

MINUTES - REGULAR MEETING OF CITY COUNCIL - JANUARY 14, 2003

REGULAR MEETING

JANUARY 14, 2003

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 Chief of Police Donald Harper.

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

Mayor Fitzgerald announced that four snowplows decorated by the City's elementary students won the Judge's Special Award in the 2002 Christmas Parade.

Mayor Fitzgerald presented a Judges' Special Award to Kenny Knight representing the Public Works Department for its entries into the 2002 Christmas Parade. Mayor Fitzgerald read the following letter received from the Christmas Parade Committee: Congratulations, Your entry in the 2002 Christmas Parade received the Judges' Special Award. The Parade Committee would like to thank you for your participation and for all the work that you did to make this an enjoyable event for everyone involved especially the spectators.

City Manager Baker read the following letter from Joan Strickler, Executive Director of First Night. Dear Mr. Baker and City Council Members: On behalf of the entire Board of Directors of First Night 2003, I want to express our deepest appreciation for the excellent cooperation we received from the City, aspects of planning and coordinating another incident free and enjoyable New Year's celebration. Thank you for sponsoring us. We try to give our major partners credit whenever possible. Once again, the weather smiled upon us and it didn't have anything to do with George Heishman being the MC at the closing ceremony. It was good to see that many people came out to enjoy the activities we had planned. I am especially pleased with the way the Police, Public Works, and Fire Departments worked so well with us to make the celebration come off without a hitch. We heard comments from visitors to the area that they were very appreciative of the City's support for such a family centered and community spirited New Year's Eve Festival.

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Council Member Peterson offered a motion to approve the consent agenda, including approval of the minutes and the second reading approval of several Supplemental Appropriations for the Police Department, General Funds Reserve and a rezoning request by Fairfield Language Technologies. The motion also included referring closing a portion of a street to the Planning Commission. The recorded roll call vote was taken as follows:

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

Absent None

Planning and Community Development Director Turner introduced a request for a special use permit to locate a religious institutional use within the M-1, General Industrial District zoning classification. The site is located at 760 Waterman Drive. The City's Zoning Ordinance does allow religious uses in the M-1, General Industrial Zoning District with a special use permit. The site is currently undeveloped. She reviewed the surrounding uses in the area. The applicant has requested a special use permit to construct a church on the property. Staff recommended approval of the special use permit, but noted that the church was in an industrial zoning classification and should be aware there could be intensive industrial uses in the area in the future. She suggested that the Church might want to develop a landscaping buffer to isolate itself from the surrounding properties. Furthermore, staff encourages the church to retain a many existing trees as possible during any construction that may take place on this property. Mrs. Turner said the only condition staff recommended be placed on this special use permit for the church, is that there should be outdoor lighting provided to illuminate any parking areas, walkways and entrances to provide security for church patrons. She said that Planning Commission recommended approval of the special use permit request.

At 7:40 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, December 30, 2002 and Monday, January 6, 2003.

Notice Of Public Hearing

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The Harrisonburg City Council will hold public hearings on Tuesday, January 14, 2003, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following.

SPECIAL USE PERMIT Iglesia Nueva Vida Pentecostes

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Public hearing to consider a request by the church, with representative Pastor Abel Castro, for a special use permit {per section 10-3-97 (9) of the Zoning Ordinance} to locate a religious institutional use within the M-1, General Industrial District. The church will be built at 760 Waterman Drive on tax map parcel 38-A-7A.

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 hearings 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 Fitzgerald called on anyone desiring to speak for or against this special use permit. There being no one desiring to be heard, the public hearing was declared closed at 7:41 p.m., and the regular session reconvened. Vice-Mayor Rogers offered a motion to approve this request. The recorded roll call vote was taken as follows:

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

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Absent None

Planning and Community Development Director Turner introduced a request for a special use permit to co-locate communication antennas on an existing building at the Hampton Inn. The property is zoned B-2 General Business District zoning classification and is located at 85 University Boulevard. She reviewed the surrounding uses in the area. In October 1997, a special use permit was granted to CFW Wireless to locate six antennas on the rooftop of the Hampton Inn at a height not to exceed six feet above the parapet wall. The Hampton Inn applied for an electrical permit in October 1997 and placed a configuration of four antennas on the rooftop. Another special use permit was approved in May 1999 that allowed Triton PCS to place six antennas on the Hampton Inn. The antennas were conditioned to meet all specifications contained on the submitted plans and that equipment not operated for a continuous period of 24 month shall be considered abandoned and removed within 90 days. The Triton antennas were approved to extend to a height of 54 feet 6 inches, which is 9 feet 4 inches above the parapet roof. In June 1999, Triton was granted a building permit. The permit allowed them to place six antennas according to their proposed plan approved during their May 1999 special use permit process. Currently, the Hampton Inn supports ten antennas that are visible from the surrounding area. She said that staff is recommending that the special use permit request be granted with the following conditions: 1) If the cell provider goes off the air or their equipment no longer operates for more than twelve (12) months, then all equipment associated with that company shall be removed from the building. 2) Only the equipment shown on the submitted drawing shall be approved with issuance of the special use permit. All equipment would have to be removed from the roof if the special use permit was violated. 3) A screening material shall be constructed to raise the parapet wall an additional twelve feet to visually obscure the panels and equipment attached to the roof of the building. 4) Placement of advertising of any kind is prohibited on the antennas. 5) City staff shall review the special use permit annually, for compliance of the conditions. If any of the conditions are found to be in neglect, a certified letter will be sent to the property owner, at which time they will need to bring the equipment into compliance. If the equipment is not brought into compliance within 10 days, then the special use permit will be held until null and void and all equipment approved under the issuance of the permit will have to be removed from the rooftop. She said that Planning Commission voted six to one to approve the request.

At 7:50 p.m., Mayor Fitzgerald 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, December 30, 2002 and Monday, January 6, 2003.

Notice Of Public Hearing

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The Harrisonburg City Council will hold public hearings on Tuesday, January 14, 2003, at 7:30 p.m. in the Municipal Building, City Council Chamber, 345 South Main Street, to consider the following.

SPECIAL USE PERMIT Valley Motel Company

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Public hearing to consider a request by Valley Motel Company (Hampton Inn), with representative Cellco Partnership, for a special use permit {per section 10-3-91(4) of the Zoning Ordinance} to co-locate communication antennas on an existing building, on property identified as tax map parcel 78-B-2 at 85 University Boulevard.

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 hearings 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 Fitzgerald called on anyone desiring to speak for or against this special use permit.

Gregory S. Tully, Director of Planning and Zoning for Site Solutions, LLC, located in Roanoke, VA said that he was representing Verizon Wireless and the Valley Hotel Company and was available to answer questions. There being no others desiring to be heard, the public hearing was declared closed at 7:51 p.m., and the regular session reconvened. Council Member Peterson offered a motion to approve this request. The recorded roll call vote was taken as follows:

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

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Mayor Fitzgerald

Absent None

Mayor Fitzgerald presented for Council's consideration a second reading re-enacting Section 15-3-2 of the Harrisonburg City Code. He explained that this ordinance was adopted for a first reading at the November 26, 2002 City Council meeting. He reminded everyone that although this item was not a public hearing, he would allow comments from the audience.

Cindy Whitlock, a member of the Board of Directors of the Harrisonburg/Rockingham Association of Realtors, said that she was appearing on behalf of 260 members of the association. The realtors expressed concern about the new proposed ordinance. She said the realtors appreciated the sensitive nature of the matter before Council and Council's desire to ensure that the City protect the integrity of its neighborhoods. She said the opinion of the realtors was that City Council is neither authorized to enact or enforce such an ordinance under its grant of general police powers. The Code of Virginia must grant authority to local governments to adopt an ordinance such as the one under consideration. She requested that Council consider alternatives to this ordinance.

Kevin Williams of Forbes Development said that many of the local landlords had asked him to speak on their behalf. He reviewed general points concerning the new proposed ordinance: 1) He questioned City Council power to control all things detrimental to the health and welfare of the community. Does Council have the same power to impose a fee on offending tenants? 2) Will people use this new ordinance to punish landlords and try to drive rental housing out of their neighborhoods? 3) Does the property make the noise or the people within the property? Landlords would be required to evict someone if a person with whom they had no relationship had a noise violation the previous year. 4) Paragraph (b) language is not clear. There are many interpretations. 5) There are some good ideas in the ordinance, but noise does not just occur in rental housing. 6) Are the courts going to allow the landlords to evict people for being accused of a noise violation? He suggested that all the kinks needed to be worked out before the implementation is put in place and adopted. This proposal should go back to the committee and be reworked to contain representatives from the student housing community.

Bucky Berry, a resident of 877 North Main Street, said it wasn't fair to the rest of the citizens living in Harrisonburg to allow college kids to drink, play loud music and trash lawns. He requested that this ordinance be adopted.

Council Member Peterson stated that he wanted to address the concerns mentioned by Mr. Williams. He pointed out that City Council adopted the noise ordinance in November 2002, which contained a class three misdemeanor for violations. He emphasized that this proposed ordinance is not picking on anybody. He said, I trust the Police Officers. He also said that during the last few years 85-90% of summons have been turned into convictions, which states that Police Officers are not being misled. If landlords try to evict troublesome tenants, no fine will be levied. The committee might have to tighten the language in paragraph (b), but it wasn't the intent to kick everybody out of the apartment complex for one noisy tenant. Landlords will have mechanism for defending themselves in court and hopefully will educate and control their tenants.

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The question whether courts would allow landlords to evict tenants could not be answered.

Following further discussion and comments, Council Member Peterson offered a motion to table this issue. The motion was approved with a unanimous vote of Council.

Commissioner of the Revenue Hosaflook presented a brief overview on implementing a cigarette tax in the City. She explained that the City has the authority under existing State Code to impose a cigarette tax. According to the Weldon Cooper Center, 19 cities collect a cigarette tax. She said that she selected five cities in Virginia based on population and location to gather information and conduct a comparative analysis. The cities were Charlottesville, Fredericksburg, Lynchburg, Petersburg, and Winchester. She reviewed the rates in the cities and noted that a discount to cover the cost of fixing the stamps to the cigarette packs is offered to the dealers and sellers when they purchase the stamps. A proposed bill to cap localities tobacco tax at 25 cents per pack is being introduced in the General Assembly, which could take effect later this year.

Carolyn Gilmer, store manager for the Smokehaus, said that she has customers coming from Charlottesville and West Virginia to purchase cigarettes from her store due to the City's low prices. It's not going to be economically sound and it's going to have a negative impact on businesses. It would put the small businesses out of business.

The following discussion by Council Members relative to the proposed cigarette tax included whether to consider a smaller tax of 10 or 15 cents, whether imposing a tax of more than 25 cents a pack could be grandfathered in, whether it would be significant extra revenue, regressive tax, and concern that the relatively small amount of annual revenue generated by the tax would not justify the potential loss of business.

City Manager Baker presented a brief report on implementing a tax incentive to property owners who convert rental units to single-family homes. He said that information could not be found that any locality in Virginia offered the tax incentive. Commissioner of Revenue Hosaflook came to the podium and said that the market value is used in determining appraisals of real estate property in the City and particularly residential property. Real estates sales in the neighborhood are also reviewed. Whether a house is rented or owned does not necessarily increase the value of the property. It depends on the trend of the neighborhood. Following further discussion and comments, Council agreed to ask City staff to prepare an ordinance for Council's consideration at the February 11, 2003 meeting.

City Manager Baker presented the following resolution for Council's consideration.

HARRISONBURG AUXILIARY POLICE FORCE RESOLUTION

BE IT RESOLVED, that members of the Harrisonburg Auxiliary Police Force are hereby authorized to be included as employees of the City of Harrisonburg for the purposes of the Workers Compensation Act of the Commonwealth of Virginia and entitled to all coverage under said Act.

Date

Joseph Gus Fitzgerald, Mayor

Attest:

Yvonne Ryan, CMC, City Clerk

City Manager Baker said that since an auxiliary police force exists in the City, it is necessary for the group to be covered by the City's Workers Compensation Insurance. The cost is approximately \$20.00 per person per year. Council Member Peterson offered a motion to adopt the resolution as presented. The motion was approved with a unanimous vote of Council.

City Manager Baker presented a request to transfer funds from Reserve for Contingencies to General Properties. He explained that these funds will be used for unexpected repairs to a boiler, insurance and heating at the Simms Building. Council Member Peterson offered a motion to transfer these funds:

\$26,141.00 chge. to: 1000-940111-49310 Reserve for contingencies

\$9,000.00 approp. to: 1000-430221-43330 Maint. & Rep. Mech. & Equipment

3,000.00 approp. to: 1000-430221-43360 Maint. & Rep. Bldg. & Grounds

7,800.00 approp. to: 1000-430221-45125 Heating Simms Building

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910.00 approp. to: 1000-430221-45310 Boiler & Machinery Insurance

1,110.00 approp. to: 1000-430221-45340 Other Property Insurance

21.00 approp. to: 1000-430221-45370 Pub Official Liability Insurance

4,300.00 approp. to: 1000-430221-46070 Repair & Main. Supplies

The recorded roll call vote was taken as follows:

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

Absent None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these funds will be used to purchase auxiliary police uniforms. Council Member Peterson offered a motion to approved this request for a first reading, and that:

\$1,000.00 chge. to: 1000-31809 Donations

\$1,000.00 approp. to: 1000-310231-46110 Uniforms

The recorded roll call vote was taken as follows:

Vote: Yes Council Member Lantz
 Vice-Mayor Rogers

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Council Member Peterson

Council Member Frank

Mayor Fitzgerald

Absent None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these funds will be used to install a flag and flagpole at Harrison Plaza. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$2,860.00 chge. to: 1000-31010 Amount from fund balance

\$2,860.00 approp. to: 1000-310131-46140 Other operating expenses

The recorded roll call vote was taken as follows:

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

Absent - None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these funds received from a DMV mini grant will be used to purchase bicycle helmets. Council Member Peterson offered a motion to approve this request for a first reading, and that:

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\$557.20 chge. to: 1000-33524 Federal DMV grant

\$557.20 approp. to: 1000-310231-46140 Other operating supplies

The recorded roll call vote was taken as follows:

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

Absent - None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He explained that these funds from a DMV grant will be used for overtime expenditures. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$7,541.93 chge. to: 1000-33524 Federal DMV grant

\$7,541.93 approp. to: 1000-310231-41020 Salaries/wages OT

The recorded roll call vote was taken as follows:

Vote: Yes Council Member Lantz

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Vice-Mayor Rogers

Council Member Peterson

Council Member Frank

Mayor Fitzgerald

Absent - None

City School Business and Finance Director Triplett presented a request for a supplemental appropriation for the School Board. He explained that these funds were received from unanticipated receipts from the Federal Government that were not known during the budget process. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$99,881.00 chge. to: 1111-33301 School Revenue Federal

\$78,516.00 approp. to: 1111-11114-40610 Instruction

21,365.00 approp. to: 1111-11114-40680 Technology

The recorded roll call vote was taken as follows:

Vote: Yes Council Member Lantz

Vice-Mayor Rogers

Council Member Peterson

Council Member Frank

Mayor Fitzgerald

Absent - None

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Public Works Department Director Baker presented a request for a supplemental appropriation for the Police Department. He explained that these funds will be used to purchase real estate, which is currently being leased and identified as parking lots on both sides of East Water Street. Council Member Peterson offered a motion to approve this request for a first reading, and that:

\$159,000 chge. to: 2015-31010 Amount from Fund Balance

\$159,000 approp. to: 2015-410641-48282 Land

The recorded roll call vote was taken as follows:

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

Absent - None

Kathy Whitten, a resident of 560 South Main Street, said that she appreciated Council Member Frank disclosing the ownership of rental property. She said, It is important for our citizens to know if Council Members own rental property and function as landlords. She questioned whether being a landlord would constitute a conflict of interest on voting on this matter. She said representing a realtors association of 200 plus sounds impressive, but City Council has a more impressive job of representing the citizenry of Harrisonburg. She said if the landlords would spend as much time working on the problem as it has been presented and not complain about the \$1,000 fine, it would be better for everyone. The landlords seem to be very concerned about their pocketbook rather than the behavior of their tenants the City has to deal with. That should be their first concern. When you buy rental property landlords should be aware of the problems that goes with having tenants. She said her husband has had his sleep disturbed many nights because of surrounding tenant behavior problems. Landlords should have to disclose if a nuisance clause exist in their contracts.

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Bucky Berry, a resident of 877 North Main Street, complained about yellow cabs cars not obeying the school zone on streets.

At 9:40 p.m., Council Member Peterson offered a motion that Council enter a closed session for the purpose of discussion or consideration of prospective candidates for appointment to the Harrisonburg Parks and Recreation 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).

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 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.

Council Member Peterson offered a motion that William K. Latham, 427 Mountain View Drive, be appointed to a first term on the Harrisonburg Parks and Recreation Commission to expire on December 31, 2006. The motion was approved with a unanimous vote of Council.

At 10:05 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR