

REGULAR MEETING

JULY 11, 2000

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

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

Vice-Mayor Peterson offered a motion to approve the consent agenda, including approval of the June 27 and July 1, 2000 minutes and a second reading increasing the School Capital Projects Fund. The motion was seconded by Council Member Fitzgerald, and approved with a recorded roll call vote taken as follows:

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

Absent - None

✓ Planning and Community Development Director Turner introduced a request by Beckwith Development to rezone 2.08 acres located on the northern side of West Market Street, opposite Thomas Harrison Middle School. The Land Use Guide shows the property as Planned Residential - Medium Density use. This category is designated for the planned development of multi-family uses including two-family dwellings and single-family attached dwellings (townhouses and condominiums). She reviewed the surrounding property uses which include R-1 Single-Family Residential District, vacant land, single-family, multi-family, a Harrisonburg Electric Commission substation zoned B-2, and Thomas Harrison Middle School. She explained that the applicant has requested this rezoning to construct townhouses on the site. This is a request for a conditional rezoning from R-1 Single-Family Residential District to R-3 Multiple Dwelling Residential District (Conditional) with the following proffers: (1) Dwelling units may be occupied by a family or not more than two (2) persons except that such occupancy may be superseded by building regulations. (2) Attached townhouses of not more than eight (8) units per building. (3) Developer will plant a double staggered row of evergreens and erect a solid fence barrier on the east side between Harrisonburg Electric Commission and lot 40 and on the north side between lot 40 and lot 7 on the Wellington Subdivision. The conceptual plan, although not proffered, shows a proposed townhouse development with 29 units on 2.08 acres. Mrs. Turner also said that our ordinance allows approximately 21 townhouse units to be constructed on an acre of land. This proposal would be within the allowable density; however, this calculation does not take into consideration land used for parking areas and travelways which would reduce that number. Harrisonburg Electric

Commission commented that excessive noise from the substation located east of the property might cause future nuisance complaints from a residential neighborhood. At Planning Commission's public hearing, Mr. Beckwith spoke in favor of the development and Mr. Jay Litten, attorney for Frazier Quarry spoke in opposition. At the first Planning Commission meeting, Mr. Litten presented some information on a private deed restriction which had been placed on this property when Mr. Beckwith bought it from the Fraziers. Because of the concern, Planning Commission tabled this request for a month to allow the City Attorney to review the private deed restrictions concerning this development. The City Attorney advised Planning Commission that the agreement between Frazier Quarry and Mr. Beckwith is a private matter and that the City does not enforce deed restrictions or private agreements between property owners. She noted that the land is already zoned R-1 Single-Family Residential. She said that Planning Commission recommended approval of the proposed rezoning.

At 7:38 p.m., Mayor Frank 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 26, and Monday, July 3, 2000.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a public hearing on Tuesday, July 11, 2000 at 7:30 p.m., in the City Council Chambers, 345 South Main Street, to consider the following:

REZONING

Request by Beckwith Development to rezone 2.08 acres, identified as tax map parcel 37-C-6, from R-1 Single-Family Residential District to R-3 Multiple Dwelling Residential District (Conditional). The property is located on the northern side of West Market Street, opposite Thomas Harrison Middle School. The R-1 district is intended for single-family dwellings on 10,000 SF lots and certain governmental, educational, and religious uses that are compatible with residential surroundings. The R-3 district allows single-family dwellings, duplexes, apartments, townhouse units, and institutional buildings. The maximum allowable density in the R-3 district is up to 21 units per acre. The Land Use Guide recommends the site for Planned Residential-Medium Density 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 individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five days.

**CITY OF HARRISONBURG
Steven E. Stewart
City Manager**

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

Walter Beckwith developer of Wellington Subdivision said that it first was designed and planned as a retirement community. Originally Wellington planned to include an amenity's center on lot 40. However, with the cost of blasting and grading the Wellington site to make more desirable level home sites, the plans were changed. Mr. Beckwith said that marketing research indicates that the addition of a townhome community in the Wellington Subdivision would help fill a need in Harrisonburg for moderate housing for both retired families and families with children being close to City schools. This half-mile stretch along West Market Street seems to fit in with everything happening on the west side of the City. The Harrisonburg Land Use Guide designates the property for planned residential medium density. Mr. Beckwith reviewed some of the proffers and said that they were concerned about safety for the residents. The 2.08 acre lot is an ample buffer between lot 40 and the quarry and this zoning change has been supported by City staff and the Planning Commission.

Todd Rhea, attorney with the law firm of Clark and Bradshaw, said that he has worked with Mr. Beckwith and his company in developing the subdivision concept and rezoning idea for this parcel on West Market Street. At the first Planning Commission meeting, several issues were raised including safety and certain agreements between the property owners. He said there are some restrictive easements and noted that nothing is being hidden from any prospective purchasers.

Jay Litten, attorney with the law firm of Litten and Sipe, and representing Frazier Quarry said that the quarry was opposed to this rezoning. He said that the property is currently zoned R-1 and questioned why should it be rezoned. This property is subject to an industrial easement and that easement acknowledges that the property is subject to noise, vibrations, and dust from the quarry. This property is in an area affected by an industry. This property is not prime residential property. The Frazier oppose this rezoning application because of public safety and children living in close proximity with an industrial site. Frazier Quarry has been operating at the Waterman Drive location since about 1949. Over the years, they have moved their operation back away from existing neighborhoods. Ironically, that has pushed them back closer to this proposed development. He suggested there were other places located in the City for townhouses that would not have a safety hazard. Besides the safety hazard and the industrial easement, there is the restrictive covenant which was placed on the property in 1986 by Frazier Quarry. That restrictive covenant said that there shall be no residential development until the year 2016. Mr. Beckwith acquired the property in 1998 or 1999 and approached the Fraziers and asked that the restrictive covenant be lifted. Mr. Beckwith seemed willing to make sure that all of Wellington would blend in well with the quarry because this would be a retirement development with an amenity's center on this property. That seemed like a very good fit to the Fraziers. However, the release was conditional. The release requires that Beckwith Development build streets, water lines, sewer lines, and so on throughout the subdivision, by December 28, 2001. He questioned if the City would benefit from rezoning this property and noted that the Comprehensive Plan designates this area as medium density multi-family.

There being no others desiring to be heard, the public hearing was declared closed at 8:03 p.m., and the regular session reconvened.

Discussion by Council Members included an agreement transferring lot 7 to Frazier Quarry including providing water and sewer, Comprehensive Plan, trends of growth, restricted covenant, industrial easement, a lot of R-3 property yet to be developed in the City, change leaves a checkerboard approach to City zoning, a complicated issue, and a planned retirement community. Council Member Fitzgerald offered a motion to table this rezoning request until the next meeting.

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

Planning and Community Development Director Turner introduced a request to amend the City of Harrisonburg's 1998 Comprehensive Plan in order to add a mediation statement. She explained that the mediation center noticed recently that the 1992 Comprehensive Plan had a statement encouraging the use of mediation. That statement read: Consider the use of mediation for facilitating a consensus through face-to-face negotiation in a non-adversarial process. A mediation statement was included in the 1992 plan, but it was inadvertently left out during the 1998 update. She said that it was recommended that the mediation statement be inserted on page 94 in the Government Section Project/Program Strategies with the same text as before. Planning Commission recommended adding the statement back into the Comprehensive Plan.

At 8:10 p.m., Mayor Frank 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 26, and Monday, July 3, 2000.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a public hearing on Tuesday, July 11, 2000 at 7:30 p.m., in the City Council Chambers, 345 South Main Street, to consider the following:

Comprehensive Plan Amendment

Public Hearing to consider a request to amend the City of Harrisonburg's 1998 Comprehensive Plan in order to add a mediation statement. The following statement will be considered for insertion on page 94, Government Section, Project/Programs Strategies, of the 1998 Comprehensive Plan.

- 6. Consider the use of mediation as a means of facilitating consensus through face-to-face negotiation in a non-adversarial process.**

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 individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five days.

**CITY OF HARRISONBURG
Steven E. Stewart
City Manager**

Mayor Frank called on anyone desiring to speak for or against amending the 1998 Comprehensive Plan.

Tim Rucke a resident living at 220 Paul Street encouraged City Council to consider this amendment to the Comprehensive Plan. He said this is an opportunity to set a tone and create a culture that promotes positive communication and collaborate problem solving.

There being no others desiring to be heard, the public hearing was declared closed at 8:11 p.m., and the regular session reconvened. Council Member Lantz offered a motion to approve this request amending the 1998 Comprehensive Plan. The motion was seconded by Council Member Fitzgerald, and approved with a recorded roll call vote taken as follows:

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

Absent - None

Police Chief Harper presented for Council's consideration an application from Natalie W. Miller applying for a Certificate of Public Convenience and Necessity to open Gem Enterprises, Ltd. He explained that Ms. Miller would like to operate a limousine service in Harrisonburg and has already established a limousine service in Winchester. Colonel Harper said that the Police Department has completed the background for the applicant and recommended issuing the certificate. Vice-Mayor Peterson offered a motion to approve a Certificate of Public Convenience & Necessity for Gem Enterprises, Ltd. for five (5) years. The motion was seconded by Council Member Fitzgerald, and approved with a unanimous vote of Council.

Assistant City Manager Baker said that he would be presenting a number of proposed projects to be considered for funding at the Virginia Department of Transportation annual pre-allocation hearing on July 21st in Verona. Mr. Baker explained that the proposed projects are the same projects which were presented last year. The existing projects under construction include four-laning portions of Cantrell Avenue, Stone Spring Road, Port Republic Road, Linda Lane, Mt. Clinton Pike, widening portions of South Main Street, Country Club Road, Pleasant Hill Road, and upgrading Pleasant Valley Road, and East Market Street. The City will also request funding for our transit system at the meeting. Council Member Lantz offered a motion to support these proposed projects at the VDOT meeting in Verona. The motion was seconded by Vice-Mayor Peterson, and approved with a unanimous vote of Council.

Vice-Mayor Peterson presented for Council's consideration adopting Robert's Rules of Order Newly Revised. He explained that the current City Code Handbook listed as Karcher's Handbook for parliamentary procedures is out of print. He also noted that most organizations use Robert's Rules of Order. Mr. Peterson said that some of the major changes included in Robert's Rules of Order were that most motion would not need a second, no time limits of discussion; however, the current code limits Council Members too only speaking for 15 minutes on anyone topics, and saying that the Mayor cannot make motions. He suggested that City Counsel because of their small size should follow the same rules as those for small boards, but noted that the rules could be modified according to how this Council wishes to operate. Council Member Lantz said

that "He was not opposed to Roberts's Rules of Order. Nevertheless, he did not like carefully choosing certain sections of the book. Either it is adopted or not adopted. He also said that if the Mayor is chairing and controlling the meeting, then the Mayor should not be making motions." Robert's Rules of Order Newly Revised does state that the Chair or Mayor can speak in discussion without rising or leaving the chair; and, subject to rule or custom within the particular board (which should be uniformly followed regardless of how many members are present), he/she can usually make motions and usually votes on all questions.

✓ Council Member Lantz offered a motion that Title 2, Chapter 3, Section 1 of the Harrisonburg City Code be amended to read: The proceedings of the Council, except as otherwise provided in this chapter, shall be governed by the current edition of "Robert's Rules of Order Newly Revised." by adding procedures for small groups. The motion was seconded by Council Member Fitzgerald, and approved with a recorded roll call vote taken as follows:

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

Absent - None

Vice-Mayor Peterson offered a motion directing the City Attorney to draft removal of Title 2, Chapter 3, Sections 3, 4, 7, and 12-18 of the Harrisonburg City Code. He explained that these sections would be redundant by adopting Robert's Rules of Order and should be removed. The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

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

Absent - None

✓ Vice-Mayor Peterson offered a motion directing the City Attorney to draft the appropriate wording making it clear in the City Code that while the Mayor is chairing the meeting, he/she may not make a motion. He also directed the City Attorney to do an appropriate re-numbering of Chapter 3 by adding this provision. The motion was seconded by Council Member Rogers, and approved with a recorded roll call vote taken as follows:

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

Mayor Frank

Absent - None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these are funds through a Federal block grant and will be used to purchase in-car videos and power point training. Council Member Lantz offered a motion to approve this request for a first reading:

\$16,370.00 chge. to: 1000-31010 Amount from fund balance
\$16,370.00 approp. to: 1000-310231-48211 New equipment and machinery

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

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

Absent - None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these are funds left over in a Federal block grant and will be used to purchase police equipment for the department. Vice-Mayor Peterson Lantz offered a motion to approve this request for a first reading:

\$1,186.87 chge. to: 1000-31010 Amount from fund balance
\$1,186.87 approp. to: 1000-310331-48211 Machinery and Equipment (additions)

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

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

Absent - None

City Manager Stewart presented a request for a supplemental appropriation of funds encumbered at June 30, 2000. He explained that these funds are for purchase orders out of last year's budget for a variety of goods and/or services. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$476,309.38 chge. to: 1000-31010 Amount from fund balance

\$ 3,500.00 approp. to: 1000-121511-48173 Software
 34,000.00 approp. to: 1000-122011-48173 Software
 1,000.00 approp. to: 1000-122211-48173 Software
 5,700.00 approp. to: 1000-310131-48211 Machinery and Equipment
 35,750.00 approp. to: 1000-320132-48181 Buildings and grounds
 17,400.00 approp. to: 1000-430221-48181 Buildings and grounds
 89,437.50 approp. to: 1000-410241-48294 WIP-Annex area #1
 79,133.98 approp. to: 1000-410241-48297 WIP-West Market Street
 108,000.00 approp. to: 1000-410741-46070 Repair and maintenance supplies
 95,000.00 approp. to: 1000-410741-48111 Machinery and Equipment
 1,089.80 approp. to: 1000-710171-46132 Ed/rec supplies - recreational
 1,140.00 approp. to: 1000-710171-46150 Merchandise for resale
 5,158.10 approp. to: 1000-810521-43134 Labor Market & Training survey

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

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

Absent - None

Hank Dunton, a resident of 314 Franklin Street, speaking on behalf of the CARING Group said that the group hoped the political climate would soon see a change and that the City Council can move forward with an agenda serving all of the citizens. The commitment to the people should and must take precedent over any want or whim of self or benefactor. He said that during recent weeks the City has been marked by departure from service of several dedicated servants. CARING is committed to supporting the many remaining City employees who are dedicated to the service of this City. He urged the City Council to retain the remaining dedicated loyal employees.

Richard Ingram, a resident of 686 Wyndham Woods Circle, expressed concern over the placement of the 13th hole of the golf course. He said because of trees being removed on the golf course and the nearness of the current placement of the pin for the 13th green to his house puts the family and property at jeopardy for injury and/or damage from errant golf balls. He said that the City could be liable for damage or injury incurred as a result of an errant golf ball. He requested that the City redesign the 13th hole to remove any possible hazard from his property.

Vern Sequin suggested that some of the money information presented on local radio talk shows concerning the golf course was misleading.

✓ Police Chief Harper encouraged all of the City residents to participate in the National Night Out 2000. He explained that the Police Department will be traveling in a convoy to various communities throughout the City to participate in community activities.

Bob Berrson encouraged neighborhoods in Harrisonburg to participate in National Night Out 2000.

Vice-Mayor Peterson said that he plans to introduce changes to the City Charter at the next City Council meeting giving citizens the right to recall Council Members, call for referendums, having at least three Council Members elected every two years, and removing the specific cap on Council and Mayor's salary.

City Manager Stewart announced that City staff would be appearing before the Rockingham County Board of Supervisors Wednesday July 12 to hopefully have the final phase for the water line from the south fork of the Shenandoah River approved. He said that Rockingham County's Planning Commission has voted unanimously to forward the request to the Board of Supervisors saying that it was in compliance with the County's Comprehensive Plan.

At 9:15 p.m., Council Member Rogers offered a motion that Council enter a closed session for discussing and considering prospective candidates for appointment to boards and commissions, and; discussing the possible resignation of a public official. A closed session is permissible for both purposes pursuant to Section 2.1-344. A.1 of the Code of Virginia (1950), as amended (the Code). The motion was seconded by Council Member Fitzgerald, and approved with a unanimous vote of Council.

At 10:30 p.m., the closed 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 matters as were identified in the motion by which the executive or closed meeting was convened, were heard, discussed or considered in the closed session by the City Council.


CLERK


MAYOR