

REGULAR MEETING

November 11, 2008

At a regular meeting of Council held this evening at 7:00 p.m., there were present: Mayor Rodney Eagle; City Manager Kurt Hodgen; Assistant City Manager Evan Vass; 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 Chief of Police Donald Harper.

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

Council Member Chenault offered a motion to approve the consent agenda, including approval of the minutes and the second reading of a supplemental appropriation for the Police Department. The motion also included amending and re-enacting Chapter 1 of Title 14 of the Harrisonburg City Code. 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 Chenault
Council Member Frank
Vice-Mayor Pace
Mayor Eagle

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 ACQUISITION OF FEE SIMPLE INTEREST AND
EASEMENTS FOR THE CONSTRUCTION OF THE NEW LIMITED ACCESS
ERICKSON AVENUE/STONE SPRING ROAD IMPROVEMENT PROJECT ACROSS
PARCELS OF REAL ESTATE OFF OF SOUTH MAIN STREET IN THE CITY OF
HARRISONBURG**

WHEREAS, the Department of Public Works for the City of Harrisonburg is in the process of planning, acquiring real estate and constructing the Erickson Avenue/Stone Spring Road Improvement Project in the southern portion of the City of Harrisonburg, Virginia; and

WHEREAS, the construction of the new roadway and installation of utilities will improve the movement of traffic across the city and provide better utility service and storm drainage to the citizens of the city; and

WHEREAS, the City of Harrisonburg needs to acquire the fee simple property interests and easements along with temporary construction easements in order to make the improvements to the city street system, storm drainage and utilities; and

WHEREAS, the Department of Public Works, through its agent the Virginia Department of Transportation, has been attempting to negotiate the purchase of fee simple interest and easements for the Erickson Avenue/Stone Spring Road Improvement Project; and

WHEREAS, the City of Harrisonburg desires to purchase the fee simple interests and easements for the public use at a fair price mutually agreed to by the current owners and the City; and

WHEREAS, the City of Harrisonburg through its Department of Public Works and the Virginia Department of Transportation has made an offer to the owners of the real estate for the purchase of the fee simple interests and easements and should those offers be refused or should the owners not respond within the time period as set forth in the offers, then the City of Harrisonburg wishes to use its power of eminent domain to acquire said fee simple interests and easements; and

WHEREAS, pursuant to Section 15.2-1903(B) of the Code of Virginia, as amended, the City Council of the City of Harrisonburg prior to initiating the condemnation proceedings, held a public hearing on November 11, 2008 and subsequently adopts this resolution approving the public use of the street project and the use of the fee simple interests and the easements for the needed improvements to the city's street system, storm drainage and its public utilities, and directs the acquisition of these property interests by the use of condemnation or other means;

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

1. That the Limited Access Erickson Avenue/Stone Spring Road Improvement Project is approved as a public use by providing improved movement of traffic within the city and by making improvements to the city's public utilities.

2. That acquisition of the fee simple interests and easements are necessary to construct the new public street and install the improved public utilities and storm drainage.

3. That the City Council of the City of Harrisonburg by this resolution authorizes the use of its power of eminent domain or condemnation to acquire the fee simple interests and easements for this public use by improving city streets, storm drainage and public utilities, should the owners of the real estate and the city fail to agree on a purchase price for these property interests.

Approved: November 11, 2008

MAYOR

ATTEST:

CITY CLERK

City Attorney Thumma explained that the Public Works Department is presently negotiating the purchase of fee simple interests and easements (both permanent and temporary) for the Limited Access Erickson Avenue/Stone Spring Road Improvement Project. The Code of Virginia requires that City Council hold a public hearing and enact a resolution prior to using condemnation to acquire property interests for a public use project. The City has only four to five parcels remaining to be acquired for this project. If the Public Works Department is unable to reach an agreement to purchase these parcels they are requesting adoption of this resolution so the parcels can be acquired by condemnation.

At 7:06 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 Monday, November 3, and Monday, November 10, 2008.

**NOTICE OF INTENTION TO ADOPT A RESOLUTION
TO USE CONDEMNATION PROCEEDINGS
TO ACQUIRE FEE SIMPLE INTEREST AND EASEMENTS
FOR THE ERICKSON AVENUE/STONE SPRING ROAD IMPROVEMENT PROJECT
IN THE CITY OF HARRISONBURG**

**City Council Chambers
409 South Main Street
Harrisonburg, VA 22801
Tuesday, November 11, 2008
7:00 P.M.**

The Harrisonburg City Council will hold a public hearing on Tuesday, November 11, 2008, 7:00 P.M., at City Council Chambers, 409 South Main Street, Harrisonburg, Virginia, to consider the adoption of a resolution to use condemnation proceedings to acquire the fee simple interest and easements for the Erickson Avenue/Stone Spring Road Improvement Project in the southern portion of the City of Harrisonburg, Virginia. This is a street project that is for the public good of the citizens of the city and the city may need to use condemnation to acquire the necessary fee simple interest and easements to accomplish this public use.

A copy of the plans showing the Erickson Avenue/Stone Spring Road Improvement Project are available in the Department of Community Development, 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 resolution.

Dan Brubaker questioned the procedure the City will use for eminent domain.

City Attorney Thumma reviewed the procedure the City will use for eminent domain. There being no others desiring to be heard, the public hearing was declared closed at 7:07 p.m., and the regular session reconvened. Vice-Mayor Pace offered a motion to approve this resolution 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 Chenault
Council Member Frank
Vice-Mayor Pace
Mayor Eagle

Absent – None

Planning and Community Development Director Turner introduced a request to make modifications to the Zoning Ordinance. The proposed ordinance amendments include Sections 10-3-35, 10-3-41, 10-3-47, 10-3-48.5, 10-3-53, 10-3-55.5, 10-3-64, 10-3-72, 10-3-80, 10-3-86, 10-3-92, 10-3-98, and 10-3-105 of the Zoning Ordinance. Mrs. Turner said these amendments would correct errors that occurred as ordinances were updated. These amendments include correcting references made to Article F, which should be Article T, correcting references to townhouse classifications, removing R-2 from townhouse developments, adding R-5 into the townhouse reference, correcting references made to Article T, which should be Article U, addressing new setback regulations for bus shelters, and adding a bus shelter definition. Planning Commission recommended approving all of these changes.

At 7:12 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 Monday, October 27, and Monday, November 3, 2008.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold several public hearings on Tuesday, November 11, 2008 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Ordinance Amendments

Public hearing to consider requests to make amendments to the Zoning Ordinance Sections 10-3-35, 10-3-41, 10-3-47, 10-3-48.5, 10-3-53, 10-3-55.5, 10-3-64, 10-3-72, 10-3-80, 10-3-86, 10-3-92, 10-3-98, and 10-3-105. These modifications would correct references made to Articles F and S written within the above listed sections, which should be made to Article T. A second amendment would add the R-5, High Density Residential District to the list of zoning classifications that are affected by the additional townhouse regulations within Section 10-3-113 of the Zoning Ordinance. A third amendment would make modifications to the Zoning Ordinance Sections 10-3-127 (a) and 10-3-128 (a) and (b). These amendments would correct references that are made to Article T, which should be made to Article U. The fourth amendment would add language to Section 10-3-114 of the Zoning Ordinance to allow zero lot line setbacks for bus shelters at designated bus stops. The final amendment would add the definition of a bus shelter to Section 10-3-24 of the Zoning Ordinance.

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 making these modifications to the Zoning Ordinance. There being no one desiring to be heard, the public hearing was declared closed at 7:13 p.m., and the regular session reconvened. Council Member Byrd offered a motion to approve making modifications to the Zoning Ordinance as presented. 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 Chenault
Council Member Frank
Vice-Mayor Pace
Mayor Eagle

Absent – None

Planning and Community Development Director Turner introduced a request from Harman Realty for a special use permit to allow multiple family dwellings of more than 12 units per building. The property is located along Stone Spring Road and is adjacent to Interstate 81. The property can be found on tax map parcel 93-A-3. The Comprehensive Plan designates this area Medium-Density Mixed Residential. Mrs. Turner reviewed the surrounding uses in the area. This site is a portion of a larger tract that was rezoned in February of this year from R-3, Multiple Dwelling Residential District to R-5C, High Density Residential District Conditional.

Specific proffers with the rezoning included a public street that would loop through the property and be completed when 60% of total site development occurred. The street would also be lined up with the realigned Ramblewood Road. Other proffers included green space, a bike/multi-use path, and limiting the total number of residential units to 1,054. The applicant also agreed to dedicate the necessary right-of-way and easements for the Erickson Avenue/Stone Spring Road improvement project. Presently, the applicant has a comprehensive site plan in review which depicts 15 residential buildings, 12 dwelling units in each, for a total of 180 dwelling units. The applicant would like to remove one building and then redistribute those units throughout the 14 remaining structures. Six of the proposed residential buildings would have 14 dwelling units each, while the remaining eight buildings would have 12 dwelling units each. The total number of units would remain the same at 180. Planning Commission recommended approving the request.

At 7:18 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, October 27, and Monday, November 3, 2008.

NOTICE OF PUBLIC HEARING

The Harrisonburg City Council will hold several public hearings on Tuesday, November 11, 2008 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:

Special Use Permit – The Overlook at Stone Spring (10-3-55.4(1))

Public hearing to consider a request from Harman Realty with representative Blackwell Engineering for a special use permit per Section 10-3-55.4 (1) to allow multiple family dwellings of more than 12 units per building. The property, zoned R-5C, High Density Residential District Conditional, is located along Stone Spring Road and can be found on tax map parcel 93-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 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 request.

Dick Blackwell said the applicant wanted to utilize the terrain to its best advantage. The residential units will remain at 1,054.

Orden Harman thanked Council for doing an outstanding job while serving the citizens of Harrisonburg. There being no others desiring to be heard, the public hearing was declared closed

at 7:20 p.m., and the regular session reconvened. Vice-Mayor Pace offered a motion to accept the Planning Commission recommendation and approve this request. The motion was seconded by Council Member Byrd and approved with a recorded roll call vote taken as follows:

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

Absent – None

Planning and Community Development Director Turner introduced a request from Robert Beck to preliminarily subdivide 7.82 acres into 38 single family home lots with a variance to the Subdivision Ordinance. The property can be found on tax maps 74-B-2, 3, 4, 5 & 6. The Comprehensive Plan designates this area as Low-Density Residential. In July 2006, the applicant rezoned these five parcels from R-1, Single Family Residential District to R-6, Low Density Mixed Residential Planned Community. The current request is to preliminarily subdivide 38 single family home lots, which will front on private streets. These private streets will be owned and maintained by a property owner's association. Road improvements adjoining the subdivision include one entrance into the subdivision with a right turn in and out from Market Street. Mrs. Turner reviewed the surrounding uses in the area. Each home will have a two car garage that would be set back from the house and accessed by either a private or a shared driveway. The master plan includes common/open space, a gazebo, a walking trail around the entire development, and other open areas to provide additional recreational opportunities. The subdivision will have a four foot tall brick wall along the boundary of the rear lot lines. The preliminary plat is in conformance with the previously approved master plan. Planning Commission recommended approving the request. Council Member Chenault offered a motion to approve this request as presented. 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 Chenault
Council Member Frank
Vice-Mayor Pace
Mayor Eagle

Absent – None

An update on the HARTS Program was deferred until December.

City Manager Hodgen presented a request from the Harrisonburg Parks and Recreation Department, Rockingham County Recreation Department, the Downtown Merchants Association, and Harrisonburg Downtown Renaissance to hold the annual Christmas parade on December 5, 2008, at 7:00 p.m., with a makeup date on December 12, 2008. The request also included holding the "Holidays on Main Street" event on December 6, 2008, from 4:00 p.m.

until 8:00 p.m. Council Member Chenault offered a motion to approve these requests. The motion was seconded by Vice-Mayor Pace and approved with a unanimous vote of Council.

City Attorney Thumma presented for Council's consideration amending and re-enacting Section 13-1-60.01 of the Harrisonburg City Code. This is a change in the residential parking zones ordinance that will exempt certain days for events at James Madison University (JMU). Council Member Frank offered a motion to approve this ordinance for a first reading. 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 Chenault
Council Member Frank
Vice-Mayor Pace
Mayor Eagle

Absent – None

City Manager Hodgen presented a request for a supplemental appropriation for the Fire Department. Mr. Hodgen explained that the City has purchased a new fire truck and initially planned to pay for it through a 3-year lease purchase arrangement, but interest rates are such that it is advantageous to pay cash for this transaction. Council Member Chenault offered a motion to approve this request for a first reading, and that:

\$ 73,348.00 chge. to: 1000-980142-49118 Fire Truck Lease purchase principal
8,376.00 chge. to: 1000-980142-49128 Fire Truck purchase interest
267,806.00 chge. to: 1000-31010 Amount from fund balance

\$349,530.00 approp. to: 1000-320232-48165 Fire Truck

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 Chenault
Council Member Frank
Vice-Mayor Pace
Mayor Eagle

Absent – None

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. \$50,000.00 in funding is being requested from the general fund balance to serve as the required match for a Federal grant of \$150,000.00. The grant is for mobile data terminals for police vehicles. Council Member Frank offered a motion to approve this request for a first reading, and that:

\$ 50,000.00 chge. to: 1000-31010 Amount from Fund Account
150,000.00 chge. to: 1000-33556 Mobile Data Terminals

\$200,000.00 approp. to: 1000-310431-48211 Machinery & Equipment

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 Chenault
Council Member Frank
Vice-Mayor Pace
Mayor Eagle

Absent – None

Council Member Chenault urged staff to begin talking to owners of older housing developments on Port Republic Road about installing surveillance cameras and increasing police patrols to help curb crime. Students and senior citizens in these complex developments need to be safe.

Council Member Byrd encouraged all non-profit agencies who apply directly to the City for funding to first complete the CDBG funding application before seeking City funding.

City Manager Hodgen said that some non-profit agencies receiving City funding will not be eligible for CDBG funding. Making some modifications to the CDBG application will be considered.

Economic Development Director Brian Shull presented an overview of a public-private partnership act proposal to construct a parking deck structure to accommodate between 500 and 600 vehicles and a 30,000 square foot office space to meet the needs of the school board staff. The proposed location is City owned property, which is located behind Harrison Plaza. A City staff review team has been formed to study the proposed project. According to the PPEA guidelines, within ten days the City will need to advertise for competing bids. The proposal will be advertised until January 9, 2009. Mr. Shull recommended moving forward with advertising the project and receiving other bids. Council Member Chenault offered a motion to move forward with advertising the project and allowing competing proposals. 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 Chenault
Council Member Frank
Vice-Mayor Pace
Mayor Eagle

Absent – None

At 7:56 p.m., Council Member Byrd offered a motion that Council enter into a closed session for discussion and consideration of personnel and prospective candidates to be appointed to the Industrial Development Authority, Harrisonburg Planning Commission, Harrisonburg Electric Commission, and Harrisonburg Board of Zoning Appeals, exempt from the public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia and discussion and consideration of the acquisition of real estate to be used for public purposes, exempt from the 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 Frank and approved with a recorded roll call vote taken as follows:

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

Absent – None

At 9:00 p.m., the closed session ended and the regular session reconvened. City Attorney Thumma 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 requirement 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 9:01 p.m., there being no further business and on motion adopted, the meeting was adjourned.

CITY CLERK

MAYOR