

REGULAR MEETING

September 11, 2007

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

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

Council Member Byrd offered a motion to approve the consent agenda, including approval of the minutes and the second reading of several supplemental appropriations for Erosion and Sedimentation Control, Harrisonburg Downtown Renaissance, and a Two-Way Communication system. The motion was seconded by Vice-Mayor Pace and approved with a recorded roll call vote taken as follows:

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

Absent - None

Fire Chief Shifflett presented a request for a supplemental appropriation for the Fire Department. This request will recover unspent state grant funds from the 2006-2007 budget. Vice-Mayor Pace offered a motion to approve this request for a first reading, and that:

\$24,102.12 chge. to: 1000-31010 Amount from fund balance  
20,992.48 chge. to: 1000-31010 Amount from fund balance  
78,369.11 chge. to: 1000-31010 Amount from fund balance

\$24,102.12 approp. to: 1000-350532-46155 Four for Life Expenses  
20,992.48 approp. to: 1000-350532-46160 Haz Mat Supplies  
78,369.11 approp. to: 1000-350532-48203 Fire Programs Fund

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

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

Absent - None

Planning and Community Development Director Turner introduced a request from Ted and Tammy Brown to close a 1,989 square foot portion of undeveloped right-of-way located between Campbell Street and Ash Tree Lane, abutting 238 and 246 Campbell Street. The right-of-way is currently shown as an alley on the City of Harrisonburg's tax maps and serves as access to the abutting parcels. She said that presently this access is graveled but not maintained by the City, and it is not used for emergency services or refuse collection. There are also no utilities located within the alley. The applicants desire to split the alley with the adjoining property owners at 238 Campbell Street; each property will receive an extra six feet of width. She said that Planning Commission recommended approving the request.

At 7:10 p.m., Mayor Eagle 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 Saturday, September 1, and Saturday, September 8, 2007.

**NOTICE OF INTENTION TO VACATE  
A TWELVE (12) FOOT WIDE ALLEY LOCATED  
LOCATED BETWEEN 238 AND 246 CAMPBELL STREET  
IN THE CITY OF HARRISONBURG**

**City Council Chambers  
409 South Main Street  
Harrisonburg, VA 22801  
Tuesday, September 11, 2007  
7:00 P.M.**

The Harrisonburg City Council will hold a public hearing on Tuesday, September 11, 2007, 7:00 P.M., at City Council Chambers, 409 South Main Street, Harrisonburg, Virginia, to consider a request by Theodore and Tammy Brown to vacate and close a twelve (12) foot wide alley, containing 1,989 square feet, all located between 238 Campbell Street and 246 Campbell Street in the City of Harrisonburg, Virginia.

A copy of the plat showing the alley to be vacated and the recommendation of the City's Planning Commission are available in the City Community Development office, 409 South Main Street, Monday through Friday.

All persons interested will have an opportunity to express their views at this public hearing.

**CITY OF HARRISONBURG  
Kurt D. Hodgen,  
City Manager**

Mayor Eagle called on anyone desiring to speak for or against this alley closing request.

Tammy Brown requested that the alley be closed for safety issues. Sometimes traffic going through the alley disregards children and pets in the yard.

Stephanie Byrd said that the alley needs to be closed for safety reasons. There being no others desiring to be heard, the public hearing was declared closed at 7:11 p.m., and the regular session reconvened. Vice-Mayor Pace offered a motion to approve this alley closing 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  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Abstained - Council Member Byrd

Absent - None

Planning and Community Development Director Turner introduced a request from Hi-Sky Enterprises, LLC to close a 2,584 square foot portion of an alley located between East Market Street and Ott Street. The subject area is adjacent to tax map parcels 26-A-7, 8, & 29. She reviewed the surrounding uses in the area. The applicant plans to redevelop within this block of East Market Street. A new building could be built over the area of this existing alley, therefore they would need to close and purchase this section. The applicant owns all sides of the right-of-way, which includes the adjacent eastern parcel 26-A-8, the southern parcel 26-A-29, and the western parcel 26-A-7. Harrisonburg Electric Commission (HEC) owns facilities that are located within the alley and adjacent to the alley, using it for access to and maintenance of the facilities. HEC has requested that when the alley is closed, if the utilities have not been relocated at the time, there be easements established. The City Attorney would be able to make sure that this is done to HEC satisfaction. She said that Planning Commission recommended approving the request.

At 7:21 p.m., Mayor Eagle 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 Saturday, September 1, and Saturday, September 8, 2007.

**NOTICE OF INTENTION TO VACATE  
AN ALLEY LOCATED  
LOCATED ALONG THE SIDE AND REAR OF THE LOT  
KNOWN AS 237 EAST MARKET STREET  
IN THE CITY OF HARRISONBURG**

**City Council Chambers  
409 South Main Street  
Harrisonburg, VA 22801  
Tuesday, September 11, 2007  
7:00 P.M.**

The Harrisonburg City Council will hold a public hearing on Tuesday, September 11, 2007, 7:00 P.M., at City Council Chambers, 409 South Main Street, Harrisonburg, Virginia, to consider a request by Hi-Sky Enterprises, LLC to vacate and close an alley that lies along the western side lot line and along the southern rear lot line and containing 9,777 square feet, of the lot known as 237 East Market Street in the City of Harrisonburg, Virginia.

A copy of the plat showing the alley to be vacated and the recommendation of the City's Planning Commission are available in the City Community Development office, 409 South Main Street, Monday through Friday.

All persons interested will have an opportunity to express their views at this public hearing.

CITY OF HARRISONBURG  
Kurt D. Hodgen,  
City Manager

Mayor Eagle called on anyone desiring to speak for or against this alley closing request. Andrew Forward said he is speaking on behalf of the applicants who are currently working on potential redevelopment of the property. Malcolm Wilfong representing Muhlenberg Lutheran Church said members of the church have been concerned for years for the safety of the children traveling back and forth from one facility of the church to another. There being no others desiring to be heard, the public hearing was declared closed at 7:11 p.m., and the regular session reconvened. Vice-Mayor Pace offered a motion to approve this alley closing with the appropriate easement established for HEC. The motion was seconded by Council Member Frank and approved with a recorded roll call vote taken as follows:

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

Absent - None

Planning and Community Development Director Turner introduced a request from Heritage Estates, LLC to rezone approximately 2.83 acres located near Garbers Church Road from R-1 to R-2C. The properties are located near Garbers Church Road and can be found on tax map parcels 116-C-20-23, 27, & 27 and 117-F-1. The property is located within the Heritage Estates Subdivision, which is a neighborhood age restricted to 55 years or older. She reviewed the surrounding uses in the area. The applicant desires to convert the six undeveloped lots into eight lots, allowing for four buildings of paired homes. A paired home is described as having entrances on opposite sides of the building, giving the effect of a large single-family dwelling. By City zoning definition a paired home is a duplex dwelling. In order to construct this type of

building, a rezoning is necessary. She said this subdivision received a variance to the subdivision regulations to allow private streets within the development. There will be four paired homes to be situated on eight building lots on the existing tax parcels. The remaining parcel is an approximately 1.33 acre lot improved with a single-family dwelling. The applicant is showing subdividing this seventh parcel into five single-family home lots, leaving the existing dwelling on one of the lots. There will be five single-family dwellings, one of which already exists, on the 1.33-acre parcel. She said that staff does not support this request; however, Planning Commission has recommended approval by a three-two vote.

At 7:32 p.m., Mayor Eagle closed the regular session temporarily and called the evening's third public hearing to order. The following notice appeared in the Daily News-Record on Monday, August 27, and Tuesday, September 4, 2007.

### NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, September 11, 2007 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

#### *Rezoning – Heritage Estates*

Public hearing to consider a request from Heritage Estates, LLC, with representative Amar Gogia, to rezone 2.83 +/- acres from R-1, Single Family Residential District to R-2C, Residential District Conditional. The properties are located near Garbers Church Road and can be found on tax map parcels 116-C-20-23, 27, & 28 and 117-F-1.

The Comprehensive Plan designates this area as Low-Density Mixed Residential. These large undeveloped areas located at the edge of the city are planned for residential development containing a mix of large and small-lot single-family detached dwellings and attractive green spaces.

The Zoning Ordinance states that the R-1, Single-Family Residential District is intended for low-density, relatively spacious single-family residential development. The residential density ranges from 1 to 4 units per acre, with a minimum lot size of 10,000 sq. ft. The R-2, Residential District is intended for medium-density, single-family and two-family residential development. The residential density ranges for R-2 are single-family, 7,000 sq. ft. minimum and two-family, 5,500 sq. ft./unit.

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 hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

CITY OF HARRISONBURG

**Kurt D. Hodgen  
City Manager**

Mayor Eagle called on anyone desiring to speak for or against this rezoning request. Jerry Scripture reviewed documents describing a paired home including the square footage. He asked for Council's approval stating that this rezoning will increase the tax base and not place a burden on the school system. These are private streets, and there are no road costs for the City. There being no others desiring to be heard, the public hearing was declared closed at 7:40 p.m., and the regular session reconvened. Following further discussion and comments, Vice-Mayor Pace offered a motion to approve this rezoning request. The motion was seconded by Council Member Chenault and approved with a recorded roll call vote taken as follows:

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

No - Council Member Byrd

Absent - None

Planning and Community Development Director Turner introduced a request from Falling Creek, LLC, to rezone approximately 118 acres located between Country Club Road and Smithland Road from B-2C, M-1, and R-1 to R-7. She said the plan of development would incorporate most of the elements of the R-7 district including single-family homes, duplexes, townhomes, multi-family buildings, commercial space, mixed-use buildings, and recreational areas. This project, known as *The Quarry*, is part of a larger plan of development which consists of this proposal, a subsequent rezoning application for a commercial district fronting along Country Club Road, and future plans for other multi-family buildings. She reviewed the surrounding uses in the area. In 2006, the Comprehensive Plan's Land Use Guide was amended to include *The Quarry* properties from Commercial and Mixed Use Development to Medium Density Residential, Medium Density Mixed residential, and Commercial. The majority of the subject area was designated Medium Density Mixed Residential, an area planned for multi-family buildings was designated Medium Density Residential, and areas near Country Club Road were designated Commercial. The development would be accessed from four public street entrances. Two entrances would be from Smithland Road and one from the extension of Linda Lane, which must traverse railroad tracks. The fourth entrance would be located off of Country Club Road. The project would have eleven separate development blocks. Block II-IX are part of this rezoning request. Blocks I, X, XI are planned for the future commercial district fronting along Country Club Road. The R-7 development is described as development with a range of 4-12 dwelling units per acre. She reviewed the plan of development submitted by the applicant including the various home styles in the plan. The narrative states after the lots are final platted; no further subdivision would be allowed that would increase the net number of residential lots. The property exceeds the 15% minimum open space or park requirement as the development illustrates about 51 acres would be common open space including the parks and the lake. A 1.4-mile walking trail would be provided within the development as part of their recreational

amenities, as well as clubhouse and swimming pool. She said if the rezoning is approved, the applicant will still need to submit the preliminarily subdivision plans for this development at a later time. An important element to the development in this area is the extension of Linda Lane from Country Club Road to Smithland Road. The applicant is pursuing proposed crossings with the railroad. City staff reminded the applicant that any landscaping requiring maintenance within public right-of-way needed to be set up as the responsibility of the property owners association. *The Quarry* property has several sinkholes. The applicant has been reminded about the concern over the impacts to the sinkholes and the relative locations of lots and buildings to the sinkholes. Protection of these areas must be in accordance with the DCSM. As necessary for R-7 proposals, staff has worked closely with the applicant and their engineer throughout this process. Staff believes they have generated a plan of development that is consistent with the intent of the R-7 zoning district. She said that Planning Commission has recommended approving the request.

At 8:20 p.m., Mayor Eagle closed the regular session temporarily and called the evening's fourth public hearing to order. The following notice appeared in the Daily News-Record on Monday, August 27, and Tuesday, September 4, 2007.

### NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold public hearings on Tuesday, September 11, 2007 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

#### *Rezoning – The Quarry*

Public hearing to consider a request from Falling Creek, LLC, with representative Blackwell Engineering, to rezone 118 +/- acres from B-2C, General Business District Conditional, M-1, General Industrial District, and R-1, Single Family Residential District to R-7, Medium Density Mixed Residential Planned Community. The properties are located between Country Club Road and Smithland Road and can be found on tax map parcels or portions of 13-B-3, 4, & 6 and 30-A-1-4, & 6 (see map for exact boundary lines).

The Comprehensive Plan designates this area as Medium-Density Mixed Residential and Commercial. The Medium Density Mixed Residential designation is intended for small-lot single-family detached and single-family attached neighborhoods where green spaces are integral design features. Apartments could also be permitted under special circumstances. The gross density of development in these areas should be in the range of 4-12 dwelling units per acre. The Commercial designation states that these areas include uses for retail, wholesale, or service functions. These areas are found along major travel corridors and in the Central Business District of the City.

The Zoning Ordinance states that the R-1, Single-Family Residential District is intended for low-density, relatively spacious single-family residential development. The residential density ranges from 1 to 4 units per acre, with a minimum lot size of 10,000 sq. ft. The B-2, General Business District is intended to provide sufficient space in appropriate locations for a wide variety of retail shopping, commercial, automotive, miscellaneous recreational,

and service activities. No minimum lot size restrictions exist in the B-2, General Business District. The M-1, General Industrial District is intended primarily for manufacturing, processing, storage, and distribution activities, which are not properly associated with, nor compatible with, residential and institutional development. No minimum lot size restrictions exist in the M-1, General Industrial District. The R-7, Medium Density Mixed Residential Planned Community is intended to permit the development of planned residential communities offering a mix of single-family detached and attached dwellings and open spaces. Innovative residential building types and creative subdivision design solutions are encouraged to promote neighborhood cohesiveness, walkability, connected transportation systems, community green spaces and protection of environmental resources. Communities shall be developed, redeveloped, and amended in accordance with a master development plan.

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 hearing shall notify the City Manager at least five (5) days prior to the date of the meeting.

**CITY OF HARRISONBURG**  
**Kurt D. Hodgen**  
**City Manager**

Mayor Eagle called on anyone desiring to speak for or against this rezoning request. Ed Blackwell said Blackwell Engineering has been working on the plan for a year. The density will be on the low end of what is allowed in the R-7 zoning classification. *The Quarry* will contain about seven acres or 6% of the total acreage. John Serrell said it is a great project and wonderful idea. The City and project engineer are negotiating to close their right-of-way and they have never talked to them. Mr. Serrell has let Blackwell Engineering know that they have a legal right-of-way (in to their property), and they should be consulted when somebody is going to change their traffic pattern. There being no others desiring to be heard, the public hearing was declared closed at 8:45 p.m., and the regular session reconvened.

The following discussion by Council Members included: Concern whether there is a plan B to provide access to Superior Concrete? Concern regarding transportation. Concern about phasing of the development. Council encouraged developing the commercial areas first. The land has been designated for commercial industrial development for 25 years. A new school has provided access to this land. Development will cost the taxpayers of the City. Some significant benefits from the development may have been overlooked. Following further discussion and comments, Vice-Mayor Pace offered a motion to approve Planning Commission's recommendation. The motion was seconded by Council Member Chenault and approved with a recorded roll call vote taken as follows:

Vote: Yes – Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

No - Council Member Byrd  
Council Member Frank

Absent - None

Mayor Eagle presented the following resolution for Council's consideration of approval.

**A RESOLUTION HONORING ARCHBISHOP DESMOND TUTU**

**WHEREAS, Archbishop Desmond Tutu recipient of the 1984 Nobel Peace prize and winner of the Albert Schweitzer Award for Humanitarianism will be visiting Harrisonburg and James Madison University on September 21, 2007; and**

**WHEREAS, Archbishop Tutu is known for his outspoken opposition to apartheid and his message of tolerance and peace; and**

**WHEREAS, Archbishop Tutu's message of interfaith dialogue, forgiveness and respect is one that continues to have resonance in today's world; and**

**WHEREAS, his contributions to peace, encouragement of a non-violent approach to human relations and world affairs, and efforts to promote reconciliation will be recognized by his being awarded the Mahatma Gandhi Global Nonviolence Award from the James Madison University Mahatma Gandhi Center for Global Nonviolence on September 21, 2007, International Day of Peace**

**NOW, THEREFORE, BE IT RESOLVED that the Mayor and City Council of Harrisonburg, Virginia, hereby welcomes Archbishop Desmond Tutu to the City of Harrisonburg and extends its congratulations to him for this prestigious award.**

**ADOPTED THIS 11<sup>TH</sup> DAY OF SEPTEMBER, 2007**

**BY: \_\_\_\_\_**

**Rodney L. Eagle, Mayor**

**ATTEST: \_\_\_\_\_**

**Yvonne H. Ryan, MMC, City Clerk**

Council Member Chenault offered a motion to adopt this resolution as presented. The motion was seconded by Council Member Frank and approved with a unanimous vote of Council.

The next item of business was a request by City Attorney Thumma to amend and re-enact Section 16-8-51 of the Harrisonburg City Code. He said this amends the City's open container ordinance to bring it into compliance with the State statute that was amended earlier this year. Vice-Mayor Pace offered a motion to approve this ordinance for a first reading 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 Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent - None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said these funds were received as a donation to the K-9 unit from the Shenandoah Valley Spay and Neuter Clinic. Vice-Mayor Pace offered a motion to approve this request for a first reading, and that:

\$75.00 chge. to: 1000-31809 Donation (K-9 unit)  
\$75.00 approp. to: 1000-310631-46100 Police Supplies

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

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

Absent - None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said these funds were received through a reimbursement grant from the Division of Motor Vehicles to be used for overtime for officers. Vice-Mayor Pace offered a motion to approve this request for a first reading, and that:

\$2,379.28 chge. to: 1000-3524 DMV Federal grant  
\$1,209.83 approp. to: 1000-310231-41020 Salaries/wages OT  
1,169.45 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 Byrd  
Council Member Frank  
Council Member Chenault  
Vice-Mayor Pace  
Mayor Eagle

Absent - None

City Manager Hodgen presented a request for a supplemental appropriation for Community Policy and Management Team. He said this request will complete fiscal year 2007 funding. He reviewed previous allocations for this joint program of Harrisonburg and Rockingham County. Vice-Mayor Pace offered a motion to approve this request for a first reading, and that:

\$112,349.00 chge. to: 1000-31010 Amount from fund balance  
\$112,349.00 approp. to: 1000-910511-47071 Expenditures of Social Services Dist.

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

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

Absent - None

Council Member Chenault presented a request that a pay study be conducted for the Fire Department.

Council Member Byrd offered a motion that Karen M. Rose, 286 Campbell Street, be recommended as an At-Large-Member to the Valley Program for Aging Services Board of Directors. The motion was seconded by Council Member Frank and approved with a recorded roll call vote taken as follows:

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

Absent - None

Council Member Frank offered a motion that John Otenasek, 1860 Buttonwood Court, be appointed to fill an unexpired term on the Harrisonburg/Rockingham Community Services Board

to expire on July 1, 2009. The motion was seconded by Council Member Frank, and approved with a recorded roll call vote taken as follows:

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

At 9:40 p.m., Council Member Frank offered a motion that Council enter into a closed session for 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. The motion was seconded by Council Member Chenault and approved with a recorded roll call vote taken as follows:

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

Absent - None

At 10:35 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 City Council.

At 10:37 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

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