mayor and Council Discussion

5:30 PM  6.  Review of Materials Related to Reproductive Health – Mayor and Council Discussion

CITY ADMINISTRATOR'S COMMENTS

MAYOR AND COUNCIL COMMENTS

ADJOURN
REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

**Topic:**
EXECUTIVE SESSION

**Mayor and City Council Action Required:**

**Discussion:**

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**
REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

Topic:
Preliminary Agenda Review

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:
Topic:
Northpoint Development: Wesel Boulevard Roadway Improvements – Jill Thompson, Director of Community & Economic Development, and Rodney Tissue, City Engineer, and Brent Miles, Chief Marketing Officer & Founding Partner

Mayor and City Council Action Required:

Discussion:
Staff will attend the February 18, 2020 Work Session to review agreement documents for NorthPoint Development’s planned Wesel Boulevard project, and the funding plan for the required improvements to Wesel Boulevard.
Attending the meeting representing NorthPoint Development will be Brent Miles, Chief Marketing Officer & Founding Partner.

Project Status:
The development includes 2.2 million square feet of new warehouse construction (four buildings) and a $139 million investment with the possibility of 1500+ jobs. Buildings #1 & #3 are planned to start construction in March 2020 with completion December 2020. Buildings #2 & #4 are planned to start construction in March 2021 with completion December 2021.
Key steps in the project timeline are:
- Planning Commission Approved Concept Plan in August 2019
- Planning Commission Approved Site Plan for Buildings #1 and #3 at December 11, 2019 Meeting.
- Expected Settlement on Property Acquisition – March 2020

Required Roadway Improvement to Wesel Boulevard:
When the City constructed Wesel Boulevard in the late 1980’s, the road was constructed with eight-inches of asphalt directly on the clay soil. No stone drainage layer was provided. The pavement was designed for 8,000 vehicles per day and a maximum of 960 trucks per day. The road currently conveys around 13,000 vehicles per day and about 750 trucks daily. In the past few years, we repaired several major pavement failures (deep rutting and base failure) on Wesel Boulevard due to the pavement design and significant truck volumes.

The approved Traffic Impact Study for the development projects that at full build out in 2022, the average daily traffic for Wesel Blvd would be upwards of 17,000 (more than twice the original pavement design volume) and the number of trucks would be upwards of 1,500 trucks daily (almost 40% more than designed). The NorthPoint development truck traffic will cause widespread pavement failure on Wesel Boulevard. As a condition of approving their site plans, we recommend the attached Agreement be approved to stipulate that they contribute to the reconstruction of Wesel Boulevard.
Staff and the geotechnical consultants are recommending a complete reconstruction of the Wesel Boulevard pavement section from the City line to Burhans Boulevard. This involves
removing the existing asphalt, and constructing a new pavement section. The roadway improvement costs are still unknown but for the entire street could be as much as $6,000,000.

**Funding Plan Agreements:**
Staff are seeking approval of two agreements at the February 25, 2020 Regular Session:

1. Agreement between the City of Hagerstown and NorthPoint Development for the Reconstruction of Wesel Boulevard
2. Agreement between the City of Hagerstown and the Board of County Commissioners for Reconstruction of Wesel Boulevard

The Agreements represent a public-private partnership for funding the roadway infrastructure improvements necessary for this development project to move forward. The Agreements confirm funding up to $6,000,000 and define respective roles and contributions from the City, County and Developer. Staff and NorthPoint representatives will summarize and review the two Agreements, and will answer any questions.

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

<table>
<thead>
<tr>
<th>File Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>021820_MCC_Packet_Agreements_for_Roadway_Improvements.pdf</td>
<td>NorthPoint Wesel Roadway Improvements</td>
</tr>
</tbody>
</table>
TO: Scott Nicewarner, City Administrator

FROM: Jill Thompson, Director of Community & Economic Development
       Rodney Tissue, City Engineer

DATE: February 13, 2020

RE: NorthPoint Development: Wesel Boulevard Roadway Improvements

Staff will attend the February 18, 2020 Work Session to review agreement documents for NorthPoint Development’s planned Wesel Boulevard project, and the funding plan for the required improvements to Wesel Boulevard.

Attending the meeting representing NorthPoint Development will be Brent Miles, Chief Marketing Officer & Founding Partner.

Project Status:
The development includes 2.2 million square feet of new warehouse construction (four buildings) and a $139 million investment with the possibility of 1500+ jobs. Buildings #1 & #3 are planned to start construction in March 2020 with completion December 2020. Buildings #2 & #4 are planned to start construction in March 2021 with completion December 2021.

Key steps in the project timeline are:
- Planning Commission Approved Concept Plan in August 2019
- Planning Commission Approved Site Plan for Buildings #1 and #3 at December 11, 2019 Meeting.
- Expected Settlement on Property Acquisition – March 2020

Required Roadway Improvement to Wesel Boulevard:
When the City constructed Wesel Boulevard in the late 1980’s, the road was constructed with eight-inches of asphalt directly on the clay soil. No stone drainage layer was provided. The pavement was designed for 8,000 vehicles per day and a maximum of 960 trucks per day. The road currently conveys around 13,000 vehicles per day and about 750 trucks daily. In the past few years, we repaired several major pavement failures (deep rutting and base failure) on Wesel Boulevard due to the pavement design and significant truck volumes.

The approved Traffic Impact Study for the development projects that at full build out in 2022, the average daily traffic for Wesel Blvd would be upwards of 17,000 (more than twice the original pavement design volume) and the number of trucks would be upwards of 1,500 trucks daily (almost 40% more than designed). The NorthPoint development truck traffic will cause widespread pavement failure on Wesel Boulevard. As a condition of
approving their site plans, we recommend the attached Agreement be approved to stipulate that they contribute to the reconstruction of Wesel Boulevard.

Staff and the geotechnical consultants are recommending a complete reconstruction of the Wesel Boulevard pavement section from the City line to Burhans Boulevard. This involves removing the existing asphalt, and constructing a new pavement section. The roadway improvement costs are still unknown but for the entire street could be as much as $6,000,000.

**Funding Plan Agreements:**

Staff are seeking approval of two agreements at the February 25, 2020 Regular Session:

1. Agreement between the City of Hagerstown and NorthPoint Development for the Reconstruction of Wesel Boulevard
2. Agreement between the City of Hagerstown and the Board of County Commissioners for Reconstruction of Wesel Boulevard

The Agreements represent a public-private partnership for funding the roadway infrastructure improvements necessary for this development project to move forward. The Agreements confirm funding up to $6,000,000 and define respective roles and contributions from the City, County and Developer.

Staff and NorthPoint representatives will summarize and review the two Agreements, and will answer any questions.

**Attachments:**

- Motion, Resolution and Agreement: Agreement between the City of Hagerstown and NorthPoint Development for the Reconstruction of Wesel Boulevard
- Motion, Resolution and Agreement: Agreement between the City of Hagerstown and the Board of County Commissioners for Reconstruction of Wesel Boulevard

c:
Jason Morton
Kathy Maher
Steve Bockmiller
Michelle Hepburn
Nancy Hausrath
Jim Bender
Doug Reaser
REQUIRED MOTION

MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

DATE: February 25, 2020

TOPIC: Approval of a Resolution: Execution of an Agreement between the City of Hagerstown and NorthPoint Development LLC for the Reconstruction of Wesel Boulevard

Charter Amendment __
Code Amendment __
Ordinance __
Resolution X
Other __

MOTION: I hereby move for the Mayor and City Council to approve a resolution authorizing the execution of an Agreement between the City of Hagerstown and NorthPoint Development LLC for the Reconstruction of Wesel Boulevard. The approval provides that the City Attorney may make administrative and non-substantive edits to attached Agreement if necessary prior to execution. The approval also provides that the City Administrator may execute a written addendum to the Agreement at a later date that shall attach and incorporate Exhibit B as referenced in the Agreement.

DATE OF INTRODUCTION: 2/25/2020
DATE OF PASSAGE: 2/25/2020
EFFECTIVE DATE: 2/25/2020
CITY OF HAGERSTOWN, MARYLAND

A RESOLUTION TO APPROVE AN 
AN AGREEMENT 
WITH NORTHPOINT DEVELOPMENT, LLC 
FOR THE RECONSTRUCTION OF WESEL BOULEVARD

RECITALS

WHEREAS, the Mayor and Council of the City of Hagerstown, Maryland, is a municipal body corporate and politic (“City”), and NorthPoint Development, LLC, is a Missouri limited liability company, with an address of 4825 NW 41st St #500, Riverside, MO 64150 (hereinafter “NorthPoint”). The City and the NorthPoint are hereinafter referred to in this Resolution collectively as “the Parties;”

WHEREAS, NorthPoint is under contract to purchase parcels of land located on the north and south side of Wesel Boulevard in the City of Hagerstown and has undertaken to develop a site consisting of 2.2 million square feet of new warehouse construction to include four buildings and a $139 million investment with the possibility of 1500 jobs (hereinafter referred to as the “Development”);

WHEREAS, the parties recognize that the Development will benefit the City by the provision of new jobs and additional tax revenue, among other advantages;

WHEREAS, the City and NorthPoint acknowledge that the Development will generate significant additional traffic that will utilize Wesel Boulevard;

WHEREAS, the City and NorthPoint acknowledge certain deficiencies with Wesel Boulevard’s pavement such that in its current form the pavement cannot sustain the additional traffic to be generated by the Development and have made improving the road a condition of site plan approval for the first phase of the project;

WHEREAS, NorthPoint is required as part of the Development’s site plan approval to assist the City in addressing the inadequacies of transportation infrastructure in the region in order to mitigate the impact of traffic generated by the Development on the public transportation infrastructure. NorthPoint’s transportation infrastructure obligations are known as “the Improvements:”

WHEREAS, the Parties agree that the total cost of the Improvements will be approximately $6,000,000, of which NorthPoint shall pay $1,800,000 (regardless of the final cost
of the Improvements), and the City shall fund the balance of up to $4,200,000, as the local share from public sources, including the City and Washington County (the “Local Share”);

WHEREAS, in the event that the cost of the Improvements exceeds $6,000,000, the parties shall negotiate in good faith and enter into a written addendum to the attached Agreement, in order to address an equitable sharing of the additional expenses required for the Improvements;

WHEREAS, the attached Agreement also anticipates that the County shall contribute funds towards the Local Share;

WHEREAS, by way of a separate written agreement known as the Agreement between the City of Hagerstown and the Board of County Commissioners for the Reconstruction of Wesel Boulevard and to be executed contemporaneously with the attached Agreement, the City and the County have defined their respective obligations with respect to the County’s contribution towards the Local Share, as well as other matters relating thereto (“the City/County Agreement”);

WHEREAS, the Parties deem this Agreement to be mutually beneficial to contribute towards the transportation and infrastructure improvements to Wesel Boulevard in accordance with the terms set forth herein; and

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to enter into said Agreement.

NOW THERFORE, BE IT RESOLVED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth verbatim.

2. That the Mayor be and is hereby authorized to execute and deliver to the NorthPoint the Agreement between the City of Hagerstown and NorthPoint Development, LLC for the Reconstruction of Wesel Boulevard, a copy of which is attached hereto and incorporated herein by reference, and to execute any additional documentation required to effectuate the purposes of this Resolution.

3. That the City Attorney be and is hereby authorized to make administrative and non-substantive revisions to the Agreement, if warranted, prior to the execution of the Agreement.

4. That the City Administrator be and is hereby authorized to execute a written Addendum to the Agreement at a later date, which shall attach and incorporate Exhibit B, as is contemplated in the Agreement.
BE IT FURTHER RESOLVED THAT this resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

________________________________  ___________________________________
Donna K. Spickler,      Robert E. Bruchey, II, Mayor
City Clerk

Date of Introduction:  February 25, 2020
Date of Passage:  February 25, 2020
Effective Date:  February 25, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS

6
AGREEMENT FOR THE RECONSTRUCTION OF WESEL BOULEVARD

THIS AGREEMENT FOR THE RECONSTRUCTION OF WESEL BOULEVARD (hereinafter “Agreement”) is made this ____ day of _________ 2020, by and between NorthPoint Development, LLC, a Missouri limited liability company, with an address of 4825 NW 41st St #500, Riverside, MO 64150 (hereinafter “NorthPoint” or “Developer”) and the City of Hagerstown, a body corporate and politic and a political subdivision of the State of Maryland, with an address of 1 East Franklin Street, Hagerstown, Maryland 21740 (hereinafter the “City”).

WHEREAS, NorthPoint is a contract purchaser of parcels of land located on the north and south side of Wesel Boulevard in the City of Hagerstown and has undertaken to develop a site consisting of 2.2 million square feet of new warehouse construction to include four buildings and a $139 million investment with the possibility of 1500 jobs (hereinafter referred to as the “Development”), as more fully detailed on the drawing attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, NorthPoint has obtained from the City site plan approval for Buildings 1 & 3 and concept plan approval for Buildings 2 & 4;

WHEREAS, the City and NorthPoint acknowledge that the Development will generate significant additional traffic that will utilize Wesel Boulevard;

WHEREAS, the City and NorthPoint acknowledge certain deficiencies with Wesel Boulevard’s pavement such that in its current form the pavement cannot sustain the additional traffic to be generated by the Development and have made improving the road a condition of site plan approval for the first phase of the project;

WHEREAS, NorthPoint is required as part of the Development’s site plan approval to assist the City in addressing the inadequacies of transportation infrastructure in the region in order to mitigate the impact of traffic generated by the Development on the public transportation infrastructure; and

WHEREAS, NorthPoint and the City have agreed as specified herein to address and satisfy Developer’s transportation infrastructure obligations, as well as other matters relating thereto.

NOW, THEREFORE, in consideration of the covenants, conditions and agreements, hereinafter expressed, the parties agree as follow

1. Improvements. At its sole cost (except for NorthPoint’s Contribution as set forth in Section 2 below), the City will construct the Improvements to Wesel Boulevard (the “Improvements”) specified in the plans to be prepared by Frederick Seibert & Associates and approved by the City Engineer (“Plans”). The cost of preparing the Plans shall be paid by NorthPoint and shall be credited towards NorthPoint’s Contribution (hereinafter defined). The Plans shall be incorporated as Exhibit B to this Agreement. Due to time constraints, this Agreement shall be executed without Exhibit B attached. By written addendum to this Agreement, Exhibit B shall be attached and incorporated at a later date, to reflect the parties’ mutual agreement to said Exhibit. As required
by the Planning Commission, the Plans shall be bid-ready and include a sidewalk/trail on the
north side from Burhans Boulevard to Rhine Way (at the Lowes retail store). The total cost is
estimated, but not limited to, $6,000,000.00 (six million and 00/100 dollars).

2. **NorthPoint’s Contribution.** NorthPoint shall contribute $1,800,000 (one million, eight hundred
thousand and 00/100 dollars) toward the project and NorthPoint shall receive credit against this
amount for the cost of the Plans (“NorthPoint’s Contribution”). In the unlikely event that the cost
of the Improvements exceeds $6,000,000.00, another addendum to this Agreement shall be
required. Within ten (10) calendar days of the date of this Agreement, NorthPoint shall provide
to the City an irrevocable standby letter of credit, drawn on a Maryland bank branch and subject
to automatic renewal, in the amount equal to NorthPoint’s Contribution. Once the City has
incurred costs equal to or in excess of NorthPoint’s Contribution, it shall submit written notice to
NorthPoint, who shall within thirty (30) calendar days of the receipt thereof, submit payment to
the City in the amount of NorthPoint’s Contribution.

3. **Project Phases.** The parties may agree that the Improvements may be completed in two phases
with the first phase to encompass from the main entrance of Building 1 west to the City line,
which shall be referred to as “Phase I” and the remainder of the Improvements being referred to
as “Phase II.”

4. **Private Sanitary Sewer line:** In an effort to cost-effectively provide sewer service, NorthPoint will
install a private sewer line across Wesel Boulevard, in accordance with City standards. The
private sewer line shall not be considered part of the Improvements. The exact location of the
private sewer line shall be established in a separate drawing, which shall be another
addendum/deed of easement to this Agreement, which shall run with the land. NorthPoint (and
any subsequent landowner) shall be fully responsible for all costs associated with installation, and
any future maintenance and/or replacement of the sewer line. The City does not assume any
liability for the sewer line by granting an easement to NorthPoint and allowing the private sewer
line to be placed across Wesel Boulevard.

Should there ever be an issue with this section of the private sewer which would require
excavation to make repairs, NorthPoint (and any subsequent landowner) shall, at its sole
expense, obtain the proper permit from the City and make all the repairs to the line and
pavement to the City’s applicable standards.

5. **Traffic Signal.** Installation of a traffic signal shall not be considered part of the Improvements;
however, during the construction of the Improvements, the City will install adequate
underground conduit and handboxes, and install underground conduits to the future power
source for a future traffic signal at the main driveway entrance between Buildings #1 and
#2. As a condition of the Traffic Impact Study, NorthPoint will complete traffic signal warrant
analysis after the first two buildings are occupied and again after all the buildings are operational
and occupied. When the signal is warranted and approved by the City, NorthPoint will complete
the construction of the traffic signal at its sole expense. The signal shall be completed to City
Standards and the City will take over maintenance of the signal upon satisfactory completion.
6. **Indemnification and Insurance**: NorthPoint shall and hereby agrees to hold the City harmless and to indemnify the City for any loss, damages or claims arising from the work to be performed by NorthPoint or its agents in connection with this Agreement, except for any such loss caused by the negligence of the City, its agents, servants or employees. NorthPoint shall maintain commercially reasonable policies, naming the City as an additional insured party, in the types and amounts as follows: (1) comprehensive general liability insurance, in the minimum amount of $1,000,000 per occurrence and $2,000,000 in the aggregate; (2) umbrella excess liability insurance in the minimum amount of $2,000,000 per occurrence and $2,000,000 in the aggregate; (3) worker’s compensation (statutory minimum); (4) employers liability insurance covering the work to be performed hereunder ($500,000 per accident, $100,000 disease each employee, and $500,000 disease policy limit); and (5) business automobile liability insurance ($1,000,000 combined single limit for bodily injury or property damage), and shall deliver to the City verification of such insurances upon the execution of this Agreement, and at the request of the City thereafter.

7. **Completion Requirements**: The City shall complete the Improvements in a timely, workmanlike manner to current City standards and specifications. The Improvements are projected to be completed by December 31, 2020; however, to accommodate for any unforeseen delays, all Improvements must be completed on or before a completion deadline date of June 30, 2021. NorthPoint and the City will coordinate the schedules of the Improvements with the building construction. The City completing the Improvements will not be a condition of Use and Occupancy Permit.

8. **Non-completion/Clawback Provision (Phase I)**: If Building 1 is not constructed and 33% occupied on or before December 31, 2021, and if Building 3 is not constructed and 50% occupied on or before December 31, 2021, then NorthPoint shall repay the City the amount paid by the City for the Phase I Improvements, minus the amount of NorthPoint’s Contribution. Notwithstanding the foregoing, if the Phase I Improvements are not completed by December 31, 2021, the deadline for completion of buildings 1 & 3 shall be extended on a day-for-day basis for each day that elapses between December 31, 2021, and the date the City has completed the Phase I Improvements.

9. **Non-completion/Clawback Provision (Phase II)**: If Building 2 is not constructed and 33% occupied on or before December 31, 2024, and if Building 4 is not constructed and 50% occupied on or before December 31, 2024, then NorthPoint shall repay the City the amount equal to one-half of the amount determined by taking all costs paid by the City for the Improvements, not to exceed $6,000,000.00 (six million and 00/100 dollars), reduced by the amount of NorthPoint’s Contribution; one-half of such net amount shall not exceed $2,100,000 (two million one hundred thousand and 00/100 dollars). Notwithstanding the foregoing, if the Phase II Improvements are not completed by December 31, 2024, the deadline for completion of buildings 2 & 4 shall be extended on a day-for-day basis for each day that elapses between December 31, 2024, and the date the City has completed the Phase II Improvements.

10. **General Provisions**.
    
    (a) This Agreement shall not be assignable or transferable by NorthPoint to another individual, company, group, corporation, or other entity without the prior written
approval and consent of the City, which approval and consent shall not be unreasonably withheld. If this Agreement is assigned or transferred by NorthPoint, NorthPoint shall remain liable to the City for the satisfactory completion of all obligations hereunto.

(b) All notices and correspondence under or regarding this Agreement or any provisions hereof shall be in writing and shall be hand-delivered or sent postage prepaid by either (i) United States mail, certified, return receipt requested, or (ii) for delivery the next business day with a nationally recognized express courier to NorthPoint at:

NorthPoint Development, LLC  
4825 NW 41st St #500,  
Riverside, MO 64150  
Attn: Nathaniel Hagedorn, Manager

And to the City at:

City of Hagerstown  
1 E. Franklin Street  
Hagerstown, MD  21740  
Attn: Rodney A. Tissue, City Engineer

And a courtesy copy to:

Jason Morton, City Attorney  
Salvatore & Morton, LLC  
82 West Washington Street, Suite 100  
Hagerstown, Maryland 21740

11. Choice of Law. This Agreement was made and entered into in Maryland and is to be governed by and construed under the laws of the State of Maryland, without regard to its conflicts of law principles, and with the parties consenting to jurisdiction and venue being in the Circuit Court for Washington County, Maryland.

12. Recitals. The Recitals are hereby incorporated into this Agreement as substantive provisions.

13. Entire Agreement; Modification. This Agreement, and the Exhibits incorporated herein by reference, constitute the entire agreement between the parties. There are no other promises or other agreements, oral or written, express or implied between the parties other than as set forth in this Agreement. No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing signed by authorized representatives of NorthPoint and the City. NorthPoint acknowledges that such authorization for the City requires the approval of the Mayor and Council. Any further expansion or modification to the Development shall not be governed by this Agreement but shall be governed by all applicable rules, regulations, policies, and laws in effect at the time of said expansion or modification.
14. **Severability.** If any provisions of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.

15. **Waiver.** Neither party’s waiver of the other’s breach of any term, covenant or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition in this Agreement.

16. **Survival.** The covenants contained herein or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable notwithstanding the expiration or other termination of this Agreement.

17. **Counterparts/Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or photocopy of a signature of a party shall constitute an original signature, fully binding the party for all purposes.

18. **Successors Bound.** This Agreement shall be binding on and shall insure to the benefit of the successors, assigns, heirs and legal representatives of the parties hereto.

IN WITNESS WHEREOF, the parties have executed this Agreement under their respective seals as of the day and year first above written.

---

**ATTEST:**

NORTHPOINT DEVELOPMENT, LLC

_________________________________

BY ___________________________(Seal)

Nathaniel Hagedorn, Manager

---

**ATTEST:**

CITY OF HAGERSTOWN, MARYLAND

_________________________________

BY ___________________________(Seal)

Donna Spickler, City Clerk

Mayor Robert E. Bruchey
STATE OF MARYLAND, COUNTY OF WASHINGTON, to-wit:

I HEREBY CERTIFY that on this ___ day of ______________, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Mayor Robert E. Bruchey, City of Hagerstown, Maryland, who acknowledged that the foregoing is the act and deed of the City of Hagerstown of Washington County, Maryland, and that he is authorized by it to make this acknowledgment.

_____________________________
Notary Public

My Commission Expires: ________________________

STATE OF ___________, COUNTY OF ___________________, to-wit:

I HEREBY CERTIFY that on this ___ day of _________, 2020, before me, the subscriber, a Notary Public in and for the State and County aforesaid, personally appeared Nathaniel Hagedorn who acknowledged himself to be the Manager of NorthPoint Development, LLC. and being duly authorized so to do, did further acknowledge that he executed the foregoing instrument for the purpose therein contained.

_____________________________
Notary Public

My Commission Expires: ________________________

Exhibits: A Overall Development Drawing
B Improvements to Wesel Boulevard

2/13/2020
Exhibit A
At a Glance

**74.6 MM SF**

INDUSTRIAL SPACE **DEVELOPED & MANAGED** SINCE 2012

**$6.5+ BILLION**

TOTAL CAPITAL **RAISED** SINCE 2012

**13.3 MM SF**

INDUSTRIAL SPACE CURRENTLY **UNDER CONSTRUCTION**

**14.2 MM SF**

INDUSTRIAL SPACE **LEASED** IN 2019

**164+ INDUSTRIAL CLIENTS**

References available from our clients; a few are represented below

- chewy.com
- adidas
- **The Home Depot**
- STAPLES
- patagonia
- Amazon
- Spectrum Brands
- jet
- ups
- True Value

- GM
- BNSF
- Ford
- OP
- Boulevard
- Kubota
- Grainger
- Marlen
- Hostess

- Caterpillar
- XPO Logistics
- Saddle Creek Logistics Services
- Gallagher
- Mosaic Life Care
- Flexsteel
- Smithfield Farmland
- Continental
ECONOMIC IMPACT

<table>
<thead>
<tr>
<th>Building</th>
<th>SF</th>
<th>JOBS*</th>
<th>CAPITAL INVESTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building 1</td>
<td>± 1,004,194 SF</td>
<td>± 672</td>
<td>$63,050,000</td>
</tr>
<tr>
<td>Building 2</td>
<td>± 794,872 SF</td>
<td>± 532</td>
<td>$49,905,000</td>
</tr>
<tr>
<td>Building 3</td>
<td>± 177,673 SF</td>
<td>± 119</td>
<td>$11,150,000</td>
</tr>
<tr>
<td>Building 4</td>
<td>± 241,800 SF</td>
<td>± 162</td>
<td>$15,180,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td>± 2,218,539 SF</td>
<td>± 1,485</td>
<td><strong>$139,285,000</strong></td>
</tr>
</tbody>
</table>

*Jobs created based on 0.67 jobs per 1,000 SF bldg space

ANTICIPATED PROJECT BUDGET

Current Projected Budget $5,899,290
NorthPoint Development Contribution $1,800,000

*Jobs created based on 0.67 jobs per 1,000 SF bldg space
REQUIRED MOTION

MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

DATE: February 25, 2020

TOPIC: Approval of a Resolution: Execution of an Agreement between the City of Hagerstown and the Board of County Commissioners for the Reconstruction of Wesel Boulevard

Charter Amendment __
Code Amendment __
Ordinance __
Resolution X
Other __

MOTION: I hereby move for the Mayor and City Council to approve a resolution authorizing the execution of an Agreement between the City of Hagerstown and the Board of County Commissioners for the Reconstruction of Wesel Boulevard. The approval provides that the City Attorney may make administrative and non-substantive edits to attached Agreement if necessary prior to execution.

DATE OF INTRODUCTION: 2/25/2020
DATE OF PASSAGE: 2/25/2020
EFFECTIVE DATE: 2/25/2020
CITY OF HAGERSTOWN, MARYLAND

A RESOLUTION TO APPROVE AN
AN AGREEMENT
BETWEEN THE CITY OF HAGERSTOWN AND THE
BOARD OF COUNTY COMMISSIONERS
FOR THE RECONSTRUCTION OF WESEL BOULEVARD

RECITALS

WHEREAS, the Mayor and Council of the City of Hagerstown, Maryland, is a municipal body corporate and politic (“City”), and the Board of County Commissioners of Washington County, Maryland, is a body corporate and politic and a political subdivision of the State of Maryland (“County”). The City and the County are hereinafter referred to in this Resolution collectively as “the Parties;”

WHEREAS, NorthPoint Development, LLC, a Missouri limited liability company with its principal place of business in Riverside, Missouri (“NorthPoint”) is under contract to purchase parcels of land located on the north and south side of Wesel Boulevard in the City of Hagerstown and has undertaken to develop a site consisting of 2.2 million square feet of new warehouse construction to include four buildings and a $139 million investment with the possibility of 1500 jobs (hereinafter referred to as the “Development”);

WHEREAS, the parties recognize that the Development will benefit each of them by the provision of new jobs and additional tax revenue, among other advantages;

WHEREAS, the City and NorthPoint acknowledge that the Development will generate significant additional traffic that will utilize Wesel Boulevard;

WHEREAS, the City and NorthPoint acknowledge certain deficiencies with Wesel Boulevard’s pavement such that in its current form the pavement cannot sustain the additional traffic to be generated by the Development and have made improving the road a condition of site plan approval for the first phase of the project;

WHEREAS, NorthPoint is required as part of the Development’s site plan approval to assist the City in addressing the inadequacies of transportation infrastructure in the region in order to mitigate the impact of traffic generated by the Development on the public transportation infrastructure. NorthPoint’s transportation infrastructure obligations are known as “the Improvements;”
WHEREAS, by way of a separate written agreement known as the Agreement for the Reconstruction of Wesel Boulevard and to be executed contemporaneously with the attached Agreement, NorthPoint and the City have agreed to address the funding of the Improvements, as well as other matters relating thereto (“the City/NorthPoint Agreement”);

WHEREAS, the City/NorthPoint Agreement provides that the total cost of the transportation and infrastructure improvements will be approximately $6,000,000, of which NorthPoint shall pay $1,800,000 (regardless of the final cost of the Improvements), and the City will fund up to $4,200,000, as the local share from public sources, including the City and Washington County (the “Local Share”),

WHEREAS, the City/NorthPoint Agreement anticipates that the County shall contribute funds toward the Local Share;

WHEREAS, the parties are entering into this Agreement in order to define their respective obligations with respect to the County’s contribution towards the Local Share;

WHEREAS, in the event that the cost of the Improvements exceeds $6,000,000, the City and County shall negotiate in good faith and enter into a written addendum to this Agreement, in order to address an equitable contribution by each to the Local Share;

WHEREAS, the Parties deem this Agreement to be mutually beneficial to contribute towards the transportation and infrastructure improvements to Wesel Boulevard in accordance with the terms set forth herein; and

WHEREAS the Mayor and Council believe it to be in the best interest of the citizens of the City of Hagerstown to enter into said Agreement.

NOW THEREFORE, BE IT RESOLVED by the Mayor and Council of the City of Hagerstown, Maryland, as its duly constituted legislative body, as follows:

1. That the foregoing Recitals be and are hereby incorporated herein as if set forth verbatim.

2. That the Mayor be and is hereby authorized to execute and deliver to the County the Agreement between the City of Hagerstown and the Board of County Commissioners for the Reconstruction of Wesel Boulevard, a copy of which is attached hereto and incorporated herein by reference, and to execute any additional documentation required to effectuate the purposes of this Resolution.

3. That the City Attorney be and is hereby authorized to make administrative and non-substantive revisions to the Agreement, if warranted, prior to the execution of the Agreement.
BE IT FURTHER RESOLVED THAT this resolution shall become effective immediately upon its approval.

WITNESS AND ATTEST
AS TO CORPORATE SEAL

________________________________  ___________________________________
Donna K. Spickler,      Robert E. Bruchey, II, Mayor
City Clerk

MAYOR AND COUNCIL OF THE
CITY OF HAGERSTOWN, MARYLAND

Date of Introduction: February 25, 2020
Date of Passage: February 25, 2020
Effective Date: February 25, 2020

PREPARED BY:
SALVATORE & MORTON, LLC
CITY ATTORNEYS
Agreement between the City of Hagerstown and the Board of County Commissioners for the Reconstruction of Wesel Boulevard

This Agreement between the City of Hagerstown and the Board of County Commissioners for the Reconstruction of Wesel Boulevard ("Agreement") is made this _____ day of ____________, 2020, by and between the Mayor and Council of the City of Hagerstown, Maryland, a body corporate and politic ("City"), and the Board of County Commissioners of Washington County, Maryland, a body corporate and politic and a political subdivision of the State of Maryland ("County"). The City and the County may sometimes be referred to in this Agreement individually as a Party or and collectively as the Parties.

RECITALS

WHEREAS, NorthPoint Development, LLC, a Missouri limited liability company with its principal place of business in Riverside, Missouri ("NorthPoint") is under contract to purchase parcels of land located on the north and south side of Wesel Boulevard in the City of Hagerstown and has undertaken to develop a site consisting of 2.2 million square feet of new warehouse construction to include four buildings and a $139 million investment with the possibility of 1500 jobs (hereinafter referred to as the "Development"), as more fully detailed on the drawing attached hereto as Exhibit A and incorporated herein by reference;

WHEREAS, the parties recognize that the Development will benefit each of them by the provision of new jobs and additional tax revenue, among other advantages;

WHEREAS, NorthPoint has obtained from the City site plan approval for Buildings 1 & 3 and concept plan approval for Buildings 2 & 4;

WHEREAS, the City and NorthPoint acknowledge that the Development will generate significant additional traffic that will utilize Wesel Boulevard;

WHEREAS, the City and NorthPoint acknowledge certain deficiencies with Wesel Boulevard’s pavement such that in its current form the pavement cannot sustain the additional traffic to be generated by the Development and have made improving the road a condition of site plan approval for the first phase of the project;

WHEREAS, NorthPoint is required as part of the Development’s site plan approval to address the inadequacies of transportation infrastructure in the region in
order to mitigate the impact of traffic generated by the Development on the public transportation infrastructure;

WHEREAS, by way of a separate written agreement known as the Agreement for the Reconstruction of Wesel Boulevard and executed on February ___, 2020, NorthPoint and the City have agreed to address and satisfy NorthPoint’s transportation infrastructure obligations ("the Improvements"), as well as other matters relating thereto ("the City/NorthPoint Agreement");

WHEREAS, the City/NorthPoint Agreement provides that the City shall project manage the construction of the Improvements;

WHEREAS, the City/NorthPoint Agreement provides that the total cost of the transportation and infrastructure improvements will be approximately $6,000,000, of which NorthPoint shall pay $1,800,000 (regardless of the final cost of the Improvements), and the City will fund up to $4,200,000, as the local share from public sources, including the City and Washington County (the "Local Share"),

WHEREAS, the City/NorthPoint Agreement anticipates that the County shall contribute funds toward the Local Share;

WHEREAS, the parties are entering into this Agreement in order to define their respective obligations with respect to the County’s contribution towards the Local Share;

WHEREAS, the Improvements are consistent with the goals of the County’s Making Connection Campaign;

WHEREAS, in the event that the cost of the Improvements exceeds $6,000,000, the City and County shall negotiate in good faith and enter into a written addendum to this Agreement, in order to address an equitable contribution by each to the Local Share; and

WHEREAS, the Parties deem this Agreement to be mutually beneficial to contribute towards infrastructure improvements to Wesel Boulevard in order to spur significant economic development and private investment in accordance with the terms set forth herein.

NOW, THEREFORE, in consideration of the mutual covenants and promises contained herein, the Parties agree as follows:
1. **Recitals.** The aforesaid recitals be and are hereby incorporated herein by reference.

2. The City shall pay 35.7% of the Local Share, which is estimated by the Parties to be up to $1,500,000.

3. The County shall pay 64.3% of the Local Share, which is estimated by the Parties to be up to $2,700,000. If the County seeks outside funding sources, the County will review Agreements for said funding with the City prior to execution for acceptance of funding conditions that could affect the costs and/or timeline of the Improvements.

4. The respective contributions of each party shall be adjusted proportionally in the event that the total Local Share is less than $4.2 million due to cost savings.

   By way of examples:

   | Total cost of Improvements | $6,000,000 | $5,300,000 |
   | NorthPoint                | -$1,800,000| -$1,800,000|
   | **Local Share**           | **$4,200,000**| **$3,500,000**|
   | City (35.7%)              | $1,500,000 | $1,249,500 |
   | County (64.3%)            | $2,700,000 | $2,250,500 |

5. **Timing of Payments.** Within thirty (30) days of each of the City’s payments to its contractor(s) for the Improvements, the County shall make its proportionate contribution to the Local Share to the City, in accordance with the formula set forth in the previous Paragraph. The City/NorthPoint Agreement contains a Non-completion/Clawback Provision. In the event that NorthPoint is required to repay the City as a result of said provision, the City will repay to the County the proportional contribution of the Local Share that the County paid to the City. No payments shall be due from the County until after NorthPoint has paid $1,800,000 toward the Improvements.

6. **Entire Agreement; Modification.** This Agreement, and the Exhibit incorporated herein by reference, constitutes the entire Agreement between the parties. There are no other promises or other agreements, oral or written, express or implied between the parties other than as set forth in this Agreement. No change or modification of, or waiver under, this Agreement shall be valid unless it is in writing signed by authorized representatives of the Parties.

7. **Severability.** If any provisions of this Agreement shall be determined to be invalid or unenforceable, the remaining provisions of this Agreement shall
not be affected thereby, and every provision of this Agreement shall remain in full force and effect and enforceable to the fullest extent permitted by law.

8. **Waiver.** Neither party’s waiver of the other’s breach of any term, covenant or condition contained in this Agreement shall be deemed to be a waiver of any subsequent breach of the same or any other term, covenant or condition in this Agreement.

9. **Survival.** The covenants contained herein or liabilities accrued under this Agreement which, by their terms, require their performance after the expiration or termination of this Agreement shall be enforceable notwithstanding the expiration or other termination of this Agreement.

10. **Counterparts/Execution.** This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument. A facsimile or photocopy of a signature of a party shall constitute an original signature, fully binding the party for all purposes.

11. **Successors Bound.** This Agreement shall be binding on and shall insure to the benefit of the successors, assigns, heirs and legal representatives of the parties hereto.

12. **Notices.** All notices and correspondence under or regarding this Agreement or any provisions hereof shall be in writing and shall be hand-delivered or sent postage prepaid by either (i) United States mail, certified, return receipt requested, or (ii) for delivery the next business day with a nationally recognized express courier to the other Party at:

   **If to the City:**
   City Clerk
   1 West Franklin Street
   Hagerstown, MD 21740

   With a courtesy copy to:
   Jason Morton
   Salvatore & Morton, LLC
   82 West Washington Street, Suite 100
   Hagerstown, Maryland 21740

   **If to the County:**
   County Clerk
IN WITNESS WHEREOF, the Parties have caused this Agreement to be duly executed and delivered.

ATTEST:                  ATTEST:

Donna K. Spickler, Clerk   By:

Jason Morton, City Attorney

By:__________________________

Robert E. Bruchey, II, Mayor

Approved as to form and legal sufficiency:

By:__________________________

Jeffrey A. Cline, President

Kirk C. Downey, County Attorney

vs. 02.13.20
At a Glance

74.6 MM SF
INDUSTRIAL SPACE DEVELOPED & MANAGED SINCE 2012

$6.5+ BILLION
TOTAL CAPITAL RAISED SINCE 2012

13.3 MM SF
INDUSTRIAL SPACE CURRENTLY UNDER CONSTRUCTION

14.2 MM SF
INDUSTRIAL SPACE LEASED IN 2019

164+ INDUSTRIAL CLIENTS
References available from our clients; a few are represented below

chewy.com  adidas  BNSF Railway
THE HOME DEPOT  STAPLES  patagonia  amazon  Spectrum Brands  jet  ups  True Value
GM  Ford  OP
Boulevard  Kubota  GRAINGER
Marlen  Hostess
PFG  XPO Logistics  Saddle Creek
Lowe's  Gallagher  Mosaic Life Care
unfi  Commonwealth Inc  Seamless Distribution Solutions
Magna  veloci
Comprehensive Logistics
Caterpillar  Smithfield Farmland  Continental
### ECONOMIC IMPACT

<table>
<thead>
<tr>
<th>Building</th>
<th>SF</th>
<th>JOBS</th>
<th>CAPITAL INVESTMENT</th>
</tr>
</thead>
<tbody>
<tr>
<td>Building 1</td>
<td>1,004,194 SF</td>
<td>672</td>
<td>$63,050,000</td>
</tr>
<tr>
<td>Building 2</td>
<td>794,872 SF</td>
<td>532</td>
<td>$49,905,000</td>
</tr>
<tr>
<td>Building 3</td>
<td>177,673 SF</td>
<td>119</td>
<td>$11,150,000</td>
</tr>
<tr>
<td>Building 4</td>
<td>241,800 SF</td>
<td>162</td>
<td>$15,180,000</td>
</tr>
<tr>
<td><strong>TOTAL</strong></td>
<td><strong>2,218,539 SF</strong></td>
<td><strong>1,485</strong></td>
<td><strong>$139,285,000</strong></td>
</tr>
</tbody>
</table>

* Jobs created based on 0.67 jobs per 1,000 SF bldg space

### ANTICIPATED PROJECT BUDGET

- **Current Projected Budget**: $5,899,290
- **NorthPoint Development Contribution**: $1,800,000
REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

Topic:
Stormwater Program – Implementation Phase – Rodney Tissue, City Engineer

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:
File Name          Description
stormwater_program.2020.pdf       Stormwater Program - Implementation Phase
February 13, 2020

TO: Scott Nicewarner, City Administrator

FROM: Rodney Tissue, City Engineer

RE: Stormwater Program – Implementation Phase

**Background:**
At the direction of the Council last December, staff has continued to work toward the goal of creating a Stormwater Utility Fund that would become effective later this year. A workgroup of Engineering, Utility Billing, Information Technology, and Finance staff have been working with our consultant (WOOD) to prepare a database of property accounts that will be used to bill the stormwater user fee. The City Attorney has been drafting the necessary ordinances to implement the fee, and we are developing a public information campaign to educate residents on the program before it becomes effective. The purpose of this memo is the present the draft ordinance that will create the Stormwater Utility Fund, review the proposed schedule for implementation and the first round of billing, and to discuss other programs and personnel assignments that will be affected.

**Mayor and Council Action Requested:**
Review the draft versions of the attached ordinances, and give direction to staff on the implementation/billing schedule. Staff also seeks direction from the Council on transitioning the curb and sidewalk repair program from being the private property owner’s responsibility to the City’s responsibility. The ordinances would be introduced at the Council’s regular session meeting in March. Staff will be present at the work session to discuss.

**Discussion:**

**Ordinance**
Through previous discussions with the Council, staff has worked to create a Stormwater Utility Enterprise Fund that would operate the stormwater program and collect the stormwater utility fee. An ordinance is required to enable the City to collect this fee; a draft version of the ordinance is attached for the Council’s review. In particular, under the ordinance:

- This shall be a dedicated enterprise fund whose purpose is to cover all costs required to operate the City’s stormwater program, including maintenance of the existing system, street sweeping, and construction of retrofit or new stormwater facilities required to meet our NPDES permit requirements.
- The rate of the fee will be set by the Council as part of their adoption of the annual City budget. Based upon the current financial model, we anticipate that the annual fee per billing unit (1,000 square feet of impervious area) will be $32.
- The City will prepare and approve a credit policy that will allow certain properties to petition for a reduction in their fee based upon criteria established in the policy.
- The fee will appear as a separate line item charge on the property owner’s water and wastewater bill.
• Property owners will be given an opportunity to contest the calculation of their stormwater fee and have their bill adjusted if it is determined that the fee was incorrectly calculated.

Staff requests direction from the Council on the timing of the initial billing of the stormwater utility fee. The ordinance, as drafted, indicates that this billing will begin with the opening of the new fiscal year (July 1, 2020); water and wastewater bills sent out after this date will include the stormwater utility fee. The majority of water and wastewater bills are sent on a quarterly basis; however, because water meter readings are performed on a rolling basis through a series of zones throughout the City, some property owners will not receive a water and wastewater bill until October 2020. If the Council has a particular date when they would like the first stormwater utility fees to appear on water and wastewater bills, staff will work to coordinate that date with the utility billing staff.

Curb and Sidewalk program
Under the current City Code, private property owners are responsible for the maintenance and repair of the curbs and sidewalks along their property’s frontage. Based upon recommendations from the Stormwater Advisory Committee, the financial model for the stormwater utility fee was based upon the assumption that the City would take over responsibility for the curbs, and would use a portion of the collected fees to perform maintenance and repair. Under previous discussions with the Council, direction was also given for the City to take over the maintenance and repair of public sidewalks; the costs for this work would be covered by the General Fund, using savings realized by having costs for stormwater program activities covered by the stormwater utility fee. In order to accomplish these changes, Chapter 216 of the City Code (Streets and Sidewalks) will need to be revised to reflect these changes in responsibilities; the City Attorney is working on making the necessary revisions.

In the spring of 2019, the City sent out approximately 120 Curb & Sidewalk repair notices to property owners on streets that were to be overlaid in 2020. These notices had a completion deadline of June 1, 2020. A handful of these repairs were completed by property owners, but most of the work has not been completed. Staff recommends that the outstanding notices be rescinded, and that the work required by these notices be completed by the City after the Stormwater Utility Fund becomes active.

Public Education
In 2019, The City held two public meetings to present the proposed stormwater program and utility fee to property owners and the general public; staff also gave presentations to the Washington County Land Use Council and the Hagerstown Rotary Club, and prepared a video (available on the City’s website) describing the stormwater program. However, staff feels that additional efforts should be made to alert the public to the upcoming stormwater fee prior to it becoming effective. Staff plans to prepare an insert for the water and wastewater bill that will provide information on the proposed program, the stormwater fee, and how residents can apply for credits or contest their bill; this insert will go out with the cycle of bills mailed in early April. Staff, along with representatives from WOOD, plan to meet with property owners who are projected to receive the largest stormwater utility bills, and to discuss ways that they can earn credits that would reduce their bill. Staff is also developing a dedicated webpage with information on the stormwater program.

Personnel changes
In order to manage the expanded stormwater program, the addition of staff (or the hiring of contract consultants) and changes to existing job description will be required. The financial model for the stormwater utility fee included a new position whose role would be to manage the multiple capital improvement projects (e.g. tree planting, construction of retrofit facilities, etc.) required to meet our NPDES permit goals. We anticipate that this new full-time employee would be hired in FY 21 after the stormwater utility fee begins to generate revenue.
The “Construction Inspector I-III” position formerly held by Roger Reed is vacant. We plan to upgrade this position to a “Senior Construction Inspector I-III”, with increased responsibilities that are focused on tree planting, inspection of stormwater-related capital improvement projects, and meeting with property owners to discuss disputes over their stormwater utility bills. The other “Construction Inspector I-III” position currently held by Austin Allman will remain in place, with some slight modifications to the education and license/certification requirements.

Planned projects
To meet our NPDES permit requirements, the City will need to immediately begin work on capital improvement projects. Staff are identifying potential projects for future consideration; however, there are several projects that we anticipate will begin within the next two years (and that can occur due to the new funding source):

- Pangborn Park Lake and Stream Restoration
- Tree Planting at R.C. Willson Water Treatment Plant
- Stormwater facility at the BMX track at Fairgrounds Park
- Hamilton Run stream restoration along Northern Avenue
- Hamilton Run relocation and restoration at the Greens at Hagerstown golf course

attachments: draft Ordinance to modify Chapter 213 of the City Code

cc: Rodney Tissue
    Michelle Hepburn
ARTICLE XIII. - \\

STORMWATER UTILITY FEE

Sec. 213-30. - Authority

The City is authorized by section 4-204(d) of the Environment Article of the Annotated Code of Maryland, as amended, to adopt a system of charges to fund the implementation of a stormwater management program.

Sec. 213-31. - Purpose and organization.

The City Council finds that an adequate, sustainable source of revenue for the implementation of a stormwater program is necessary to protect the general public health, safety, and welfare. Further, the City Council finds that higher amounts of impervious area contribute greater amounts of stormwater and pollutants to the stormwater management system. Therefore, the City Council determines that it is in the best interest of the public to enact a Stormwater Utility Fee that allocates stormwater program costs to all owners of improved property based on impervious area.

The stormwater program shall be operated under the direction of the City Engineer. The City Engineer shall develop a Stormwater Utility Fee policy and procedure manual for adoption by City Council resolution. The manual shall contain the necessary policies and procedures to carry out this article as well as any credit policy pursuant to Section 213-35 and any hardship policy pursuant to Section 213-36.

Sec. 213-32. - Stormwater Utility Enterprise Fund.

(a) The City's Stormwater Utility Enterprise Fund is a dedicated enterprise fund.

(b) The following revenue will be deposited into the Stormwater Utility Enterprise Fund:

(1) All fees established by the City Council to cover the cost of administering the provisions of this Chapter, including but not limited to application and permit fees and fines.

(2) All revenue collected from the imposition of the Stormwater Utility Fee pursuant to Section 213-33 of the Code.

(3) All interest from deposits in the Stormwater Utility Enterprise Fund.

(4) Any other revenue (including grant funds) as may be determined by the City Council or the City Engineer, including but not limited to grants and special appropriations.

(c) The Stormwater Utility Enterprise Fund is hereby established as a dedicated, separate fund for the sole purpose of recovering stormwater costs, including the following:

(1) The study, design, purchase, construction, expansion, retrofit, repair, maintenance, landscaping, operation and/or inspection of stormwater management practices, stormwater management plans, storm drainage and other watershed improvements;

(2) Street sweeping;

(3) Water quality and pollution prevention education and outreach activities, including the City's rainscapes program.

(4) Water quality monitoring, inspection and enforcement activities, including illicit discharge and illicit connection investigations.
(5) Program administration and implementation, including reasonable operating and capital reserves to meet unanticipated or emergency requirements for stormwater management, storm drainage and water quality.

(6) Land acquisition (including but not limited to easements and rights-of-way), and construction of stormwater management systems and structures;

(7) Retrofitting developed areas for pollution control;

(8) Water quality monitoring and water quality programs;

(9) Operation and maintenance of facilities;

(10) Program development of these activities; and,

(11) Any other activities consistent with 4-204(d)(1) of the Environment Article of the Annotated Code of Maryland, as amended.

Sec. 213-33. - Stormwater Utility Fee.

(a) A Stormwater Utility Fee is hereby imposed on all improved property in the City that exists on January 1 of each year, including government-owned real property and regardless of whether the property is subject to taxation under Title 7, Tax Property Article, Annotated Code of Maryland, as amended.

(b) All revenue from the Stormwater Utility Fee and income derived from the fee shall be deposited into the Stormwater Utility Enterprise Fund described in Section 213-32.

(c) The Stormwater Utility Fee billing unit is 1000 square feet of impervious area. The rate per Stormwater Utility Fee billing unit to be used for calculating the Stormwater Utility Fee shall be set by the City Council with the adoption of the budget.

(d) Except as otherwise provided in this article, the impervious area for a property will be determined by the city using aerial photography, as-built drawings, final approved site plans, field surveys, or other appropriate engineering and mapping analysis tools as determined by the City Administrator.

(e) Except as otherwise provided in this article, the Stormwater Utility Fee for a property will be calculated in the following manner:

   (1) Determine the impervious area of the property in square feet;

   (2) Divide the impervious area of the property by the Stormwater Utility Fee billing unit;

   (3) Round the resulting calculation to the nearest whole number to determine the number of Stormwater Utility Fee billing units;

   (4) Multiply the number of Stormwater Utility Fee billing units by the rate established in subsection (c) to obtain the Stormwater Utility Fee for the property.

(f) The Stormwater Utility Fee for any common area owned by a community association will be charged as follows:

   (1) The Stormwater Utility Fee for the common area will be calculated based on the impervious area of the common area in the manner described in subsection (e).

   (2) The entire Stormwater Utility Fee for the impervious area of the common area will be divided equally among the property tax accounts for all ACCOUNTS [word choice?] assigned to the homeowners by the State Department of Assessments and Taxation.

   (3) The City Administrator, at his sole discretion, may utilize alternative methodologies for billing Stormwater Utility Fees associated with community associations.

(g) The Stormwater Utility Fee for a condominium will be charged as follows:
(1) The Stormwater Utility Fee for the impervious area of condominium will be calculated in accordance with the methodology in subsection (e).

(2) The entire Stormwater Utility Fee for the condominium will be divided equally among the property tax accounts for all UNITS [OR ACCOUNTS?] assigned to the condominium by the State Department of Assessments and Taxation.

(3) The City Administrator, at his sole discretion, may utilize alternative methodologies for billing stormwater program fees associated with condominiums.

(h) Unimproved lot fee. No Stormwater Utility Fee will be charged to an unimproved lot.

(i) Roads and rights of way. No Stormwater Utility Fee will be charged to public roads or other property within a public right-of-way. A utility fee will be charged to owners of private alleyways, streets and roads. No fee will be charged for a private street or road where the City Engineer determines that a private street or road functions primarily as a public road or street and meets Code standards.

(j) Mainline tracks. No Stormwater Utility Fee will be charged to mainline tracks devoted to movement of subway, rapid transit and railroad traffic. The Stormwater utility Fee will be charged for all other impervious areas associated with rail traffic, including parking lots, maintenance yards, buildings, bridges and storage areas.

Sec. 213-34. - Credits.

The City Council may adopt by resolution as part of the Stormwater Utility Fee policy and procedure manual a system of credits against the Stormwater Utility Fee for a property owner who operates and maintains a stormwater best management practice. No credit will be provided if the City Engineer determines that the stormwater best management practice is not functioning as designed and the property owner fails to take corrective action within the time period provided by the City Engineer. Nothing shall prevent the City Council from modifying or eliminating the adopted system of credits. Any such modification or elimination may apply to holders of existing credits at the discretion of the City Council.

Sec. 213-35. - Method of collection, interest, and penalties.

(a) The City will prepare and forward to the Director of Finance the necessary data for collecting the Stormwater Utility Fee from owners of City property. The data must include the identification of each parcel to be charged and the amount of the fee. The fee will be included as a separate line item on the water and wastewater bill for each property subject to the fee. The bill will include information on whom to contact for questions and Petitions for Adjustment.

(b) The Stormwater Utility Fee will be considered delinquent if not paid on or before the due date shown on the bill. If the owner has filed a Petition for Adjustment in accordance with Section 213-36, the Stormwater Utility Fee must be paid by the date shown on the bill and will be reimbursed to the owner if the Petition is successful.

(c) A late charge on an overdue payment accrues according to the same schedule and at the same rate charged for delinquent water and wastewater bill until the owner has remitted the outstanding payment and interest. Unpaid charges are subject to all penalties and remedies that apply to unpaid water and wastewater bills, including but not limited to discontinuance and a reconnection charge.
Sec. 213-36. - Petitions for adjustment.

(a) Any property owner subject to the Stormwater Utility Fee may petition for an adjustment to the fee by submitting a request in writing to the City within thirty (30) days after the date the bill is issued to the property owner. Grounds for adjustment of the Stormwater Utility Fee are limited to the following:

1. An error was made regarding the square footage of the impervious area attributed to the property;
2. A mathematical error in calculating the Stormwater Utility Fee;
3. An error in the identification of the property owner billed; or,
4. An approved credit was incorrectly applied.

(b) The property owner shall complete a petition for adjustment form in a format approved by the City Engineer. In the event the City Engineer finds that the form is incomplete, the City Engineer shall offer the property owner fifteen (15) additional days from his decision to supply the missing or incomplete information. If the missing or incomplete information is not provided to the City Engineer within the fifteen (15) additional day period, the Petition for Adjustment shall be considered withdrawn.

(c) If the property owner alleges an error in the amount of the impervious area, a plan view of the property's impervious area will be provided by the City with labeled dimensions of all impervious area within the property boundaries. If, based on the plan view or other materials provided by the property owner, the City Engineer finds that the impervious area calculation is in error, the City will recalculate the impervious area of the property.

(d) A decision by the City Engineer on a Petition for Adjustment shall be the final decision from which an aggrieved party may appeal to the City Board of Code Appeals, as set forth in Article 10, §10-65, et seq..

Sec. 233-37. - Effective date.

The provisions of this article shall be effective April ________, 2020. The initial billing shall be for Fiscal Year 2021 based on impervious area in existence as of January 1, 2020.
**Topic:**
Loan Portfolio Update – Jonathan Kerns, Community Development Manager, and Ashley Newcomer, Business/Community Development Finance Specialist

**Mayor and City Council Action Required:**

**Discussion:**
Staff request an opportunity to meet with the Mayor & City Council to provide a status update on the City’s loan portfolio. The update will include a brief review of the following items:
- Overview of Community Development Block Grant (CDBG) Loan programs
- Overview of Business Revolving Loan program
- Status of existing loans and loan program balances
- FY19 and FY20 loan activity
- Status of delinquent loans

Additional details will be provided in a PowerPoint presentation during Tuesday’s work session.

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

<table>
<thead>
<tr>
<th>File Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>021820_Loan_Portfolio_Update.pdf</td>
<td>Loan Portfolio Update</td>
</tr>
</tbody>
</table>
To: Scott Nicewarner, City Administrator

From: Jonathan Kerns, Community Development Manager  
Ashley Newcomer, Business/Community Development Finance Specialist

Date: February 12, 2020

RE: Loan Portfolio Update

Staff request an opportunity to meet with the Mayor & City Council to provide a status update on the City’s loan portfolio.

The update will include a brief review of the following items:

- Overview of Community Development Block Grant (CDBG) Loan programs
- Overview of Business Revolving Loan program
- Status of existing loans and loan program balances
- FY19 and FY20 loan activity
- Status of delinquent loans

Additional details will be provided in a PowerPoint presentation during Tuesday’s work session.

c. Jill Thompson, DCED Director
REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

Topic:
State of Maryland Request for Comment – Low Income Housing Tax Credit Application for Alexander House – Mayor and Council Discussion

Mayor and City Council Action Required:

Discussion:
The City has received notice regarding an application to the State of Maryland seeking Low Income Housing Tax Credits (LIHTC) and other related financing to carry out redevelopment of the existing residential units at the 7 East Washington Street Alexander House property. The City received the notice on February 3rd, 2020 and the State has requested that any comments be provided by the end of February.
The current entity listed as the owner of record for the 7 East Washington Street property is Alexander House Owner LLC. This entity is a subsidiary of the NHP Foundation. Representatives from the NHP Foundation will attend the February 18th work session to provide information on their proposed rehabilitation project and answer any questions the Mayor & City Council may have.

Background on Alexander House Property
A brief summary of notable events and property status changes of the Alexander House include the following:
· Per State records, the building located at 7 East Washington Street was constructed in 1928.
· The Alexander Hotel opened February 14, 1929 and ultimately closed in 1971 according to a 5/13/18 Herald Mail article.
· In 1978, the Alexander House opened following renovation to accommodate 95 units set aside for low income disabled residents and elderly residents aged 62 and over. According to City records, there was a payment in lieu of taxes agreement (PILOT) that began in 1978 and this PILOT agreement would remain in effect until a change of property ownership occurred.
· Per State records, Alexander House LLC bought the property for $1.8 million in a non-arms-length transaction from Alexander House Inc. on 12/03/2013. According to a 9/10/13 Herald Mail article, the buyer was a Memphis-based developer named James Carmichael of the non-profit Housing Preservation Inc. and Affordable Housing Management Inc.
· Per State records, the NHP Foundation/Alexander House Owner LLC bought the property for $5.7 million in an arms-length transaction from Alexander House LLC on 11/30/2015. According to the NHP Foundation web site, the purchase price was financed by Enterprise Community Loan Fund. NHP claims that all current households receive rental subsidies through a project-based Housing Assistance Payment contract with HUD. There are 68 studio units and 27 one bedroom units.
· The property became fully taxable after the previous PILOT agreement expired due to aforementioned ownership changes and the property remains taxable at this time.
· In September 2019, the NHP Foundation’s Partners in Economic Progress (PEP)
application was approved. In November of 2019, an Invest Hagerstown grant of $100,000 was committed to the NHP Foundation’s retail renovation project for commercial space rehabilitation at the Alexander House property.

- According to NHP Foundation staff, the Maryland Department of Housing and Community Development (DHCD) recently awarded the current project $7.2 million in loan funding.
- This is the NHP Foundation’s first attempt at seeking LIHTC funding for the Alexander House property. A previous attempt to seek Maryland State Historic Tax Credits was unsuccessful.

**Proposed Renovation Plan**
The total hard costs and soft costs for the Alexander House rehabilitation are projected to be over $15 million. The proposed renovations of the residential units at the Alexander House will include:
- Upgraded, energy efficient HVAC/mechanical equipment
- New windows
- New kitchens
- Security upgrades
- Fire alarm replacement
- Plumbing upgrades
- Energy efficient lighting
- New finishes
- Nine (9) existing units to be fully accessible residential units
- Abatement of asbestos and lead paint

If the project is awarded LIHTC funding, the current income restrictions would become slightly more

**Financial Impact:**

**Recommendation:**

**Motion:**

**Action Dates:**

**ATTACHMENTS:**

<table>
<thead>
<tr>
<th>File Name</th>
<th>Description</th>
</tr>
</thead>
<tbody>
<tr>
<td>021820_Alexander_House_LIHTC.pdf</td>
<td>Memo Alexander House</td>
</tr>
</tbody>
</table>
To: Scott Nicewarner, City Administrator

From: Jonathan Kerns, Community Development Manager

Date: February 13, 2020

RE: State of Maryland Request for Comment – Low Income Housing Tax Credit Application for Alexander House

The City has received notice regarding an application to the State of Maryland seeking Low Income Housing Tax Credits (LIHTC) and other related financing to carry out redevelopment of the existing residential units at the 7 East Washington Street Alexander House property. The City received the notice on February 3rd, 2020 and the State has requested that any comments be provided by the end of February.

The current entity listed as the owner of record for the 7 East Washington Street property is Alexander House Owner LLC. This entity is a subsidiary of the NHP Foundation. Representatives from the NHP Foundation will attend the February 18th work session to provide information on their proposed rehabilitation project and answer any questions the Mayor & City Council may have.

Background on Alexander House Property
A brief summary of notable events and property status changes of the Alexander House include the following:

- Per State records, the building located at 7 East Washington Street was constructed in 1928.
- The Alexander Hotel opened February 14, 1929 and ultimately closed in 1971 according to a 5/13/18 Herald Mail article.
- In 1978, the Alexander House opened following renovation to accommodate 95 units set aside for low income disabled residents and elderly residents aged 62 and over. According to City records, there was a payment in lieu of taxes agreement (PILOT) that began in 1978 and this PILOT agreement would remain in effect until a change of property ownership occurred.
- Per State records, Alexander House LLC bought the property for $1.8 million in a non-arms-length transaction from Alexander House Inc. on 12/03/2013. According to a 9/10/13 Herald Mail article, the buyer was a Memphis-based developer named James Carmichael of the non-profit Housing Preservation Inc. and Affordable Housing Management Inc.
- Per State records, the NHP Foundation/Alexander House Owner LLC bought the property for $5.7 million in an arms-length transaction from Alexander House LLC on 11/30/2015. According to the NHP Foundation web site, the purchase price was financed by Enterprise Community Loan Fund. NHP claims that all current households receive rental subsidies through a project-based Housing Assistance Payment contract with HUD. There are 68 studio units and 27 one bedroom units.
The property became fully taxable after the previous PILOT agreement expired due to aforementioned ownership changes and the property remains taxable at this time.

In September 2019, the NHP Foundation’s Partners in Economic Progress (PEP) application was approved. In November of 2019, an Invest Hagerstown grant of $100,000 was committed to the NHP Foundation’s retail renovation project for commercial space rehabilitation at the Alexander House property.

According to NHP Foundation staff, the Maryland Department of Housing and Community Development (DHCD) recently awarded the current project $7.2 million in loan funding.

This is the NHP Foundation’s first attempt at seeking LIHTC funding for the Alexander House property. A previous attempt to seek Maryland State Historic Tax Credits was unsuccessful.

Proposed Renovation Plan
The total hard costs and soft costs for the Alexander House rehabilitation are projected to be over $15 million. The proposed renovations of the residential units at the Alexander House will include:

- Upgraded, energy efficient HVAC/mechanical equipment
- New windows
- New kitchens
- Security upgrades
- Fire alarm replacement
- Plumbing upgrades
- Energy efficient lighting
- New finishes
- Nine (9) existing units to be fully accessible residential units
- Abatement of asbestos and lead paint

If the project is awarded LIHTC funding, the current income restrictions would become slightly more restrictive but per NHP Foundation staff, the tenant profile is expected to remain the same.

Attachments: State of Maryland Letter – Alexander House Project

c. Jill Thompson, Director of Community and Economic Development
Kathy Maher, Director of Planning and Code Administration
Michelle Hepburn, Director of Finance
December 19, 2019

The Honorable Robert E. Bruchey, II
1 East Franklin Street
Hagerstown, MD 21740

RE: Alexander House

Dear Mayor Bruchey,

The Maryland Department of Housing and Community Development administers the federal Low Income Housing Tax Credit program and other rental housing finance programs in accordance with applicable federal and State laws. These programs provide financial assistance for the development and/or preservation of affordable rental housing in Maryland. These rental housing developments generally are owned and operated by private sector for-profit or nonprofit entities. The Department’s financing is provided directly to the organization or entity that will own and operate the project.

The Department has received an application from the sponsor of the above-named project for financing of the project through the federal Low Housing Tax Credit Program, Multifamily Housing Revenue Bond program and/or other programs at the Department A description of the project and the requested financing is attached.

Under State and federal law, the Department is required to provide written notice of the application and a reasonable opportunity to comment to the political subdivision in which a proposed project is to be located. If the project is located in a municipal corporation, the notice is required to be sent to the municipal corporation and not to the county. The written notice is to be sent to the political subdivision’s highest elected public official and to the head or president of the political subdivision’s legislative body. Accordingly, this notice of the Department’s intent to review this project for financing and a summary of the project is attached for your review.

The political subdivision has 45 days from the date of this letter to review the project and the Department is proposed financing for the project and provide comments, if any. The Department will consider the comments received in its review of the application. If you have any questions or would like more information about the project, please feel free to call me (301) 429-7775. We look forward to any input you may have as we proceed to evaluate the application.

Sincerely,

[Signature]

Gregory V. Hare
Director
Multi-family Housing
Office: (301) 429-7775

GVH: bs
LOCAL GOVERNMENT NOTIFICATION
PROJECT SUMMARY

DATE OF APPLICATION: December 19, 2019

NAME OF PROJECT: Alexander House

ADDRESS OF PROJECT: 7 East Washington Street
                     Hagerstown, MD 21740
                     The NHP Foundation
                     Scott Barkan, Vice President
                     (206) 427-8167
                     sbarkan@nhpfoundation.org

DEVELOPER & DEVELOPER’S CONTACT INFORMATION:

AMOUNT OF DHCD FUNDING AND/OR LOW INCOME HOUSING TAX CREDITS (LIHTC) REQUESTED:
Multifamily Bond Program (MBP) ........................................... $14,000,000 (short and long-term bonds)
Rental Housing Financing Program (RHFP) ...........................................
Federal HOME Program (HOME) ...........................................
Rental Housing Works (RHW) ........................................... $ 2,500,000
Partnership Rental Housing Program (PRHP) ...........................................
Energy Lending Program (EmPOWER or CIF) ...........................................
LIHTC (Annual estimated 4% LIHTCs) ...........................................$ 708,981
Other: DHCD (Housing Trust Fund) ...........................................$ 2,700,000
Other: City of Hagerstown ...........................................$ 100,000

OTHER SOURCES FINANCING
(amount, type & provider)

DEVELOPER’S EQUITY $ 2,406,986
LIMITED PARTNER $ 10,331,051
INTERIM INCOME $ 412,561
OTHER LOANS $

TYPE OF PROJECT

NEW CONSTRUCTION

ACQUISITION

X ACQUISITION AND REHABILITATION

REHABILITATION

TOTAL NO. OF UNITS 95

NUMBER OF UNITS RESERVED FOR HOUSEHOLDS OF LIMITED INCOME, INCLUDING THE INCOME AND RENT LIMITS:

95 TOTAL UNITS FOR HOUSEHOLDS OF LIMITED INCOME
100% OF TOTAL UNITS

RESTRICTED UNITS ONLY

UNITS @ 80% AREA MEDIAN INCOME (AMI) ($ ______ )
UNITS @ 70% AMI ($ ______ )
72 UNITS @ 60% AMI ($30,600 for 1 pp HH)
UNITS @ 50% AMI ($ ______ )
UNITS @ 40% AMI ($ ______ )
23 UNITS @ 30% AMI AND BELOW ($15,300 for 1 pp HH)

RESTRICTED UNITS ONLY
BRIEF NARRATIVE DESCRIPTION OF PROJECT:

The Alexander House project is a 95-unit affordable senior housing building in downtown Hagerstown, MD. It is a historic building on the national registry of historic buildings. A subsidiary of the NHP Foundation purchased the building in 2015 with the intention of renovating and preserving the historic building. We are now ready to proceed with the renovation and recapitalization of the building.

We have carefully scoped out a substantially rehabilitation with our architect (Quinn Evans Architects) and general contractor (Southway Builders), as well as a small army of engineers and specialists. They are both experienced in affordable housing, historic renovation, and temporary relocation of seniors.

The substantial rehabilitation will include the installation of new mechanical equipment, replacement of kitchen cabinets and countertops, abatement of asbestos and lead-based paint. We anticipate the work will take approximately 17 months. Residents will be required to move out for three months while their homes are renovated. The retail bays along the plaza will be converted into warm, lit shells with the goals of leasing to tenants who will activate the plaza.

The substantial rehabilitation will be paid for with soft gaps from the State of MD, short-term and long-term tax-exempt bonds, equity raised from Low Income Housing Tax Credits and Historic Tax Credits, a grant from the City of Hagerstown, and equity from the Sponsor.
REQUIRED MOTION
MAYOR AND CITY COUNCIL
HAGERSTOWN, MARYLAND

Topic:
Review of Materials Related to Reproductive Health – Mayor and Council Discussion

Mayor and City Council Action Required:

Discussion:

Financial Impact:

Recommendation:

Motion:

Action Dates:

ATTACHMENTS:
File Name                             Description
TO: Mayor and City Council Members  
    Scott Nicewarner, City Administrator

FROM: Donna K. Spickler, City Clerk

SUBJECT: Review of Materials Related to Reproductive Health

DATE: February 13, 2020

During General Citizen Comments on January 28, 2020, one of the speakers provided copies of legislation from two jurisdictions (Roswell, New Mexico, and Waskom, Texas) regarding the unborn.

As requested by the Mayor and City Council, time is included on the February 18, 2020 Work Session agenda to review and consider this legislation.

Copies of the fully executed documents are attached for your information.

Please let me know if you have any questions, or need additional information.

Thank you.
RESOLUTION 19-28

A RESOLUTION IN SUPPORT OF THE UNBORN

WHEREAS, the Declaration of Independence, the founding document of the United States of America, states, “We hold these truths to be self-evident, that all men are created equal, that they are endowed by their Creator with certain unalienable Rights, that among these are Life, Liberty and the pursuit of happiness.” Life being the first of these declared rights; and

WHEREAS, as recently as March 2017, the American College of Pediatricians published an Abstract stating that “The predominance of human biological research confirms that human life begins at conception - fertilization. At fertilization, the human being emerges as a whole, genetically distinct, individuated zygotic living human organism, a member of the species Homo sapiens, needing only the proper environment to grow and develop. The difference between the individual in its adult state and in its zygotic state is one of form, not nature”; and

WHEREAS, each and every innocent human life is unique and precious to God; and

WHEREAS, human life begins at the moment of conception and continues, uninterrupted, until the moment of natural death; and

WHEREAS, innocent human life must always be protected and preserved; and

WHEREAS, the protection of all human life is important to the people of the City of Roswell; and

WHEREAS, the New Mexico Legislature is currently considering legislation to diminish the limitations on abortions.

NOW, THEREFORE, BE IT RESOLVED BY THE CITY COUNCIL AS THE GOVERNING BODY OF THE CITY OF ROSWELL, NEW MEXICO, that declare that innocent human life, including fetal life, must always be protected and that Society must protect those who cannot protect themselves.

BE IT FURTHER RESOLVED by the City Council that it declare its opposition to any diminution by the New Mexico Legislature of the limitations on abortion.

BE IT FURTHER RESOLVED that the City Council honors the rights of healthcare providers to object on moral grounds to performing abortions and opposes any regulation or law seeking to violate that right.

BE IT FURTHER RESOLVED that the City Council supports adoptions as an alternative to abortion and encourages the State and Federal governments to support adoption at higher levels and enact legislation to ease the burden of adoption.

PASSED, ADOPTED, SIGNED and APPROVED March 14, 2019

Dennis Kintigh, Mayor

ATTEST:
Sharon Coll, City Clerk
ORDINANCE NO. 336

ORDINANCE OUTLAWING ABORTION WITHIN THE CITY OF WASKOM, DECLARING WASKOM A SANCTUARY CITY FOR THE UNBORN, MAKING VARIOUS PROVISIONS AND FINDINGS RELATED THERETO, PROVIDING FOR SEVERABILITY, REPEALING CONFLICTING ORDINANCES, AND ESTABLISHING AN EFFECTIVE DATE.

WHEREAS, the City Alderman of the City of Waskom hereby finds that the United States Constitution has established the right of self-governance for local municipalities;

WHEREAS, a surgical or chemical abortion is the purposeful and intentional ending of a human life, and is murder "with malice aforethought" since the baby in the womb has its own DNA, and at certain points in pregnancy has its own heartbeat and its own brainwaves;

WHEREAS, these babies are the most innocent among us and deserve equal protection under the law as any other member of our American posterity as defined by the United States Constitution;

WHEREAS, the Supreme Court erred in Roe v. Wade, 410 U.S. 113 (1973), when it said that pregnant women have a constitutional right to abort their pre-born children, as there is no language anywhere in the Constitution that even remotely suggests that abortion is a constitutional right;

WHEREAS, constitutional scholars have excoriated Roe v. Wade, 410 U.S. 113 (1973), for its lack of reasoning and its decision to concoct a constitutional right to abortion that has no textual foundation in the Constitution or any source of law, see John Hart Ely, The Wages of Crying Wolf: A Comment on Roe v. Wade, 82 Yale L.J. 920, 947 (1973) ("Roe v. Wade . . . Is not constitutional law and gives almost no sense of an obligation to try to be."); Richard A. Epstein, Substantive Due Process By Any Other Name: The Abortion Cases, 1973 Sup. Ct. Rev. 159, 182 ("It is simple flat and power that gives [Roe v. Wade] its legal effect."); Mark Tushnet, Red, White, and Blue: A Critical Analysis of Constitutional Law 54 (1988) ("We might think of Justice Blackmun’s opinion in Roe as an innovation akin to Joyce’s or Mailer’s. It is the totally unreasoned judicial opinion.");

WHEREAS, Roe v. Wade, 410 U.S. 113 (1973), is a lawless and illegitimate act of judicial usurpation, which violates the Tenth Amendment by trampling the reserved powers of the States, and denies the people of each State a Republican Form of Government by imposing abortion policy through judicial decree;

WHEREAS, the recent changes of membership on the Supreme Court indicate that the pro-abortion justices have lost their majority;

WHEREAS, to protect the health and welfare of all residents within the City of Waskom, including the unborn, the City Council has found it necessary to outlaw human abortion within the city limits.
NOW, BE IT ORDAINED BY THE CITY COUNCIL OF THE CITY OF WASKOM, TEXAS, THAT:

A. DEFINITIONS

1. "Abortion" means the death of a child as the result of purposeful action taken before or during the birth of the child with the intent to cause the death of the child. This includes, but is not limited to:

   (a) Chemical abortions caused by the morning-after pill, mifepristone (also known as RU-486), and the Plan B pill.
   
   (b) Surgical abortions at any stage of pregnancy.
   
   (c) Saline abortions at any stage of pregnancy.
   
   (d) Self-induced abortions at any stage of pregnancy.

   The term "abortion" does NOT include accidental miscarriage.

2. "Child" means a natural person from the moment of conception until 18 years of age.

3. "Pre-born child" means a natural person from the moment of conception who has not yet left the womb.

4. "Abortionist" means any person, medically trained or otherwise, who causes the death of the child in the womb. This includes, but is not limited to:

   (a) Obstetricians/gynecologists and other medical professionals who perform abortions of any kind for any reason.
   
   (b) Any other medical doctor who performs abortions of any kind for any reason.
   
   (c) Any nurse practitioner who performs abortions of any kind for any reason.
   
   (d) Any personnel from Planned Parenthood or other pro-abortion organizations who perform abortions of any kind for any reason.
   
   (e) Any remote personnel who instruct abortive women to perform self-abortions at home via internet connection.
   
   (f) Any pharmacist or pharmaceutical worker who sells chemical or herbal abortifacients.

5. "City" shall mean the city of Waskom, Texas.

B. DECLARATIONS

1. We declare Waskom, Texas to be a Sanctuary City for the Unborn.
2. Abortion at all times and at all stages of pregnancy is declared to be an act of murder with malice aforethought, subject only to the affirmative defenses described in Section C.3:

3. Organizations that perform abortions and assist others in obtaining abortions are declared to be criminal organizations. These organizations include, but are not limited to:

(a) Planned Parenthood and any of its affiliates;
(b) Jane's Due Process;
(c) The Afiya Center;
(d) The Lilith Fund for Reproductive Equality;
(e) NARAL Pro-Choice Texas;
(f) National Latina Institute for Reproductive Health;
(g) Whole Woman's Health and Whole Woman's Health Alliance;
(h) Texas Equal Access Fund;

4. The Supreme Court’s rulings and opinions in Roe v. Wade, 410 U.S. 113 (1973), Planned Parenthood v. Casey, 505 U.S. 833 (1992), Stenberg v. Carhart, 530 U.S. 914 (2000), Whole Woman's Health v. Hellerstedt, 136 S. Ct. 2292 (2016), and any other rulings or opinions from the Supreme Court that purport to establish or enforce a "constitutional right" to abort a pre-born child, are declared to be unconstitutional usurpations of judicial power, which violate both the Tenth Amendment the Republican Form of Government Clause, and are declared to be null and void in the City of Waskom.

C. UNLAWFUL ACTS

1. ABORTION — It shall be unlawful for any person to procure or perform an abortion of any type and at any stage of pregnancy in the City of Waskom, Texas.

2. AIDING OR ABETTING AN ABORTION — It shall be unlawful for any person to knowingly aid or abet an abortion that occurs in the City of Waskom, Texas. This includes, but is not limited to, the following acts:

(a) Knowingly providing transportation to or from an abortion provider;

(b) Giving instructions over the telephone, the internet, or any other medium of communication regarding self-administered abortion;

(c) Providing money with the knowledge that it will be used to pay for an abortion or the costs associated with procuring an abortion;
(d) Coercing a pregnant mother to have an abortion against her will.

3. AFFIRMATIVE DEFENSES — It shall be an affirmative defense to the unlawful acts described in Sections C.1 and C.2 if the abortion was:

(a) In response to a life-threatening physical condition aggravated by, caused by, or arising from a pregnancy that, as certified by a physician, places the woman in danger of death or a serious risk of substantial impairment of a major bodily function unless an abortion is performed.

(b) In response to a pregnancy caused by an act of rape, sexual assault, or incest that was reported to law enforcement;

The defendant shall have the burden of proving these affirmative defenses by a preponderance of the evidence.

4. CAUSING AN ABORTION BY AN ACT OF RAPE, SEXUAL ASSAULT, OR INCEST — It shall be unlawful for any person to cause an abortion by an act of rape, sexual assault, or incest that impregnates the victim against her will and causes her to abort the pre-born child.

5. PROHIBITED CRIMINAL ORGANIZATIONS — It shall be unlawful for a criminal organization described in Section B.3 to operate within the City of Waskom, Texas. This includes, but is not limited to:

(a) Offering services of any type within the City of Waskom, Texas;

(b) Renting office space or purchasing real property within the City of Waskom, Texas;

(c) Establishing a physical presence of any sort within the City of Waskom, Texas;

D. PUBLIC ENFORCEMENT

1. Neither the City of Waskom, nor any of its officers or employees, nor any district or county attorney, nor any executive or administrative officer or employee of any state or local governmental entity, shall take any steps to enforce this ordinance against a person or entity that commits an unlawful act described in Section C, unless and until the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), and permits states and municipalities to once again enforce abortion prohibitions.

2. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a person who commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.
Provided, that no punishment shall be imposed upon the mother of the pre-born child that has been aborted.

3. If the Supreme Court overrules Roe v. Wade, 410 U.S. 113 (1973), and Planned Parenthood v. Casey, 505 U.S. 833 (1992), a corporation or entity that commits an unlawful act described in Section C shall be subject to the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health, and each violation shall constitute a separate offense.

E. PRIVATE ENFORCEMENT

1. A person or entity that commits an unlawful act described in Section C.1 or C.2, other than the mother of the pre-born child that has been aborted, shall be liable in tort to any surviving relative of the aborted pre-born child, including the child’s mother, father, grandparents, siblings or half-siblings, aunts, uncles, or cousins. The person or entity that committed the unlawful act shall be liable to each surviving relative of the aborted pre-born child for:

   (a) Compensatory damages, including damages for emotional distress;

   (b) Punitive damages; and

   (c) Costs and attorneys’ fees.

   There is no statute of limitations for this private right of action.

2. Any private citizen may bring a qui tam relator action against a person or entity that commits or plans to commit an unlawful act described in Section C, and may be awarded:

   (a) Injunctive relief;

   (b) Statutory damages of not less than two thousand dollars ($2,000.00) for each violation, and not more than the maximum penalty permitted under Texas law for the violation of a municipal ordinance governing public health; and

   (c) Costs and attorneys’ fees;

   Provided, that no damages or liability for costs and attorneys’ fees may be awarded or assessed against the mother of the pre-born child that has been aborted. There is no statute of limitations for this qui tam relator action.

3. No qui tam relator action described in Section E.2 may be brought by the City of Waskom, by any of its officers or employees, by any district or county attorney, or by any executive or administrative officer or employee of any state or local governmental entity.

F. SEVERABILITY
1. Mindful of Leavitt v. Jane L., 518 U.S. 137 (1996), in which in the context of determining the severability of a state statute regulating abortion the United States Supreme Court held that an explicit statement of legislative intent is controlling, it is the intent of the City Council that every provision, section, subsection, sentence, clause, phrase, or word in this ordinance, and every application of the provisions in this ordinance, are severable from each other. If any application of any provision in this ordinance to any person, group of persons, or circumstances is found by a court to be invalid or unconstitutional, then the remaining applications of that provision to all other persons and circumstances shall be severed and may not be affected. All constitutionally valid applications of this ordinance shall be severed from any applications that a court finds to be invalid, leaving the valid applications in force, because it is the City Council’s intent and priority that the valid applications be allowed to stand alone. Even if a reviewing court finds a provision of this ordinance to impose an undue burden in a large or substantial fraction of relevant cases, the applications that do not present an undue burden shall be severed from the remaining provisions and shall remain in force, and shall be treated as if the City Council had enacted an ordinance limited to the persons, group of persons, or circumstances for which the statute’s application does not present an undue burden. The City Council further declares that it would have passed this ordinance, and each provision, section, subsection, sentence, clause, phrase, or word, and all constitutional applications of this ordinance, irrespective of the fact that any provision, section, subsection, sentence, clause, phrase, or word, or applications of this ordinance, were to be declared unconstitutional or to represent an undue burden.

2. If any provision of this ordinance is found by any court to be unconstitutionally vague, then the applications of that provision that do not present constitutional vagueness problems shall be severed and remain in force, consistent with the declarations of the City Council’s intent in Section F.1.

3. No court may decline to enforce the severability requirements in Sections F.1 and F.2 on the ground that severance would “rewrite” the ordinance or involve the court in legislative activity. A court that declines to enforce or enjoins a city official from enforcing a subset of an ordinance’s applications is never “rewriting” an ordinance, as the ordinance continues to say exactly what it said before. A judicial injunction or declaration of unconstitutionality is nothing more than a non-enforcement edict that can always be vacated by later courts if they have a different understanding of what the Constitution requires; it is not a formal amendment of the language in a statute or ordinance. A judicial injunction or declaration of unconstitutionality no more “rewrites” an ordinance than a decision by the executive not to enforce a duly enacted ordinance in a limited and defined set of circumstances.

4. If any federal or state court ignores or declines to enforce the requirements of Sections F.1, F.2, or F.3, or holds a provision of this ordinance invalid on its face after failing to enforce the severability requirements of Sections F.1 and F.2,
for any reason whatsoever, then the Mayor shall hold delegated authority to issue a saving construction of the ordinance that avoids the constitutional problems or other problems identified by the federal or state court, while enforcing the provisions of the ordinance to the maximum possible extent. The saving construction issued by the Mayor shall carry the same force of law as an ordinance; it shall represent the authoritative construction of the ordinance in both federal and state judicial proceedings; and it shall remain in effect until the court ruling that declares invalid or enjoins the enforcement of the original provision in the ordinance is overruled, vacated, or reversed.

5. The Mayor must issue the saving construction described in Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 and F.2. If the Mayor fails to issue the saving construction required by Section F.4 within 20 days after a judicial ruling that declares invalid or enjoins the enforcement of a provision of this ordinance after failing to enforce the severability requirements of Sections F.1 or F.2, or if the Mayor's saving construction fails to enforce the provisions of the ordinance to the maximum possible extent permitted by the Constitution or other superseding legal requirements, as construed by the federal or state judiciaries, then any person may petition for a writ of mandamus requiring the Mayor to issue the saving construction described in Section F.4.

G. EFFECTIVE DATE

This ordinance shall go into immediate effect upon majority vote within the Waskom, Texas City Council meeting.
PASSED, ADOPTED, SIGNED and APPROVED,
CITY SEAL Jesse Moore, Mayor
ATTEST: Tammy Lofton, City Secretary
FURTHER ATTESTED BY "WE THE PEOPLE", THE CITIZENS and WITNESSES TO
WITNESS: Suessa Laverie
WITNESS: Lora Lafon