

## REGULAR MEETING

November 10, 2009

At a regular meeting held this evening at 7:00 p.m., there were present: Mayor Kai Degner; City Manager Kurt Hodgen; City Attorney Earl Q. Thumma, Jr.; Vice-Mayor Richard A. Baugh; Council Members David Wiens, Carolyn W. Frank and Ted Byrd; City Clerk Yvonne “Bonnie” Ryan, MMC; and Chief of Police Donald Harper. Absent: Assistant City Manager Evan Vass.

Vice-Mayor Baugh gave the invocation, and Mayor Degner led everyone in the Pledge of Allegiance.

Thomas Jenkins said he has been working on bicycle issues in the City and thanked everyone for improvements that have been made to the railroad tracks, but bicycle programs still have funding issues.

Tom Benevento expressed concern as a citizen, cyclist and motorist. There are many parallel drainage grate problems in the City. A bicycle tire can easily get stuck in these parallel grates, causing a cyclist to be thrown off his/her bicycle. Accidents caused by the grates can have serious consequences for all involved. They are in violation of Federal Law for road safety standards. They discourage bicycle use and serious accidents can be caused by the grates. Requests have been made to the Public Works Department to modify these grates, but nothing has been done.

Soula Pefkaros said this problem exists in other areas of the Country. Mr. Benevento and Ms. Pefkaros requested that City Council vote for changes to retrofit already-identified parallel grates, establish better protocol with the Public Works Department to ensure that grates are changed or retrofitted when identified and reported by citizen, and confirm that all future grates in new road construction will be safe for cyclists and in compliant with the Federal safety standards.

City Manager Hodgen said that VDOT has not notified the City that any changes are necessary or that the grates are in violation of any state or Federal laws. Also, it is necessary to determine the cost of replacing these drainage grate problems.

Bucky Berry thanked everyone for participating in the Salvation Army’s holiday food drive.

Council Member Frank offered a motion to approve the consent agenda, including approval of the minutes and the second reading of a supplemental appropriation for the Parks and Recreation Department. 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 Frank  
Council Member Wiens  
Vice-Mayor Baugh

Mayor Degner

Absent – None

Planning and Community Development Director Turner presented a request from Cassandra and Fred Allgood for a special use permit to allow a Major Family Day Home use at 429 Eastover Drive. The Comprehensive Plan designates this area as Low-Density Residential. Mrs. Turner reviewed the surrounding uses in the area and also briefly reviewed child care provisions allowed in the Zoning Ordinance. The applicants are requesting a special use permit to allow a “Major Family Day Home” within the R-1, Single Family Residential District. The applicant has operated a “Minor Family Day Home” for approximately ten months. Mrs. Turner reviewed the City’s “Minor Family Day Home” definition in the Zoning Ordinance. The applicants have stated their goal is to have the maximum number of children at the “Major Family Day Home”, with hours of operation between 6:00 a.m. and 6:00 p.m., Monday through Friday. The Eastover Subdivision, where the property is located, is a red zone permit parking area, which means parking permits are needed Monday through Friday from 4:00 a.m. until 6:00 p.m. The applicants have a driveway where parents can pull-in to drop off children, or they can utilize their visitor parking passes. The special use permit request has been discussed with the Police Department and if complaints arise, the applicants may need to work out some type of arrangement that would ensure violations do not occur. At the public hearing held by Planning Commission, several residents of the neighborhood expressed concerns regarding the traffic problems, parking zone, and parking during week-end events. A member of the Planning Commission expressed hope that between the Planning Commission meeting and the City Council meeting that perhaps the neighbors of the area could discuss and resolve any issues before the City Council meeting. Planning Commission recommended approval of the special use permit request by a vote of four to one.

At 7:23 p.m., Mayor Degner 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, October 26, and Monday, November 2, 2009.

### NOTICE OF PUBLIC HEARING

**The Harrisonburg City Council will hold several public hearings on Tuesday, November 10, 2009 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:**

*Special Use Permit – 429 Eastover Drive (Major Family Day Home 10-3-34 (6))*

**Public hearing to consider a request from Cassandra and Fred Allgood for a special use permit per Section 10-3-34 (6) of the Zoning Ordinance to allow a major family day home within the R-1, Single Family Residential District. The property is located at 429 Eastover Drive and can be found on tax map 15-F-2.**

**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 Degner called on anyone desiring to speak for or against this special use permit request. Cassandra Allgood, owner of the property and the applicant, said she would like to provide care for 12 children in her home. She also has been taking classes at Blue Ridge Community College to provide better day care for the children.

Pam DeBose who lives on Eastover Drive said that she has lived in the neighborhood for over 20 years. We are a small neighborhood and have protected the homes from turning into student housing. Ms. Debose reviewed information from Social Services inspections and mentioned several violations the applicant had received. Mrs. Debose objected to approving the special use permit to increase the day care service to 12 children.

Joseph Eneyd who lives on Eastover Drive said, "I am here to object to the Planning Commission's approval of the special use permit to operate a "Major Family Day Home" at 429 Eastover Drive." There is a significant difference between a major and minor family day home. The neighborhood has sacrificed a lot over the years, including opening Paul Street and Cantrell Avenue, cut-through traffic after the mall developed, and widening of the bridge on Reservoir Street. "I don't disapprove of the family day home with five children, but the neighborhood is not suitable for twelve children." He said that he opposed the special use permit.

Madeline Dupree who lives on Eastover Drive said there is a need to have quality day care for children, but could not understand how a business can operate within an R-1 residential area. She questioned can the Social Service Department conduct an investigation, discover regulations violations, and recommend increasing the children capacity? She asked Council to protect the R-1 Zoning and neighborhood.

Fred Allgood, owner of the property said he could understand some of the concerns. There has never been a problem with traffic and too many cars on the street. There is a need for a good day care home.

Jim Fukumoto who lives on Eastover Drive said the Allgoods have been good neighbors. But, the families who are dropping off the children are making very dangerous "U" turns at the intersection. Residents of the area should also be purchasing the appropriate parking permits. There being no others desiring to be heard, the public hearing was declared closed at 7:52 p.m., and the regular session reconvened. Following further discussion and comments, Council Member Frank offered a motion to approve the special use permit request. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Frank  
Council Member Wiens  
Vice-Mayor Baugh

No - Council Member Byrd

Mayor Degner

Absent – None

Council Members did mention their concern that the neighbors did not meet to discuss and resolve any issues before this City Council meeting as had been requested by a Planning Commission member.

Planning and Community Development Director Turner presented a request to amend Section 10-2-41(k) of the Subdivision Ordinance. The proposed changes to the Subdivision Ordinance is to reflect the accurate cul-de-sac radii widths as recently modified within the City's Design and Construction Standards Manual (DCSM). Mrs. Turner reviewed some of the amendments to the City's DCSM adopted by City Council on September 8, 2009. Specifically, there is now a requirement for sidewalk along both sides of new streets and for sidewalk across all lot frontage including lots within the cul-de-sac. Planning Commission recommended approving the proposed changes to the Subdivision Ordinance.

At 8:06 p.m., Mayor Degner 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 26, and Monday, November 2, 2009.

#### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold several public hearings on Tuesday, November 10, 2009 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:**

**Public hearing to consider a request to amend Section 10-2-41 (k) of the Subdivision Ordinance to reflect the accurate cul-de-sac radii widths as recently changed within the City's Design and Construction Standards Manual.**

**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 Degner called on anyone desiring to speak for or against amending this ordinance. There being no one desiring to be heard, the public hearing was declared closed at 8:07 p.m., and the regular session reconvened. Council Member Byrd offered a motion to amend this ordinance

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

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Wiens  
Vice-Mayor Baugh  
Mayor Degner

Absent – None

The next item of business was a request to utilize City owned property for the placement of a storage building. City Manager Hodgen said the owners/proprietors of commercial and residential properties associated with 80, 82, and 92 South Main Street and 14 East Water Street are requesting permission to place a storage shed on the north east corner of a City owned public parking lot located at East Water Street and Federal Street. The building would be utilized to store waste and recyclables generated by the various uses prior to removal by City crews and/or private haulers. The properties have inadequate on site storage capacity. It was pointed out that the permit is revocable. Following further discussion and comments, which also included comments from property owners, Council Member Wiens offered a motion to approve a revocable license for the placement of a storage building. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Wiens  
Vice-Mayor Baugh  
Mayor Degner

Absent – None

The next item of business was a request to transfer a Certificate of Public Convenience and Necessity. City Manager Hodgen said that Royal Cab Company is now operating under an LLC as Benish Corporation. The current certificate issued to Royal Cab Company was issued in May 2007 and will expire in May 2012. Following further discussion and comments, Vice-Mayor Baugh offered a motion to transfer a Certificate of Public Convenience and Necessity from Royal Cab Company to Benish Corporation. 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 Wiens  
Vice-Mayor Baugh  
Mayor Degner

Absent – None

The next item of business was a report on Maintenance/Administration Feasibility Study from the Department of Public Transportation. Public Transportation Director Reggie Smith said that the Harrisonburg Department of Public Transportation (HDPT) has had a new Maintenance/Administration Building in the Capital Improvement Plan (CIP) for years. Mark Probst representing Parsons Brickerhoff presented an overview of a Maintenance/Administration Feasibility Study. The current facility was built in 1983 and has been expanded four times. The facility includes maintenance, operation, and on-site administration for all other City equipment and vehicles. However, it is operating at capacity and expectations are that both fleet and service demands will increase in the future. Adding on to the existing facility will not allow the space needed to function safely and efficiently. As the fleet grows, a new facility will be required to continue to maintain safe and reliable transit service. Adjacent to the existing facility is City owned land, which will become available in the near future because the City built a new water tank to replace an open reservoir. The combined facility will be more cost effective and efficient, while meeting the operational requirements for transit buses, school buses, school, and City equipment and vehicles. Mr. Probst reviewed the different phases of the proposal and said the proposed project could cost approximately \$24 million dollars. Following a lengthy discussion and comments, Council Member Byrd offered a motion to approve the Master Plan Maintenance/Administration Building Feasibility Study 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 Frank  
Council Member Wiens  
Vice-Mayor Baugh

No - Mayor Degner

Absent – None

Public Transportation Director Reggie Smith presented a request for a supplemental appropriation for the Transportation Department. These funds were received by the School Board and will be used to purchase a special education bus for Head Start and for students with special needs. Council Member Byrd offered a motion to approve this request for a first reading, and that:

\$88,800.00 chge. to 2013-31656 School BD-School Buses

\$88,800.00 approp. to: 2013-872081-48254 School Buses

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 Wiens

Vice-Mayor Baugh  
Mayor Degner

Absent – None

Parks and Recreation Department Director Lee Foerster presented an overview of revised fee structure for the department. The Parks and Recreation Advisory Commission have recommended an adjustment to the various fees and charges for recreation programs and facilities. The fees will be effective January 1, 2010 except for the child care fees. Council Member Byrd offered a motion to approve the proposed scheduled fees and charges. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Wiens  
Vice-Mayor Baugh  
Mayor Degner

Absent – None

City Manger Hodgen presented for Council's consideration repealing Section 5-2-40 of the Harrisonburg City Code. This ordinance was enacted as part of the EMS services billing and since its enactment, the City and Rockingham County have decided to have these terms placed within the billing Services agreement so that all terms of the agreement will be the same for both the city and county in order that no resident of the city or the county will receive a bill for EMS services. Vice-Mayor Baugh offered a motion to approve this ordinance for a first reading. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Wiens  
Vice-Mayor Baugh  
Mayor Degner

Absent – None

Commissioner of the Revenue June Hosaflook presented for Council's consideration enacting Article L. of Chapter 2 of Title 4 of the Harrisonburg City Code. This ordinance will create a short-term rental tax for the City effective January 1, 2010. She said that the new rate on sales short-term gross rental receipts will either be 1% or 1.5% depending on the type of equipment that is leased. City Attorney Thumma clarified that businesses in the City will not be charged the short-term rental tax for the year 2009. Council Member Frank offered a motion to approve this ordinance for a first reading as presented. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Wiens  
Vice-Mayor Baugh  
Mayor Degner

Absent – None

City Manager Hodgen reviewed a breakdown of state reductions in support of local government. The most recent changes include the City Constitutional Offices \$23,281.00, Shared City-County Constitutional Offices, \$224,757.00 (City share); and local law enforcement through the local HB599 \$162,270.00 for a total of \$410,308.00. Of the amounts, savings have been identified within the affected areas that can be sustained, but may result in a decline in service levels. The savings include City Constitutional Offices \$23,281.99, Shared City-County Constitutional Offices \$23,808.00 (City share), and local law enforcement \$72,150.00 with a difference of reductions and savings of \$291,069.00. “I recommend that we proceed with the identified reductions and continue to work across the spectrum of the entire City budget and joint City-County services budgets to identify other savings.” It is important to note that we do not expect the state reductions to return at any point in the near future.

City Manager Hodgen said that a considerable number of e-mails were sent to Council members during the past relative to operational issues at the Rockingham-Harrisonburg SPCA (RHSPCA). Most of the e-mails originated from supporters of an organization called “Citizens for Animal Welfare” (CFAW). The primary issues included a relative high rate of euthanization at the HRSPCA, spaying and neutering practices, the desire on the part of CFAW for the City and Rockingham County to utilize their status as major “customers” of RHSPCA to affect make changes and the success rate for adoption of dogs and cats. Staff follow up research has confirmed that: 1) Amount a list of “comparable” shelters indicates that the RHSPCA did have the highest rate of euthanization for 2008. 2) The shelter’s that the RHSPCA was most frequently compared to had similar local government contributions, but significantly higher overall revenues than RHSPCA. 3) RHSPCA is meeting at least the minimum requirements established by the Commonwealth of Virginia for operation of “city or county pounds”. Standards or expectations of performance beyond what the state requires is a local policy/community issue. 4) Neither the City nor the County have direct representation on the RHSPCA’s Board. 5) CFAW feels that its attempts to offer suggestions, assistance, etc. to RHSPCA have been ignored by the RHSPCA Board of Directors and they have not been able to get people who share their operational philosophies on the Board. They believe there are significant financial, technical and professional resources that are ready to actively engage in meeting the needs of the animal population of Harrisonburg and Rockingham County. 6) If they are not able to achieve any success in working with the RHSPCA Board of Directors, CFAW may be interested in submitting a proposal to the City and County to provide animal impoundment services. Council requested that the RHSPCA and CFAW meet to discuss some of the issues. Mayor Degner and Council Member Frank volunteered to coordinate a meeting between RHSPCA and CFAW.

At 9:45 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 Harrisonburg Electric Commission, exempt from the public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia.

At 10:05 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.

Council Member Byrd offered a motion that Dennis Snyder, 964 Wren Way Drive, be appointed to a second term on the Harrisonburg Electric Commission. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Wiens  
Vice-Mayor Baugh  
Mayor Degner

Absent – None

Council Member Byrd offered a motion that John Neff, 456 Meyers Avenue, be appointed to a first term on the Harrisonburg Electric Commission. The motion was seconded by Vice-Mayor Baugh and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Byrd  
Council Member Frank  
Council Member Wiens  
Vice-Mayor Baugh  
Mayor Degner

Absent – None

At 10:06 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