

## REGULAR MEETING

June 22, 2010

At a regular meeting held this evening at 7:00 p.m., there were present: Mayor Kai Degner; City Manager Kurt Hodgen; Assistant City Manager Evan Vass; 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 Police Major Malcolm Wilfong. Absent: Police Chief Donald Harper.

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

Mayor Degner recognized Boy Scout Allen Smith who was attending the Council meeting to work on his community and citizenship badge.

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 Public Works Department, amending and re-enacting Sections 10-3-84 and 10-3-109, and Chapter 4 of Title 13 of the City Code. The motion also included amending and re-enacting Sections of the City Code for the Harrisonburg Department of Public Utilities. 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 Wiens  
Vice-Mayor Baugh  
Council Member Frank  
Mayor Degner

Absent – None

Mayor Degner announced that Agenda Item #6 and #7 regarding a rezoning and special use permit amending proffers on property zoned R-5C, High Density Residential District Conditional located between Boxwood Court and Kaylor Park Drive will be covered by one staff presentation.

Planning and Community Development Director Turner presented a request from Bill Neff to rezone 60.43 +/- acres by amending proffers on property zoned R-5C, High Density Residential District Conditional. The developer has requested a special use permit to allow more than 12 units per building. The properties can be found on tax maps 2-C-1, 2-D-0, 6-10, and 103-A-5A. The Comprehensive Plan designates this area as Medium-Density Mixed Residential. Mrs. Turner reviewed the surrounding uses in the area. This property was the subject of requests for both a Comprehensive Plan Amendment and a rezoning in 2006. At the time, the applicant received approval of the Comprehensive Plan Amendment and also to rezone the property from M-1, General Industrial District and B-2, General Business District to R-7, Medium Density Mixed Residential Planned Community District. The plan of development

proposed 326 townhouses and 140 apartments, which had a public street running through the development connecting Kaylor Park Drive to a proposed relocated Boxwood Court. The proposed change used the existing Boxwood Court and required the installation of a phased traffic signal for Boxwood Court and Pointe Drive. Staff recommended against both requests due to transportation issues and land use concerns. Planning Commission voted 4-2 against the Comprehensive Plan amendment but had a neutral vote of 3-3 on the rezoning request. Both were unanimously approved by City Council by a vote of 5-0.

In January 2007, the property owner requested a revision to the development plan that required a submission for rezoning. This was primarily due to problems with acquiring right-of-way from adjacent property owners to relocate Boxwood Court as planned. The proposed change used the existing Boxwood Court and required the installation of a phased traffic signal for Boxwood Court and Pointe Drive. Staff, again, did not recommend this Plan. Planning Commission unanimously recommended denial and City Council denied the request with a vote of 3-2.

In October 2007, the property was again under review, this time to rezone the property to R-5C, High Density Residential District Conditional. This request reflected a change from townhouses and apartments to 322 condominiums and 144 apartments for a total of 466 housing units. Mrs. Turner reviewed the changes in the plan for the development by a different developer who is interested in having all 466 housing units become apartments and allowing more than 12 units per building. Their intent would be to market the units to students. Also, reviewed were the existing proffered regulations for this property with a specific plan of development. There were several minor amendments made to the proffers during the Planning Commission meeting. Planning Commission believes that the plan for the development owned and managed by a single entity would be an improvement for the property. Planning Commission has recommended approving the rezoning request with the amendments to the Plan of Development and also approving the special use permit for buildings with more than 12 units.

At 7:30 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 Monday, May 24, and Tuesday, June 1, 2010.

### **NOTICE OF PUBLIC HEARING**

**The Harrisonburg City Council will hold several public hearings on Tuesday, June 8, 2010 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:**

#### ***Rezoning – Southbury Station Proffer Amendment 2010***

**Public hearing to consider a request from Bill Neff, with representative Babcock, LLC, to rezone 60.43 +/- acres by amending proffers on property zoned R-5C, High Density Residential District Conditional. The property has approximately 40-feet of frontage along South Main Street with the majority of the property located between Boxwood Court and Kaylor Park Drive, adjacent to I-81. The properties can be found on tax maps 2-C-1, 2-D-0,**

**6-10, and 103-A-5A. The Comprehensive Plan designates this area as Medium-Density Mixed Residential. This 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 Zoning Ordinance states that the R-5, High Density Residential District is intended for medium to high density residential development, including townhouses and multiple family dwelling units, together with certain governmental, educational, religious, recreational and utility uses.**

***Special Use Permit – Southbury Station 2010 (10-3-55.4(1))***

**Public hearing to consider a request from Bill Neff, with representative Babcock, LLC for a special use permit per Section 10-3-55.4 (1) of the Zoning Ordinance to allow multiple-family dwellings of more than twelve units per building in the R-5, High Density Residential District. The property is located between Boxwood Court and Kaylor Park Drive, adjacent to I-81. The properties can be found on tax maps 2-C-1, 2-D-0, 6-10, and 103-A-5A.**

**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 (5) five 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 rezoning request.

Robert Babcock, contract purchasers of the subject property, said Boxwood Court during the first phase would be offered as a secondary access primary for emergency purposes. Mr. Babcock reviewed the future vision and plans for the development.

Seth Roderick, an engineer representing the developer, said the emergency access during Phase I is controlled by the City and all discussions have been that Boxwood Court will be emergency access only. This development has been discussed for about five years and is now moving forward because of the change in the housing unit types.

William Long, trustee of property at 2870 South Main Street, said that several occupants of their building are concerned with the movement of the entrance across from Pointe Drive. We have many elderly patients and the possibility of collisions could exist.

Todd Fallow, a dentist who has a practice in the building at 2870 South Main Street, said the changes in the traffic are a concern because of the potential of having cut-through traffic. There being no others desiring to be heard, the public hearing was declared closed at 7:59 p.m., and the regular session reconvened.

The following discussion by Council Members included: Technically this property is planned and zoned for this type of development. That decision was made in 2006 to allow 466

housing units on this property. Concept of student housing in this location is a terrible idea. Problems that exist on Boxwood Court should have been a reason not to approve this rezoning in 2006. It is a situation that doesn't have a good answer. Will public interest be served? Best proposal of the three previous proposals. Proposal has more green space, links and dedicates a bike trail, and has increased security. Following further discussion and comments, Council Member Byrd offered a motion to approve Planning Commission's recommendation amending the proffers on this rezoning request for this property. 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 Wiens  
Vice-Mayor Baugh  
Mayor Degner

No - Council Member Frank

Absent – None

At 8:17 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 Monday, May 24, and Tuesday, June 1, 2010.

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

**The Harrisonburg City Council will hold several public hearings on Tuesday, June 8, 2010 at 7:00 p.m., in the City Council Chambers, 409 South Main Street to consider the following:**

*Special Use Permit – Southbury Station 2010 (10-3-55.4(1))*

**Public hearing to consider a request from Bill Neff, with representative Babcock, LLC for a special use permit per Section 10-3-55.4 (1) of the Zoning Ordinance to allow multiple-family dwellings of more than twelve units per building in the R-5, High Density Residential District. The property is located between Boxwood Court and Kaylor Park Drive, adjacent to I-81. The properties can be found on tax maps 2-C-1, 2-D-0, 6-10, and 103-A-5A.**

**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 (5) five 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 to allow multiple-family dwellings. There being no one desiring to be heard, the public hearing was declared closed at 8:18 p.m., and the regular session reconvened. Vice-Mayor Baugh offered a motion to approve the special use permit request as presented. 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 Wiens  
Vice-Mayor Baugh  
Mayor Degner

No - Council Member Frank

Absent – None

The next item of business was a request from City Manager Hodgen to consider removing delinquent taxes from the current collection accounts. The City is required to remove uncollectible personal property taxes for the year 2004 and real estate taxes for the year 1989 as stipulated in the City Code and Code of Virginia. This will not eliminate the City's diligent pursuit of these past due taxes. Since the City has employed the DMV stop program to help collect personal property taxes there has been an increase of about \$62,000 collected over last year. Council Member Frank offered a motion to approve this request. 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 Wiens  
Vice-Mayor Baugh  
Council Member Frank  
Mayor Degner

Absent – None

The next item of business was approval of a City owned site for the location of a "Welcome Home Garden." Parks and Recreation Director Foerster said that the concept of a "Welcome Home Garden" honoring returning war veterans was originally presented to City Council earlier this year. The concept was referred to the Parks and Recreation Commission for their recommendation. After reviewing several City owned sites the Parks and Recreation Commission at its May 17, 2010 meeting, made a motion to recommend that the backyard of the City Municipal Building be selected as the site for the construction of the "Welcome Home Garden." The "Welcome Home Garden" design plan will include a water feature that does not present safety issues or require intensive maintenance. Council Member Wiens offered a motion to approve selecting the backyard of the Municipal Building as the location of the "Welcome

Home Garden.” The motion was seconded by Vice-Mayor Baugh and approved with a unanimous voice vote of Council.

The next item of business was a presentation by Eddie Bumbaugh, Executive Director of Harrisonburg Downtown Renaissance (HDR), who gave an update of the progress and accomplishments of HDR. Mr. Bumbaugh said that Harrisonburg is being noticed around the state for having successful downtown businesses. HDR has been awarded a grant from Virginia Main Street to attract more visitors from Massanutten Resort as well as the hospitality industry in the City to make them aware of the downtown attractions. Mr. Bumbaugh also reviewed projects receiving Façade Enchantment grants, new businesses, new housing units, and restaurants. HDR is also creating a business resource guide to provide more information for downtown businesses. He said that downtown businesses have expressed concern regarding the number of newsstands and information racks, which have been placed on public sidewalks in downtown. Council reminded Mr. Bumbaugh that any pertinent information or supporting documentation should be included in their packets and not provided the night of the meeting. It would also be very helpful if the downtown merchants and citizens could provide more information to Council regarding newsstands and information racks.

Jessica Chase, Manager/Downtown Parking Services for HDR, reviewed information regarding events that occurred during the last several months and upcoming events. All of the new parking signs throughout the downtown area have been put in place.

Mayor Degner presented the following resolution for Council’s consideration of approval:

## **RESOLUTION**

### **Authorization to Pick-up the Employee’s Contribution to VRS Under § 414(h) of the Internal Revenue Code For Plan 2 Employees**

**WHEREAS, the Virginia General Assembly, in its 2010 session passed legislation creating a separate retirement plan for employees hired on or after July 1, 2010 (hereafter referred to as “Plan 2 Employees”). The legislation stipulates that Plan 2 Employees will pay their 5 percent member contribution and that, absent other action by the employer, such contribution will be paid through salary reduction according to Internal Revenue Code § 414 (h) on a pre-tax basis; and**

**WHEREAS, the legislation allows certain employers, including the City of Harrisonburg, to pick-up and pay all or a portion of the member contributions on behalf of its Plan 2 Employees as an additional benefit not paid as salary; and**

**WHEREAS, the election to pick-up and pay all or a portion of the member contributions on behalf of its Plan 2 Employees as an additional benefit not paid as salary shall, once made, remain in effect for the applicable fiscal year (July 1 - June 30) and shall continue in effect beyond the end of such fiscal year absent a subsequent resolution changing the way the 5 percent member contribution is paid; and**

**WHEREAS, employee contributions that are picked-up as an additional benefit not paid as salary are not considered wages for purposes of VA Code § 51.1-700 et seq. nor shall they be considered salary for purposes of VA Code § 51.1-100 et seq.; and**

**WHEREAS, the City of Harrisonburg desires to pick-up and pay its Plan 2 Employees' member contributions to VRS as an additional benefit not paid as salary in an amount equal to (1%) (2%) (3%) (4%) (5%) of creditable compensation; and**

**WHEREAS, VRS tracks such picked-up member contributions and is prepared to treat such contributions as employee contributions for all purposes of VRS.**

**NOW, THEREFORE, IT IS HEREBY RESOLVED that effective the first day of July, 2010, the City of Harrisonburg shall pick-up member contributions of its Plan 2 Employees to VRS as an additional benefit not paid as salary in an amount equal to 5% of creditable compensation subject to the terms and conditions described above; and it is further**

**RESOLVED that such contributions, although designated as member contributions, are to be made by the City of Harrisonburg in lieu of member contributions; and it is further**

**RESOLVED that nothing herein shall be construed so as to permit or extend an option to VRS members to receive the picked-up contributions made by the City of Harrisonburg directly instead of having them paid to VRS.**

**Approved: June 22, 2010**

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**Mayor**

**ATTEST:**

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**CLERK OF THE COUNCIL**

City Manager Hodgen said the recently completed General Assembly session, legislation was passed which allows localities the option of continuing to pay the 5% employee share of retirement costs or paying any "whole percent up to the entire 5%". This applies only to new employees hired after July 1, 2010 who are not currently in the VRS system in a different locality. It does not affect existing employees. The City is required to notify VRS by June 30, 2010 of its intent. No action results in a default decision whereby any new employees hired after July 1, 2010, would be required to contribute the full 5% employee share. There was a very short time frame given to localities to make this decision. There is also concern about competitiveness. Mr. Hodgen reviewed changes in the Virginia Retirement System (VRS) and possible annual savings to the City. Following further discussion and comments, Vice-Mayor Baugh offered a motion to adopt the resolution and continue to pay the 5% employee share of the retirement costs. The motion was seconded by Council Member Wiens and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Wiens

Vice-Mayor Baugh  
Mayor Degner

No - Council Member Byrd  
Council Member Frank

Absent – None

Police Major Wilfong presented a request for a supplemental appropriation for the Police Department. This is a reimbursement through the Virginia State Police for Internet Crimes Against Children (ICAC). Vice-Mayor Baugh offered a motion to approve this request for a first reading, and that:

\$461.43 chge. to: 1000-31914 Recovered costs

\$461.43 approp. to: 1000-310331-48172 Replacement hardware

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 Wiens  
Vice-Mayor Baugh  
Council Member Frank  
Mayor Degner

Absent – None

City Manager Hodgen thanked Police Major Wilfong who is retiring at the end of the month, for 35 years of good service with the City.

At 9:50 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