

## REGULAR MEETING

OCTOBER 10, 2006

At a regular meeting of Council held this evening at 7:00 p.m., there were present: Mayor Rodney Eagle; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor George W. Pace; Council Members Charles R. Chenault; Council Member Carolyn W. Frank, and Ted Byrd; City Clerk Yvonne “Bonnie” Ryan, MMC, and Chief of Police Donald Harper.

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

Mayor Eagle congratulated City Clerk Bonnie Ryan for completing her Master Municipal Clerk (MMC) designation from the International Institute of Municipal Clerks, which is the highest recognition given by the International Institute of Municipal Clerks. Mayor Eagle said it is quite an honor and recognized Bonnie’s exemplary performance as a municipal clerk. Bonnie has been very dedicated and devoted a lot of time and effort into completing this designation. Council congratulated Bonnie for receiving her MMC.

Council Member Chenault offered a motion to approve the consent agenda, including approval of the minutes and second reading of a supplemental appropriation to the Tourism Fund. The motion was seconded by Vice-Mayor Pace, and approved with roll call vote taken as follows:

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

The next item of business was a presentation by Commonwealth Attorney Marsha Garst regarding how her office is coping with the issue of illegal immigrants. The Commonwealth Attorney office becomes involved with criminal aliens once the individual has been charged and brought before the system because of criminal infractions. Her office is not in a position with resources nor with power granted to be proactive in the area of illegal immigration as far as going out and seeking illegal immigrants for charge. She reviewed how the office is notified of the status of illegal immigrants. If a person cannot produce a social security number or other documentation the office will object to any bond because of fear that the individual will fail to appear for court proceeding. There are circumstances where notification is not made properly to the attorney prior to a bond hearing and her office is aware of the person’s illegal status. The system is not perfect. But, the ultimate issue with bonds lies in the power with the judge whether to grant the bond once the individual is in court. Confirmation is received from Immigration and

Customs Enforcement (ICE), which can trigger a detention without a warrant. The Commonwealth Attorney's responsibility is to give everyone a fair trial. It is the duty of the Commonwealth Attorney office to assure that everyone possible can be held and bonded for trial or at least assures that they will appear. There have been many challenging cases in the past few years. ICE is working very hard to make sure the Commonwealth Attorney office has bond information regarding whether an individual poses a threat to this community and the safety of the community. Local government can be very proactive in working with ICE to get the appropriate information to ensure those that are criminals are held accountable. The Commonwealth Attorney office and local law enforcement do not target anyone. We deal with criminals that come before us because of criminal activity.

Planning and Community Development Director Turner introduced a request from the City of Harrisonburg to modify roof mounted telecommunications equipment. The property, zoned B-1, Central Business District, is located at 101 North Main Street and can be found on tax map 34-P-1. She said Alltel has applied for a special use permit to modify unenclosed telecommunications equipment located on the roof of the Public Safety Building. She reviewed the surrounding uses in the area. VA Cellular was granted a special use permit in August 2005 from City Council to collocate three antenna panels, a two-foot communications dish and one equipment cabinet on the roof of the building. VA Cellular has since been sold to Alltel Communications, Inc., which is a private communications provider and not associated with functions of Emergency Communications Center (ECC). Alltel wants to modify the previously granted special use permit to allow for the replacement of the existing equipment cabinet with two smaller cabinets. The new design calls for two smaller cabinets to sit side by side on the existing platform. As with the old design, the existing parapet wall will screen this equipment from public view. Staff recommends that the request be approved with the following conditions: 1) If the telecommunications equipment ceases to be used for more than 12 months, it would need to be removed from the building. 2) Only the equipment as shown on the submitted drawings, or something smaller in size or weaker in transmission be approved. Installation of additional equipment, larger, equipment, or more powerful equipment will constitute a violation of the special use permit and make it null and void. 3) Placement of any advertising is prohibited and the antennas are to be a neutral color that blend in with their surroundings. 5) City staff may review this for compliance with the above conditions and if they are found to be in neglect then the property owner of the equipment will be contacted. She said that Planning Commission recommended approving the request.

At 7:25 p.m., Mayor Eagle closed the regular session temporarily and called the evening first public hearing to order. The following notice appeared in the Daily News-Record on Monday, September 25, and Monday, October 2, 2006.

### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold public hearings on October 10, 2006 at 7:00 p.m., in the Municipal Building, City Council Chambers, 345 South Main Street, to consider the following:**

***Special Use Permit – 101 North Main Street (Alltel)***

**Public hearing to consider a request from the City of Harrisonburg, with representative Alltel for a special use permit per Section 10-3-85(2) to allow Alltel to modify roof mounted telecommunications equipment. The property, zoned B-1, Central Business District, is located at 101 North Main Street and can be found on tax map 34-P-1.**

**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 Eagle called anyone desiring to speak for or against this special use permit request. Pete Caramanis an attorney representing Alltel reiterated this request is required because Alltel acquired VA Cellular and needs to use its own equipment. There being no others desiring to be heard, the public hearing was declared closed at 7:27 p.m., and the regular session reconvened. Council Member Byrd offered a motion to approve this request as presented. The motion was seconded by Vice-Mayor Pace, and approved with roll call vote taken as follows:

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

Planning and Community Development Director Turner introduced a request from Tarun Patel of Horizon Hospitality to allow telecommunications equipment on the Holiday Inn located at 1400 East Market Street. The Comprehensive Plan designates this area as Commercial. She reviewed the surrounding uses in the area. T-Mobile wants to expand their coverage area and provide additional user capacity to reduce dropped calls from existing antennas in the area. The proposal calls for the mounting of three sectors of panels, consisting of a maximum of three panels per sector. These panels would be located on the top floor of the five-story structure and would be painted match the existing color of the walls. Three equipment cabinets would be located on the ground near the building within a secure fenced area. The panels would be connected to the cabinets through wires that would run up the side of the building. Staff recommended approving the special use permit with the same type of conditions as Alltel. She said that Planning Commission also recommended approving the special use permit request.

At 7:31 p.m., Mayor Eagle closed the regular session temporarily and called the evening second public hearing to order. The following notice appeared in the Daily News-Record on Monday, September 25, and Monday, October 2, 2006.

### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold public hearings on October 10, 2006 at 7:00 p.m., in the Municipal Building, City Council Chambers, 345 South Main Street, to consider the following:**

***Special Use Permit – 1400 East Market Street (T-Mobile)***

**Public hearing to consider a request from Tarun Patel of Horizon Hospitality, with representative T-Mobile for a special use permit per Section 10-3-91 (4) to allow telecommunications equipment on the Holiday Inn building. The property is located at 1400 East Market Street and can be found on tax map 13-A-3.**

**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 Eagle called anyone desiring to speak for or against this special use permit request. Vanessa Cooper of T-Mobile thanked staff for a very good presentation. She said at the Planning Commission meeting, Vice-Mayor Pace had requested to know who T-Mobile competitors were in this market. T-Mobile competitors in Harrisonburg are Verizon, Cellular One, Ntelos, Sprint, Nextel, Cingular, and Alltel. She did not have what their market share was in the community. There being no others desiring to be heard, the public hearing was declared closed at 7:33 p.m., and the regular session reconvened. Council Member Byrd offered a motion to approve this request as presented. The motion was seconded by Vice-Mayor Pace, and approved with roll call vote taken as follows:

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

John Serell requested that a scheduled public hearing be continued until the October 24<sup>th</sup> Council meeting. Vice-Mayor Pace offered a motion to continue this agenda item until the October 24<sup>th</sup> Council meeting. The motion was seconded by Council Member Chenault, and approved with a unanimous vote of Council.

Planning and Community Development Director Turner introduced a request from Clover Leaf Shopping Center Corporation to subdivide one, 10.75-acre parcel into two lots, a 9.89 acre parcel, and a .85 acre parcel. The property is located between Carlton and Cantrell Streets and can be found on tax map 27-O-1. She reviewed the surrounding uses in the area. The subdivision request is for financial purposes not for the purpose of development. However, this request is subject to the requirements of the Design and Construction Standards Manual (DCSM), which requires construction of sidewalks to be located on any arterial street. The applicant; however, is asking for a variance to that section. Since East Market Street is classified as an arterial street, Cantrell Avenue a minor arterial street, and Reservoir Street a collector street, sidewalk construction must occur along their frontages. Carlton Street is classified as a local street and does not require sidewalk construction as a result of the subdivision. She reviewed the plan staff discussed regarding the sidewalk issue and reasonable compromise that has been reached. Staff supports the preliminary plat with the variance to sidewalk construction along Reservoir Street and Cantrell Avenue, but feels that the applicant should provide sidewalk along East Market Street. She said that Planning Commission recommended that the variances be granted, but that City Council include \$20,000 in the 2007 CIP to construct sidewalks from Carlton Street to Cantrell Avenue. Planning Commission recommended approval of the preliminary plat as requested.

Mark Callahan an attorney with the law firm of Clark and Bradshaw reviewed and explained the reason for the request. The applicant has refinanced the property, which requires a phase one environmental report. The report indicated there have been dry cleaning fluids leaking underneath Preston Cleaners and therefore the lender said they wanted that excluded from the deed of trust. That is the purpose of the request to subdivide the properties.

Following further discussion and comments, Vice-Mayor Pace offered a motion to approve this request as presented. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

Planning and Community Development Director Turner introduced a request from Gary Turner to subdivide 14 townhouse lots from a 3.69-acre parcel located at 1620 Virginia Avenue. The property is located at 1620 Virginia Avenue and can be found on tax map 52-C-3. The Comprehensive Plan designates this area as Commercial. She reviewed the surrounding uses in

the area. In 1999, Mr. Turner, rezoned a lot to the north of the subject parcel from B-2 to R-3C and developed the site with 29 dwelling units. Then, in March of this year, Mr. Turner rezoned the property similar to what is on the adjacent site. The following proffers were approved with the rezoning: 1) Dwelling units may be occupied by a family or not more than two (2) unrelated persons. 2) The façade of fifty (50) percent of the structures shall be brick veneer and limited to two (2) stories and thirty-five (35') in height. 3) The property will be used for single-family detached homes or single family attached dwellings. The applicant has proposed to build the required sidewalk along Virginia Avenue when the commercial lot fronting on Virginia Avenue develops. If the variance is approved, the applicant cannot place a sign for the development on the street, nor any snow removal or trash pick-up. Stormwater management would be collected from the rear of the lot owned by the applicant. She said that Planning Commission recommended approving the request. Following further discussion and comments, Vice-Mayor Pace offered a motion to approve this request as presented. The motion was seconded by Council Member Chenault, and approved with a approved with roll call vote taken as follows:

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

Planning and Community Development Director Turner introduced a request from Walt Trobaugh to subdivide 132 townhouse lots at 2151 Reservoir Street. The property is located at 2151 Reservoir Street and can be found on tax map 80-A-4 & 5. The Comprehensive Plan designates this area as Medium-Density Mixed Residential. She reviewed the surround uses in the area. The applicant has requested to re-subdivide two parcels into a development of 132 townhouse units, utilizing private internal streets and parking areas. A variance is required because many of the lots will not front on a public street. By utilizing private streets developers are able to get a higher density per acre. The intent is to create a development that would be attractive to the City's college student population, by offering four bedroom units with community amenities including a clubhouse, swimming pool, and open recreational areas. The property owner's association would maintain the private yards and common areas. Dumpsters located throughout the development would provide trash collection. The development would be constructed at the corner of Reservoir Street and Lucy Drive with a primary entrance located off of Lucy Drive. This request would require extending Lucy Drive and constructing a sidewalk. The applicant is working with the adjacent landowners to acquire the necessary right-of-way to design an alignment of the road extension to allow for a four-way intersection with Woodland Drive. The applicant and the City have had several meetings to discuss arrangements to exchange land to assist in the townhouse development and City road improvements in this area. The current preliminarily plat proposal shows two townhouse lots encroaching upon the existing City right-of-way. When the preliminarily plat for the Towns of Bluestone was approved it was intended that Bluestone Hills Drive be continued through the subject parcel and connected with Lucy Drive at some point in the future. The plan now is for Bluestone Hills Drive to end in a permanent cul-de-sac on the eastern boundary of this property. She said that Planning

Commission recommended approving the request. Following further discussion and comments, Vice-Mayor Pace offered a motion to approve this request as presented. The motion was seconded by Council Member Byrd, and approved with a approved with roll call vote taken as follows:

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

The next item of business was a request by the American Legion Post 27 to close South Main Street at the Municipal Building to Gay Street on November 11<sup>th</sup> from 2:00 to 3:00 p.m., for the Veteran’s Day Parade. The certificate of insurance has been submitted. Vice-Mayor Pace offered a motion to approve this request. The motion was seconded by Council Member Chenault, and approved with a unanimous vote of Council.

The next item of business was a request by T.E.N.T. (Together-Evil Never Triumphs) to close the 200 block of Kelley Street on November 4<sup>th</sup> from 2:30 to 5:30 p.m., for a two (2) hour community revival with choirs and ministries. The certificate of insurance has been submitted. Rain date is November 18<sup>th</sup>. Vice-Mayor Pace offered a motion to approve this request. The motion was seconded by Council Member Frank, and approved with a unanimous vote of Council.

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said that these funds were received through a special awards grant to purchase equipment. Vice-Mayor Pace offered a motion to approve this request for a first reading, and that:

\$20,257.50 chge. to: 1000-33541 Special Awards Grant

\$20,257.50 approp. to: 1000-310131-48211 Mach/equipment

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

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

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 grant for overtime traffic task force. Vice-Mayor Pace offered a motion to approve this request for a first reading, and that:

\$4,135.44 chge. to: 1000-33524 Federal DMV grant

\$1,958.24 approp. to: 1000-310231-41020 Salaries/Wages OT

2,177.20 approp. to: 1000-310631-41020 Salaries/Wages OT

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

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. These funds were received from state asset seizure money and will be used to build the new police training facility and to purchase equipment for the police command vehicle. Council Member Byrd offered a motion to approve this request for a first reading, and that:

\$30,000.00 chge. to: 1000-31010 Amount from fund balance

\$20,000.00 approp. to: 1000-310231-48234 Police training facility

10,000.00 approp. to: 1000-310231-48235 Police command vehicle

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

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

City Attorney Thumma said that it has been determined the reason Paula Cantleberry did not receive a delinquent person property tax notice was the City's mistake. The Treasurer's office has been asked to refund Ms. Cantleberry's interest, court costs and penalty.

At 8:22 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 Harrisonburg Parking Authority and Harrisonburg Redevelopment and Housing Authority, exempt from the public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. Consultation with legal counsel regarding a proposed contract requiring the provision of legal advice of such legal counsel exempt from public meeting requirements pursuant to Section 2.2-3711(A)(7) 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 Byrd, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank  
Vice-Mayor Pace  
Council Member Chenault  
Council Member Byrd  
Mayor Eagle

Absent – None

At 9:40 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement 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.

Vice-Mayor Pace offered a motion to accept the resignation of Transportation Superintendent Drew Williams and support his hiring by the Central Shenandoah Planning District. The motion was seconded by Council Member Chenault, and approved with a unanimous vote of Council Members.

At 9:45 p.m., there being no further business and on motion adopted the meeting was adjourned.

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CITY CLERK

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MAYOR

