

REGULAR MEETING

OCTOBER 26, 2004

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Larry M. Rogers; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Earl Q. Thumma, Jr., Vice-Mayor Rodney L. Eagle; Council Members Charles R. Chenault; Council Member Hugh J. Lantz; George W. Pace; City Clerk Yvonne “Bonnie” Ryan, CMC/MMCA, and Chief of Police Donald Harper.

Vice-Mayor Eagle gave the invocation and Mayor Rogers led everyone in the Pledge of Allegiance.

Bucky Berry, a resident of Harrisonburg, complained about City businesses paying the same amount as County businesses to obtain a business license.

Council Member Chenault offered a motion to approve the consent agenda, including approval of the minutes and the second reading of Supplemental Appropriations for the Police Department, Fire Department and Public Works Department and adopting Procedures Regarding Requests Made Pursuant to the Public-Private Education Facilities and Infrastructure Act of 2002. The motion also included a rezoning request by Janice Scaglione and amending and re-enacting Section 16-8-51 (b) and enacting Section 4-2-17 of the Harrisonburg City Code. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

Planning and Community Development Director Turner introduced a request by D. James Shaw, II to subdivide one, 1.31-acre lot into two parcels with a variance to Section 10-2-42 (d) of the Subdivision Ordinance to allow one of the lots to not front on a public street. Mrs. Turner said that the property is located at 289 Lucy Drive and was included as part of a subdivision platted when Lucy Drive was developed in 2000. The immediate area surrounding this lot began developing when Pro Pointe Lane was created. The applicant has requested to subdivide a 1.31-acre lot into two parcels, a .459-acre lot and an .853-acre lot. Both lots would have access to Pro Pointe Lane. Water and sewer is easily accessible from Lucy Drive. Planning Commission has recommended approval of the request. Council Member Pace offered a motion to approve this request as presented. The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

Planning and Community Development Director Turner introduced a request by Kim Young to plat 81 lots on 31.79 acres of land with a variance to the Subdivision Ordinance. She said that the property is located at the terminus of Willow Hills Drive and Rex Road and this development will complete the build-out of the Willow Hills neighborhood located off of Pleasant Hill Road. She reviewed the surrounding uses in the area. The developer has indicated that lots 61 through 81 will be single-family homes since these lots adjoin the existing lots in the Willow Hills neighborhood. One of the most important impacts on this development is the creation of the Erickson Avenue Extension. This section of road, scheduled for construction within six to eight years, will be a four lane controlled access road that will provide rapid movement between the eastern and western parts of the City. Because of the controlled access nature of this roadway, street connections will be greatly limited, especially in the areas where the Erickson Connector is designed to be four lanes. Because of traffic interruption and the potential for cut-through traffic impacting the Willow Hills development, the Department of Public Works maintains their position that no connection will be allowed from this development onto the future Erickson Avenue Extension. Mrs. Turner said that currently negotiations are underway between the developer, the City and the owner of the property and the existing plat hinges on this negotiation occurring. The developer is working with the City on easements, stormwater management and the City's raw water line running to the water treatment plant. This proposed development completes the build out of this neighborhood in a sound and logical manor. The second street connection to this neighborhood would not only benefit the new homes proposed to be built, but also the existing homes that currently exceed the maximum limits for a cul-de-sac community. The developer has committed the following proffers: 1) That lots 61 to 81 would be reserved for single-family homes. 2) A second entrance onto Pleasant Hill road will be completed prior to 30% of the houses being built. 3) A construction entrance and road to the phase is being developed and will be built at the location of the second entrance onto Pleasant Hill Road prior to start of any houses being built. She said that Planning Commission has recommended approval of the request with the following conditions attached: 1) A second entrance will be constructed prior to any houses being built, engineer should give consideration to making a recommendation for play areas to the site plan, and that a letter of intent from the owners for single family homes adjacent to the existing Willow Hills subdivision would be submitted, and that the second entrance be completed prior to more than 30% build out of the development.

Dr. Donald Ford, a resident living at 1970 Lynne Place, reiterated that the community appreciated the Young's responses to the questions submitted by the residents of the Willow Hills subdivision regarding the subdivision. There still is a lingering concern about what happens with the retention pond and the drainage from the site. He said he hoped the developers

could address these concerns sufficiently to make certain that it doesn't adversely affect the houses near the detention pond. Space should also be designated where children can play safely.

Council Member Pace questioned who addressed the issue of places safe for children to play, Transportation Safety Commission or the Planning Staff?

Council Member Chenault said several residents of subdivision had contacted him after the Planning Commission meeting about the Willow Hills and Pleasant Hill Road issue having to deal with truck traffic and some traffic calming measures. They acknowledged that the study had been done with Mr. Williams during the past; however, they are requesting that the issue be addressed again because conditions have changed.

Council Member Pace requested that the City Manager ask the Traffic Department to meet with the residents of the subdivision to discuss some of the traffic issues. The study should capture what is going on now and envision two years from now the traffic issues.

Vice-Mayor Eagle questioned why an access to Erickson Road wasn't considered.

Planning and Community Development Director Turner reviewed some of major points discussed regarding Erickson Avenue Extension.

Bobby Juhasz a resident of the Willow Hills neighborhood presented pictures of existing houses, parking, and traffic.

Council Member Chenault offered a motion to approve a request by the Young's for a variance to the Subdivision Ordinance. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

Planning and Community Development Director Turner introduced a request by George C. Wilson to plat 139 lots on 14.4 acres of land with a variance to the Subdivision Ordinance. She said the site located on Old Furnace is zoned R-4, Planned Unit Residential District. The Comprehensive Plan designates this area as Medium-Density Residents. She reviewed the surrounding uses in the area. The applicant has requested to preliminarily plat 139 townhouses as part of the proposed Old Furnace Manor development. The townhouses would be subdivided to allow for individual lot ownership. Access to this development would come from two entrances along Old Furnace Road. The entrance closest to Vine Street would line up with an existing entrance across the street that provides access to another apartment complex. As part of this project, Old Furnace Road would be improved, creating an additional lane for vehicles, bike

lanes, and a five-foot sidewalk down the south side of this road closest to the proposed townhouse community. Common area lots are proposed within this development to allow for three designated recreational sites and stormwater management. All of the townhouse units in this development will have single car garages. Each unit would also have two external parking spaces. Additional parking would be located at various points throughout the development. She said that Planning Commission has recommended approving the subdivision with the condition to limit occupancy to no more than two unrelated individuals per unit.

Vice-Mayor Eagle offered a motion to approve the request granting the variance as presented. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

City Manager Baker presented the following resolution for Council's consideration of approval:

RESOLUTION APPROVING THE ISSUANCE BY THE HARRISONBURG REDEVELOPMENT AND HOUSING AUTHORITY OF ITS MULTIFAMILY RESIDENTIAL RENTAL HOUSING BONDS FOR THE ACQUISITION AND REHABILITATION OF THE APPROXIMATELY 156 UNIT COLD HARBOR GARDENS MULTI-FAMILY HOUSING FACILITY LOCATED IN HANOVER COUNTY, VIRGINIA

WHEREAS, the Harrisonburg Redevelopment and Housing Authority (the "Authority") is authorized to advertise and hold public hearings relative to the issuance of private activity bonds; and,

WHEREAS, the Authority considered the request of Cold Harbor Associates, LLC, a Virginia limited liability company, whose principal business address is 378 Main Street, Suite 9, East Greenwich, Rhode Island 02818 (the "Company"), for the issuance by the Authority of up to \$8,800,000 of its Multifamily Residential Rental Housing Revenue Bonds (Cold Harbor Gardens Project) (the "Bonds"), to finance a portion of the cost of acquiring and rehabilitating an approximately 156 unit multifamily residential rental housing project commonly known as Cold Harbor Gardens (the "Project") located at 7202 Garden Park Lane, Mechanicsville, Virginia in Hanover County, Virginia (the "County"); and,

WHEREAS, pursuant to Section 36-23 of the Code of Virginia of 1950, as amended (the "Virginia Code"), the Authority may exercise its powers in the territorial boundaries of the County by issuing the Bonds for the Project provided the governing body of the

County adopts a resolution (the “Section 36-23 Resolution”) declaring there is a need for the Authority to exercise its powers within the County; and,

WHEREAS, earlier on October 26, 2004, the Authority conducted a public hearing on the issuance of the Bonds and, by adoption of a resolution (the “Official Intent Resolution”), declared its official intent to issue the Bonds to finance the Project, subject to the Board of Supervisors of the County adopting the Section 36-23 Resolution in a form satisfactory to the Authority, and recommended that the City Council of the City of Harrisonburg (the “City Council”) approve the issuance of the Bonds; and,

WHEREAS, prior to the issuance of the Bonds, the Board of Supervisors of the County will conduct a public hearing and adopt the Section 36-23 Resolution; and,

WHEREAS, Section 147(f) of the Internal Revenue Code of 1986, as amended (the “Internal Revenue Code”), provides that the applicable elected representatives of the governmental unit issuing private activity bonds and the applicable representatives of the governmental unit having jurisdiction over the area in which any facility financed with the proceeds of private activity bonds is located, shall approve the issuance of such bonds; and,

WHEREAS, the Authority, as the issuing governmental unit, has no applicable elected representative and the City is the next highest governmental unit with such a representative; and,

WHEREAS, the members of the City Council constitute the applicable elected representatives of the City of Harrisonburg; and,

WHEREAS, Chapter 514 of the 1983 Acts of the General Assembly of Virginia requires that any government entity established by or pursuant to an Act of the General Assembly that proposes to issue bonds that are industrial development bonds within the meaning of Section 103(b) of the Internal Revenue Code of 1954, as amended, shall, with respect to such bonds, comply with the procedures set forth in Virginia Code Sections 15.2-4906 and 15.2-4907; and,

WHEREAS, Virginia Code Section 15.2-4906 requires that, within sixty (60) calendar days after the public hearing, the City Council approve or disapprove the financing of any facility recommended by the Authority; and,

WHEREAS, the Authority has adopted a resolution recommending that the City Council approve the issuance of the Bonds, and a copy of the Authority's resolution approving the issuance of the Bonds, (subject to the terms set forth therein and such other terms to be agreed upon) a reasonably detailed summary of the comments, if any, expressed at the public hearing and the Fiscal Impact Statement required by Virginia Code Section 15.2-4907 have been filed with the City Council.

NOW, THEREFORE, BE IT RESOLVED by the Council of the City of Harrisonburg, Virginia, that:

1. The City Council approves the foregoing recitals, which are incorporated in, and deemed a part of, this Resolution as if fully set forth herein.

2. The City Council approves the issuance of the Bonds by the Authority, for the benefit of the Company, to the extent of and as required by Section 147(f) of the Internal Revenue Code, Chapter 514 of the 1983 Acts of the Virginia General Assembly, and Virginia Code Sections 15.2-4906 and 15.2-4907, to permit the Authority to assist in the financing of the Project.

3. The approval of the issuance of the Bonds does not constitute an endorsement to the prospective owners of the Bonds of the creditworthiness of the Project or the Company and the Bonds shall provide that neither the City of Harrisonburg nor the Authority shall be obligated to pay the Bonds or the interest thereon or other costs incident thereto except from the revenues and monies pledged thereto, and that neither the faith and credit nor the taxing power of the City of Harrisonburg is pledged to the payment of the principal of the Bonds or the interest thereon or other costs incident thereto.

4. In approving this resolution, the City of Harrisonburg, including its elected representatives, officers, employees and agents, shall not be liable, and hereby disclaim all liability for any damages to any person, direct or consequential, resulting from the Authority's failure to issue the Bonds for any reason.

5. This resolution shall take effect immediately upon its adoption.

CERTIFICATE

The undersigned Clerk of the City Council hereby certifies that the foregoing is a true, correct and complete copy of a resolution duly adopted by a majority of the members of the Council present and voting during the meeting duly called and held on October 26, 2004, and that such resolution has not been repealed, revoked, rescinded or amended, but is in full force and effect on the date hereof. A summary of the members present or absent at such meeting, and the recorded vote with respect to the foregoing resolution, is set forth below:

Member Name	Present	Absent	Voting		
			<u>Yes</u>	No	Abstaining
Larry M. Rogers, Mayor	_____	_____	_____	_____	_____
Rodney L. Eagle, Vice Mayor	_____	_____	_____	_____	_____
Hugh J. Lantz	_____	_____	_____	_____	_____
Charles R. Chenault	_____	_____	_____	_____	_____
George W. Pace	_____	_____	_____	_____	_____

WITNESS my hand and the seal of the City this October 26, 2004.

**Clerk, City Council of the City of
Harrisonburg, Virginia**

(SEAL)

Harrisonburg Redevelopment and Housing Authority Director Michael Wong explained that this financing would be through the Redevelopment and Housing Authority authorizing the sale of \$8,800,000 in bonds for a project in Hanover County. The bonds will not be a debt or obligation of the City. Council Member Lantz offered a motion to approve this resolution. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

City Manager Baker presented a request from the Parks and Recreation Department, Rockingham County Recreation Department and the Downtown Merchants Association to hold the annual Christmas parade. He explained that these groups are sponsoring the annual Christmas parade to be held on Friday, December 3rd at 7:00 p.m. The parade will begin at the corner of Cantrell Avenue and Main Street and continue north to Main Street to the corner of Main Street and Gay Street. Streets should be closed at 6:00 p.m. and re-opened at 9:00 p.m. These hours are extended from previous years due to the JMU Marching Dukes concert on the courthouse steps following the conclusion of the parade. Vice-Mayor Eagle offered a motion to approve this request. The motion was seconded by Council Member Pace, and approved with a unanimous vote of Council.

Mayor Rogers presented a request to consider waiving refuse collection fees for Mercy House. The Rockingham County Board of Supervisors will consider doing the same for landfill tipping fees that could be charged to Mercy House. Council Member Lantz offered a motion to approve this request. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

City Attorney Thumma presented the following resolution for Council's consideration of approval:

RESOLUTION OF THE CITY COUNCIL OF THE CITY OF HARRISONBURG, VIRGINIA, REGARDING THE VACATION OF A THIRTY FOOT WIDE PUBLIC UTILITY EASEMENT AND ACCEPTANCE OF A THIRTY FOOT WIDE (WATER AND SEWER ONLY) PUBLIC UTILITY EASEMENT IN SECTION THREE SOUTH MAIN COMMERCIAL PARK

WHEREAS, the City of Harrisonburg by deeds of easement, dated March 17, 2003 and duly of record in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in deed Book 2242, Pages 201 & 211, and as shown on plats recorded in Deed Book 2242, Pages 197 & 207, acquired a 30 foot wide general public utility easement in Section Three of South Main Commercial Park in the City of Harrisonburg, Virginia; and

WHEREAS, the Owner of Section Three, South Main Commercial Park is now desirous of placing public water and sewer lines within the existing 30 foot wide general public utility easement; and

WHEREAS, it is the policy of the City's Department of Public Utilities to have water and sewer only easements for public water and sewer lines owned by the city; and

WHEREAS, the Owner of Section Three, South Main Commercial Park is willing to grant water and sewer only easements within the 30 foot wide easement upon the vacation of the existing general public utility easement;

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

- 1. That the existing 30 foot wide general public utility easement acquired by the City of Harrisonburg, by deeds of easement, dated March 17, 2003, and duly of record in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, in Deed Book 2242, Pages 201 & 211 and as shown on plats recorded in Deed Book 2242, Pages 197 & 207, is hereby vacated.**
- 2. That the City Manager is hereby directed to accept a new 30 foot wide water and sewer only public utility easement to replace the vacated easement.**

Approved: October 26, 2004

MAYOR

ATTEST:

CLERK OF THE CITY COUNCIL

City Attorney Thumma said that in 2003 a South Main Commercial Park was subdivided and a general deed of easement was prepared for the City of Harrisonburg. The developer is re-subdividing several lots on the property and desires placing public water and sewer lines within the existing 30 foot wide private drive. It is the policy of the City's Department of Public Utilities to have water and sewer placed only in easements for public water and sewer lines. The owner is willing to grant water and sewer easements. The old easement needs to be vacated and a new easement needs to be adopted. Council Member Chenault offered a motion to approve the vacation easement within Section 3 of the South Main Commercial Park and to accept the new water and sewer easement as proposed on the plat. The motion was seconded by Vice-Mayor Eagle, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

City Attorney Thumma presented for Council's consideration an ordinance amending and re-enacting Section 13-3-3 and 13-3-7 of the Harrisonburg City Code. He presented two ordinances pertaining to sounding of locomotive horns or whistles and ringing locomotive bells. Section 13-3-3 states that no locomotive engine horn or whistle shall be sounded in the City limits except to warn persons or animals off the track or at any un-gated railroad/street crossing or unless an emergency exists. Section 13-3-3 removes this reference and does not allow the train to sound its horn at any crossing in the City unless it is warning persons or animals off the track or unless an emergency exists. He said he combined the whistle portion with the existing bell portion of the ordinance and added a new section stating that a violation will be a misdemeanor. Following further discussion and comments, Council Member Chenault offered a motion to approve amending Section 13-3-3 of the Harrisonburg City Code for a first reading. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

School Superintendent Ford presented a request for a supplemental appropriation for the School Board. He explained that this funding represents unanticipated receipts from the state and Federal government, plus other funds that were not known during the budget process. No additional City dollars are required from City Council for the school division to receive these

additional funds. Vice-Mayor Eagle offered a motion to approve this request for a first reading, and that:

\$ 1,000.00 chge. to: 1111-32442 School Revenue-State
137,011.00 chge. to: 1111-33301 School Revenue-Federal
1,000.00 chge. to: 1111-31691 School Revenue-Other

\$131,230.00 approp. to: 1111-111114-40610 Instruction
7,781.00 approp. to: 1111-111114-40680 Technology

The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said that these funds were received from a DMV reimbursement grant for overtime and training. Council Member Pace offered a motion to approve this request for a first reading, and that:

\$8,368.70 chge. to: 1000-33524 Federal DMV grant
\$8,018.70 approp. to: 1000-310231-41020 Salaries/wages OT
350.00 approp. to: 1000-310231-45530 Travel/training

The motion was seconded by Council Member Lantz, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent – None

City Manager Baker presented a request for a fireworks permit for the last football game at Harrisonburg High School on October 29, 2004. He said that City staff has reviewed the request and recommended approval of the permit request. Vice-Mayor Eagle offered a motion to approve the fireworks display. The motion was seconded by Council Member Chenault, and approved with a unanimous vote of Council.

Council Member Pace wanted it clarified that City Council agreed at the October 12th meeting that Halloween would be celebrated on Sunday, October 31, 2004.

Council Member Pace requested that Public Utilities Director Mike Collins make a presentation at a future Council meeting regarding the future issue associated with the water and sewer situation and potential investment necessary to upgrade the wastewater treatment facility to address future regulations concerning the Chesapeake Bay and potentially capping future growth in the area.

Council Member Pace requested that staff review the BPOL tax and other tax issues and the impact of businesses leaving the City. He suggested this issue be placed on a future Council agenda.

Mayor Larry Rogers suggested that another Council Planning Work Session should be scheduled. Council Members were encouraged to discuss some of the tax issues with Commissioner of Revenue June Hosaflook prior to a work session.

Council Member Chenault said that he had received a telephone call from the Commonwealth's Attorney Marsha Garst office regarding graffiti that may or may not be gang related on some of the buildings in the City. She suggested that Council adopt an ordinance requiring the removal of graffiti from private businesses.

Vice-Mayor Eagle said that he receives many telephone calls inquiring about the future of East-West Connector. He suggested placing this issue on the Council Planning Work Session agenda.

City Manager Baker presented information by Curtis Poe, Executive Director of the Harrisonburg-Rockingham Regional Sewer Authority, and announced that he will make a presentation at a future Council meeting regarding the Chesapeake Bay water quality improvement issues.

City Manager Baker said that he will present updated information regarding operating a taxi service in the City at the November 9, 2004 Council meeting.

At 8:45 p.m., Council Member Chenault offered a motion that Council enter a closed session for discussion and consideration of personnel and prospective candidates to be appointed to the Blue Ridge Disability Services Board, Social Services Advisory Board, Harrisonburg Board of Zoning Appeals, Harrisonburg Electric Commission, Harrisonburg Redevelopment and Housing Authority, Harrisonburg Parking Authority, Building Code Board of Appeals, Parks and Recreation Commission, and Harrisonburg Planning Commission exempt from public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. Discussion concerning a prospective business where no previous announcement has been made of the business' interest in locating within the City, exempt from public meeting requirements pursuant to Section 2.2-3711(A)(5) of the Code of Virginia. Discussion and consideration of the acquisition of real estate to be used for public purposes, exempt from public meeting requirements pursuant to

Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Vice-Mayor Eagle
Council Member Chenault
Council Member Pace
Council Member Lantz
Mayor Rogers

Absent - None

At 10:40 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 hereby 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 public business matters as were identified in the motion by which the closed session was convened, were heard, discussed or considered in the closed session by the City Council.

At 10:45 p.m., there being no further business and on motion adopted the meeting was adjourned.

CITY CLERK

MAYOR