

REGULAR MEETING

January 13, 2009

At a regular meeting of Council held this evening at 7:00 p.m., there were present: Mayor Kai Degner; City Manager Kurt Hodgen; Assistant City Manager Evan Vass; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor Richard A. Baugh; Council Members David Wiens, Carolyn W. Frank, and Ted Byrd; City Clerk Yvonne “Bonnie” Ryan, MMC; and Chief of Police Donald Harper.

Council Member Byrd gave the invocation, and Mayor Degner led everyone in the Pledge of Allegiance.

Council Member Byrd offered a motion to approve the consent agenda, including approval of the minutes and the second reading of supplemental appropriations for the Public Works Department, Tourism office, HRECC, School Board, Commonwealth of VA, and HARTS. The motion also included a rezoning request from Ellen E. DeSarno and amending and re-enacting Section 1-1-12 of the Harrisonburg City Code. The motion was seconded by Council Member Frank and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

Captain Duane Burleigh of the Salvation Army provided a brief update on the Salvation Army activities in the City, including their donation of land to the City for development and usage as a recreation area.

City Manager Hodgen said that the City has received an offer from Rosetta Stone to purchase the old Police Department property located at 179 South Liberty Street. Rosetta Stone is offering \$300,000 for the property and is committing to invest at least \$500,000 into improvements on the property and at least 100 new jobs with an average annual wage of \$50,000 per year. In light of the commitment to investment in the property, the creation of new jobs and the longer term potential for further site and job development by Rosetta Stone, staff is recommending that the ordinance approving the sale be adopted on first reading. Mr. Hodgen reviewed the 2008 property assessed value, property taxes generated, and Water Street traffic.

Economic Development Director Brian Shull reviewed information regarding the old Police Department property.

At 7:16 p.m., Mayor Degner 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 Friday, January 2, and Friday, January 9, 2009.

**NOTICE OF PUBLIC HEARING ON THE
DISPOSITION OF REAL ESTATE
OWNED BY THE CITY OF HARRISONBURG
ALONG SOUTH LIBERTY STREET IN THE CITY OF HARRISONBURG**

The Harrisonburg City Council will hold a public hearing on January 13, 2009 at 7:00 P.M. in the City Council Chambers located at 409 South Main Street, Harrisonburg, Virginia, concerning the disposition of real estate, namely, 1.202 acres, more or less, designated as 181 South Liberty Street and shown on the City Block Map as Parcel Nos. 25-C-2, 3, 4, 5 & 15 to Rosetta Stone, Ltd., a Virginia corporation, as per their proposal to purchase the same.

Copies of the proposed sales agreement are available in the City Manager's Office, 345 South Main Street, Harrisonburg, Virginia, 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 this public hearing shall notify the City Manager at least five (5) days prior to the time of the hearing.

**CITY OF HARRISONBURG
Kurt D. Hodgen,
City Manager**

Mayor Degner called on anyone desiring to speak for or against disposing of the real estate. Shawna Fowble representing Rosetta Stone said Harrisonburg is the operational base with 450 employees located in the City. The company, which was founded in 1992, would like to continue to grow.

Nancy Garber spoke in favor of selling the building to Rosetta Stone.

Jerry Scripture said that selling the old building to Rosetta Stone is a terrific idea.

Bucky Berry encouraged Council to sell the building.

Patrick Lincoln said that he works with the Shenandoah Valley Migrant Education Program and helps to organize the grassroots network The People United. He requested that City Council invite Rosetta Stone to donate its very own Rosetta Stone – high quality simultaneous interpreting equipment - as a thank you for being allowed to purchase City property at a price under its appraised value.

Gustavo Maldonado asked Rosetta Stone, through an interpreter Patrick Lincoln, to donate interpreting equipment for community usage.

Andy Perrine, President of Harrisonburg Downtown Renaissance (HDR), spoke in support of selling the property to Rosetta Stone.

David Miller encouraged Council to sell the property to Rosetta Stone.

Mike Arehart, owner of Kline's Dairy, spoke in support of selling the property to Rosetta Stone.

Lonnie Yoder a member of Community Mennonite church questioned the issue of the traffic flow on Water Street.

Vivian Myers encouraged Council to strongly consider this sale.

Tom Brubaker said that he has watched the growth of Rosetta Stone over the years. Many young professionals live and work in the downtown area.

Jerry Eldridge said that Rosetta Stone has a wonderful product. The City will gain many new jobs from the sale of the property to Rosetta Stone. There being no others desiring to be heard, the public hearing was declared closed at 7:37 p.m., and the regular session reconvened. Following further discussion and comments, Council Member Byrd offered a motion to adopt the contract approving the sale of the property to Rosetta Stone for a first reading. The motion was seconded by Council Member Frank and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

Planning and Community Development Director Turner introduced a request from DRE Properties, LLC to rezone one, 6,761+/- sq. ft. parcel from R-2 Residential District to R-3C Multiple Dwelling Residential District Conditional. The property is located at 584 East Market Street and can be found on tax map parcel 33-V-3. The Comprehensive Plan designates this area as Professional. Mrs. Turner reviewed the surrounding uses in the area. Currently situated on the site is a single-family dwelling with parking and an accessory building in the rear. The applicant desires to continue using the building as a dwelling or to convert the building to a medical or professional office. As traffic increases along East Market Street, the homes in the area have become less desirable for single-family dwellings and more attractive as professional offices. The applicant has proffered the following: 1) any use permitted by right in the R-1 and R-2 Residential districts; 2) dwelling units may be occupied by a family or not more than three (3) unrelated persons, except that such occupancy may be superseded by building regulations; 3) convalescent or nursing homes, medical offices and professional offices as defined by Article F; 4) charitable or benevolent institutions; 5) accessory buildings and uses clearly incidental to the above; and 6) public uses permitted in every zoning classification. In the last several years, a number of properties along this portion of the East Market Street corridor have been rezoned to R-3C to allow for the dwellings to be converted to medical or professional offices. This is a very visible and highly traveled corridor of the City, and although staff is in favor of the conversion of single-family dwellings to professional offices along this portion of East Market Street, they do not support the increase in occupancy to more than two (2) unrelated persons for this area. Staff also believes the occupancy precedent has been set with earlier rezoning in the area. For these

reasons, staff does not recommend approval of this request because of the increase in occupancy. However, Planning Commission recommended approving the request with a vote of four to three (4-3) of the rezoning request.

At 7:50 p.m., Mayor Degner 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, 2008, and Monday, January 5, 2009.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold several public hearings on Tuesday, January 13, 2009 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Rezoning – 584 East Market Street

Public hearing to consider a request from DRE Properties, LLC, to rezone one, 6,761 +/- sq. ft. parcel from R-2, Residential District to R-3C, Multiple Dwelling Residential District Conditional. The property is located at 584 East Market Street and can be found on tax map parcel 33-V-3. The Comprehensive Plan designates this area as Professional. These areas are designated for professional service oriented uses with consideration to the character of the area. These uses are found in the residential areas along major thoroughfares and adjacent to the Central Business District. The Zoning Ordinance states that the 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 R-3, Multiple Dwelling Residential District is intended for medium- to high-density residential development and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The residential density ranges for R-3 are single-family, 6,000 sq. ft. minimum; two-family, 4,000 sq. ft/unit; multi-family, 3,000 sq. ft. minimum per unit; townhouses, 2,000 sq. ft. minimum per unit; and other uses, 6,000 sq. ft. minimum.

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
Kurt D. Hodgen
City Manager**

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

Dick Blackwell with Blackwell Engineering said he is the applicant for the request and because office space is plentiful within the City, this property is not needed for office space. Since purchasing the property, Mr. Blackwell has spent a lot of money fixing it up. He asked Council to consider his request. There being no others desiring to be heard, the public hearing was declared closed at 7:56 p.m., and the regular session reconvened. Following further discussion and comments, Council Member Frank offered a motion to accept the Planning Commission recommendation and approve this request. The motion was seconded by Council Member Byrd. The motion was denied with the recorded roll call taken as follows:

Vote: Yes - Council Member Frank
Council Member Byrd

No - Council Member Wiens
Vice-Mayor Baugh
Mayor Degner

Absent – None

Planning and Community Development Director Turner introduced a request from Funkhouser & Associates Properties to rezone one, .63-acre parcel from R-3, Multiple Dwelling Residential District to B-2C, General Business District Conditional with the goal of establishing commercial and office uses on the site. The property is located at 715 Port Republic Road and can be found on tax map parcel 12-M-3. The Comprehensive Plan designates this area as High-Density Residential. Mrs. Turner reviewed the surrounding uses in the area. If rezoned, the applicant intends to demolish the existing structure and construct a new, two story building, with an outdoor area, which could be occupied by a mix of commercial and office uses. The applicant has proffered the following: 1) the commercial space will not exceed 4,400 square feet and office space will not exceed 3,000 square feet, while meeting the required number of off-street parking requirements; 2) only B-2 uses allowed under Section 10-3-90 will be permitted; 3) ten deciduous trees and 14 shrubs or bushes will be planted and maintained at the approximate locations shown on the conceptual plans; and 4) the total square footage of all free standing signs will not exceed 136 square feet and will be limited to 25 feet in height. The applicant will not take advantage of the interstate overlay sign. Planning Commission recommended approving the request.

At 8:11 p.m., Mayor Degner 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, 2008, and Monday, January 5, 2009.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold several public hearings on Tuesday, January 13, 2009 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Rezoning – 715 Port Republic Road (Funkhouser & Associates)

Public hearing to consider a request from Funkhouser & Associates Properties, LLC to rezone one, .63-acre parcel from R-3, Multiple Dwelling Residential District to B-2C, General Business District Conditional. The property is located at 715 Port Republic Road and can be found on tax map parcel 12-M-3. The Comprehensive Plan designates this area as High-Density Residential. This designation states that these areas are intended for high-density development, mostly apartment buildings with densities ranging from 12 to 15 dwelling units per acre. The Zoning Ordinance states that the R-3, Multiple Dwelling Residential District is intended for medium- to high-density residential development and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The residential density ranges for R-3 are single-family, 6,000 sq. ft. minimum; two-family, 4,000 sq. ft./unit; multi-family, 3,000 sq. ft. minimum per unit; townhouses, 2,000 sq. ft. minimum per unit; and other uses, 6,000 sq. ft. minimum. 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
Kurt D. Hodgen
City Manager

Mayor Degner called on anyone desiring to speak for or against this rezoning request. Barry Kelley said he is one of the owners of the property. It is a really old house and they would like to make improvements for their use as well as for the public. There being no others desiring to be heard, the public hearing was declared closed at 8:12 p.m., and the regular session reconvened. Vice-Mayor Baugh offered a motion to approve this rezoning request as presented with the submitted proffers. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

Planning and Community Development Director Turner introduced a request from Ellen E. DeSarno for a special use permit to allow for a reduction in the required number of parking spaces within the B-2, General Business District. The property is located at 1320 Port Republic Road and can be found on tax map parcel 88-C-6. The Comprehensive Plan designates this area as Low-Density Residential. Mrs. Turner reviewed the surrounding uses in the area. This special use permit allows the property owner to provide fewer than the required number of parking spaces within the General Business District. The applicant intends to lease the property to the owner of VIP Scooters. Port Republic Road is handling an increasing amount of traffic. The following are the recommended conditions: 1) the special use permit is applicable only for the business of VIP Scooters on this property; and 2) before the special use permit is granted, the applicant proves to the City that a tractor trailer can maneuver on site without utilizing the Port Republic Road right-of way. Planning Commission recommended approving the special use permit with a four to two (4-2) vote, with conditions that the special use permit would only be applicable for VIP Scooters and that the applicant prove that a tractor trailer could maneuver on site without utilizing the Port Republic Road right-of-way. Mrs. Turner also said that staff is still not satisfied that the conditions Planning Commission has put forth to City Council have been met.

At 8:27 p.m., Mayor Degner closed the regular session temporarily and called the evening's fourth public hearing to order. The following notice appeared in the Daily News-Record on Monday, December 29, 2008, and Monday, January 5, 2009.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold several public hearings on Tuesday, January 13, 2009 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Special Use Permit – 1320 Port Republic Road (10-3-91 (8) Reduced Parking)

Public hearing to consider a request from Ellen E. DeSarno, with representative Steven M. Blatt for a special use permit per Section 10-3-91 (8) to allow for the reduction in the required number of parking spaces within the B-2, General Business District. The property, zoned B-2C, General Business District Conditional is located at 1320 Port Republic Road and can be found on tax map 88-C-6.

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
Kurt D. Hodgen
City Manager**

Mayor Degner called on anyone desiring to speak for or against this special use permit. Steven Blatt, attorney for the applicant, said he did not understand staff comments or concerns. He has been asked to provide many documents regarding this request at the last minute. If the City doesn't want the additional playground area paved, then deny the special use permit. He asked Council to make a decision because his client cannot afford any more expense.

Jerry Bennett said that he opposed the special use permit. There being no others desiring to be heard, the public hearing was declared closed at 8:41 p.m., and the regular session reconvened. Following further discussion and comments, Council Member Wiens offered a motion to approve this special use permit only with the condition that the special use permit is applicable only for the business of VIP Scooters on this property. The motion was seconded by Council Member Frank and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

Council by a unanimous voice vote agreed to table a rezoning request from Radha Krushna.

Elizabeth Haworth, Executive Director of First Night, gave a brief overview of the First Night 2008 program. The program for this year is already being planned.

The next item of business was a presentation by James Berry. Mr. Berry said that the City should discontinue the sale of vehicle decals. He also expressed concern about the City's valuation process for personal property, in particular as it applies to motor vehicles.

Commissioner of Revenue June Hosaflook clarified that the Commonwealth requires that the Commissioner of the Revenue establish the value of all property as of January 1st. The Commonwealth also requires that the City use a recognized pricing guide in order to value vehicles. Mrs. Hosaflook reviewed the pricing procedure. It can be confusing because once the bill is issued in November, the value of the vehicle is almost a year old. Also, there are only certain assessments that can be appealed beyond the Commission of Revenue office to the Tax Commissioner of Virginia. Vehicle assessment is not included in the appeal process.

City Manager Hodgen presented a request for a supplemental appropriation for the First Tee Building. The City has received donations for the construction of the First Tee Building. The First Tee Advisory Committee will handle and oversee all of the procurement associated with the construction, but the City's Finance Department will pay the bills. Council Member Byrd offered a motion to approve this request for a first reading, and that:

\$131,248.51 chge. to: 1000-31010 Amount from fund balance
93,970.00 chge. to: 1000-31827 Donations-First Tee Program

225,218.51 chge. to: 1310-34210 Transfer from General Fund

\$225,218.51 approp. to: 1000-990111-49216 Transfer to General Capital Project Fund

225,218.51 approp. to: 1310-910141-48720 First Tee Building

The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

Fire Chief Shifflett presented a request for a supplemental appropriation for the Fire Department. Chief Shifflett reviewed the breakdown of the funds from last year's budget, reimbursement funds from Rockingham County and the Virginia Department of Fire Programs that will be put into the Fire Department budget. Council Member Frank offered a motion to approve this request for a first reading, and that:

\$90,000.00 chge. to: 1000-31010 Fund Balance

90,000.00 chge. to: 1000-31932 Reimb-Rockingham County

68,566.00 chge. to: 1000-32512 Fire Programs Fund

\$248,566.00 approp. to: 1000-320232-48181 Buildings & Grounds

The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. These funds were received from state asset seizure money and will be used to construct a display case, purchase replacement software, blackberry phones cases and replace an administration printer. Council Member Byrd offered a motion to approve this request for a first reading, and that:

\$5,432.00 chge. to: 1000-31010 Amount from fund balance

\$ 650.00 approp. to: 1000-310631-48121 Furniture and fixtures
2,117.00 approp. to: 1000-310631-48173 Software
1,665.00 approp. to: 1000-310131-45230 Telecommunications
1,000.00 approp. to: 1000-310131-48172 Hardware

The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

The next item of business was the consideration of authorizing the Mayor and City Manager to execute an agreement between the City and Pike Church, LLC. City Manager Hodgen said that the agreement essentially involves traffic studies and improvements to roadways within the City limits that the Pike Church developer is committing to perform in conjunction with their development project on South Main Street. The proposed development project involves land in both the City and County. The agreement notes when the improvements in the City will be made relatively to the development of the entire site. As the site continues to be developed, additional improvements will be made to the roads in the area. The agreement does not involve any financial obligations on the part of the City, but it does ask for City assistance in obtaining certain rights-of-way if that becomes necessary and outlines the time frames in which Pike Church will complete the listed tasks. Authorization to execute this agreement does not constitute approval on the part of the City of the required entrance permits for this project. Council Member Frank offered a motion to authorize the Mayor and City Manager to execute an agreement between the City and Pike Church as presented. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

At 9:15 p.m., Council Member Byrd offered a motion that Council enter into a closed session for discussion and consideration of personnel and prospective candidates to be appointed to the Industrial Development Authority, Harrisonburg Planning Commission, Tree Advisory Committee, Blue Ridge Disability Services Board, and the Harrisonburg Board of Zoning Appeals, exempt from the public meeting requirements pursuant to Section 2.2-3711(A)(1) of the

Code of Virginia and discussion and consideration of the acquisition, use and disposition of real estate used for public purposes, exempt from public meeting requirements pursuant to Section 2.2.3711(A)(3) of the Code of Virginia, 1950, as amended. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Wiens
Vice-Mayor Baugh
Council Member Frank
Council Member Byrd
Mayor Degner

Absent – None

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

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

CITY CLERK

MAYOR