

REGULAR MEETING

OCTOBER 9, 2001

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

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

Vice-Mayor Peterson offered a motion to approve the minutes on the consent agenda and to dispense with the reading of the minutes from the previous meeting. The recorded roll call vote was taken as follows:

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

Absent – None

Vice-Mayor Peterson offered a motion to table amending and re-enacting Section 17-1-2(a) and Section 17-2-3(b) of the Harrisonburg City Code. The motion was approved with a unanimous vote of Council. These amendments state that four School Board Members should be elected from the east school district and two School Board Members should be elected from the west school district. This action is necessary due to the 2000 census. Vice-Mayor Peterson suggested inviting the Electoral Board and the School Board to the next Council meeting to see if perhaps they wanted to make a presentation on maintaining this system or going to an at large system.

Mayor Frank announced that the public hearings to consider a rezoning request by Dunham Bush and amending the Comprehensive Plan would be postponed until a future date.

Planning and Community Development Director Turner introduced a request by Eugene and Jonas Borntrager to rezone 0.52 acres, tax map parcels 25-F-6, 7, & 8 from M-1, General Industrial District to B-1, Central Business District. The lot is located at 205 South Liberty Street. She explained that the Comprehensive Plan's Land Use Guide classifies the area as Commercial. This designation states that this area is suitable for commercial development to include retail, wholesale, or service functions principally found along major travel corridors and in the Central Business District. Currently on the site is a professional office occupied by Layman, Diener, and Bortrager and Twin States Supply Inc. The surrounding uses in the area,

include the Harrisonburg Police Department, Harrisonburg Electric Commission, Cassco Ice Company, Cassco Ice and C&W Railroad right-of-way. The building is a two-story structure, with the first floor being built almost entirely into the ground. This level provides office space for Twin State Supplies, Inc., a salon and barber supply company. The roof of this business is the front parking area for Layman, Diener and Borntrager, Inc. The property owners have requested constructing a roof over their front parking area. In addition, they have expressed an interest in converting this covered parking area into additional professional office space for their business at a future date. The three major issues faced with the sites at 185 and 205 South Liberty Street are that under the current zoning the uses do not meet parking requirements, the structures do not meet the setback requirements and the current uses are considered nonconforming. Initially, the owners asked for a special use permit to allow for the modifications. However, during the review process an alternative solution was discovered. It was determined that a request to rezone the parcels would provide a better fit than a special use permit. A more appropriate zoning classification would be the B-1, Central Business District that provides for areas of commercial, financial, professional and governmental activities to which the public requires direct and frequent access. She said that staff and Planning Commission recommended approval.

At 7:45 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, September 24, and Monday, October 1, 2001.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a Public Hearing on Tuesday, October 9, 2001, at 7:30 p.m., in the Municipal Building, City Council Chambers, 345 South Main Street, to consider the following:

REZONING

Public Hearing to consider a request by Eugene Diener and Jonas Bontrager, with representative PHR&A, to rezone 0.52 acres, tax map parcels 25-F-6, 7 & 8 from M-1, General Industrial District to B-1, Central Business District. The lot is located at 205 South Liberty Street.

The Comprehensive Plan designates this area as Commercial, which has uses including retail, wholesale, or service functions. These areas are found along major travel corridors and in the Central Business District of the City.

The Zoning Ordinance states that the M-1, General Industrial District is intended primarily for manufacturing, processing, storage, and distribution activities, which are not property associated with, nor compatible with, residential and institutional development. No minimum lot size restrictions exist in the M-1, General Industrial District. In addition, the B-1, Central Business District is intended as an urban and regional center for the conduct of commercial, financial, professional and governmental activities to which the

public requires direct and frequent access. No minimum lot size or setback restrictions exist in the B-1, Central 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 person interested will have an opportunity to express their views at this public hearing. Any individual requiring auxiliary aids, including signers, in connection with this 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 Frank called on anyone desiring to speak for or against this rezoning request. Mark Byerly, Engineer with Patton, Harris, & Rust and representing Layman, Diener, and Borntrager, offered to answer questions. There being no others desiring to be heard, the public hearing was declared closed at 7:46 p.m., and the regular session reconvened. Council Member Fitzgerald offered a motion to approve this request. The recorded roll call vote was taken as follows:

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

Absent – None

✓ At 7:47 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, September 24, and Monday, October 1, 2001.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a Public Hearing on Tuesday, October 9, 2001, at 7:30 p.m., in the City Council Chambers, Municipal Building, 345 South Main Street, Harrisonburg, Virginia.

The Harrisonburg City Council will receive the views of citizens regarding the proposed use of funds paid under the Local Law Enforcement Block Grant as it relates to the Harrisonburg Police Department's entire budget. At this hearing, persons shall be given an opportunity to provide written and oral views to the City Council about the Department's budget and the relation of the Grant to the entire budget.

CITY OF HARRISONBURG

Roger D. Baker
City Manager

Mayor Frank called on anyone desiring to speak for or against the local Law Enforcement Block Grant.

Colonel Don Harper stated that the United States Department of Justice issues the local Law Enforcement Block Grant to assist localities in improving public safety. A public hearing must be held to receive these funds, which will be used to purchase in-car cameras for the police vehicles. There being no others desiring to be heard, the public hearing was declared closed at 7:48 p.m., and the regular session reconvened. Council Member Lantz offered a motion to approve this block grant. The recorded roll call vote was taken as follows:

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

Absent: - None

David Mills, president of the James Madison University Student Body, introduced himself to City Council and said that on behalf of the entire James Madison University Student Body, they were interested in furthering the partnership between JMU and the greater Harrisonburg community. He said that it has been a busy year one filled with both success and tragedy. This year has demanded his organization and all students to reevaluate their priorities and values. The one value that has gained priority in the aftermath of all this tragedy is one word and that is "Community". The Student Government Community Affairs Committee is charged with establishing and maintaining a constructive working relationship with City Council. He also introduced several other members of the committee.

Fire Lieutenant Miller presented for Council's consideration replacing members of the Local Emergency Planning Committee (LEPC). He explained that the LEPC is a committee required by the Superfund Amendments and Reauthorization Act (SARA) of 1986, otherwise known as the Community Right to Know Act. This legislation requires the locality to establish a system for industry to notify the locality of the type and amounts of hazardous materials used within the community. The LEPC receives and stores this information and disseminates it on request from members of the community. He said that the City participated in a recent mock hazardous material plan. One of the goals of the plan was to make sure the plan fits the needs of the community. The committee is composed of members of the community of various occupations and agencies. The membership of the committee needs to change to allow Assistant City Manager Kurt Hodgen to replace City Manager Roger Baker and Paul Lockwood to replace Bob Dillon as the representative from Rockingham Memorial Hospital. Vice-Mayor Peterson offered a motion to appoint Kurt Hodgen and Paul Lockwood to the Local Emergency Planning Committee. The motion was approved with a unanimous vote of Council.

City Manager Baker presented for Council's consideration a request to sell City property located at 1781 West Market Street. He explained that this property was purchased when the City widened Garbers Church Road and has been rented since the project was completed. The house is presently empty and should be returned to the tax roll. Vice-Mayor Peterson offered a motion to proceed appropriately with selling the property and directed the City Manager to explore the best way to sell the house. The recorded roll call vote was taken as follows:

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

Absent – None

City Manager Baker presented a request to declare December 31, 2001 as an additional holiday. He explained that the State and Rockingham County have decided to give their employees December 31st as an additional holiday. The main reason is that the holiday falls on a Tuesday and this will give employees two long weekends. Council Member Fitzgerald offered a motion to approve this request. The motion was approved with a unanimous vote of Council.

Planning and Community Development Director Turner presented a request to waive a performance bond for Kelly/Tower Subdivision. She explained that when a developer is starting construction on a subdivision plans are submitted showing how the streets will be constructed and the layout of the sewer, water, and storm drainage facilities. She said that a developer has two options for putting in public facilities. If the developer puts public facilities in before the subdivision plat is recorded, it is permitted; however, it means they can't record the subdivision plat until the facilities are in place and have been accepted by the City as part of the City's system. Then the plat can be recorded and the lots can be sold. If the developer wants to start the sale of the lots before the streets, water and sewer are in, they need to post surety to assure the completion of the public improvements and then construction on the subdivision can start. This is the course that most of the developers take in the City and then after the lots are platted, the developer can start selling the lots. However, a situation could be created if a developer sold lots to somebody and then never built the street, never built the sewer, never built the water lines, then people who were expecting to be able to build houses on the lots would look to the City to do something about it because all the subdivision and construction plans had been approved. In that type of a situation the City could call the surety and use the funds to construct the public improvements. She mentioned that the City has come close several times, but has never had to do that. Mrs. Turner said that when she spoke with Mr. Gebre about Hope Community Builders and Kelly/Tower Subdivision, he expresses some concerns about have to pay for one of the surety and asked if there was a way around it. It was decided the only way around it would be to appear before City Council and ask if that requirement could be waived because of special circumstances due to the nature of the subdivision and the funding that it being obtained from the state. Following further discussion and comments, Council Member Lantz offered a motion to waive this performance bond for the Kelly/Tower Subdivision. The recorded roll call vote was taken as follows:

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

Absent – None

City Manager Baker presented for Council's consideration approving the purchase of the Virginia Department of Transportation Harrisonburg Residency office. The property is located on Chicago Avenue and Waterman Drive. This property will be used as a satellite operation by various City departments. He said that the plans are to use the property for the Department of Public Utilities and Public Works. He said the City has the property appraised at \$453,600. Vice-Mayor Peterson offered a motion authorizing the City Manager to execute the necessary documents. The recorded roll call vote was taken as follows:

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

Absent – None

Deputy Fire Chief Groah presented an overview of the Statewide Mutual Aid Agreement. He explained that the Statewide Mutual Aid Agreement has been formulated so that in times of natural or man-made disaster, localities can provide assistance to each other with little or no negotiations as to who will be responsible for insurance coverage, damage to equipment or injuries to personnel as well as payment for costs incurred by the assisting locality for salaries, expenses, and supplies used during disaster recovery operations. City Attorney Miller said that if necessary the beginning place for this mutual aid agreement is state statutory and basically a model or form way of working out ahead of time who will be responsible for what, what are the criteria for bringing in assistance from another locality, who has primary responsibility even when an emergency is going on within one community, who pays for what and who remains responsible for their own personnel and property. All of these issues have been discussed and decided, so that at the time of a crisis this model resolution will take place. This is a resolution that states the City Council of Harrisonburg resolves to go along with is taking place in other communities. Council Member Lantz offered a motion to approve this model resolution as presented. The motion was approved with a unanimous vote of Council.

City Manager Baker presented a request to increase petty cash in the City Manager's office from \$200 to \$500. He explained that since four departments use this fund for small purchases, it is necessary to reimburse the account weekly. Sometimes the account is short when it is necessary to make a purchase. Council Member Fitzgerald offered a motion to approve this request. The recorded roll call vote was taken as follows:

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

Absent – None

City Manager Baker presented a request for a supplemental appropriation to purchase the Virginia Department of Transportation property. He explained that this property located on Chicago Avenue and Waterman Drive would be used to the Public Works Department, Public Utilities Department, Parks and Recreation Department and Fire Department activities. Vice-Mayor Peterson offered a motion to approve this request for a first reading.

\$453,600.00 chge. to: 1000-31010 Amount from fund balance

\$453,600.00 approp. to: 1000-430221-48227 Old VDOT Site, Land and Building

. The recorded roll call vote was taken as follows:

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

Absent – None

Economic Development Director Shull presented a request to transfer funds for the Hardesty Higgins House. He explained that these funds will be used for a local match for a Federal grant to renovate the Hardesty Higgins House. It will also establish a capital project accounts to get the project rolling. A grant was received from VDOT to purchase the property and the City does have the title to the building. The remainder of the funds will be used to start the preliminary engineering and renovation of the building. Mr. Shull also that we are in the idea stage, and we're working with the architect on potential uses for the building. A Craft House Advisory Committee has been established to work on the project. Some of the committee ideas include housing the Convention and Visitors Bureau in the building, a history and transportation museum, a gift shop, trolley stop, children's craft room, and a tearoom. One wall of the historic house could be torn down to add more rooms. Mr. Shull said the renovated house will be a "multi-use facility" which would contribute to downtown revitalization. Vice-Mayor Peterson offered a motion to transfer these funds.

\$45,000 chge. to: 1000-940111-49310 Reserve for contingencies

\$45,000 approp. to: 1000-990111-49216 Transfer to capital projects

\$156,800 chge. to: 1310-33527 ISTE A Grant

45,000 chge. to: 1310-34210 Transfer from the General Fund

\$201,800 approp. to: 1310-910141-48692 Hardesty Higgins House

The recorded roll call vote was taken as follows:

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

Absent - None

The agenda item to amend and re-enact Section 14-1-1 of the Harrisonburg City Code was tabled.

✓ Terry Ward read the following statement: I can be reached at the Valley Voice office located on South Main Street and I am speaking as a civilian about the downtown parking (sorry). I have no financial interest in this matter. I'm just here because the 'Burg is my home and I care about parking downtown. Here're twelve paragraphs of prepared text so that I neither ramble nor forget anything—as we know I'm prone to do.

I visited the recent evening meeting of the Parking Authority, where it was said that the Parking Authority does have a mandate to encourage commerce in downtown—and that it does NOT have a mandate to raise money. Good.

The Parking Authority was discussing replacing our parking meters or putting in a parking booth gate just so control space use-not to raise money. In fact, there's not much money to raise to maintain the parking decks each year: from the meeting, just thirty-eight thousand dollars of that, thirty thousand is the electricity bill. Thirty eight thousand is not much for a City this size and revenue could come from other sources like trimming some expenses and perhaps hiking some difference fees by a few pennies per year.

Why obtain deck-maintenance money from elsewhere? Because this self-proclaimed "Friendly City" should give more weight to its own words by resolving to consider seriously the idea of free parking downtown. It is in the City's interest to do so.

Until the impressive public architecture of the last few years, downtown looked almost dead. Hoping for more great public works is unrealistic, yet many boarded-up businesses exist. Rehabilitating them up to Code is very expensive. Downtown is not quite decrepit yet, but it is on the edge.

You can help it move forward or stagnate. If Charlottesville or Staunton charges fifty cents per hour (or whatever) for shoppers' parking, then I urge you to think like businessmen and ruthlessly undercut them with an unbeatable offer. "Shop Harrisonburg with Free Parking Downtown."

Currently the Parking Authority SEEMS only open to new-improved parking meters, a parking deck booth gate, or some combination. But, already people complain about the risk of getting tickets here. Already people resent needing a handful of silver to go window shop. It is illogical then to worsen the situation by taking away even the possibility of finding a parking meter with some leftover time on it, as the recently proposed booth gate would do. At a time when people bitterly resent being charged fifty cents by their A.T.M. to at least get use of their money—SOME would propose charging them that much, or more, just to browse.

That's not Friendly. And it flies in the face of common sense.

Of course we can't be such a Friendly City that we give everything away, but traditionally towns do support some public services without charge to users—most notably ball fields and parks. Supporting Free Parking Downtown would be simple and cheap downtown rehabilitation step.

Would shopkeepers and workers hog the best spaces for themselves? Not if they have the best interest of their own businesses in mind. A little white paint, a stencil, and enforcement from the City can guarantee it. Mark some spaces "thirty minute parking" and some "two-hour parking". Problem solved. This method is low maintenance, cheap, and as the Parking Authority is suppose to support, an encouragement to downtown commerce.

Now two items. Either at this meeting or at a convenient later one, I ask Council to approve the following:

Resolve, the Council is willing to consider with an open mind the idea of Free Parking Downtown.

Also, to maintain public confidence in the unbiased judgment of the unelected Parking Authority, and to eliminate any possible APPEARANCE of impropriety or potential conflict of interest. I ask the Council to approve the following:

Resolved, Parking Authority members shall be ineligible for parking-related paid employment by the City.

This because there's been talk of needing a full-time Parking Director and a Parking Administrative staff after a booth gate would go in.

That's all. I appreciate your consideration and your service.

Council Member Lantz said, "I did not write that, but I agreed with him. I think that is a travesty to charge people to come downtown to shop in our downtown area when we don't have enough cars and traffic to fill half the parking lots." If our Parking Authority can't find a way to monitor

people from parking there all day, then we have a more serious problem than parking. Discussion and comments from Council Members included the Parking Authority is an independent authority rather than an advisory board, Council's only true power over the Parking Authority comes from budgetary control, making money is not the issue, making parking convenient and fair is what Council wants. Council Member Lantz offered a motion suggesting to the Parking Authority that Council is not interested in making money out of the parking downtown. The motion was approved with a unanimous vote of Council.

Public Works Director Baker invited everyone to attend a Parking Authority meeting on Wednesday morning October 9th.

City Attorney Miller said that yesterday, "I had an opportunity to read through the charter amendments after having sat them aside for awhile and not having looked at them for awhile. I realized in that reading that the draft of the ordinance referendum didn't say what I think that we meant it to say. I think that was in part because we became so familiar with what we had written that we didn't notice what it actually said." What was meant and what was put in the summary that the judge ordered to be printed on the ballots which are already out there in the public in the form of absentee ballots and will be because it is my understating that the ballots for November are pretty much if they are not printed they will be printed. The language of the summary of this charter amendment is correct on this point that the summary states that "it's a majority of the voters voting that will determine whether an ordinance is approved or not approved. It is a majority of the voters voting. That was the key in the summary that went to the judge and that he entered in his order. Unfortunately the draft of the whole full blown charter amendment reads as follows: "If in the duly ordered referendum election, a majority of the registered voters residing in the City vote in favor of the ordinance that it becomes an ordinance if a majority of such voters vote against so the implication of that is that you would have to take or get 50 plus percent of everyone registered to vote which I do not believe was the intent or the understanding of the people in favor of this. So what we have is a draft of the full blown charter amendment that says a majority of voters residing and we have a summary that says a majority of voters voting and the majority of voters voting is what was the intent and what I think the three Council Members, but this where I certainly could be corrected. The three Council Members who voted in favor of sending this to the Circuit Court that was their understanding and I don't mean to dismiss the other two Council Members, but the point there is simply that the three people who passed this had something in mind. I have drafted and I think that you all now have a copy in front of you of an affidavit that I believe is the way to fix this. Basically it puts the matter in the Circuit Court lap. A presentation would be much as I have said in the last minute or two. "Your honor this is what happened and here is an affidavit that signed by those three people who constituted a majority that says what we meant was this substitute language that is in the second paragraph, it is in paragraph five the second associate language that clears this up. Judge what do you want to do?" Changing the summary on the ballot is not an option at this point, at this time on the calendar because the ballot is already out there. The absentee ballots are out there and some have already come back, I believe, people have already voted on the summary and in fact the summary is correct. A wise lawyer would never predict what a judge is going to do. I am not saying much, I am not going to predict what he is going to do, but it seems to me other than saying yes I will allow the language in the full blown draft to be the way I would present to him to be corrected. I really view this as an administrator error and not a policy error, not a

content error, I don't see this as an attempt to change something after the fact. I see this as a matter of trying to correct an administrator error. Almost a typo although it is a little bit more extensive than a typo, but it is almost a typo, typographical error. I would hazard a guess that the judge is probably going to let us do that.

Council Member Fitzgerald asked, "What happens if we do nothing?"

City Attorney Miller said that if we do nothing, I believe we got a cloud on this thing, at least. We have a cloud because the law says that the summary is supposed to be a summary of the actual body of what the charter amendment is supposed to be. Certainly the cleanest, the purest way to proceed after the referendum vote is if the citizens say "yes we like this" then we would want to simply take what was submitted to the court and hand it to our local representatives, our senator, and our delegate and say "Will you please carry this to Richmond and get this passed." Now the question has come up can you make any modifications between Harrisonburg and Richmond after the referendum vote and I have to tell you that the statutes just don't really speak to that. I mean they don't say that you cannot that you can't make any modification or the question could be phrased "Can the General Assembly, once it gets down to the General Assembly, can they say well we don't want to approve the way this is drafted, but we could approve it, we would approve it with some slight modification. The question, can they do that, and frankly the statutes in the state constitution provisions that talk about doing this don't really say they can do this, or they can't, they do write our charter, so they could rewrite our charter it seems to me. So I think that in all likelihood yes they could modify it and they could amend it for us. But, I would characterize this as a relatively minor problem and I would characterize it as an administrator one and not anything more than administrator one. So what I am suggesting is that I be told by Council to submit this affidavit with an appropriate motion to the court, and the motion would be that the court enter an order amending this paragraph of the ordinance referendum. That is my suggestion on how to fix this.

Council Member Lantz asked, "What if we would withdraw what we originally did and re-submit it, would that be cleaner yet? Then the judge wouldn't have to be on the spot to make a decision."

City Attorney Miller responded, "It could and what the practical affect of that is that we miss the 60 days for this November election so then we are putting off that referendum. The item will stay on the ballots because again my understanding is that they all are printed even the absentee ballots, so people will vote and this issue would simply not be certified in the end. I guess probably mechanically speaking the judge would probably enter an order telling the Electoral Board, "don't certify the vote on this particular referendum issue, go ahead and certify it on the other two." So those votes wouldn't be counted or wouldn't be bothered with and then yes sure it could be resubmitted at a later date. That is certainly an option. It may be one that the judge decides to go with he may say I am not going to monkey with this language, I am not going to certify or tell people not to certify that vote, that may be a way he goes.

Council Member Rogers said, "One of the things that you know Tom you said that this is a pretty minor, but however you caught it after spending so much time with is that you laid it aside and then you caught it yesterday. Couldn't there be other things in here that we need to be concerned

about because that was one of my issues in the beginning about us rushing through this to get it on this ballot. Now we got to go before a judge to try to make it work right."

Council Member Lantz said, "I think that Larry is right, it is a minor error, but it is a very blatant error and I think that this builds the case that I have said before and that is that there needs to be a committee and citizen input on this so that these kinds of blatant errors don't occur in the future. The impact of these charter amendments will make the school issue and golf course pale in comparison to the ramifications and yet we opened it up to the school issues to many, many, many public hearings and not one single voice has been heard about these charter amendments other than Council Member Peterson's words on it."

Vice-Mayor Peterson said, "I believe we did have a public hearing on this with people speaking about it. Margaret Haynes spoke about it. There were other people at that same public hearing who voiced support. There was a public hearing."

Council Member Lantz said, "Yes, Margaret Haynes did voice her concerns." Did anybody have any public comment as to some of the advantages or disadvantages and really have public input. We only had one session. We have been criticized as a Council for having as many as eight or ten sessions with the school issue for not getting enough public input and here we've got an issue that had just one session and maybe one or two people to speak to the issue. The ramifications of these charter amendments are far reaching that I think the people need to be aware of.

Vice-Mayor Peterson agreed that the ramifications are far reaching and the reason why the approach to do this is to put it before the population to vote on it is because they are so far reaching and people should be allowed to make that decision not just Council. "I accept complete responsibility for this mis-wording, I don't know where it got into the original forms, but somehow you see something so often you keep reading it and you see what you expect to see there and not what is really there and in fact when I sat down to write the summary I wasn't looking at the charter I just wrote down what I knew was in the charter amendments as a summary and that's why the summary came out correct because I was writing down what I knew was in the charter amendments and somehow I never noticed this thing where it says voters residing rather than voters voting. I haven't done the research, but I would be extremely surprised if there is a single political entity in the United States that has a referendum where in fact it is a majority of the registered voters who have to vote one way or the other to approve or disapprove an ordinance on a referendum." It is always a majority or possibly a super majority of those voting. But, never of those who are just registered and don't bother to go to the polls. So this is a very peculiar wording as it is and it is obvious from the summary that what was meant was the more normal interpretation of a referendum. Voters go to the poll and if 50 percent plus one person vote in favor of the ordinance it passes and if 50 percent plus one vote against it, it fails. That is just what a referendum is defined to be. I accept full responsibility for not noticing this. I read those charter amendments over and over again and somehow my eyes just went pass that over and over again."

Council Member Rogers commented, "Dorn, you pointed out to us that you are a scientist and I don't expect you to do that, but the lawyer even looked over it as well and he just caught it yesterday and Mr. Miller has worked with you so we have had the best in our society a scientist

and a lawyer and then we still you know have some discussion here so that's the reason I think haste makes waste."

Vice-Mayor Peterson said, "It is an accepted mistake, it is true if back last in September a year ago when I had first proposed this if Margaret Haynes had come forward at that point and said you have been very nice now and said that you won't propose this for a year because Larry and Hugh were asking very strongly that you do not do it and you backed down, lets sit down and lets make a commission to look at the whole charter and think of all of these things that would have been a good suggestion a year ago and then we could have been working on it. But, I am a little upset with having made the compromise to wait a year and then be accused by the two of you of rushing into it when in fact they are presented a year later. A year warning is not exactly rushing into something."

Council Member Fitzgerald said, "Before we get too far into this, the three things that strike me are number one people ought to know what they are voting on and it's four weeks to the election and number two is we should have got this right to begin with. I read these things myself and I should have caught it in my role as a former editor if not as a Council Member. The third thought is that we made the error here that I don't think we should be tossing it to a judge at the midnight hour asking him to fix it for us between now and November."

Vice-Mayor Peterson said, "It might be a matter of just whether his opinion is to whether or not it is an important change or not and certainly giving him the affidavit let him decide whether or not it is something that has to be delayed or not."

Council Member Fitzgerald said what I am saying is I don't think that he should decide, I think that we should. I think we should decide to revisit this for May. We should have done that to begin with.

Council Member Lantz said, "I actually would like to make a motion that we do that for the very reason that it would give us time to have some public hearings get some input because I don't know all the ramifications of what these charter amendments mean and I don't think that you do either, but we may hear from the public who has ideas and things that we never even thought of but yet we've not even really not had a public input into this. I think that is what Joe is saying that it will give us time to do it rather than having it on the November ballot. As a matter of fact if you look at the ballot it has already been prepared. On our three charter amendments you have to flip the ballot over on the back to even get to them. So they take sort of a second seat, but in a May election people that have a deep concern for this City not just a national election or state election, but a deep concern for this City, they are the ones who are going to be voting in May, I think those are the people we need to listen to and that will give us time to open it up to the public to have some public hearings like it should have been done in the first place. So I would like to make a motion that we withdraw our whatever the official document is called, what is it called?"

Vice-Mayor Peterson said, "Can we even do that is the question, I mean that still has to go back to judge and he has to decide, isn't that true."

City Attorney Miller said, "Yes we are in somewhat uncharted waters here, but I believe that at the very least we have the responsibility to make the court aware that there is this difference and hearing what Council may be about to say our suggestion at that point to the judge would be we ask that you order the Electoral Board to simply not certify this one issue I think would probably be the way that he would then go."

Council Member Lantz said, "Is it possible to strike out the back side of the ballot?"

City Attorney Miller said, "I would think that would be mechanically impossible, but we could check with the Electoral Board whether that is possible."

City Manager Baker said some people have already voted on it.

City Attorney Miller said, "The absentee ballots have already been voted on, I think that Mr. Lantz's question would be the ballots that would go into the polling places. That one charter amendment wouldn't be certified, but the other two charter amendments are there and could be certified."

Council Member Lantz said, "Then my motion would be that we pursue whatever is necessary on the attorney's part to have all the charter amendments withdrawn to give us time to discuss them to have some public hearings and then try to get them back on the May election. So that would be my motion."

Vice-Mayor Peterson said, "Since there is no cloud over the other two is the court going to be willing to let us withdraw it once its been approved and entered?"

Council Member Lantz said, "Well that is what I am asking him to find out, that was my motion to see if it can be."

City Attorney Miller said, "I see no reason why. The Council has asked for them to be on the ballot, I don't see why the Council could not say we have changed our minds for now and would rather they not be certified. I don't see why it couldn't do that, again the statutes that set up this procedure do not specifically address that issue. They do not tell us how to withdraw."

Council Member Fitzgerald said we can either leave them as they are and attempt to fix the flawed one or we can move the flawed one to May and leave the other two intact or we can ask to have all three withdrawn or ask that the court direct the Electoral Board not to certify them.

Council Member Lantz said that the reason I made that motion to withdraw them is that I firmly believe we have not had adequate public hearings and adequate education not just on the referendum idea, but the recall and the appointment of Council Members when there is a vacancy. None of these have really had adequate public hearings so that was my reason for making the motion that we withdraw all of them and not confuse the public. I think that it would be very confusing to say the middle one is withdrawn, but the other two are still valid. I think that it makes more sense to do them all at one time whether in November or whether it be in May. I think the decision should be whether we do all or none at this point.

Mayor Frank asked, "Hugh and Larry when you asked Dorn to postpone for a year, why didn't you take any initiative to talk to people, plan a strategy and address these issues. Dorn gave you a year because you asked him to; however, in that year neither one of you did absolutely nothing. Dorn went on the radio and put an article in City Hall Update in the newspaper. I guess I feel like the citizens have been waiting for this opportunity to go to the ballot and here we are again saying "Oh sorry!"

Council Member Rogers said that one of the things is that the issue before us now is that we are re-hashing this and we are a policy-making board and our issue is tonight as a policy-making board. "We don't have it correct to present to the public and that's the issue."

Council Member Lantz said, "My issue goes a little bit deeper than that and to answer your question, when I thought that Council Member Peterson was going to bring this up that there would be adequate time for public hearings, public comment sessions, and it wouldn't happen in two Council meetings. So I thought when he said I will delay it for a year that didn't mean forget the public input. I thought when he did come back with it in a year there would be public input on it and so people could become educated about it."

Mayor Frank said, "You sat on Council for seven years and it is always when we have public hearings and people come and we did have a public hearing and then we voted the next week."

Vice-Mayor Peterson said, "It wasn't like the old town public hearing for instance or some of these others where there is lots of interest in the community. It was a few people. If there had been a large amount of interest it might have been better, but I think the people who were interested in it came and talked. There was adequate advertising of that, there was the City Hall Update the previous week. I am curious about this."

Council Member Lantz said, "I believe the reason there was a lack of interest is because people didn't understand it. We didn't tell them exactly what all the ramifications and all this means because I still firmly believe that these charter amendments are so massive in the ramifications of this City that the school issue will pale in comparison and the reason that there is a lack of interest is people don't understand them."

Council Member Fitzgerald said we are covering a lot old ground. "I think that the referendum is too flawed to continue for this election. At the same time if people are going to the polls with some idea, I don't know how vague or exact it might be that there are three things to vote on and on one of them the vote doesn't count and on the other two it does. I basically think that we should put the whole thing off until May and let the Circuit Court know that is our intention."

Vice-Mayor Peterson said, "I have to agree with Hugh that either they should all be on or they should all be in May. In one case we are asking the court to terminate a vote on two that have been perfectly validly ordered to be on the ballot and are on the ballot and we are asking them to terminate it long after the deadline for making the decision. In the other way we are asking the court to make essentially a one-word change. A one word change that is in fact making the full text equivalent to the summary which most of the people are reading when they are voting on

this. That seems a much more minor change. I really don't know how the court is going to feel comfortable about this. I am not a lawyer. Are they going to be more comfortable about terminating two that are perfectly valid or making a one-word change in the third one when it was obviously what was meant when the vote was taken. I don't know that Tom can answer that question. It is something that probably has to be brought before the court and asked."

City Attorney Miller said, I think that is true and I really don't think the court is going to be terribly disturbed either way. I think that the court could see this might very well see this as an administrative because I think that it a little bit more than a typo, but it is not much more than a typo and I think that the court could very easily see it that way and say sure because the saving grace here is that the summary was correct and that's what the public has the most interaction with. That is what they are voting on. But, I don't think the court is going to lose a lot of sleep or be terribly concerned by saying all right the Council started this, the Council started the whole ball of wax. If the Council decided they want to pull it all back I don't think that the court is going to be terribly upset about that either. I really think that the view would probably be at this point so far this is Council's project and if Council wants to put it off I think that he probably wouldn't have a lot of concern about that either. I do think that the court would see the error as being largely as being administrative and not have a big problem with correcting the body of the text to match what was intended."

Vice-Mayor Peterson asked, "Is it reasonable to go forward with this affidavit as you have written with an understanding from Council that if the court has trouble with making that change that it is our request to the court that all three be delayed until May?"

Council Member Rogers asked City Attorney Miller if he wrote this.

City Attorney Miller answered yes.

Council Member Rogers offered to make motion, but was reminded that Council Member Lantz had a motion on the floor.

Council Member Lantz said, "The other issue is that it was a split vote when it went before in the first time so I don't think that the judge will have a problem with bringing it back. If we can get enough public input hey maybe Larry and I will have an unanimous vote the next go round to submit it to the ballot. Because I feel like it needs to go, but the public needs to be educated and I don't feel like they are educated at this point on the ramifications of the impact that the charter amendments are going to have. So that's my reasoning. So my motion was already that we withdraw all three of them and that Tom pursue going to the judge and see if we as a Council can withdraw all three from the certification of the vote."

Mayor Frank questioned what is that saying to our public.

Vice-Mayor Peterson said it is saying sometimes we make a mistake.

Mayor Frank asked, "If the referendum went just like it is written would it be tougher to have a referendum?"

Council Member Lantz said the Electoral Board would not certify it.

City Attorney Miller said that there you would have at the very least a legal cloud because you got language in the body and it is not the same as different as what is in the summary. I think that it has to be addressed.

Mayor Frank said couldn't we have actually passed these ordinances with a three to two vote and not even taken it to the public for a vote.

City Attorney Miller said passed in the sense that you could have sent it to the delegates and senators and asked them to take it to the General Assembly.

Mayor Frank asked why couldn't it be left on the ballot as a poll of our citizens how they felt about referendums.

Vice-Mayor Peterson said that we aren't allowed to have a straw vote.

Council Member Lantz said the one member of the Electoral Board has stated that if it went through just like it is now with the document saying one thing and the summary saying another because of that conflict they would not certify the results of that particular item.

Vice-Mayor Peterson asked, "Is it conceivable that if we went with that motion the judge would say no I am not going to remove the other two from the ballot, they are valid. Then I think that we are making life worse for ourselves because I would prefer to have all three voted on at the same time. I am worried about the motion as you stated it. Once we pass and send forward to the judge there is no fall back here."

City Attorney Miller said, "There is no way to predict, but again I don't see the judge, again the statue doesn't speak to how do you get back once it gets started, it doesn't say you cannot withdraw it, and I see no reason why you could not withdraw. I don't see why the judge would say I am not going to do that."

Council Member Lantz said, "If he would, I think Dorn, what would really happen is that if he failed to do that then he also would more than likely fail to change the wording in it so what it would do would go through the electoral process and the Electoral Board would not certify the results of that one item out of the three if he refused to change it or send it back to us."

City Attorney Miller said there is of course another stopgap and that is the sending of the other two to the representatives. You could talk to the representatives and say we would rather do this in May. If they don't go to the legislature at the next general assembly or they go and are not passed, they die according to statute at that point. Then you start the process all over again in May.

Vice-Mayor Peterson said, "I think the motion as stated by Council Member Lantz is the wrong way to do it, but since that is the motion on the floor, I mean that I think the appropriate thing is to take the affidavit as Tom has written it to the judge, but lets vote on Hugh's motion."

Council Member Lantz again stated that his motion was to withdraw all three-charter amendments. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Rogers
Council Member Fitzgerald
Council Member Lantz

No - Vice-Mayor Peterson
Mayor Frank

Absent - None

City Manager Baker presented a brief update on the Simms Building. He explained that the building inspector had conducted an inspection of the building to determine areas that will need repairing and renovations. The building is used for a polling place. The bathrooms need repair, walls need to be re-pointed, a water heater needs to be removed from a bathroom and installed in another area of the building, and it is not handicap accessible. He also said that he had requested that the School Board provide an approximate cost of the utilities for the building.

Council Member Lantz said that several people and organizations have approached him requesting free passes for the golf course. Following further discussion and comments, Council suggested that Golf Course Advisory Committee determine the appropriate way to handle these requests and make recommendations concerning these requests.

Vice-Mayor Peterson offered a motion that Council enter a closed session for the purpose of discussing and considering prospective candidates for appointment to the following boards and commissions: the Community Services (Chapter 10) Board, the Board of Viewers, the Upper Valley Regional Park Authority Board of Directors, the Harrisonburg Parking Authority, the Building Code Board of Appeals, the Parks and Recreation Commission, and the Harrisonburg Electric Commission. 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). IN ADDITION, the purpose of the closed session is for the discussion of matters related to the acquisition real property. 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). IN ADDITION, the purpose of the closed session is for the discussion of matters related the investing of public funds where bargaining is involved, where, if made public initially, the financial interest of the City would be adversely affected. A closed session is permissible for this purpose pursuant to Section 2.2-3711-A.6 of the Code of Virginia (1950), as amended (the Code). FINALLY, the purpose of the closed session is for the discussion of matters relating to probable litigation. A closed session is permissible for this purpose pursuant to Section 2.2-3711-A.7 of the Code of Virginia (1950), as amended (the Code). The closed session is also for the purpose of considering the location or relocation of new business in Harrisonburg pursuant to Section 2.2-3711.A.5 of the Code of Virginia (1950), as amended (the Code).

At 9:40 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 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 matters as were identified in the motion by which the closed meeting were convened, were heard, discussed or considered in the closed session by the City Council.

Council Member Fitzgerald offered a motion that City Manager Roger Baker be appointed to a term on the Upper Valley Regional Park Authority Board of Directors to expire on October 1, 2005.

At 9:45 p.m., there being no further business and on motion adopted the meeting was adjourned.

Lyvonne Ryan Carolyn W. Frank
CITY CLERK) MAYOR