

MINUTES - REGULAR MEETING OF CITY COUNCIL - MAY 28, 2002

REGULAR MEETING

MAY 28, 2002

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 to approve the consent agenda, including approval of the minutes and the second reading of several supplemental appropriations for the City Attorney, Finance Department, Sanitation Capital Projects Fund Budget, School Division, and the Police Department. The motion also included the second reading of a rezoning request by Gail A. Back, Franklin R. Blatt, and Candace F. Blatt, and amending the Zoning and Subdivision Ordinance of the City Code. The recorded roll call vote was taken as follows:

Vote:        Yes -        Council Member Fitzgerald  
  
                 Council Member Lantz  
  
                 Council Member Rogers  
  
                 Vice-Mayor Fitzgerald  
  
                 Mayor Frank  
  
Absent    None

Council Member Lantz requested the unanimous consent of Council to change the agenda by adding a presentation by Ted Adams, an attorney representing the American Trucking Association and the SMART Group. This agenda item will be number 7A.

Planning and Community Development Director Turner introduced a request by John and Annette Holloran to conditionally rezone 0.31 acres of land from R-2, Residential District to R-3C, Multiple Dwelling Residential District (conditional). She said that the site is located at 409 Virginia Avenue and contains one single-family house. With approval, Mr. Holloran will purchase the property and then plans on converting the first two levels into professional office space for his law practice. The Comprehensive Plan's Land Use Guide designates this property as neighborhood residential. This classification is intended for neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. These are older neighborhoods, which can be characterized by larger housing units on small lots. She reviewed the surrounding uses in the area. The rezoning of the property located at 409 Virginia Avenue would adjust the zoning from R-2 Residential District, to the more intense R-3C, Multiple Dwelling Residential District (Conditional). Mrs. Turner explained that when staff reviews rezoning requests they look at what zoning district correlates with the Comprehensive Plan designation. In the case of this property, although the Comprehensive Plan designation is not an exact fit with the zoning requested, it is not in conflict. The document calls for this section of Virginia Avenue to be neighborhood residential, a designation that correlates most closely with the R-2 zoning classification. In an effort to protect the surrounding neighborhood from an obstructive use in the future, the Hollorans have proffered to use the

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property for only the following: 1) Any use permitted by right in the R-1 and R-2 Residential Districts which would basically be the single-family type homes. 2) Medical offices and professional offices as defined in the Zoning Ordinance. 3) The lot line between the front and back lots would be vacated. 4) Owner would install and maintain a vegetated landscape buffer along the northern and western boundary line of the property. 5) Hours of operation have also been proffered so that weekday patrons would only visit this facility between the hours of 7:00 a.m. and 6:00 p.m. Weekend patrons would be limited to visits between the hours of 10:00 a.m. and 3:00 p.m. 6) The applicant has offered a proffer stating that the owner will preserve the integrity of the present structure on the property to maintain its unique heritage and architecture. These proffers are consistent with the Comprehensive Plan neighborhood residential policy of protecting the single-family character of the area and encouraging any new development to be compatible with existing facilities. She said that Planning Commission recommended by a vote of six to one to approve this rezoning request.

At 7:40 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, May 13, and Monday, May 20, 2002.

### **Notice Of Public Hearing**

The Harrisonburg City Council will hold public hearings on Tuesday, May 28, 2002, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following.

**REZONING- HOLLORAN PROPERTY**

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Public hearing to consider a request by John and Annette Holloran to conditionally rezone 0.31 acres of land from R-2, Residential District to R-3C, Multiple Dwelling Residential District (conditional). The site is represented by tax map 35-F-1 & 4 and is located at 409 Virginia Avenue.

The Comprehensive Plan designates this area as neighborhood residential. This designation is intended for neighborhoods in which existing conditions dictate the need for careful consideration of the types and densities of future residential development. These are older neighborhoods, which can be characterized by larger housing units on small lots.

The Zoning Ordinance states that the R-2, Residential District is intended for medium-density, single-family and two-family residential development. The residential density ranges for R-2 are single-family, 7,000 sq. ft. minimum and two-family, 5,500 sq. ft/unit.

The R-3, Multiple Dwelling Residential District is intended for medium to high-density residential development and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The residential density ranges for R-3 are single-family, 6,000 sq. ft. minimum; multi-family, 3,000 sq. ft. minimum per unit; townhouses, 2,000 sq. ft. minimum per unit; and other uses, 6,000 sq. ft. minimum.

Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m.

All persons interested will have an opportunity to express their views at these public hearings.

Any individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

**CITY OF HARRISONBURG**

**Roger D. Baker**

**City Manager**

Mayor Frank called on anyone desiring to speak for or against this rezoning request. There being no one

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desiring to be heard, the public hearing was declared closed at 7:41 p.m., and the regular session reconvened. Vice-Mayor Peterson offered a motion to approve this rezoning request. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Fitzgerald

Council Member Lantz

Council Member Rogers

Vice-Mayor Fitzgerald

Mayor Frank

Absent None

Planning and Community Development Director Turner introduced a request by Lee and Associates to conditionally rezone 5.455 acres of land from R-3, Multiple Dwelling Residential District to B-2C, General Business District (conditional). The property is located at the intersection of Port Republic Road and Devon Lane. She said that the request is to construct professional offices and allow shops and restaurants to occupy part of the professional office building. She reviewed the surrounding uses in the area. She also explained that currently, under the R-3, Multiple Dwelling Residential District, business and professional offices are uses that are permitted by right, but Mr. Lee wants to have some smaller retail uses in the building. Staff had concerns with the professional office development use because the Comprehensive Plan designates this area as a medium-density residential classification. The Comprehensive Plan designation of medium-density residential states that these areas are near major thoroughfares or commercial areas. They contain a variety of housing types such as single-family, duplexes, and two or three story apartments and densities can range from 1 to 15 units per acre. This Comprehensive Plan designation does not mention any type of flexibility with uses that would be commercial in nature in this area. She said that a professional office building or apartment complex could be built under the current R-3, Multiple Dwelling Residential District. However, staff's concerns are not with apartment or professional office development, but that of inserting more intense B-2, General Business District uses, into a residential area when there are multiple locations already zoned for this type of development. She reviewed a sketch of the intended building including the elevation of the site. Mrs. Turner reviewed the proffers, which included governmental, business and professional offices and financial institutions, community rooms, museums, galleries, religious, civic, educational, charitable, medical or benevolent institutional uses not providing housing, research and development activities with certain restrictions, public uses, public and privately owned parking lots, and parking garages, retail stores, personal service establishments, and general service shops. Further proffers made at the Planning Commission meeting included that the square footage of any one unit devoted to retail or service shall not exceed 30% of the total square footage devoted to retail and service uses, parking lots and parking garages permitted shall be developed for use in connection with other permitted uses, not as standalone operations, and no single building on the property may exceed 70,000 square feet, excluding square footage devoted or related to underground parking. In addition, a proffer was made that the sale of alcoholic beverages for off-premises consumption would not be permitted. Also, a statement was submitted that a high-quality level of exterior finish and design of the building shall be subject to architectural approval by the City's planning staff in

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accordance with the restated proffers. The applicant also proffered to provide some additional parking to Devonshire Property Owners Association. The applicant stated that they would contribute \$2,000 toward the cost of installing a pedestrian crossing walk light at the intersection of Port Republic Road and Devon Lane if the City elected to install such a crossing light in connection with the City's planned improvements to Port Republic Road. The project would offer amenities within walking distance for near-by residents who otherwise would have to drive to one of the City's retail areas. Mrs. Turner said that Planning Commission recommended unanimous approval of the request.

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, May 13, and Monday, May 20, 2002.

### **Notice Of Public Hearing**

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**The Harrisonburg City Council will hold public hearings on Tuesday, May 28, 2002, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following.**

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REZONING LEE & ASSOCIATES

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**Public hearing to consider a request by Lee & Associates to conditionally rezone 5.455 acres of land from R-3, Multiple Dwelling Residential District to B-2C, General Business District (conditional). The site is represented by tax map 92-F-1,2,3 and 92-J-22 and is located at 861 and 865 Port Republic Road. (Note the existing R-3 zoning permits professional office use. The requested B-2C zoning is desired to permit retail and restaurant uses and for greater height.)**

**The Comprehensive Plan designates this area as medium density residential. This designation is for areas near major thoroughfares or commercial areas and is intended to contain housing types such as single-family, duplex, and two or three story apartments. Densities in these areas may range from 1 to 15 units per acre.**

**The R-3, Multiple Dwelling Residential District is intended for medium to high-density residential developments and other uses intended to respect the residential character, which are aesthetically compatible within the district by means of architectural expression, landscaping, and restrained traffic flow. The residential density ranges for R-3 are single-family, 6,000 sq. ft. minimum; multi-family, 3,000 sq. ft. minimum per unit; townhouses, 2,000 sq. ft. minimum per unit; and other uses, 6,000 sq. ft. minimum.**

**The B-2 district is intended to provide a wide variety of retail shopping, commercial, automotive, and miscellaneous recreational and service activities generally serving the City, a wide area of the region, and the traveling public. No residential uses are allowed by right in the B-2 district. Existing residential uses may be nonconforming in nature, and must follow certain restrictions as discussed under continuance of nonconforming uses.**

**Maps and other information are available for review in the Community Development Department, 409 South Main Street, Monday through Friday, 8:00 a.m. to 5:00 p.m.**

**All persons interested will have an opportunity to express their views at these public hearings.**

**Any individual requiring auxiliary aids, including signers, in connection with the public hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.**

**CITY OF HARRISONBURG**

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**Roger D. Baker**

**City Manager**

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

David Lee, a resident of 1159 Nelson Drive, said that he was the developer of the site was available to answer any questions.

James Miller, president of Devonshire Homeowners Association, sent a letter to City Manager Baker expressing endorsement of the project.

John Hopkins owner of Neighbors Convenience Store said that he supported rezoning the tract to accommodate commercial shops and services in the new building. He commended Mr. Lee for bringing the project to Harrisonburg.

Jerry Bennett, a resident of Westmoreland Drive, said that rezoning this property could set a precedent and open the door for other commercial businesses to locate in residential areas. He said, "Once this project goes through, what will stop another project from coming to Neff Avenue? It is spot zoning and the neighborhood does not want it. He requested that Council not approve the project."

Some discussion by Council Members relative to the request included Planning Commissioners were convinced it is a better use for the area with regard to the neighbors, less traffic, will reduce density in the area, will be an improvement to the area, professional offices close to neighborhoods is a plus, and it is an attractive alternative to student housing.

There being no others desiring to be heard, the public hearing was declared closed at 7:59 p.m., and the regular session reconvened. Vice-Mayor Peterson offered a motion to approve this rezoning request. The recorded roll call vote was taken as follows:

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

Mayor Frank

Absent None

Council Member Fitzgerald presented the following resolution for Council's consideration of approval:

## **RESOLUTION**

**WHEREAS, Patricia Doss has served as executive vice-president of the Harrisonburg Rockingham Chamber of Commerce since March 1, 1991; and**

**WHEREAS her many contributions to this community signify her dedication and love for the area; and**

**WHEREAS she has promoted city-county cooperation in the areas of transportation, development, and education; and**

**WHEREAS new programs during her term include the Farm Family Stewardship Awards and environmental cleanup initiatives; and**

**WHEREAS she has worked to expand the Community Leadership participant program and to involve area businesses with the Rockingham Educational Foundation; and**

**WHEREAS she has served on many boards and commissions aimed at improving and promoting Harrisonburg, Rockingham County and the Shenandoah Valley,**

NOW, THEREFORE, BE IT RESOLVED, that on the occasion of her retirement from her post, the *City of Harrisonburg* salutes and commends *Patricia Doss* for her many contributions to the community, and wishes her good fortune and personal fulfillment in her future pursuits.

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Date

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Carolyn W. Frank, Mayor

Attest:

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Yvonne Ryan, CMC, City Clerk

Council Member Fitzgerald said that this resolution will be presented to Pat Doss at a Chamber of Commerce dinner. Council Member Fitzgerald offered a motion to approve the resolution. The motion was approved with a unanimous vote of Council.

Ted Adams, an attorney with Troutman Sanders Law Firm and representing Smart Solutions said that he was appearing on behalf of the American Trucking Association regarding a resolution adopted at the May 14th City Council meeting. The resolution stated that Mayors and Board Chairmen representing many counties and cities supported the establishment of a public-private partnership that would help reduce the time required for making improvements to Interstate 81. He said that Smart Solutions is also in favor of improvements to Interstate 81, but does have some specific concerns about the proposal that has been submitted under Virginia Private Transportation Act to create four new truck lanes on I-81 because the toll would be imposed on trucks only. He said it would make I-81 the only road in the nation to impose tolls on trucks.

Mike Tisdell, business unit manager of the Coors Brewing Company, said that the Shenandoah Plant is a finishing and packing operation employing approximately 460 people. The company recently celebrated its 15<sup>th</sup> anniversary in Elkton. A truck toll would cripple the company's ability to compete with other brewing facilities, provide a negative impact on future growth, and could have a potential negative impact to deliveries being made on time. Coors Brewing Company is currently in the process of improving its distribution systems in the eastern United States. It annually receives 10,000 truckloads of materials and supplies, and ships 36,000 truckloads of beer. Most of the facility's customers do not have access to rail service that could decrease the number of truck shipments. He said a final concern is the impact that a toll will have on trucks using I-81. He asked for Council support in helping to fight the Star Solution proposal.

Neil Snoddy responsible for warehousing and distribution of Cargill Turkey Eastern Operation said that a toll on its trucks would increase the company's costs by double digits. It would place the company at a competitive disadvantage and would alternately affect the community. He said, "We have 45 units that could use this route everyday, and adding 20 cents per mile would greatly impact the company. The likely alternative is that the company would divert truckers from I-81 onto U.S. 11 through Harrisonburg's

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downtown.

Jim Hartman, president of Truck Enterprises, said that Truck Enterprises has been in Harrisonburg for over 40 years. He said that he is one of thousands of suppliers shipping product and using I-81. Millions of dollars in revenue annually are transacted with local business operations for goods and services by persons using this North-South main artery. He said any toll placed on I-81 traffic should be distributed equally among all traffic users, not just truckers. Truckers are the life blood of our existence and if we do not have their business relationships, we cannot exist and be part of this community, employing people, earning a profit, investing in expansions, buying goods and services locally, and paying taxes. Trucking companies and suppliers represented in this area are facing a major financial impact if the proposed toll is enacted. We are a dealer, but we are operating trucks on I-81 everyday. He said that he disagreed with the Star Group, which expects to make a sizeable profit on the project. They indicate it will be an economic stimulus for the entire I-81 corridor by creating new jobs and increased demand for goods and services even with tolls. We all agree the expansion needs to take place, but payment should include all traveling vehicles and not collected through an inefficient toll system. He said, I would be happy to pay my share. I think everybody owes the state that participation in the road segment. However, collecting tolls is often inefficient on any road. The transportation department should place an additional gas and diesel fuel tax at gas stations along I-81 corridor. The suppliers to this trucking industry who deliver the vast majority of the goods you daily use and consume, respectively request you consider the negative impact this proposed funding would render on our state, communities, companies, families and commit to another fiscal sound alternative to financing the widening of I-81.

Council Member Rogers asked Mr. Adams if he had a solution for the traffic problems on I-81. Mr. Adams came to podium and responded that Star Solutions proposal was initiated by private industry wanting four brand new lanes mostly in the existing median strip for use by trucks only. VDOT has reviewed an initial engineering study on a third lane in each direction with some interchange improvements. He said more open dialogue is needed, provide an opportunity to look at options like a third lane, and study specific areas of congestion. He said We don't think that the answer is to create an additional four lanes on I-81 from border to border.

City Manager Baker said that the resolution Council passed at the May 14<sup>th</sup> meeting was very generic encouraging the state to improve I-81 by forming a public-private partnership. It did not address tolls for anyone.

Mr. Adams said Council would have an opportunity to voice their opinion at the Public Private Transportation Act (PPTA) process meetings. He said that the resolution Council passed is fairly generic in nature, but is being seen by the public and the media as the beginning of approval of this toll proposal. He said, We want to make sure you understand the implications of a toll proposal on the business community in Harrisonburg.

City Manager Baker presented a request to amend the Financial Management Policy. He explained that currently the City invests bonds in SNAP, which only earns 2.05% interest. Since the money the City

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borrowed in not needed immediately, the City would like to invest the securities into a money manager program earning up to 4.8%. However, the City's Financial Management Policy adopted in 1995 limits the City to invest in securities, which mature in one year or less. This request is to amend the policy to state three years or less. Council Member Fitzgerald offered a motion to approve this request. The motion was approved with a unanimous vote of Council.

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

## RESOLUTION

WHEREAS, the Harrisonburg-Rockingham Community Services Board was created pursuant to Chapter 10, Title 37.1 of the Code of Virginia for the purposes of establishing, maintaining, and promoting the development of mental health, mental retardation and substance abuse services; and

**WHEREAS, the Harrisonburg-Rockingham Community Services Board was duly organized on May 8, 1972 in accordance with Resolution adopted by the City Council of the Harrisonburg, Virginia and the Board of Supervisors of Rockingham County, Virginia on March 14, 1972 and February 14, 1972 respectively; and**

**WHEREAS, the mission of the Harrisonburg-Rockingham Community Services Board is to develop and maintain a continuum of innovative community-based treatment and rehabilitation services for individuals with mental health, mental retardation and substance abuse disabilities; to ensure these services are responsive to the needs and sensitive to the choices of the individuals served; and to fulfill a special obligation to individuals with the most severe impairments, their families who require support, and children at risk of developing serious problems; and**

**WHEREAS, each year thousands of local residents and their families benefit from services and supports provided by the Harrisonburg-Rockingham Community Services Board; and**

**WHEREAS, the Harrisonburg-Rockingham Community Services Board has forged invaluable partnerships with consumer and advocacy groups, and with public, private, and not-for-profit agencies in order to enhance and expand local community treatment and rehabilitation services over the past thirty years; and**

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WHEREAS, the Harrisonburg-Rockingham Community Services Board has been ably led over the past thirty years by local Board Members who have generously donated their time and talents; and

**WHEREAS, the Harrisonburg-Rockingham Community Services Board has been ably served over the past thirty years by a staff of competent, committed, caring professionals; and**

**WHEREAS, the Harrisonburg-Rockingham Community Services Board is recognized as a well managed human service agency, a valued partner in preserving the quality of Valley life for all local residents; and a community program which puts consumers first;**

**NOW, THEREFORE, BE IT RESOLVED that the Harrisonburg City Council on behalf of the citizens of Harrisonburg does hereby commend and express sincere congratulations to the Harrisonburg-Rockingham Community Services Board on the occasion of its 30<sup>th</sup> anniversary of service to this locality.**

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Mayor

Attest:

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Clerk of the Council

City Manager Baker said that this resolution recognizes the Harrisonburg-Rockingham Community Services Board for being in existence since May 8, 1972. The board was organized for the purposes of establishing, maintaining, and promoting the development of mental health, mental retardation and substance abuse services. Council Member Lantz offered a motion to adopt the resolution. The motion was approved with a unanimous vote of Council.

Charlotte McNulty, executive director of CSB, said that the board started with support from Harrisonburg and Rockingham County in the amount of \$2,000 from each locality. The board now has an annual budget of more than \$5 million along with real estate dotting the area. She thanked City Council for their continued support. She said that Harrisonburg was significantly involved in the development of the McNulty Center for Children and Families, which opened in 1999 by donating land as well as finances for its development. The McNulty Center in its first year provided services to 610 children and youths.

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City Manager Baker presented a request to increase the Golf Course Capital Projects Fund budget. He explained that funds were received from selling timber, donations, and rental of property. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$139,452.70 chge. to: 1326-31010 Amount from fund balance

67,929.37 chge. to: 1326-31513 Investment earnings

1,000.00 chge. to: 1326-31521 Rental of property

100,000.00 chge. to: 1326-31818 Donation First TEE

427.20 chge. to: 1326-31908 Sale of timber

\$308,809.27 approp. to: 1326-910771-48660 Golf Course construction

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Fitzgerald

Council Member Lantz

Council Member Rogers

Vice-Mayor Fitzgerald

Mayor Frank

Absent None

City Manager Baker presented a request to increase the Public Utilities Department petty cash fund from \$750.00 to \$1,000.00. He explained that the increase is necessary for cashiers to have enough petty cash on hand. Council Member Rogers offered a motion to approve this request. The motion was approved with a unanimous vote of Council.

City Manager Baker presented a request for a supplemental appropriation for the Fire Department. He explained that these funds were received from donations or other recovered costs for services during the

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budget year. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$14,435.54 chge. to: 10001914 Recovered costs

6,628.77 chge. to: 10001809 Donations

\$21,064.31 approp. to: 320332-41010 Salaries & Wages Regular

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Fitzgerald

Council Member Lantz

Council Member Rogers

Vice-Mayor Fitzgerald

Mayor Frank

Absent None

City Attorney Miller presented the following resolution for Council's consideration:

**RESOLUTION OF THE  
COUNCIL OF THE CITY OF HARRISONBURG  
CONCERNING A  
WATER LINE EASEMENT AFFECTING  
TAX MAP PARCEL 84-C-19  
OWNED BY THE HEIRS OF JAMES H. SMALLWOOD**

**BE IT RESOLVED BY THE COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA:**

**WHEREAS** the City of Harrisonburg, Virginia (the City) is authorized to acquire interests in real property for public uses by eminent domain pursuant to Section 15.2-1901, *et seq.*, of the Code of Virginia (1950), as amended (the Code), and

**WHEREAS** the City is in the process of developing a water line to increase the flow for fire fighting and other public purposes in the vicinity of Nelson Drive and the Ashby Heights area of the City (the Project) and

**WHEREAS** the Project is in the public interest and for a public use, and

**WHEREAS** it is a necessity of the Project that the City acquire that 2147 square foot water line easement across Harrisonburg Tax Map Parcel 84-C-19 as shown on Attachment A, (the Easement), and

**WHEREAS** the Easement affects land now owned, as far as currently known by the City, by the heirs-at-law of James H. Smallwood, who, to the City's best knowledge currently are Edith Spitzer, Larry Smallwood, Rhonda Smallwood, Donald Lee Smallwood, Linda L. Mathews, Claudia L. Kelley and Rebecca June Bare, and

**WHEREAS** the improvements to be constructed within the Easement are those usual and customary to the overland conveyance of water within a municipal water system, and

**WHEREAS** the land to be affected is not owned by any entity described in Code Section 25-46.6, and

**WHEREAS** a bona fide but ineffectual effort has been made to acquire from the owners by purchase the Easement, it is therefore

**RESOLVED** by the Council of the City of Harrisonburg, Virginia that the power of eminent domain be employed to acquire the water line easement as described on Attachment A across that Harrisonburg, Virginia. Tax Map Parcel 84-C-19 from the heirs of James H. Smallwood, or other owners as they may appear, and that the City Attorney and the Director of Public Utilities take whatever actions and

measures are necessary and prudent to carry out this Resolution.

So Resolved this 28<sup>th</sup> day of MAY, 2002.

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**MAYOR**

**ATTESTE:**

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**CLERK OF THE COUNCIL**

City Attorney Miller explained that the City is in the process of developing a water line to increase the flow for fire fighting and other public purposes in the vicinity of Nelson Drive and the Ashby Heights area. Because the ownership of the property involves many heirs, it has been difficult to contact or find some of the heirs. Since the project needs to proceed, this resolution allows the City to pursue a Quick-take for an easement associated with the construction. Mr. Miller also said that the Quick-take provision was in the Virginia Department of Transportation section of the state code allowing projects to be built and not be held up because of one absent property owner. Vice-Mayor Peterson offered a motion to approve this resolution. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Fitzgerald

Council Member Lantz

Council Member Rogers

Vice-Mayor Fitzgerald

Mayor Frank

Absent None

Bucky Berry, a resident of 877 North Main Street, said that McNulty Center was a great asset to the City.

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Council Member Fitzgerald suggested and other Council Members agreed that City Manager Baker review Star Solutions web site and the presentation of the resolution adopted at the May 14<sup>th</sup> Council meeting to determine if perhaps it is being viewed as a stronger endorsement of Star than what City Council intended. He said if it is a misrepresentation of what Council actually said, perhaps Mr. Baker could point it out to Star in a firm and diplomatic fashion. Council Member Rogers also said that if it is misleading, Council could pass another resolution publicly opposing Star Solutions proposal.

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 Board of Zoning Appeals and the Planning 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). Further, for discussing a specific public officer or appointee of the Council. 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). Further, for discussing the negotiation of contracts. A closed session is permissible for this purpose to Section 2.2-3711.A.6 of the Code of Virginia (1950), as amended (the Code). Further, for discussion of certain law enforcement and public safety matters. A closed session is permissible for this purpose pursuant to Section 2.2-3711-A.17 of the Code of Virginia (1950), as amended (the Code), or, the information to be discussed is excluded from the Freedom of Information Act pursuant to Section 2.2-3705.A.57 of the Code of Virginia (1950), as amended. 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). The motion was approved with a unanimous vote of Council.

At 10:00 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 requirement 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 session were convened, were heard, discussed or considered in the closed session by City Council.

At 10:01 p.m., there being no further business and on motion adopted the meeting was adjourned.

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CITY CLERK

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MAYOR