

## REGULAR MEETING

OCTOBER 23, 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 Rogers delivered the invocation and Mayor Frank led everyone in the Pledge of Allegiance.

Vice-Mayor Peterson offered a motion that the Council resolve to approve the consent agenda, including approval of the minutes of the October 9 and October 17 City Council meetings, and the second reading of a supplemental appropriation for the VDOT property. The motion also included approving the second reading of a rezoning request by Eugene Diener and Jonas Borntrager. The recorded roll call vote was taken as follows:

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

Absent – None

✓ Planning and Community Development Director Turner presented a brief report on the recommendation from the Planning Commission concerning the purchase of Harrison Plaza located at 101 North Main Street. She explained that the Planning Commission had reviewed the appraisal report and other information, which had been forward by the Assistant City Manager. She said that after consideration and discussion the Planning Commission voted 5-0, with Dr. Peterson abstaining to recommend against the purchase of the Harrison Plaza building by the City of Harrisonburg. Reasons for denial were that the property is overpriced, it is a mismanagement of the efforts to encourage private businesses in the downtown area, and there is not enough information available to make a positive decision for the use of Harrison Plaza.

Glenn Hodge, attorney for Medical Arts of Rockingham, representing the owners of Harrison Plaza, said that the issue Council had to consider was whether to accept the recommendation of the Planning Commission or reject purchasing the Harrison Plaza property. He said that Medical Arts of Rockingham requested that Council do the right thing for the citizens of Harrisonburg and the departments that intended to use the

Building. The City should close on the contract, which has been signed by the City Manager. He said that the Planning Commission has ventured beyond its statutory prescribed duties. Both the City Code and Code of Virginia limit the Planning Commission in considering whether a public building should be constructed or authorized to issues of "General location, character, and extent". Nowhere does the City Code or the Code of Virginia mention that cost is a factor for consideration by the Planning Commission. In fact the City Code provides that referral to a Planning Commission may be waived by the Council in any instance when the Council deems it advisable to do so. He said that it wasn't necessary to refer the matter to the Planning Commission since it is an advisory body with limited areas of inquiries. The City Council was aware of the appraisal when it authorized the City Manager to sign the contract to purchase the building. He said that the purchase price for Harrison Plaza was a good deal for the City. The figure used for a replacement cost of the building was \$64.49 per square foot and he said does anyone actually believe that you could get a building of this character and quality construction for that price? Mr. Hodge said that estimates based on a nationally respected building price guide were closer to \$118.00 per square foot. He again asked the City Council to reaffirm its contract with the building's owners and reject the Planning Commission recommendation.

Mayor Frank said that there wasn't any negotiation price. The Harrison Plaza owners presented the price of \$3.75 million to City Council.

Bucky Berry questioned whether the City Council had given the City Manager authorization to sign the contract.

Bob Steere, a member of the Planning Commission, said that he was not speaking for the commission but as a taxpayer. He reviewed information that has appeared in articles of the Daily News-Record and the comments of the reporters. He questioned if a decision was made in closed session regarding purchasing this property why wasn't it voted on after City Council came out of the closed session.

Council Member Lantz commented that he knew Mr. Steere has served on other localities Planning Commissions so he knew that you can't rely on the newspaper to get all the facts right. Mr. Lantz clarified that he had been quoted in a newspaper article as saying it should not have been sent to the Planning Commission for a recommendation if City Council had authorized the City Manager to sign the contract. It should have been for informational purposes only.

Dale Metzler, a resident of 1513 North College Avenue, said that he was really confused concerning the whole issue. He said if the Planning Commission could only act in an advisory capacity why did City Council ask the Planning Commission for their recommendation?

Vice-Mayor Peterson said that his recollection of the specific discussion held in closed still remains a little bit hazy. He said that he remembers four Council Members saying the price is reasonable and it would be a good deal for the City. He said, "We did not

specifically say to the City Manager, but Roger don't go out and sign a contract until we have heard from the Planning Commission on their recommendation. If I had it to do over again, that's what I would have done." He said that he abstained when the Planning Commission took its vote on October 10 because he had questions about the building's appraisal and cost. He said our choice is whether we are going to buy Harrison Plaza or build a new facility. It is replacement costs that matter and on replacement costs this is a good deal for the City. He said, "I am still willing to vote in favor of purchasing Harrison Plaza."

Council Member Fitzgerald commented that he was not certain all of the questions would be answered as far as the order in which City Council did things. He said, "I do recall that during the meeting when we told Roger we were going to buy the building we were discussing at a point some board or commission appointment and one person commented that we should appoint a female to that position and somebody else said what about that guy we interviewed and I noted he was not a female. What I remember next was Larry Rogers's voice coming across the room saying it is 12:30 at night and Joe Fitzgerald is still sharp. Maybe Larry was wrong and maybe we weren't very sharp at that hour. The one thing that everybody concerned is certain about is that we gave Roger the go ahead in closed session to purchase this building. There was nothing underhanded about it. It probably had more to do with the fact that it was 12:30 at night than anything else. Obviously we didn't do things in the right order so we blundered it a bit. We should reaffirm the vote for two reasons, number one it's what we said we were going to do and number two it's still a good deal for the City. We have learned some valuable lessons and the next time we will be more clear on referring something like this to the Planning Commission and saying exactly what it is we want them to look into and exactly what questions we want them to answer for us. We didn't do that in this case and it came back to bite us." Mr. Fitzgerald pointed out that this was the first time in 16 months that this Council had voted against a Planning Commission recommendation. In this case we came to different conclusions.

Council Member Lantz commented that nobody should imply that Roger Baker is a scapegoat in this situation. He did exactly what we instructed him to do. The only right thing to do is honor our contract.

Council Member Rogers said that he agreed with Council Members Lantz and Fitzgerald, and Vice-Mayor Peterson.

City Attorney Miller said under the Freedom of Information Act, Council is permitted to discuss the terms that it will be negotiating to purchase real estate or a building in a closed session. It is anticipated by the legislators across the country that decisions are going to be made in closed sessions. You will get to a point in the discussion in closed session where the members will say "all right this is what we are going to do". The law says there shall be no secret ballot and no written ballots. The general understanding of that is that decisions that are made in closed sessions are not illegal, not immoral, and they are not sneaky. Everybody knows decisions will be made in closed sessions, but then what happened next is; in open session that public body confirms what it did in

closed session. Mr. Fitzgerald reminds us that this particular closed session ended somewhere after midnight. Would it have been practical to go back into open session and ask Colonel Harper to open the door and say, "Everybody who is waiting out in the hall at 12:30 a.m., come on in now because we are going to have an open session now and take a vote." There wasn't anybody out there nor were there any press members or television cameras present. Therefore, at the next open session you reaffirm what you did in closed session. That is what needs to take place tonight because the decision that was made in closed session some meetings ago needs to be reaffirmed. A decision was made to purchase Harrison Plaza. That decision needs to be reaffirmed for FOI purposes, but it is not an illegal thing if that decision gets reaffirmed tonight. This is an open session. It can be reaffirmed. Mr. Miller also clarified that the issue to be determined when you get to the bond issue stage is how do we come up with this money? Are we going to come up with it by issuing a bond or we going to come up with it some other way? But, the public hearing on a bond issue is not to re-address do we want to buy this building or do we want to do this project. That is not the issue at a bond public hearing. It is not an opportunity for opponents of the project to get one more shot at shooting the project down. The question is do we finance this project by a bond, or use bank financing, or owner financing, or somehow come up with the money. At some point you have to start the process somewhere. You can't start the ball rolling for a bond issuance before you know what property you are going to buy and what price you are willing to pay for it. Mr. Miller said that State Code 15.2.2232 mentions the purchase of real estate. But, our City Ordinance, which does not do a real good job in clarifying the language, does talk about the purchase of real estate being referred to the Planning Commission. However, he said, "To the extent that Planning Commission recommendation is an examination of the financial wisdom of this project that is out of bounds for the Planning Commission. It is beyond their jurisdiction." So the extent of Planning Commission's recommendation is not based on whether they think it is a good idea from a financial perspective.

Council Member Roger moved that we resolve that the City purchase the Harrison Plaza located at 101 North Main Street. The recorded roll call vote was taken as follows:

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

No - Mayor Frank

Absent - None

Mayor Frank stated for the record that her no vote was not against the police or fire department because a new public safety building was needed; however, she disagreed with purchasing Harrison Plaza for the public safety building.

Dr. Crystal Theodore, President of OASIS, appeared before City Council requesting additional funding for OASIS. She said that last year City Council had generously granted funding requested by the Shenandoah Council of the Arts for the first year of its five-year business plan. City Council also agreed to review OASIS financial situation each of the following years. Since then a new policy for funding all arts venues has been adopted by the City Council. She explained that OASIS is doing far better than originally expected, but it cannot yet function completely on its own. Exhibits are changed every two months and each change is marked by a reception open to the public. She said, "I am very proud of OASIS accomplishments, but it is having a problem with funding arrangements. OASIS does not lack creativity or willingness to work hard. But, OASIS financial situation can nullify some of the factors. She said, "We are hoping that City Council will consider a grandfather arrangement to keep us on track."

Dr. Cole H. Welter reviewed the Shenandoah Council of the Arts including OASIS financial statements. He explained the group's first-year expectations and its expenses have been about \$11,000 less than anticipated. Still, the gallery operates at a deficit, as operating revenues are about \$1,000 a month less than expenses. Donations and grant funds are about \$400 a month, leaving a monthly deficit of about \$600. Dr. Welter said that OASIS could probably operate for another eight to ten months before some drastic action will have to be taken. The request for funding either through the Valley Council of the Arts or through a grandfather clause is something that is really quite necessary. The cultural district is well served by OASIS, which is becoming an important part of the community.

Discussion and comments from Council Members included that the Shenandoah Council of the Arts was still in its formative stages, the Acts Council of the Valley was awaiting its first executive director, noting that the Arts Council wants OASIS to succeed, also noting there is a grant process, and Council expects the gallery to receive its grant monies before it is insolvent.

Vice-Mayor Peterson moved that Council resolve to cancel the December 25 Council meeting. The motion to resolve was approved with a unanimous vote of Council.

City Attorney Miller presented for Council's consideration amending and re-enacting Section 14-1-69 of the Harrisonburg City Code. He explained that these are necessary to allow the Chief of Police or his designee to have the authority to revoke or suspend the public vehicle licenses. Currently the causes in the City Code include repeated and persistent violation of traffic and safety laws and ordinances and says that only the district court can revoke or suspend these licenses. However, the Police Department needs to speed up this process and be able to issue these violations. Following further discussion and comments, Council Member Fitzgerald offered a motion to adopt this ordinance for a first reading. The recorded roll call vote was taken as follows:

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

Absent – None

City Attorney Miller presented for Council's consideration amending and re-enacting Section 17-1-2(a) and Section 17-1-3(b) of the Harrisonburg City Code. He explained that these amendments are necessary due to the 2000 Census which showed that about twice as many people live east of Main Street as west of Main Street. The census showed that population was uneven and needs to be shifted. These amendments will allow four school board members to be elected from the east district and two school board members to be elected from the west district. The dividing line is U.S. Route 11. Following further discussion and comments, Council Member Fitzgerald offered a motion to adopt this ordinance for a first reading. The recorded roll call vote was taken as follows:

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

Absent – None

City Manager Baker presented a request for a supplemental appropriation for the Fire Department. He explained that these funds were received from state grants and will be used for fire programs and hazardous materials. Council Member Lantz offered a motion that the Council resolve that this supplemental appropriation be approved for a first reading, and that:

\$24,373.46 chge. to: 1000-31010 Amount from fund balance

\$23,004.13 approp. to: 1000-350532-46160 Hazardous materials

1,369.33 approp. to: 1000-320132-48203 Fire programs fund

The recorded roll call vote was taken as follows:

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

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these funds were received from a donation from Kawneer to help purchase a new computer server for the department. Council Member Lantz offered a motion that the Council resolve that this supplemental appropriation be approved for a first reading, and that:

\$10,000 chge. to: 1000-31809 Donations

\$10,000 approp. to: 1000-310431-48172 Hardware

The recorded roll call vote was taken as follows:

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

Absent – None

City Manager Baker presented a request to transfer funds to cover utilities for the Simms Building. He explained that when budget was prepared last year the Simms Building was not included in the budget. These funds will be used for heating, electricity, water, sewer and refuse. Council Member Lantz offered a motion that the Council resolve that this supplemental appropriation be approved for a first reading, and that:

\$24,836.00 chge. to: 1000-940111-49310 Reserve for contingencies

\$15,000.00 approp. to: 1000-430221-45125 Heating – Simms Building  
 7,500.00 approp. to: 1000-430221-45115 Electricity – Simms Building  
 1,200.00 approp. to: 1000-430221-45134 Water – Simms Building  
 1,000.00 approp. to: 1000-430221-45135 Sewer – Simms Building  
 126.00 approp. to: 1000-430221-45133 Refuse – Simms Building

The recorded roll call vote was taken as follows:

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

## Absent – None

John Sease appeared before City Council to speak on the behalf of Gus Floros, owner of Jess' Quick Lunch. He explained that recent parking changes along Main Street and East Market Street intersection were having a negative impact on Mr. Floros's business. He said that tractor-trailer trucks had been allowed to unload in front of Jess' Quick Lunch between 8:00 a.m. and 11:00 a.m. for years. These trucks that unload 200 cases of drinks and 60 cases of hotdogs are now being forced to lock their truck while making deliveries from the East Market Street parking location. Because of the change some vendors have raised prices due to the extra delivery time required. He pointed out that while safety was cited for the change there has never been an accident in 41 years at this location. Mr. Sease said that Mr. Floros would like the parking arrangements changed back to allow deliveries to be made in front of the restaurant. He also said that the practice of allowing people to stop in front of the restaurant to help elderly passengers get into the restaurant has been stopped. Mr. Sease said that Mr. Floros would like permission from the City to erect a monument in the planter outside the Nations Bank building in honor of his wife who has recently passed away. Mr. Floros would be responsible for all the costs of erecting the fountain. City Council referred the parking changes to the Harrisonburg Parking Authority and the Harrisonburg Transportation Safety Commission. Council also directed City Manager Baker to work with Mr. Floros regarding the memorial fountain and present the information at a later meeting.

Bucky Berry suggested that a Citizen Advisory Disaster Committee be formed to develop a plan to notify everyone in the City concerning an emergency. City Manager Baker reviewed the City's emergency operation plan which is being implemented.

✓ Vice-Mayor Peterson offered a motion that the Council resolve that Robert J. Sullivan, Jr., 65 Paul Street, be appointed to the Board of Viewers. The motion to resolve was approved with a unanimous vote of Council.

✓ Vice-Mayor Peterson offered a motion that the Council resolve that Rebecca Lynn Lough, 79 East Weaver Avenue, be appointed to a second term on the Harrisonburg Parking Authority to expire on November 28, 2006. The motion to resolve was approved with a unanimous vote of Council.

✓ Vice-Mayor Peterson offered a motion that the Council resolve that George Homan, 1241 Alpine Drive, be appointed to a term on the Blue Ridge Disability Services Board to expire on February 1, 2002. The motion to resolve was approved with a unanimous vote of Council.

✓ Vice-Mayor Peterson offered a motion that the Council resolve that Maria Rublee, 1251 Smithland Road, be appointed to a term on the Community Policy and Management Team. The motion to resolve was approved with a unanimous vote of Council.

At 9:15 p.m., there being no further business and on motion adopted the meeting was adjourned.

Yvonne Ryan Ouellette  
CITY CLERK

Carolyn W. Frank  
MAYOR