

MINUTES - REGULAR MEETING OF CITY COUNCIL - JULY 22, 2003

REGULAR MEETING

JULY 22, 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; Carolyn W. Frank; Council Member Dorn W. Peterson; Council Member Hugh J. Lantz; City Clerk Yvonne Bonnie Ryan, CMC/MMCA, and 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 approving a rezoning request by Joe and Becky Puffenbarger, and rezoning request by M. Belmont Verstandig, Inc., for a portion of a parcel on Garbers Church Road and a special use permit to allow communications towers under Section 10-3-97(6)) of the City's Zoning Ordinance. The motion also included vacating a 22,856 square foot portion of Rockingham Drive and 3rd Street for a second reading. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Frank

Council Member Lantz

Mayor Fitzgerald

Absent None

City Manager Baker presented for Council's consideration amending the Fiscal Year 2002-2003 budget. He explained that a public hearing is required when the budget is increased by more than \$500,000. Mr. Baker briefly reviewed the amended items including money for the

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SPCA, EOC 911 hardware equipment, paving projects, and new transit buses.

At 7:37 p.m., Mayor Fitzgerald closed the regular session temporarily and called the evening's public hearing to order. The following notice appeared in the Daily News-Record on Monday, July 14, 2003.

Notice Of Public Hearing

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A Public Hearing will be held by the Harrisonburg City Council on Tuesday, July 22, 2003 at 7:30 p.m., in the Harrisonburg Municipal Building, 345 South Main Street, Harrisonburg, Virginia. The purpose of this public hearing will be to get citizen input concerning a proposed increase in the City's 2003-2004 budget in the amount of \$2,383,463.34. This amount represents outstanding encumbrance at June 30, 2003. The budget increases will be as noted below:

NOTICE OF PUBLIC HEARING

A public hearing will be held by the Harrisonburg City Council on Tuesday, July 22, 2003 at 7:30 p.m., in the Harrisonburg Municipal Building, 345 South Main Street, Harrisonburg, Virginia. The purpose of this public hearing will be to get input concerning a proposed increase in the City's 2003-2004 budget in the amount of \$2,383,463.34. This amount represents outstanding encumbrances at June 30, 2003. The budget will be as noted below:

Revenues:

General Fund

Amount from fund balance **\$1,846,144.34**

Public Transportation Fund:

Amount from fund balance **537,319.00**

-

Total revenues \$2,383,463.34

Expenditures:

General Fund \$1,846,144.34

Public Transportation Fund 537,319.00

Total expenditures \$2,383,463.34

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.

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CITY OF HARRISONBURG

Roger D. Baker

City Manager

Mayor Fitzgerald called on anyone desiring to speak for or against amending Fiscal Year 2002-2003 budget. There being no one desiring to be heard, the public hearing was declared closed at 7:38 p.m., and the regular session reconvened. Council Member Frank offered a motion to approve amending the budget for a first reading, and that:

\$1,846,144.34 chge. to: 1000-31010 Amount from fund balance

537,319.00 chge. to: 2013-31010 Amount from fund balance

\$2,383,463.34 Total

\$ 271.38 approp. to: 1000-120511-46140 Other office supplies
855.00 approp. to: 1000-120511-48111 Machinery and equipment
1,871.88 approp. to: 1000-120511-48121 Furniture and fixtures
3,712.81 approp. to: 1000-120911-48111 Machinery and equipment
855.00 approp. to: 1000-121511-48171 EDP equipment
4,886.33 approp. to: 1000-122011-48173 Software
855.00 approp. to: 1000-122011-48271 EDP equipment
6,513.00 approp. to: 1000-122011-48272 Hardware
6,513.00 approp. to: 1000-310131-48172 Hardware
500,000.00 approp. to: 1000-350131045657 SPCA
475,000.00 approp. to: 1000-310432-48272 Hardware
8,000.00 approp. to: 1000-320232-48111 Machinery and equipment
65,321.34 approp. to: 1000-320232-48151 Motor vehicles & equipment

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68,921.66 approp. to: 1000-320232-48203 Fire Programs Fund

3,385.88 approp. to: 1000-340121-48273 Software

1,736.00 approp. to: 1000-430221-43360 Maint. & Repair Bldg. & gnds

22,000.00 approp. to: 1000-410121-48191 Telecommunications

3,472.09 approp. to: 1000-410121-48274 Geographic Info System

51,220.00 approp. to: 1000-410121-48291 Engineering/Mapping

1,729.19 approp. to: 1000-810121-43100 Professional services

374,022.93 approp. to: 1000-410241-43374 Main & repair-Allowable

80,438.64 approp. to: 1000-410241-48294 WIP Annex area

28,694.89 approp. to: 1000-410241-48297 WIP West Market Street

884.40 approp. to: 1000-710171-43330 Main & repair-Match & equip

6,425.00 approp. to: 1000-710171-43360 Maint & Repair Bldg & gnds

5,650.00 approp. to: 1000-710171-46130 Recreational supplies

1,250.00 approp. to: 1000-710171-48132 Ed/Rec Supp-Athletics

44,100.00 approp. to: 1000-710171-48211 Machinery and equipment

7,944.97 approp. to: 1000-710171-48284 Improvements

663.95 approp. to: 1000-710571-43360 Main & Repair Bldg & gnds

43,695.00 approp. to: 1000-710771-48184 Improvements

11,895.00 approp. to: 1000-710871-48184 Improvements

4,950.00 approp. to: 1000-710871-43310 Repairs and maintenance

8,300.00 approp. to: 1000-710871-43360 Main & Repair Bldg & gnds

1,846,144.34 Total General Fund

2,955.00 approp. to: 2013-812081-45530 Training and travel

534,364.00 approp. to: 2013-872081-48253 Transit buses

537,319.00 Total Public Transportation Fund

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2,383,463.34 Grand Total

The recorded roll call vote was taken as follows:

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

Absent None

Planning and Community Development Director Turner introduced a request by Vern Michael to subdivide one 10.45-acre parcel. The applicant has requested to subdivide a track of land that is part of the Pleasant Valley Road Industrial Park. This request involves a variance to the City's subdivision regulations stating that all lots must front on a City street. The majority of this parcel is in Rockingham County. The 1.271 acres of land located in the County is zoned M-2, Light Industrial District. The parcel would be subdivided along Blacks Run with a portion north of Blacks Run being purchased by Mr. Michael. The reason for the subdivision is because Harman Realty does not have access to the portion that is on the opposite side of Blacks Run. She reviewed the reasons the owner wants this property to be a stand-alone parcel and noted that before the final plat is approved, Mr. Michael would be required to bond a water line on the property. She said that Planning Commission recommended approval of the request. Council Member Peterson offered a motion to approve the request. The recorded roll call vote was taken as follows:

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

Absent None

General Fund

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The next item of business was awarding a contract for rebuilding the Chesapeake Avenue Bridge over Blacks Run. City Manager Baker said bids had been received and Hammond-Mitchell, Inc. of Covington, Virginia was the low bidder at \$342,597. Planned construction is scheduled to begin August 3, 2003 with a completion date of October 31, 2003. Council Member Peterson offered a motion to accept the low bid and award the contract to Hammond-Mitchell, Inc. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Frank

Council Member Lantz

Mayor Fitzgerald

Absent None

Ted Cole of Davenport and Company, the City's financial advisor, presented an update of the City's Capital Funding Analysis. Mr. Cole reviewed the existing debt service and debt prospects if the City should proceed with new projects. The City will have approximately \$6.5 million in debt service for FY 2004, but the debt service will increase in FY 2005 by approximately \$1.1 million primarily because of the debt service associated with the new high school project. The report contained information regarding revenue the City could receive if a penny was added to the real estate tax rate and monies received from an agreement with JMU for purchasing steam. Mayor Fitzgerald summarized the revenue needed for the four proposed projects, which include \$8 million for the Stone Spring/Erickson Avenue (Phase 1) project, \$10 million for a joint radio system, \$3.5 million to renovate the existing high school, and \$11.5 million to build a new elementary school. If these projects are totally funded from real estate taxes an increase of 15 cents to the 62-cent real estate tax will be necessary.

The next item of business was discussion of a joint City/County Radio System Upgrade. City Manager Baker announced that the City will receive approximately \$130,000 in grant funding from Home Land Security. These funds will be applied to the cost of the emergency communication center.

Council Member Peterson said that the City needs to compare the costs of a City only system and a joint City/County system in order to make a reasoned choice between the two alternatives. The City only system would probably need only two or three towers and could well be significantly cheaper for the City than 50% of a joint system. Council Member Peterson also pointed out that the projected heights for the towers at 250 feet are significantly higher than the cell phone towers the County has been approving. He inquired about

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the re-farming proposal by the FCC and said his research revealed there are interference problems existing between public safety radios and cell phone systems. The research also revealed a proposal being considered that some of public safety radios will have to move from another part of the 800 MHz system. He said that it would be very expensive if the City had to move from one design to another in the future.

Bob Forrest, President of CTA Communications, said re-farming is a different thing from the Nextel situation. There are a number of proposals and opinions, but Nextel currently is proposing to move public safety to a separate part of the band to avoid interference. There would be some modifications to the City's infrastructure, but in general the radio system should be able to function in both the 700 MHz and 800 MHz bands. Mr. Forrest said lower antenna heights cost less, but Rockingham County has a lot of cell phone towers at 80 feet, which doesn't provide coverage for the entire Western mountain area of the county. Land mobile radio systems typical height is 80 feet towers. He reviewed an access area map showing six radio sites in Harrisonburg, which included Dictum Ridge, Hidden Hollow Lane, Ness Farm, Massanutten, Kyger Farm, and Stone Spring School. The service provided outside the City limits is to and from portable radios carried outside buildings. The service provided inside the City limits is to and from portable radios inside buildings. The system was designed to take atmospheric conditions into consideration. He continued to discuss the pros and cons of different radio systems.

Council Member Peterson said that he understood including coverage for certain areas, but questioned the need to cover areas North of Broadway.

Jim Junkins, ECC Director, explained that the coverage area was developed through user surveys. The City based its coverage areas on requests from City and County employees. He said City employees travel outside City limits and coverage in the northern area is needed. City employees currently use cell phones, but coverage is not available in all areas.

Council Member Peterson said that it is difficult to determine the needs of the City until a cost-benefit analysis is conducted to determine the frequent use of radios beyond City limits.

A lengthy discussion by Council Members relative to the Radio System continued and included: Radio system on school buses traveling outside the area on class trips; cell phones currently used on buses; public safety concerns; issue of immediacy; needs versus wants; towers high cost; mutual aid agreement with County should benefit both localities; the City/County has applied for grants jointly, which should provide greater opportunity to receive funding; questioned cost of sharing joint system; design adequate systems for both localities; determine ratio of costs; three antennas in northern area of county not essential for City; present system consolidated; keeping ECC consolidated; staff recommendation of 50/50 split; strong arguments on both sides; having a system designed to adequately cover both police and fire departments and suggested wording adding a five year termination clause to the agreement. Following further discussion and comments, Vice-Mayor Rogers offered a motion directing City staff to move forward on the radio system project and negotiate with Rockingham County about adding a five year clause to the ordinance stating that either party can withdraw from the contract. The motion also included voting on the final agreement at the August 26,

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2003 meeting. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Frank

Council Member Lantz

Mayor Fitzgerald

No - Council Member Peterson

Absent None

The next item of business was a presentation of the Parks and Recreation Comprehensive Master Plan. Parks and Recreation Director Lee Foerster said that a survey was conducted, a request for proposal was developed and qualifying firms were interviewed to perform this task. The contract was awarded to Land Planning and Development of Charlottesville and the project began in July 2002. The process has included an extensive telephone survey of City residents, three public input meetings, a working session with the Parks and Recreation Commission, various interviews and meetings with direct and indirect stake holders, surveys, consultations with Parks and Recreation and Community Development staff, and various other avenues of collecting information. The Parks and Recreation Commission at its last meeting voted unanimously to accept this document as the City guide to the future. He requested that City Council consider the document as an important tool and guide for the Parks and Recreation Department. This plan can and will serve as a 5, 10, and 15 year guide and planning tool for the continued improvement and development of recreation leisure facilities and programs for Harrisonburg citizens. Vice-Mayor Rogers offered a motion to adopt the Parks and Recreation Comprehensive Master Plan. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Frank

Council Member Lantz

Mayor Fitzgerald

Absent None

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Harrisonburg Redevelopment and Housing Authority Director Michael Wong briefly reviewed the progress of the Lucy F. Simms project. In March 2003, City Council authorized and approved a plan to renovate and build onto the Lucy Simms School. The project is projected to cost \$5.5 million, which includes a \$2 million contribution from the City. Mr. Wong reviewed sources for the Simms Project funding. Part one and two of the Historical Tax Credit application has been successfully approved by the Department of Interior. The Harrisonburg /Rockingham Boys and Girls Club has hired consultants and completed a market study which supported contributions from the Boys and Girls Club. The HRHA has been working with an architectural firm and is in the final phase of preparing bids and advertisement. HRHA was unsuccessful in obtaining a Community Block Grant of \$700,000, but continues to seek grant funding from other sources. He said that the City has allocated a commitment of \$200,000 annually toward the Simms project. HRHA is proposing addressing the \$700,000 deficit by asking the City to extend its \$200,000 commitment. Following further discussion and comments, Council Member Lantz offered a motion to move forward and grant the Harrisonburg Redevelopment and Housing Authority a \$2.7 million bond rather than \$2 million. The motion also included granting a construction loan and if HRHA receives additional grant funding, HRHA will reimburse the City up to \$700,000. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Frank

Council Member Lantz

Mayor Fitzgerald

Absent None

City Manager Baker presented for Council's consideration a request from Mr. Crowther. He said that he had been directed by Council to present documentation for the expenses Mr. Crowther sustained as a result of an accident with a City recycling truck. City Attorney Miller said that he is talking with Crowther's attorney to structure a way to make the payment legal in this particular case. Council Member Frank offered a motion to allow the City Manager and City Attorney to conclude the matter on behalf of City Council. The motion was approved with a unanimous vote of Council.

The next item of business was a discussion of the Mayor's performance. Council Member Frank said she was concerned that a matter discussed in closed session at one meeting had been brought back and introduced in open session at another meeting by Mayor Fitzgerald.

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Council Member Lantz said he thought the other members of Council were blindsided with an item that wasn't on the agenda. He suggested that Council should develop some rules and policies regarding items being added to the agenda. He said, "People are tired of the City Council washing its dirty laundry in public. This matter should have been handled privately. He also said that if the issue was important enough to be brought up at a Council meeting, then during the meeting between the Mayor and the City Manager it should be placed on the agenda. He questioned who makes up the agenda? Who approves it? Who has the right to put something on the agenda? Does a citizen? What if it doesn't pertain to the Council, should it be on the agenda? How do other localities handle making up the agenda? Situations happen at Council meetings because we don't have rules and regulations like other localities have established. If it is not included on the agenda, it should not be brought up at the meeting. He said that Staunton has stated very clearly in its procedures who approves every agenda item. Council Members can request it, but if the City Manager doesn't think that it should be included, it is not placed on the agenda. Citizens can also make requests, but if the City Manager doesn't approve the request, it is not placed on the agenda. He questioned who decides what items should be discussed in closed session? Other localities have adopted rules and procedures to follow. The City Charter says that each Council should develop its own rules and procedures and because we don't have that we cause a lot of our own embarrassment.

Vice-Mayor Rogers agreed that the matter should have been handled privately. He reminded everyone that citizens elect Council Members, but Council appoints the Mayor.

Mayor Fitzgerald said, "I don't know of anything in the Virginia Freedom of Information Act that says Council Members can discuss one another in closed session. We are not personnel, we are elected officials. We can discuss the people who work for us certainly, but if a clever lawyer could find some way that Council Members could discuss one another in a closed session, it might meet the letter of the law, but would not meet the spirit of the law. Council Members disagreeing with the action of another one would be a policy issue, not a personnel issue. I think that we have put the Crowther issue back into the hands of the staff tonight with some expectation that it will have an outcome that we all think will be a little more fair and just. As far as what happened at the last meeting, at the previous meeting, we had made a non-decision in a closed session to not take an action. At the last meeting in open session, we decided to reverse that decision. In closed session we were ready to take one action and in open session we were ready to take a different action. The only difference is that people were watching the second time. If we are doing one thing in the dark and one thing with people watching, there is a problem. As far as the issue of blindsiding, I made a suggestion, it wasn't a motion. No vote was called for unless somebody chose to make a motion. You had the option to table it or you had the option to put it on the next agenda. The charge of blindsiding is at best secondary and at worst irrelevant. This issue could cost the City \$2,500. It is not a small amount of money particularly to people paying it in taxes, but it was costing us a lot more than that in creditability. We blindside each other all the time. There are certain procedures that we agreed to at the retreat in 2000, which were included in the agenda packet. He also pointed out that Council adopted four guiding principles on managing the closed session at the April 24, 2001 Council meeting.

City Attorney Miller presented a brief overview on proposed taxicab ordinance changes. Council had expressed concern because of the increasing number of requests to issue Certificate of Public Convenience and Necessity. It was suggested that the City's regulations should be examined. He said staff members reached a consensus the existing taxicab ordinance are good, but perhaps needed better enforcement. The City should have a taxicab service operating seven days a week, 24 hours a day, and 365 days a year. It is

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difficult for one company to fit that requirement and other companies to only operate several days a week. He reviewed some of the provisions of the ordinance including that the applicant is required to have an established place of business. Council makes a determination about the adequacy, efficiency and safety of existing taxicab service, probable permanence and quality of service, financial ability, and the number and character of vehicles or depots proposed to be used. Currently the Police Department conducts an investigation and makes a report to City Council. Mr. Miller suggested asking the Police Department to make a recommendation rather than a report to City Council concerning whether the application for a Certificate of Public Convenience and Necessity should be approved and issued. Council Member Peterson suggested changing the current code to require a taxicab service to provide a minimal number of hours (120) per week. Council Member Peterson offered a motion that staff come back with wording to add 120 hours per week minimal service to the existing ordinance. The motion also included that City Manager Baker present a recommendation on selecting members serving on an Ad-Hoc Committee when certificates are presented for renewal. The motion was approved with a unanimous vote of Council.

City Attorney Miller presented for Council's consideration of a first reading an ordinance amending and re-enacting Section 13-1-3 of the Harrisonburg City Code. He explained that each year Council is asked to amend this ordinance to adopt the state motor vehicle laws. Council Member Lantz offered a motion to approve this ordinance for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Frank

Council Member Lantz

Mayor Fitzgerald

Absent None

City Attorney Miller presented for Council's consideration of a first reading an ordinance enacting Section 6-1-26 of the Harrisonburg City Code. He explained that when there are any cost or fees associated with the Public Works Department requesting property owners to clear their sidewalks of snow or ice and it is not done after a 30-day notice, this ordinance would allow the fees or costs of the City doing the work to be added to the next real estate tax bill. Council Member Lantz offered a motion to approve this ordinance for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

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Council Member Frank

Council Member Lantz

Mayor Fitzgerald

Absent None

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City Attorney Miller presented for Council's consideration of a first reading an ordinance enacting Section 6-2-10 of the Harrisonburg City Code. He explained that when any costs or fees associated with the Public Works Department having to remove abandoned personal property from a lot after sending proper notification to the property owner, this ordinance would allow the unpaid fee or cost to be added to the next real estate tax bill. Council Member Lantz offered a motion to approve this ordinance for a first reading. The recorded roll call vote was taken as follows:

Vote: Yes - Vice-Mayor Rogers

Council Member Peterson

Council Member Frank

Council Member Lantz

Mayor Fitzgerald

Absent None

City Attorney Miller presented for Council's consideration an ordinance amending and re-enacting enacting Sections 15-2-1 through 15-2-23 of the Harrisonburg City Code. He explained that the objective was to eliminate unnecessary duplication of state laws and strengthen and update those, which most affect the community. The current code is repetitive and outdated. He said that proposed code changes include dealing with hybrid canines and updating the definition of dangerous and vicious animals. These ordinances will be posted on the City's web site for review by citizens.

Bucky Berry, a resident of 877 North Main Street, complained about high water from recent rain storms in some areas of the City and not receiving response from City departments.

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Police Chief Harper invited Council Members to attend National Night Out 2003 on August 5, 2003.

At 11:20 p.m., Council Member Peterson offered a motion that Council enter a closed session for the purpose of discussion of personnel matters, specifically, the discussion of certain public officers. 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). The discussion of prospective business or industry where no previous announcement has been made of the business or industry's interest in locating in Harrisonburg. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.5 of the Code of Virginia (1950), as amended (the Code). The discussion with legal counsel pertaining to actual or probable litigation, where such consultation in open meeting would adversely affect the negotiating posture of the City. A closed session is permissible for this purpose pursuant to Section 2.2-3711.A.7 of the Code of Virginia (1950), as amended (the Code). The 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

At 11:45 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 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 in the closed session by the City Council.

At 11:46 p.m., there being no further business and on motion adopted the meeting was recessed until August 12, 2003 at 7:00 p.m., in the Mayor's office at which time Council plans to convene in closed session for discussion of prospective business or industry where no previous announcement has been made of the business or industry's interest in locating in Harrisonburg.

The meeting will reconvene on August 12, 2003 at 7:00 p.m.

CITY CLERK

MAYOR