

MINUTES - REGULAR MEETING OF CITY COUNCIL - AUGUST 13, 2002

REGULAR MEETING

AUGUST 13, 2002

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

Council Member Lantz gave the invocation and Mayor Fitzgerald led everyone in the Pledge of Allegiance.

Council Member Peterson offered a motion to approve the consent agenda, including approval of the minutes and the second reading of a re-appropriation of several encumbrances and amending Section 15-2-28 of the Harrisonburg City Code. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent None

At 7:36 p.m., Mayor Fitzgerald 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, July 29, and Monday, August 5, 2002.

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NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold a Public Hearing on Tuesday, August 13, 2002, 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 Fitzgerald called on anyone desiring to speak for or against the local Law Enforcement Block Grant.

Police Captain Wilfong 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 police equipments. There being no others desiring to be heard, the public hearing was declared closed at 7:37 p.m., and the regular session reconvened. Council Member Frank offered a motion to approve this block grant. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent None

City Manager Baker said that a request by the Driver Corporation to rezone 3.121 acres was introduced at the July 23rd City Council meeting. The request was approved for a first reading provided that

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before the second reading is held the proffer contained more defined language regarding the landscaping. Mr. Baker said that David Driver has submitted a proffer stating that Norway Spruce trees of a height of four to five feet will be planted in a single line approximately 15 feet from the boundary line between the referenced parcel and Purcell Park. Council Member Peterson said that he was satisfied with the amended proffer and offered a motion to approve the rezoning request for a second reading. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent None

City Manager Baker presented an overview on the goals established by City Council at the August 2000 retreat. He said that improvements have been made in virtually all of the areas. Some of the major projects and activities include hiring three additional police officers, creating positions for operating and maintaining the City's golf course, updating the City's Capital Improvement Program, appropriating funds for the Public Safety Building, Burgess Road Extension, Cantrell Avenue Road improvements, Simms Building renovations, Stone Spring Road improvements, and Erickson Avenue Extension. The report also included appropriating funds for the Western raw waterline, Smithland Road water projects, two-way communications system, Eastern water supply development, water treatment plant expansion, Smithland Road Sewer project, and continuing work on the Blacks Run Interceptor. Other projects include purchasing passenger school buses, one school activity bus, special education school buses, transit buses, one para transit bus, a tire grinder, funding for the Rockingham County's landfill equipment, and funding for the recycling development. The City also acquired the Hardesty-Higgins House, loaned money and issued bonds to the City's Rescue Squad, issued bonds to construct a new high school, and issued bonds to purchase and renovate a building for the public safety department, rebuild the City's Steam Plant, put a cover over a City reservoir and expanded the City's Water Treatment Plant. Mr. Baker also reported that golfers spent approximately \$280,500 at Heritage Oaks during the course's first months of operation. Staff has seen an increase in golfers returning to play the course and many young people are participating in the First Tee program.

Council Member Peterson presented three proposed charter amendments. He suggested separating How Vacancies are Filled amendment from the referendum and recall election amendments. He explained that a referendum would allow residents to hold special elections to overturn certain council decisions because he believes the electorate should have the option, under certain conditions, to overturn unpopular ordinances and funding decisions. Recall elections would give voters the power to remove a Council Member from office before his or her term ended.

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The following discussion by Council Members relative to the proposed charter amendments included Referenda go against the ideal of representative democracy, Whether the system is broken or not broken, citizens choose every two years to elect or not elect its Council Members. Citizens rely on Council Members to make certain decisions. The City is running very effectively under current charter.

Vice-Mayor Rogers offered a motion to stop discussing two proposed charter amendments and rejecting referendum and recall election. Mayor Fitzgerald clarified that a yes vote would be for rejection and a no vote would put the proposed charter amendments on the ballot. The proposed How Vacancies are Filled amendment will be discussed and considered at the August 27th Council meeting. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Lantz

Vice-Mayor Rogers

Mayor Fitzgerald

No - Council Member Frank

Council Member Peterson

Absent None

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

**RESOLUTION OF THE
COUNCIL OF THE CITY OF HARRISONBURG
CONCERNING THE IMPOSITION OF MANUFACTURED
OR
MOBILE HOMES
IN RESIDENTIAL ZONES**

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

WHEREAS, the General Assembly of Virginia is likely to consider again during its 2003 legislative session the question of mandating that manufactured, or mobile, homes be permitted as a matter of right in all residential zoning districts, and;

WHEREAS, the General Assembly decades ago delegated to the various localities the task of improving the public health, safety, convenience and welfare of their citizens and of planning for the future development of their communities (Code of Virginia, Section 15.2-2200), and;

WHEREAS, to enable the localities to carry out that task, the General Assembly directed the localities to establish local planning commissions, comprehensive plans and zoning maps, all so that the citizens of the locality, through their local governmental entities, can plan and provide for what is best for their own community, and;

WHEREAS, THE General Assembly has, wisely, delegated to the localities the power and authority to, by ordinance, classify the territory under each locality's jurisdiction into districts of such character as the locality deems best suited to carry out the purpose of the zoning laws, and to regulate, restrict, permit, prohibit, and determine, among other things, the use of lands and buildings in residential districts (Code of Virginia, Section 15.2-2280),

and;

WHEREAS, the localities, for decades, have been faithfully, diligently and effectively carrying out the tasks set before them by the General Assembly, in pursuit of the public health, safety, convenience and welfare of their citizens and in planning for the future development of their communities, and;

WHEREAS, the nature and character of any given residential neighborhood is greatly affected by the type and cost of dwellings located within the neighborhood, and;

WHEREAS, the placement of mobile, or manufactured, homes in neighborhoods is an issue nearly always attended by significant and impassioned public comment, and;

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WHEREAS, the placement of dwellings of significantly lower cost among structures of greater cost serves only to lower the market value of the more costly, and;

WHEREAS, many issues are raised when the market value of homes in a given neighborhood drop, among them, the tax base for that community, as well as overall quality of life, and;

WHEREAS, private developers of subdivisions often record restrictive covenants to run with the land, that operate to further property values and quality of life within those subdivisions, and;

WHEREAS, such restrictive covenants often prohibit placing manufactured, or mobile, homes within the subdivision, and;

WHEREAS, the purchasers of lots within such subdivisions bought lots relying on such protections, which protections would be nullified by a General Assembly mandate permitting manufactured homes in all residential districts, and;

WHEREAS, homeowners who bought lots in district where the local government prohibited the placement of mobile, or manufactured, homes would be similarly injured, and;

WHEREAS, the General Assembly has for many years, wisely left the comprehensive planning, the details of the zoning ordinance, and the day by day administration of land use issues to the local governments, because those governments are best suited to respond to the immediate needs of their residents, it is therefor

RESOLVED by the Council of the City of Harrisonburg, Virginia that it is in the best interests of the City of Harrisonburg that the General Assembly of Virginia leave the planning, regulation and administration of local zoning and land use issues to the various local governments. It is further

RESOLVED that the City Manager and City Attorney communicate to the local delegation to the General Assembly the Council's strong opposition to the imposition by the General Assembly of manufactured, or mobile, homes on all residential districts. It is further

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RESOLVED that the Council, City Manager, and City Attorney shall cooperate with other entities and organizations in an effort to bring the concerns and of the Council to the attention of the General Assembly in any fitting and appropriate manner.

So Resolved this 13th day of August, 2002.

MAYOR

ATTESTE:

CLERK OF THE COUNCIL

City Attorney Miller explained that the General Assembly of Virginia is expected to consider favorably mandating that manufactured homes, or mobile homes, be permitted as a matter of right in every residential zoning district in the Commonwealth of Virginia. He said there has been a very effective lobbying effort in Richmond during the last several years by businesses that manufacture and sell the homes. The legal effect of such a mandate would be if there are vacant lots in the City, it would be legal to purchase the lot and put a double wide or mobile home on it. He also said that historically the placement of manufactured homes or mobile homes has created a tremendous amount of interest at public hearings. A law from the General Assembly could possibly make restricted covenants or provisions unenforceable in subdivisions. Council Member Lantz offered a motion to adopt this resolution leaving the planning, regulation and administration of local zoning and land use issues to local governments. The motion also included that the City Manager and City Attorney communicate to the local delegation to the General Assembly Harrisonburg City Council's strong opposition to the imposition by the General Assembly of manufactured, or mobile, homes in all residential districts. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

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Absent None

City Manager Baker presented a request from the Downtown Retail Merchants Association. He explained that the association has requested permission to hold the annual Cruise In and Craft Show on Saturday, August 24th from 9:00 a.m. until 3:00 p.m. He also said that no objections have been raised to this request, although the Fire Department will require that an 18' wide lane be kept open for emergency vehicle access. Council Member Lantz offered a motion to approve this request. The motion was approved with a unanimous vote of Council.

Council Member Lantz offered a motion to approve the cancellation of the October 22 and December 24 Council meetings.

City Manager Baker presented a request to transfer funds for the Hogpen Run Access Road project. This funding will help to complete a US Forest Service project. Council Member Lantz offered a motion to transfer these funds:

\$3,000.00 chge. to: 1000-910411-45660 Other non departmental

\$3,000.00 approp. to: 1000-910411-45670 Hogpen Run Access Road

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Vice-Mayor Rogers

Council Member Lantz

Mayor Fitzgerald

No - Council Member Peterson

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Absent None

Council Member Frank offered a motion to approve FY 2003 State Performance Contract for the Harrisonburg-Rockingham Community Services Board. The motion was approved with a unanimous vote of Council.

Building Official Baldwin presented a request to amend Sections 11-1-12, 11-2-35, and 11-3-46 of the Harrisonburg City Code. He explained that current building permit fees have not been adjusted since 1993. Current electrical and plumbing fees have not been adjusted since 1981. With this adjustment, the City's fees will still be lower than a number of Valley jurisdictions. He also said that the Shenandoah Valley Home Builders support this request. Following further discussion and comments, Council Member Frank offered a motion to approve this request for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

No - Vice-Mayor Rogers

Absent None

Police Captain Wilfong presented a request for a supplemental appropriation for the Police Department. He explained that the department was reimbursed for overtime hours from a grant from the Weed and Seed Program. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$9,389.84 chge. to: 1000-31010 Amount from Fund Balance

\$9,389.84 approp. to: 1000-310231-41020 Salaries/Wages OT

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The recorded roll call vote was taken as follows:

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

Absent None

Police Captain Wilfong presented a request for a supplemental appropriation for the Police Department. He explained that these funds would be used to pay for a school resource officer at Thomas Harrison Middle School. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$16,496.00 chge. to: 1000-32505 School Resource Officer

\$13,926.00 approp. to: 1000-310431-41010 Salaries/Wages Reg.

1,926.00 approp. to: 1000-310431-42010 FICA

1,393.00 approp. to: 1000-310431-42020 Retirement

75.00 approp. to: 1000-310431-42050 Hospital

37.00 approp. to: 1000-310431-42060 Life Insurance

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank
Vice-Mayor Rogers

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Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent None

Police Captain Wilfong presented a request for a supplemental appropriation for the Police Department. He explained that these funds would be used to purchase bulletproof vests. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$7,144.10 chge. to: 1000-31010 Amount from Fund Balance

\$7,144.10 approp. to: 1000-310231-48140 Bullet Proof Vests

The recorded roll call vote was taken as follows:

Vote: Yes - Council Member Frank

Vice-Mayor Rogers

Council Member Peterson

Council Member Lantz

Mayor Fitzgerald

Absent None

Police Captain Wilfong presented a request for a supplemental appropriation for the Police Department. He explained that these funds would be used for repairs to a police vehicle. Council Member Peterson offered a motion to approve this request for a first reading, and that:

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\$1,467.82 chge. to: 1000-34011 Insurance Recovery

\$1,467.82 approp. to: 1000-310131-43350 Maint./repair to vehicle equipment

The recorded roll call vote was taken as follows:

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

Absent None

Police Captain Wilfong presented a request for a supplemental appropriation for the Police Department. He explained that these funds are partial reimbursement provided by ICRIST for the department sequel server. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$4,000.00 chge. to: 1000-31010 Amount from fund balance

\$4,000.00 approp. to: 1000-31041-48173 Software

The recorded roll call vote was taken as follows:

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

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Council Member Lantz

Mayor Fitzgerald

Absent None

Bucky Berry, a resident of 877 North Main Street, commended Assistant City Manager Kurt Hodgen for helping with traffic and other things during a recent rainstorm. He complained about the City not having enough fire trucks with ladders.

Council Member Lantz offered a motion to appoint Vice-Mayor Rogers to Harrisonburg Weed and Seed Program. The motion was approved with a unanimous vote of Council.

City Manager Baker said that the Virginia Juvenile Community Crime Control Act is forming a group of representatives from local governments to represent localities. Mr. Baker recommended that Brenda Spencer who is the Juvenile Court Supervisor be appointed as Harrisonburg's representative. Council Member Peterson offered a motion to appoint Brenda Spencer to the VJCCA State Wide Local Government Workgroup. The motion was approved with a unanimous vote of Council.

Council Member Peterson offered a motion that Margaret W. Sheridan, 518 East Market Street, be appointed to a first term on the Harrisonburg Parking Authority to expire on November 28, 2002. The motion was approved with a unanimous vote of Council.

At 9:15 p.m., Council Member Peterson offered a motion that Council enter a closed session for the purpose of a consultation with legal counsel pertaining to actual or probable litigation, where such consultation or briefing in open meeting would adversely affect the negotiating or litigating posture of the Council. A closed session is permissible for this purpose to Section 2.2-3711.A.7 of the Code of Virginia (1950), as amended (the Code). The motion was approved with a unanimous vote of Council.

At 9:30 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 session were convened were heard, discussed or considered in the closed session by the City Council.

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At 9:31 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR

cc: City Council
City Manager
Assistant City Manager
Public Library