

REGULAR MEETING

JULY 14, 1998

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Rodney Eagle; City Manager Steven E. Stewart; Assistant City Manager Roger Baker; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor Hugh J. Lantz, Walter F. Green, III, and Larry M. Rogers; City Clerk Yvonne Bonnie Ryan and Chief of Police Donald Harper. Absent: Council Member John H. Byrd, Jr.

Mayor Eagle delivered the invocation and led everyone in the Pledge of Allegiance.

Council Member Rogers offered a motion to approve the consent agenda, including approval of the minutes of the June 23 and July 1 City Council meetings, and the second reading of a supplemental appropriation to purchase land on Garbers Church Road. The motion was seconded by Council Member Green, and approved with a unanimous vote of Council Members present.

Planning and Community Development Director Turner introduced a request by Pete Karageorge to rezone 1.097 acres located at 2420 and 2426 South Main Street from M-1 General Industrial District to B-2 General Business District. She explained that the property has a combined area of 1.097 acres. Mrs. Turner reviewed the surrounding zoning classifications. The Land Use Guide recommends the site for commercial use. The applicant is requesting to rezone the two existing lots from M-1 General Industrial District to B-2 General Business District to construct a 3,000 square foot restaurant. A restaurant and motel are located on the larger lot and a house is located on the smaller lot. A conceptual plan submitted by the applicant indicates that the existing restaurant will be demolished and replaced with a new 3,000 square foot restaurant; however, the plan is not proffered in connection with the rezoning request. The plan is merely conceptual in nature and shows the location of the proposed building in relation to existing buildings. She noted that staff did have some concerns that the existing motel may detract from the proposed restaurant and upon investigating the Police Department records discovered that officers have responded to calls many times during the last year. Staff has encouraged Mr. Karageorge to create and implement a development plan for the entire site quickly. Mrs. Turner said that Planning Commission recommended approval of the request.

At 7:40 p.m., Mayor Eagle 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 Monday, June 29, and Monday, July 6, 1998.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a Public Hearing on Tuesday, July 14, 1998, at 7:30 p.m., in the City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia, to consider the following:

Rezoning:

2. Request by Pete Karageorge to rezone 1.097 acres located at 2420 South Main Street from M-1 to B-2. The property is identified as parcels 6© 2 and 3 on the City of Harrisonburg's block maps. The Comprehensive Plan recommends the site for Commercial use.

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 this public hearing.

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

CITY OF HARRISONBURG

Steven E. Stewart

City Manager

Mayor Eagle called on anyone desiring to speak for or against this rezoning request. There being no one desiring to be heard, the public hearing was declared closed at 7:41 p.m., and the regular session reconvened. Council Member Rogers offered a motion to approve this rezoning request. The motion was seconded by Council Member Green, and approved with a unanimous vote of Council Members present.

Planning and Community Development Director Turner introduced a request by Chad Layman to rezone 1.377 acres located at 1126 North Main Street from R-2 Residential District to B-2 General Business District. She explained that the applicant would like to rezone parcels 29-39 and 85-92 which front on Main Street and Moore Street. The applicant would like to rezone this area from R-2 Residential District to B-2 General Business District to operate a lawn care and landscaping business on the property while retaining use of the existing house as a residence. This site is zoned R-2 and a two-story brick home and garage is located on the property. A vacant lot to the North is also zoned R-2 and to the South is a single family residence. A vacant lot is located to the East in the R-4 zone which is the future site of Beacon Hill subdivision. Shenandoah Presbytery and AMP, Inc. are located across Main Street to the West of the site and are zoned B-2 Business District. The Land Use Guide recommends Lots 29-36 for Planned Business Use and Lots 85-92 for Planned Residential-Single-Family Use; however, the new adopted Comprehensive Plan does recommend this property for Planned Business. In connection with this rezoning, Mr. Layman has said that he would like to use the existing house as his residence, while converting the detached garage for his landscaping business. Staff has informed Mr. Layman that continued residential usage cannot be maintained if rezoned to B-2 General Business, because residential use is not permitted in the business district. She said that Planning Commission recommended that only lots 85-92 and 35 and 36 be rezoned. In making this rezoning request, Mr. Layman has proffered several uses to try to make the rezoning more compatible with some of the surrounding residential zoning which includes removing things that might be objectionable to residential neighbors. These proffers include removal of theaters and recreational establishments, automobile service stations and sales, and parking garages, among others. Mr. Layman has also proffered limitations on the hours of operation and lighting. With these proffers, Mr. Layman has removed most potential B-2 uses that would be incompatible with nearby existing and proposed residential uses, while still permitting the desired landscaping business. Mrs. Turner noted that although these proffers are very important, this property is adjacent to an established neighborhood. She said that staff had some concerns because the intended use of the property would be for a landscaping business. However, Planning Commission did recommend to approve the rezoning with the proffers for the lots at the rear that contain the garage and the two lots at the front which are lot 35 and 36 from R-2 Residential District to B-2 General Business District.

At 7:45 p.m., Mayor Eagle 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, June 29, and Monday, July 6, 1998.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a Public Hearing on Tuesday, July 14, 1998, at 7:30 p.m., in the City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia, to consider the following:

Rezoning:

1. Request by M. Chad Layman (contract purchaser) to rezone 1.377 acres located at 1126 North Main Street from R-2 to B-2. The property is identified as parcels 42(C)29-36 and parcels 42(C)85-92 on the City of Harrisonburg's block maps. The Comprehensive Plan recommends lots 29-36 for Planned Business use and lots 85-92 for Planned Residential-Single Family use.

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 this public hearing.

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

CITY OF HARRISONBURG

Steven E. Stewart

City Manager

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

Mike Layman

, representative for the applicant, reviewed the property and streets on the map and indicated some of the surrounding zoning classifications. He mentioned that only one neighbor had expressed a negative reaction to the rezoning. He said that he had addressed most of the City staff's concerns which included noise, dust, and customer traffic.

Chad Layman

said that his business is called Fine Earth which is a landscape management company specializing in lawn care and maintenance service. Parking for the commercial vehicles will be placed near the existing garage and a future mulch pile will be located along the back of the property. He reiterated the importance of making his neighbors happy and his willingness to do what was necessary so they would accept his business.

Erva Whitsell

, a resident living at 1039 Moore Street, questioned how a subdivision with a restrictive covenant for 69 years for residential use only, could be used for business.

Mike Layman

responded that he had contacted every owner in the neighborhood because they were aware of the covenant. He also said that a business has been operating in the area for 40 years violating the covenant and several houses have been built violating the covenant because they face the wrong way. The state law allows a significant change use in an area to override the terms of the covenant. He said after contacting every owner in

the subdivision they had prepared a release of covenant and still requested that the property be rezoned. There being no others desiring to be heard, the public hearing was declared closed at 8:08 p.m., and the regular session reconvened. Vice-Mayor Lantz offered a motion to approve the recommendation of the Planning Commission, stating that the rezoning does not have anything to do with the covenant and the Comprehensive Plan recommends the area for Planned Business use. The motion was seconded by Council Member Green, and approved with a unanimous vote of Council Members present.

At 8:09 p.m., Mayor Eagle 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, July 6, 1998.

Public Hearing on Increased Tax Levies

The Harrisonburg City Council will hold a public hearing on July 14, 1998 at 7:30 p.m. in the Council Chambers at 345 South Main Street in the Municipal Building. The purpose of the hearing will be to consider the following tax levies:

5% Meals Tax

5% Transient Occupancy Tax

5% Admissions Tax

10% tax on mobile communications up to a maximum of \$3.00 per consumer per month.

\$1.44 E-911 tax per month per telephone access line.

Anyone wishing to be heard may comment orally and/or in writing at the hearing.

Steven E. Stewart

City Manager

Mayor Eagle called on anyone desiring to speak for or against the proposed tax increases.

Ellen Walker

, a resident living at 761 Walnut Lane, said that the user fee tax was not a good idea if tourism was encouraged in the City. She said that she often eats out at lunch, but with the proposed tax increase she would have to be industrious and pack her lunch.

Bruce Gray

explained that he has lived in the City for a long time and although he did not make a lot of money, he did not want to pay another nickel or dime for a drink at McDonald. He said that "I don't want to cut services, but I challenge everybody here to think about top-management first before increasing taxes." He said that Council should review the entire infrastructure in the City.

Wayne Rothery

said that he was a businessman in the City and warned Council Members not to make the City an expensive place to live as was his experience in Northern Virginia. He said "Don't tax every living breathing thing we

do. It is not necessary." He suggested that some of the property which has been removed from the tax roll in recent years should be put back on the tax roll. There being no others desiring to be heard, the public hearing was declared closed at 8:20 p.m., and the regular session reconvened. Council Member Rogers said that he could understand the comments shared with Council tonight. He also mentioned that although the City has approximately 6,500 real estate owners, another 150,000 people from the surrounding area use the City's streets and other infrastructure. He said that no one likes to see a tax increase; however, during the four years he has been on Council, the City has purchased a new fire truck, increased the school budget by more than \$4.5 million, added new police officers, added new firefighters and changed the infrastructure. Council Member Rogers offered a motion to approve these increased tax levies for a first reading. The motion was seconded by Council Member Green, and approved with a unanimous recorded vote of Council Members present. Council Member Green commented that the infrastructure needed to be supported and it cannot be done with the present revenue. He said that they have postponed everything because of the commitment made to the school system and it cannot continue without serious damage to the other City departments. Vice-Mayor Lantz commented that with the limitation or reduction of the BPOL tax, there will only be a few items that they can tax. He reiterated that it is unfair to keep putting the tax burden on the approximately 6,500 real estate owners in the City. He noted that no one is forcing anyone to stay in a motel or go to a restaurant. Increasing these taxes will not make Harrisonburg another Northern Virginia. Mayor Eagle said that he concurred with the other Council Members' comments. He said it is not fair to put the burden on the approximately 6,500 real estate owners in the City. These increases are necessary to preserve the quality of life enjoyed in the City.

Mayor Eagle presented the following resolution for Council's consideration of approval:

Resolution

At a regular meeting of the City Council of Harrisonburg, Virginia on July 14, 1998, at which meeting a quorum was present and voting, the following resolution was adopted.

WHEREAS, § 37.1-194 of the *Code of Virginia*, 1950 as amended, requires each City and County to establish, singly or in combination, a community, a community services board for the provision of mental health, mental retardation, and substance abuse services to its residents; and

WHEREAS, the City of Harrisonburg already has established the Harrisonburg-Rockingham Community Services Board pursuant to this statutory provision; and

WHEREAS, § 37.1-194 of the *Code of Virginia*, 1950 as amended, further requires each City and County to designate, in consultation with its community services board, this board as an operating community services board, an administrative policy community services board, or a policy-advisory community services board with a local government department; and

WHEREAS, the Harrisonburg-Rockingham Community Services Board provides community mental health, mental retardation, and substance abuse services, directly through its own staff or through contracts with other providers; and

WHEREAS, the Harrisonburg-Rockingham Community Services Board conforms to the definition of an operating community services board that is contained in § 37.1-194.1 of the *Code of Virginia*, 1950 as amended; now therefore,

BE IT RESOLVED, by the City Council of Harrisonburg, Virginia, that the Harrisonburg-Rockingham Community Services Board is hereby designated as an operating community services board with the powers and duties enumerated in § 37.1-197.A and § 37.1-197.1 of the *Code of Virginia*, 1950 as amended.

Date

Mayor

Attest:

Clerk of City Council

Joseph Sharrer, executive director of Harrisonburg-Rockingham Community Services Board, requested that the local board be designated as an operating board. He said that the General Assembly has required that each CSB be designated as either an operating, administrative or policy advisory board. The local board has functioned as an operating board, employs staff, operates programs, and contracts to deliver services. Council Member Green offered a motion to designate the Harrisonburg-Rockingham Community Services Board as an operating board. The motion was seconded by Vice-Mayor Lantz, and approved with a three to zero vote of Council Members present with Council Member Rogers abstaining.

Joseph Sharrer, executive director of Harrisonburg-Rockingham Community Services Board, explained that each government body is required by the General Assembly to approve the state performance contract. He explained that the local board has maintained the existing programs and increased some of the housing and rental assistance programs. A position was added to service the mentally ill and chemically addicted population. Vice-Mayor Lantz offered a motion to approve this contract. The motion was seconded by Council Member Green, and approved with a three to zero vote of Council Members present with Council Member Rogers abstaining.

City Manager Stewart presented a request from Rockingham County Public Schools. John Kidd, School Superintendent of Rockingham County, explained that the County is requesting City water services for a potential Westside county elementary school to be built on property across the highway from the Belmont subdivision. The new school would replace Mount Clinton Elementary School which was built in 1925 and help with crowding in other schools. He reviewed potential sites for a new elementary school and noted that the County did not have many options. Council Member Rogers commented that any time the City can work with the County, we are willing to do it. However, he suggested because of the annexation law and Harrisonburg's moratorium on water and sewer service connections outside the City limits, that a letter written by the Rockingham County Board of Supervisors supporting this request be sent to City Council. Council Member Rogers presented a brief report concerning the median adjusted gross income for a married couple in Virginia. He said that the median income for a couple in Virginia is \$43,869 compared to Rockingham County \$35,249 and Harrisonburg \$37,358 which only rates a C. He said that both the County and City needed to find ways to keep our graduates in this area. Council Member Rogers offered a motion to approve this request upon receiving the letter from the Rockingham County Board of Supervisors. The motion was seconded by Council Member Green, and approved with a unanimous vote of Council Members present. Vice-Mayor Lantz noted that this request from the County schools system differed from earlier requests. He said "One of the major reasons for that is there was an agreement with the landowners that the City would provide water for business or residential development on that property. Although that request does say commercial or business, the school doesn't quite fall into that."

City Manager Stewart explained that the Retail Merchants Association has requested blocking certain streets around Court Square and a portion of North Main Street on August 29 for an Arts and Craft show. The street will be closed from 9:00 a.m. until 4:00 p.m. The appropriate staff members reviewed the request and supported closing the streets around Court Square, but recommended leaving the appropriate 18' fire lane and movable barricades. Council Member Green offered a motion to close a portion of Court Square on August 29. The motion was seconded by Vice-Mayor Lantz, and approved with a unanimous vote of Council Members present.

City Manager Stewart presented a request to charge off two (2) uncollectible checks in the amount of \$110.00. He explained that City Treasurer Neal has advised that she has been unable to collect these checks. Council Member Green offered a motion to approve this request. The motion was seconded by Vice-Mayor Lantz, and approved with a unanimous vote of Council Members present.

City Manager Stewart presented a request for a supplemental appropriation for interest earned on the road improvement bonds. He explained that this action will appropriate some of the interest earned on the \$7,330,000 Public Improvement bond issue and help to finance the second project from the road bond which is improvements to Reservoir Street. Council Member Green offered a motion to approve this request for a first reading, and that:

\$450,000 chge. to: 1310-31010 Amount from fund balance

\$450,000 approp. to: 1310-910141-48607 East Side Road Improvement

The motion was seconded by Council Member Rogers, and approved with a unanimous recorded vote of Council Members present.

City Manager Stewart presented a request for a supplemental appropriation for a DMV grant. He explained that these funds will reimburse the City for overtime funds in the Police Department. Council Member Rogers offered a motion to approve this request for a first reading, and that:

\$4,656.85 chge. to: 1000-31010 Amount from fund balance

\$4,656.85 approp. to: 1000-310131-41020 Salaries & Wages OT

The motion was seconded by Vice-Mayor Lantz, and approved with a unanimous recorded vote of Council Members present.

City Manager Stewart presented a request for a supplemental appropriation for the Police Department. He explained that this fund reflects money recovered from insurance companies for damages to two Police vehicles. Vice-Mayor Lantz offered a motion to approve this request for a first reading, and that:

\$19,089.65 chge. to: 1000-31010 Amount from fund balance

\$ 4,799.65 approp. to: 1000-43350 Maint. & Repairs to Auto Equipment

14,290.00 approp. to: 1000-48151 Replace - Motor Vehicles & Equipment

The motion was seconded by Council Member Green, and approved with a unanimous recorded vote of Council Members present.

City Manager Stewart presented a request to transfer funds between General Fund Capital projects. He explained that this transfer will allow completion of an infrastructure in the Technology Park. Vice-Mayor Lantz offered a motion to approve the transfer of these funds:

\$381,000 chge. to: 1310-910141-48606 Public Safety Facility

\$381,000 approp. to: 1310-910141-48614 Economic Development

The motion was seconded by Council Member Rogers, and approved with a unanimous vote of Council Members present.

Taines Rontopoulos thanked Mayor Eagle for clarifying some of his concerns regarding the increases in taxes. He mentioned that City Manager Stewart had explained the proposed Planning Commission's change and adopting of an ordinance for off-street parking. He said that he has noticed a lot of rottweiler dogs in the City and suggested that perhaps the Police Department should review what other communities have done regarding these large dogs. He said that Fairfax and Alexandria are requiring the owners of rottweiler dogs to carry liability insurance.

Naomi Thomas

suggested that Council should not communicate with the School Board through a paid newspaper article. She said that the School Board adopted their Capital Improvement Plan in September 1997.

Ellen Walker

questioned how could City Council justify purchasing land on Garber Church's Road in the amount of \$233,000. Mayor Eagle said that the purchase was justified and suggested that she speak with either him or the City Manager regarding this matter.

City Manager Stewart announced that a ribbon cutting ceremony will be held Wednesday, July 15th at 9:00 a.m., on the new Neff Avenue Extended to commence the opening of the street.

Council Member Rogers offered a motion to refer a request from Clark & Bradshaw to vacate a portion of Moore Street to the Planning Commission. The motion was seconded by Vice-Mayor Lantz, and approved with a unanimous vote of Council Members present.

At 9:08 p.m., Council Member Rogers offered a motion that Council enter an executive session for discussion and consideration of personnel and prospective candidates to be appointed to the Social Services Advisory Board, Harrisonburg-Rockingham Regional Sewer Authority, Commission on Children and Youth, Convention & Visitors Bureau Advisory Board, Valley Program for Aging Services Advisory Board, and Community Services (Chapter 10) Board, exempt from public meeting requirements pursuant to Section 2.1-344(A)(1) of the Code of Virginia. Discussion and consideration of the acquisition of real estate to be used for public purposes, exempt from public meeting requirements pursuant to Section 2.1-344(A)(3) of the Code of Virginia, 1950, as amended. The motion was seconded by Vice-Mayor Lantz, and approved with a unanimous vote of Council Members present.

At 9:35 p.m., the executive session was declared closed and the regular session reconvened. The following statement was agreed to with a unanimous recorded vote of the Council: I hereby certify to the best of my knowledge and 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 public business matters as were identified in the motion by which the executive or closed meeting were convened, were heard,

discussed or considered in the executive session by the City Council.

Vice-Mayor Lantz offered a motion that Henry C. Clark, John R. Gordon, Roger D. Baker and Mike Collins be appointed to another term on the Harrisonburg-Rockingham Regional Sewer Authority to expire on July 14, 2002. The motion was seconded by Council Member Green, and approved with a unanimous vote of Council Members present.

Vice-Mayor Lantz offered a motion that Stephanie Spangler be appointed to a term on the Children and Youth Commission. The motion was seconded by Council Member Green, and approved with a unanimous vote of Council Members present.

Vice-Mayor Lantz offered a motion that Paula Gucker be appointed to the Valley Program for Aging Services Advisory Board. The motion was seconded by Council Member Green, and approved with a unanimous vote of Council Members present.

Vice-Mayor Lantz offered a motion that Council Member Larry Rogers be appointed to another three year term on the Convention & Visitors Bureau Advisory Board to expire on June 30, 2001. The motion was seconded by Council Member Green, and approved with a unanimous vote of Council Members present.

Vice-Mayor Lantz offered a motion that Richard Travis, 1171 Nelson Drive, be appointed to a first term on the Community Services (Chapter 10) Board to expire on July 1, 2001. The motion was seconded by Council Member Green, and approved with a three to zero vote with Council Member Rogers abstaining.

At 9:50 p.m., there being no further business and on motion adopted the meeting was adjourned.

CLERK

MAYOR