

REGULAR MEETING

JANUARY 13, 2004

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Joseph Gus Fitzgerald; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Thomas H. Miller, Jr., Vice-Mayor Larry M. Rogers; Carolyn W. Frank; Council Member Dorn W. Peterson; Council Member Hugh J. Lantz; City Clerk Yvonne “Bonnie” Ryan, CMC/MMCA, and Chief of Police Donald Harper.

Council Member Frank gave the invocation and Mayor Fitzgerald led everyone in the Pledge of Allegiance.

Council Member Peterson offered a motion to approve the consent agenda, including approval of the minutes and the second reading repealing and re-enacting Section 4-2-24, 4-2-26, 4-2-27, and amending Section 10-3-85 of the Harrisonburg City Code. The motion also included the second reading approval of a Supplemental Appropriation for the Transportation Department and approving a special use permit request by Shenandoah Telecommunication Company (Shentel) for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

Planning and Community Development Director Turner presented the 2004-2005 through 2008-2009 Capital Improvement Program. Mrs. Turner explained that the Capital Improvement Program is a budgetary tool that allows the City to plan for capital expenditures for a five-year period. These are projects that cost \$25,000 or greater. She reviewed only the new projects with a priority one or two ranking in the report. A new Park View Fire Station has been requested in the budget. She said that Planning Commission is recommending that a final study be conducted to evaluate whether new land should be required at a more accessible location on a more suitable street for the new fire station to service the Park View area. There are several improvements planned for the Municipal Building including exterior painting and replacing windows. The Public Works Department includes West Elizabeth Bridge replacement, Country Club Road Bridge, Port Republic Road improvement Phase II, East Market Street improvement turning movements, pedestrian safety along East Market Street, and accelerate the construction of the Erickson Avenue/Stone Spring Road Connection. The Parks and Recreation Department includes improvements to the banks of Blacks Run through Purcell Park, additional restroom facilities at Smithland Road athletic fields, Purcell Park athletic field improvement, and playground equipment replacement at Ralph Sampson Park, replacing the gymnasium floor at the Recreation Center, Westover Pool Bathhouse renovation, and Ramblewood Athletic Field

renovation. The Smithland Road project continues in the Department of Water and Sewer fund. Other programs in the department includes Western Raw Water line project, Eastern Source Development and Blacks Run interceptor upgrade. The Transportation Department includes school bus additions. A large project included in the Sanitation Fund is the Material Recovery Facility. A request has been included to pave the golf cart paths during the next several years in the Golf Fund summary. Mrs. Turner said that Planning Commission recommended adopting the Capital Improvement Program with an addendum of four recommendations. 1) Move construction of the Erickson Avenue/Stone Spring Road Connector forward as quickly as is feasible. 2) Consider placing any needed new elementary school in the Smithland Road or Vine Street area. 3) Increase the priority ranking of improvements to Chicago Avenue and Mt. Clinton Pike. 4) Evaluate whether new land should be acquired at a more accessible location along a better street than Chicago Avenue for the new fire station to service the Park View area.

At 7:40 p.m., Mayor Fitzgerald closed the regular session temporarily and called the evening's first public hearing to order. The following notice appeared in the Daily News-Record on Saturday, January 3, and Saturday, January 10, 2004.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a Public Hearing on Tuesday, January 13, 2004, at 7:30 p.m. in the City Council Chambers, 345 South Main Street, Harrisonburg, Virginia to consider:

The proposed Capital Improvement Program, for fiscal years 2004-2005 through 2008-2009. The Capital Improvement Program is a multi-year projection and scheduling of capital projects of \$25,000 or greater. This plan is prepared annually in an effort to facilitate planning and setting priorities among capital improvement needs over a subsequent five-year period. Copies of the Capital Improvement Program are available for review in the Department of Planning and Community Development, the City Manager's office and the Rockingham Public Library.

For any additional information, contact the City Manager's office, 345 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m.

All persons interested will have an opportunity to express their views at this public hearing.

Any person requiring auxiliary aids, including signers, in connection with the Public Hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

**CITY OF HARRISONBURG
Roger D. Baker
City Manager**

Mayor Fitzgerald called on anyone desiring to speak for or against approving the Capital Improvement Program.

Bill Whalen, a resident of the City, expressed concern that City Council only received one introduction of future appropriations. He also questioned how closely projects were reviewed and whether there might be any mismanagement regarding various departments.

Mayor Fitzgerald said Council was familiar with City projects. The Capital Improvement Plan projects had also been reviewed at least three times during the past year. Mayor Fitzgerald also said that real estate taxes had not been increased since 1993. There being no others desiring to be heard, the public hearing was declared closed at 7:45 p.m., and the regular session reconvened.

The following discussion by Council Members included: Questioned whether a more appropriate location was available for a new fire station in the Northwest section of the City; and whether Planning Commission should be recommending a possible location for a new elementary school.

Council Member Lantz offered a motion that City Council adopt the Capital Improvement Plan as presented excluding the four recommendations by Planning Commission. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

Planning and Community Development Director Turner introduced a request by Michael Chadwick Layman and Brookstone Investments to rezone 22 lots. She said that Mr. Layman owns Fine Earth, a landscape business located at 1126 and 1204-1218 North Main Street. The applicant is requesting to rezone the property from Conditional B-2 zoning classification and several adjacent lots which are zoned R-2 Residential District all to a Conditional B-2 Zoning classification. The Comprehensive Plan designates this area as Planned Business. This designation states that these areas are suitable for commercial development, but need careful controls to ensure compatibility with adjacent land uses. She reviewed the surrounding uses in the area. The applicant first came before the Planning Commission in 1998 to request the initial change in zoning from R-2 to B-2C. At that time the applicant wanted to rezone this property along North Main Street from R-2 to B-2, to allow for a landscape business. A single family home adjacent to the property and owned by the applicant was left as R-2 to allow for continued residential use. She said that Planning Commission and City Council approved that request. Proffers were placed on the B-2C portion of the property at that time to restricted hours of operation, lighting, signage, and by right uses. Fine Earth has operated at the site with no complaints from neighbors for the past five years. To allow for the expansion of Fine Earth's operation, the owner/applicant has requested a change of zoning for recently acquired land adjacent to the current business, and an adjustment of existing proffers for the property already conditionally zoned B-2C. The home that remained under the R-2 zoning at the time of 1998 rezoning is now included in the request for B-2C consideration. Staff recommended unifying the

property under one set of proffers to allow for ease of understanding and enforcement of these restrictions. Mrs. Turner reviewed the new proffers offered by the applicant as well as the original proffers approved by Planning Commission and City Council in 1998. She said that Planning Commission has recommended approval of the request.

At 8:01 p.m., Mayor Fitzgerald closed the regular session temporarily and called the evening's second public hearing to order. The following notice appeared in the Daily News-Record on Monday, December 29, 2003 and Monday, January 5, 2004.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, January 13, 2004, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:

REZONING – FINE EARTH

Public hearing to consider a request by Michael Chadwick Layman and Brookstone Investments, L.L.C. to rezone 22 lots from R-2, Residential District to B-2C, General Business District (Conditional) and adjust the proffered conditions on 10 lots zoned B-2C. The total area for these adjoining lots is 2.6 acres. The properties are located at 1126 and 1204-1218 North Main Street and can be found on tax map 42-C-29-44, 85-100.

The Comprehensive Plan designates this area as Planned Business. This designation states that these areas are suitable for commercial development but need careful controls to ensure compatibility with adjacent land uses.

The Zoning Ordinance states that the current R-2, Residential District is intended for medium-density, single-family and two-family residential development. The residential density ranges for R-2 are single-family, 7,000 sq. ft. minimum and two-family, 5,500 sq. ft/unit. The B-2, General Business District is intended to provide sufficient space in appropriate locations for a wide variety of retail shopping, commercial, automotive, miscellaneous recreational, and service activities. No minimum lot size restrictions exist in the B-2, General Business District.

Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m. All persons interested will have an opportunity to express their views at these public hearings.

Any individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

CITY OF HARRISONBURG

Roger D. Baker

City Manager

Mayor Fitzgerald called on anyone desiring to speak for or against this rezoning request.

Chad Layman owner of Fine Earth said that he wants to expand his business. He said that he wants to make the property more attractive by adding water gardens and landscaping. He described his business as not having a lot of customers coming into the office and most of the employees go to the job site. There being no others desiring to be heard, the public hearing was declared closed at 8:03 p.m., and the regular session reconvened. Council Member Frank offered a motion to approve this request. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

Planning and Community Development Director Turner introduced a request by CCD, LLC, with representative Paul Cline for a special use permit. She said that CCD, LLC has requested the special use permit to allow the Harrisonburg Travel Center to continue as a conforming use in the B-2, General Business District. The City's zoning ordinances in the B-2 zoning classification changed on October 1, 2003. The purpose of the special use permit process is to give the City more control as to how businesses with the potential to create an adverse impact on surrounding neighbors and the City as a whole operate in the B-2 district. Harrisonburg Travel Center recently had plans approved to make some modifications to their site including relocating gas facilities and expanding the parking area. She reviewed the surrounding uses in the area. City staff identified a few concerns regarding the impact of this facility on the surrounding area. She said that Planning Commission recommended that the applicant separate truck traffic from car traffic entering onto the site. Staff supports a favorable recommendation of this request with the following conditions. 1) A solid, opaque privacy fence, no less than six (6) feet in height shall be constructed along the rear property line from the point where the adjoining property owner's chain link fence stops to the northern property boundary. 2) The tree buffer along the southern property boundary will be maintained. If any major event takes place that reduces the level of coverage provided by the existing plant material, the owner will replace and maintain new landscaping material that will provide buffering that is similar to what is in place at the time of the special use permit approval. 3) The existing two northern most entrances shall be marked entrance only. Should at some point the two entrances be combined into one, it too shall be marked as entrance only. The southern most entrance shall be marked exit only. 4) The curb islands marked on the approved site plan will be constructed eight (8) feet in width and shall be planted and maintained with natural landscaping material that shall include shrubs and/or trees. She said that Planning Commission recommended approval of the request.

At 8:14 p.m., Mayor Fitzgerald closed the regular session temporarily and called the evening's third public hearing to order. The following notice appeared in the Daily News-Record on Monday, December 29, 2003 and Monday, January 5, 2004.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, January 13, 2004, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following:

SPECIAL USE PERMIT - CCD, LLC

Public hearing to consider a request by CCD, LLC, with representative Paul Cline for a special use permit {per section 10-3-91 (3,10,11) of the Zoning Ordinance} to allow the Harrisonburg Travel Center to continue to be a conforming use. The property is located at 3355 South Main Street and can be found on tax map parcels 104-G-8, 9 (9.991 acres).

Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m. All persons interested will have an opportunity to express their views at these public hearings.

Any individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

**CITY OF HARRISONBURG
Roger D. Baker
City Manager**

Mayor Fitzgerald called on anyone desiring to speak for or against this special use permit. Rudy Propst representing Harrisonburg Travel Center said that he was available to answer any questions. There being no others desiring to be heard, the public hearing was declared closed at 8:15 p.m., and the regular session reconvened. Vice-Mayor Rogers offered a motion to approve this request. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

The next item of business was considering a request to designate “Stone Spring Village” a residential permit parking zone area. Police Chief Harper recommended that the “Stone Spring Village” area be approved and included in the blue zone permit parking area. He said that although the area does not meet the criteria for permit parking, at times the situation meets beyond the code requirement especially on weekends. He also recommended that the area be designated as a tow-away zone.

David Fisher, a neighborhood resident and a member of the Virginia State Police said that he has made several arrests in the neighborhood including drunk in public, underage possession, indecent exposure and littering.

Anthony Bailey, a neighborhood resident and Assistant Commonwealth Attorney in the City thanked City Council for the opportunity to be heard regarding this matter. He said that the problem began approximately two years ago. During the football season from Thursday evening until Sunday evening it is difficult for residents or their guests to get in or out of the neighborhood. It has become a safety hazard because a fire truck or rescue squad vehicle could not get into the neighborhood. Residents are concerned about safety of the children, sense of security and general welfare.

City Attorney Miller said the ordinance states that 25% of the spaces need to be occupied by non-residents during a “significant number of days”. Mr. Miller said, “It is my determination that the area does meet the criteria of the area in accordance with the City Code.” Council Member Lantz offered a motion to include the Stone Spring Village area in the blue permit parking zone and that the area be made a tow-away zone. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

The next item of business was a brief presentation by Eddie Bumbaugh, Executive Director of Harrisonburg Downtown Renaissance to consider providing funding for Harrisonburg Downtown Renaissance Streetscape Study. He said that the Harrisonburg Downtown Renaissance Group believes the Streetscape Plan is an important part of downtown revitalization. The plan includes specific guidelines for sidewalks, crosswalks, signage, recommended plantings, and parking recommendations. It is a public private partnership encouraging cost sharing from HRHA, several utilities companies, and non-profit organizations. He requested funding assistance from the City up to \$20,000 to conduct the study. He also said that the design firm would be asked to recommend a staging process using grants if available. Since this project is a community plan there will be an opportunity for public input.

Bill Whalen expressed his concern that appropriating money for this development would be the beginning of a multi-million dollar program costing the taxpayers money. Council Member Peterson offered a motion to approve the request supplying funding for this project up to \$20,000 depending on the bids from the design firms. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

The next item of business was a brief presentation by Gianna Gariglietti, Executive Director of (CASA) Citizens Against Sexual Assault. She said that CASA provides the Harrisonburg/Rockingham County community with a 24-hour sexual assault crisis hotline, counseling, advocacy and prevention/education programming for groups and schools. CASA recently began providing first response to the RMH emergency room for sexual assault cases to assure that the proper law enforcement and medical personnel are called. This ensures timely response to victims of sexual crimes and saves valuable police time. All of CASA's services are provided free of charge. Recently CASA applied for and received a grant from the Family and Children Trust Fund. This collaborative grant is shared with the Harrisonburg Police Department, Rockingham County Sheriff Department, and Rockingham Memorial Hospital.

The next item of business was a discussion concerning safety regulations for mopeds and motorized scooters. Council Member Rogers said as a result of their increasing numbers and presence on public rights-of-way, and associated safety concerns, some Virginia localities have begun regulating the use of mopeds and motorized scooters. The City of Martinsville recently adopted an ordinance regulating mopeds and motor scooters. Police Chief Harper said his department has contacted legislators regarding the problem. He reviewed the Virginia law and said that Harrisonburg has had a fatality. Following further comments and discussion, Council agreed to refer this issue to the Harrisonburg Transportation Safety Commission to look into what rules and policies the City might want to consider. Council also agreed to consider a resolution reiterating the Police Chief Harper's request to the state.

The next item of business was a discussion regarding whether to add a public comment period to the agenda. This issue was discussed at the November 25th meeting with a request for the City Attorney to report back to City Council. Mr. Miller said he would be more comfortable in this context with restricting content rather than speaker. It is assumed that "Public" means anybody. An example would be if somebody from Harrisonburg wanted to lecture the Council on a resolution being considered by the United Nations in New York, Council could determine they don't need to spend the time listening to that person. But, if somebody is traveling through the area from Minnesota and takes an interest in a rezoning request and wants to speak, that traveler should be allowed to speak because the traveler is part of the public. He said there is nothing wrong with Council asking a speaker what is your interest or connection to Harrisonburg.

The following discussion by Council Members included: Questioned asking speakers appearing before Council to wait until the end of the meeting to speak; adding a public comment period after the consent agenda; and limiting comments from the public on matters not on the regular agenda. Council requested that City Attorney Miller prepare the language for an ordinance change for the January 27th meeting adding a public comment period at the beginning of the agenda after the Pledge of allegiance.

City School Business and Finance Director Triplett presented a request for a supplemental appropriation for the School Board. He said that the School Board is requesting architect fees for renovations of the current high school. He also said that \$140,601.55 will

come from the VPSA 03 B Refund Bond Savings with the balance of \$34,398.45 coming from the School's Unappropriated Fund Balance.

Council Member Peterson said that the seventh and eighth grade students could move into the current high school; however, it is not set up for team teaching. However, it is not an efficient use of funds to move students and then renovate the school at a later time while the students are in the school. Council Member Peterson offered a motion to approve this request.

Council Member Frank said, "When you are short of funds, you are short of funds." She said that she couldn't support spending the money at this time.

Council Member Lantz said that it was premature to approve this funding until Council makes a decision whether to move forward with a bond to renovate the high school. Until that decision has been made, it is not appropriate to spend money at this time.

Vice-Mayor Rogers said that he agreed with Council Member Lantz and offered a motion to table this item.

Mayor Fitzgerald reminded Council there was a motion on the table to approve the request.

Council Member Peterson withdrew his motion to approve the request.

Mayor Fitzgerald asked for a vote on tabling the topic of architect fees for renovations for the current high school. The motion to table was approved with a unanimous vote of Council.

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these funds were received from the sale of excess Federal military property at a City auction. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$2,000 chge. to: 1000-31907 Sale of used equipment

\$2,000 approp. to: 1000-310431-48151 Motor vehicles and equipment

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said that these funds will be used to purchase new weapons for Police Officers. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$20,164.32 chge. to: 1000-31010 Amount from fund balance, asset seizure-state

\$11,634.15 approp. to: 1000-310231-48111 Machinery & Equipment (replace)

4,731.25 approp. to: 1000-310231-46100 Police Supplies

3,798.92 approp. to: 1000-310231-48211 Machinery & Equipment (new)

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said that these funds received through the United States Department of Justice, Homeland Security will be used to purchase a HP scanner. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$127.95 chge. to: 1000-3534 Homeland Security Funds

\$127.95 approp. to: 1000-310231-48211 Machinery and Equipment

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

Public Works Director Baker presented a request for a supplemental appropriation for the Public Works Department. He said these funds were donated by Greener Harrisonburg to purchase 15 trees, which were planted in the Municipal Parking Lot. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$2,104.50 chge. to: 2015-31809 Donations/Contributions

\$2,104.50 approp. to: 2015-410641-46140 Other Operating Supplies

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

Public Works Director Baker presented a request for a supplemental appropriation for the Public Works Department. He explained that these reimbursement funds were received from Crown American Hotels for their participation in improvements at the intersection of Linda Lane and the access road to the Sheraton Hotel. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$65,122.00 chge. to: 1310-31914 Recovered Costs

\$65,122.00 approp. to: 1310-910141-48620 Burgess Road Extension

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

City Manager Baker presented a request for a supplemental appropriation for the Public Utilities Department. He explained that these funds will be used to make repairs to the Silver Lake Dam. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$50,000 chge. to: 2011-31010 Amount from Fund Balance

\$50,000 approp. to: 2011-372061-48181 Buildings & Grounds

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers

Council Member Peterson
Mayor Fitzgerald

Absent – None

Bill Whalen a resident of Harrisonburg said that the downtown renovations could be a major financial issue for the City.

At 9:15 p.m., Council Member Peterson offered a motion that Council enter a closed session for the purpose of discussion, interviews or consideration of candidates for appointment to board and commissions. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.1 of the Code of Virginia (1950), as amended (the Code). The closed session will also be for the purpose of the discussion or consideration of the acquisition of real property for a public purpose, or the disposition of publicly held real property, where discussion in an open meeting would adversely affect the bargaining position or negotiating strategy of the City Council. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.3 of the Code of Virginia (1950), as amended (the Code). The closed session will also be for the purpose of discussion of a prospective business or industry or the expansion of an existing business or industry where no previous announcement has been made of the business or industry's interest in locating or expanding its facilities in the City. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.5 of the Code of Virginia (1950), as amended (the Code). The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Council Member Lantz
Vice-Mayor Rogers
Council Member Peterson
Mayor Fitzgerald

Absent – None

At 10:30 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement which was agreed to with a unanimous recorded vote of Council: I certify to the best of my knowledge belief that (1) only public matters lawfully exempt from open meeting requirements pursuant to Chapter 21 of Title 2.1 of the Code of Virginia, 1950, as amended, and (2) only such matters as were identified in the motion by which the closed session were convened, were heard, discussed in the closed session by the City Council.

Council Member Peterson offered a motion that Arthur E. Albrecht, 881 Blue Ridge Drive, be appointed to a first term on the Harrisonburg Redevelopment and Housing Authority to expire on November 29, 2007. The motion was approved with a unanimous vote of Council.

At 10:32 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR