MINUTES OF HARRISONBURG PLANNING COMMISSION
July 11, 2012

The Harrisonburg Planning Commission held its regular meeting on Wednesday, July 11, 2012, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Charles Chenault, MuAwia Da'Mes, Judith Dilts, Deb Fitzgerald, and Bill Jones.

Members absent: Alan Finks and Henry Way

Also present: Stacy Turner, Director of Planning and Community Development; Adam Fletcher, City Planner; Alison Banks, Planner and Secretary.

Chairman Jones called the meeting to order and determined there was a quorum with five of seven members in attendance. He then asked if there were any corrections, comments or a motion regarding the minutes from the June 13, 2012 Planning Commission meeting.

Mrs. Fitzgerald moved to approve the minutes as presented from the June 13, 2012 regular Planning Commission meeting.

Mr. Chenault seconded the motion.

All voted in favor of approving the minutes (3-0), with Chairman Jones and Dr. Dilts abstaining because they were not in attendance at the June 13th meeting.

Mr. Finks arrived shortly after the vote on the minutes (7:02 p.m.).

New Business

Public Utility Application – Whitesel Brothers (Garbers Church Road)

Chairman Jones read the request and asked staff to review.

Mrs. Banks said Whitesel Brothers Incorporated, a full service dealership for sales, parts and service of agricultural equipment, located in Rockingham County, is requesting to connect their facility to the City's water and sewer infrastructure. The business has over three acres of property situated in both the City and the County. The main entrance is located on Garbers Church Road, but they also have access to Erickson Avenue.

Per Section 7-2-4 (b) of the City Code, all uses, other than residential uses involving fewer than ten units, requesting to be connected to the City's water and sewer infrastructure, shall be reviewed by Planning Commission and then forwarded to City Council for final approval or rejection.

The proper application has been completed by the owner and the Public Utilities Department has stated they have the ability to provide both water and sewer service to the site. The owner would be responsible for all design calculations and fees associated with the requested services.

Planning staff has no concerns and the Public Utilities Department has no issues at this time.

Chairman Jones asked if there were any questions for staff.

Mr. Da'Mes asked if a change was made to this area within the recent Comprehensive Plan review.

Mrs. Banks said yes, we made a land use change to Commercial from Low Density Mixed Residential.

Mr. Chenault moved to approve the utility extension for Whitesel Brothers.

Mr. Finks seconded the motion.

Chairman Jones asked for a voice vote on the motion to recommend approval.

All voted in favor (6-0).

Chairman Jones said this request will move forward to City Council on August 14, 2012 with a favorable recommendation.

Street Closing – Undeveloped Kyle Street Adjacent of 25-K-4 and 17 through 21 (JMU)

Chairman Jones read the agenda item and asked staff to review.

Dr. Dilts recused herself at this time because of her affiliation with the applicant.

Mrs. Banks said the following land uses are located on and adjacent to the property:

Site:	Undeveloped portion of Kyle Street (currently used for parking)
North:	Street right-of-way of Cantrell Avenue
East:	Apartment buildings, zoned R-3
South:	Across West Grace Street, JMU Facilities Management parking lot, zoned M-1 and R-3
West:	Parking lot, zoned M-1 and R-3

The applicant is requesting to close an undeveloped portion of Kyle Street that is located perpendicular to West Grace Street, between Walnut Lane and the Chesapeake & Western Railroad. Currently, the right-of-way is being used as parking for JMU.

JMU and/or JMU Real Estate Foundation own all but one of the surrounding properties. Tax Map parcel 25-K-21 is owned by the City of Harrisonburg. The applicant is requesting to purchase that parcel as well; however it is not reviewed as part of this request. If approved, JMU would incorporate this land into their future development plans for the area.

There are two City utilities located within the Kyle Street right-of-way that would require easements if City Council approves the street closing. Harrisonburg Electric Commission (HEC) has an overhead power line currently in service that wraps around the area and serves buildings at the corner of South Main Street and Cantrell Avenue. HEC would need a fifteen foot wide utility easement centered on the pole line in order to maintain their infrastructure.

The Public Utilities Department has an active sanitary sewer main situated within the right-of-way and has requested that a public sanitary sewer easement be positioned over the area to accommodate continued maintenance of the sewer main.

There are no plans to develop the Kyle Street right-of-way and the City does not anticipate any negative consequences from vacating the street. Staff recommends closure of this portion of Kyle Street with the requested HEC and public sanitary sewer easements reserved.

Chairman Jones asked about the easements and will JMU agree to them?

Mr. Fletcher said it is not whether or not they agree to them, they will have to if they wish to purchase it. The City will reserve the easements before it is sold. There is a very good chance that all of these utilities will be relocated when the site is redeveloped by JMU.

Chairman Jones asked if there were any further questions. Hearing none, he asked if there was a motion.

Mr. Finks moved to recommend approval of the closing of Kyle Street in this area.

Mrs. Fitzgerald seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor of the motion to recommend approval (5-0).

Chairman Jones said this will be heard at City Council on August 14, 2012.

At this time Dr. Dilts returned to the Council Chambers and rejoined the meeting.

Preliminary Plat – Charleston Townes 2012 Addition

Chairman Jones read the request and asked for staff to review.

Mr. Fletcher said the Comprehensive Plan designates this area as Medium Density Residential. This designation states that these areas are designated in areas near major thoroughfares or commercial areas. Most of these areas have been developed or are approved for development of a variety of housing types such as single-family, duplex, and in special circumstances, apartments. Depending on the specific site characteristics, densities in these areas may range from 1 to 15 units per acre.

The following land uses are located on and adjacent to the property:

Site: Single family detached home, zoned R-3

North: Undeveloped property, preliminarily platted for the Townes at Bluestone townhomes, zoned R-3

East: Undeveloped property, preliminarily platted for the Townes at Bluestone townhomes, zoned R-3

South: Breckinridge Court townhomes and single family detached home, zoned R-3

West: Charleston Townes townhomes and single family detached home, zoned R-3

Purple and Gold, LLC, the developers of the Charleston Townes student housing complex, is requesting to preliminarily subdivide a 1.06 +/- acre parcel into 11 townhome lots and one common area parcel. The subdivision requires City Council approval as the planned layout requires a variance from the Subdivision Ordinance Section 10-2-42 (c) to allow lots to not have public street frontage (until recent Subdivision Ordinance amendments, this requirement was listed as (d)). Currently, the property does not have public street frontage and is accessible only from Reservoir Street via a driveway over an established 12-foot in width private access easement stretching almost 300 feet across two, neighboring parcels.

The planned 11 units would become part of the existing 132-unit student housing townhome complex known as Charleston Townes, where street maintenance, snow removal, and trash pick-up is provided by private companies. (Images of the units and amenities of the existing development can be viewed at http://www.charlestontownes.com). Charleston Townes, originally known as Purple and Gold Townhomes, was first preliminarily platted in 2006 with a variance from the Subdivision Ordinance to allow lots to not have public street frontage. That plat ultimately expired. The developers then resubmitted their same plan of development and again received preliminary approval in February 2008. Following this approval, the developers final platted the development in phases and received approval of the development's final phase in May 2011. The platting of Charleston Townes initiated the dedication and construction of Lucy Drive to Reservoir Street.

From the original submissions, the development was intended to accommodate the student population offering four bedroom units with amenities that included a clubhouse, swimming pool, and open recreational areas. A property owner's association was planned to be established to maintain the private yards and common areas as the lots were intended to be sold for independent ownership. However, Purple and Gold, LLC decided to maintain ownership of all lots within the development. Per Section 10-3-113 (5) of the Zoning Ordinance, all common areas shall be maintained by, and be the sole responsibility of, the developer-owner of the townhouse development until such time as the developer-owner conveys such common areas to a non-profit corporation whose number shall be all of the individual owners of the townhouses in the townhouse development.

The subject parcel is adjacent to 2300 Purple and Gold Way (tax map 80-A-139), the southernmost lot of Charleston Townes. Purple and Gold Way, the private street/parking area of Charleston Townes, would be extended from this parcel, at the existing private street grade, onto the subject property. This ingress and egress location would be the only access to these units. The currently used private access easement and driveway to Reservoir Street would not be utilized. Instead, all residents would use Purple and Gold Way to the established ingress and egress points for Charleston Townes including the right-in right-out entrance on Reservoir Street and the divided entrance along Lucy Drive. As noted on the plat, this planned development would not interrupt the usage of the private access easement deeded across the southern boundary of the subject parcel for the adjacent property to the east: tax map 80-A-8.

Forty-six more parking spaces (seven more than required) would be added to accommodate the 11 new units. To maintain the illustrated parking lot layout, a comprehensive site plan must be submitted before September 1, 2012, as the newly adopted Parking Lot Landscaping ordinance becomes effective on that date. The parking lot as shown on the plat does not meet the new provisions, but a note on the plat recognizes this matter.

If approved, the developer should be aware there are several issues that must be resolved including the connection to the waterline in the adjacent Charleston Townes development, which will not be permitted until that line is substantially complete; to relocate the dumpster as shown on tax map 80-A-139 as it does not meet setback requirements; to ensure that stormwater management will be handled appropriately; and that water and sewer capacity will be evaluated during the Preliminary Engineering Report prior to comprehensive site plan submittal.

Other than the requirement of Section 10-2-42 (c), the plat meets all other requirements of the Subdivision Ordinance. This request is no different than the previously approved sections of Charleston Townes and therefore staff supports a favorable recommendation to City Council to approve the preliminary layout with a variance to allow the lots to not front along a public street.

Chairman Jones asked if there were any questions for staff.

Mr. Da'Mes asked what is the distance from the road (Reservoir Street) to the new area where the townhomes are proposed.

Mr. Fletcher replied I do not know what the distance would be. However, we do not regulate the distance because it is a private street. I can say that the Fire Department did not have any comments or concerns regarding the distance or access.

Chairman Jones said this is not a public hearing; however, if the applicant or their representative would like to speak they may do so at this time.

Mr. Walt Trobaugh, a partner in the development, said he is available to answer any questions the Commission may have.

Chairman Jones asked if there were any questions or discussion. Hearing none, he asked if there was a motion on the request.

Mr. Chenault moved to recommend approval of the Preliminary Plat for Charleston Townes 2012 addition in accordance with the staff recommendation.

Dr. Dilts seconded the motion.

Chairman Jones called for a voice vote on the motion.

All voted in favor of recommending approval of the Preliminary Plat with the requested variance (6-0).

Chairman Jones said this will move forward to City Council with a favorable recommendation on August 14th.

Mr. Fletcher added that although he did not mention this tonight, it is in the staff report about the landscape regulations. The layout of this development, as currently proposed, does not meet the recently approved landscape requirements. However, if they turn in their comprehensive site plan before September 1, 2012, they will be okay with the proposed layout. If they turn it in after September 1, they will have some issues that must be resolved.

Mr. Chenault said I do have one question for the applicant that is not necessarily related. You have already donated the land for the widening of Reservoir Street, is that correct.

Mr. Trobaugh said yes, it was actually a swap with the City.

Zoning Ordinance Amendment – Section 10-3-115 (3) Security Fencing Heights within Commercial/Industrial Districts

Chairman Jones read the agenda item and asked staff to review.

Mr. Fletcher said staff is proposing to amend the Zoning Ordinance Section 10-3-115 Walls and Fences to clarify regulations associated with wall and fence heights located on business and industrially zoned property. Although it was advertised to also modify subsection (5) of the same section, staff decided to move forward with only an amendment to subsection (3). (For reference, a copy of Section 10-3-115, in its entirety, is provided within the packet.)

Recently, close evaluation of Section 10-3-115 (3) caused internal discussion among staff regarding the intent, and word choice, of this ordinance. Currently, Section 10-3-115 (3) states: In business and industrial districts walls and fences which are clearly used for safety or security purposes may be superseded by other height regulations.

For many years, staff has interpreted this to mean walls and fences in business and industrial districts desired by the business for safety and security purposes can be taller than six feet in height (subsections (1) and (2) of the same section generally restricts wall and fence heights to six feet). However, close examination of the text in subsection (3) does not clearly grant that permission. The wording indicates that for walls and fences in business and industrial districts to be greater than six feet in height, there would need to be other height regulations which “replace” the zoning requirements.

Although the Building Code has minimum height requirements for fences or barricades around pools, railings on retaining walls, and others, neither zoning staff nor the Building Official are aware of any regulations requiring walls or fences to be taller than six feet in height. It seems unlikely, or at least infrequent, that any other "superseding" regulations would require a taller or shorter fence.

To permit what staff believes is good zoning practice and what has been allowed for many years, we propose the following language:

(3) In business and industrial districts walls and fences which are ~~clearly~~ used for safety or security purposes may be greater than the height otherwise permitted. ~~superseded by other height regulations.~~

Chairman Jones asked if there were any questions for staff. Hearing none, he opened the public hearing and asked if there was anyone wishing to speak in favor of the amendment. Hearing none, he asked if there was anyone wishing to speak in opposition. Hearing none, he closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Finks moved to recommend approval of the changes to subsection three as presented by staff.

Mr. Chenault seconded the motion.

Chairman Jones called for a voice vote.

All voted in favor of the request (6-0).

Chairman Jones said this amendment will move forward to City Council with a favorable recommendation from Planning Commission.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said the Exit 243 section of the City was targeted for the month of June. Only one violation was found; an illegal sign. Next month our inspectors will be in the Fairway Hills area.

Mr. Chenault said last night at City Council the special use permit request for Hajoca on South Main Street was approved unanimously. The motion to approve the ordinance amendment regulating portable restroom facilities failed for lack of a second.

Mr. Fletcher added that the portable restroom facility ordinance has been referred back to Planning Commission to discuss what type of standards should be in place to control such facilities; where they can go, how they can go in and so forth. City Council did not care for the special use permit concept for portable restroom facilities.

Mrs. Fitzgerald asked whether this now opens up a discussion about the context to which they have been possibly proposed to be used downtown.

Mr. Chenault said I believe what Council is looking for is something that says if you are going to have such a facility and it adjoins an R-1 zoning district, then it has to meet a greater setback from the property line, it has to be screened, that type of regulating.

Mrs. Turner said someone did speak at the City Council hearing last night and said that he had desired to open a food cart court and he wanted to be able to use portable restrooms primarily for the people who would be the food cart vendors. Because the food cart court would not be constructing any buildings on the site, the Building Code would not address anything regarding these restroom facilities. There is no requirement that the bathrooms must be established with the use of a food cart.

Mr. Finks asked if the Health Department would need to be involved with this type of use.

Mr. Chenault replied they would within the individual food cart unit; but not exterior to it.

Mr. Fletcher said depending upon the manner that the food cart would operate they would still need to comply with grease traps and similar issues.

Mrs. Turner said I spoke with the Health Department and they were noncommittal. They said right now they do not issue any type of permits for portable restrooms and they have never been approached by someone requesting regulations for placing one permanently. So they do not really know if their regulations should cover that, there is some regulation that discusses a portable, storage and haul facility. These types of things usually receive a license for a locality and I do not know if the City has any of this type of permit.

Mr. Chenault said JMU has several permits for the portable haul facilities.

Dr. Dilts asked what other municipalities do regarding this issue.

Mr. Fletcher said that is a good question and we have started looking into that.

Mrs. Turner said I have spoken with at least three other localities within the past few days; Winchester, Roanoke, and Rockingham County. Winchester and Roanoke simply do not address it at all and it has not been something they had to address. Rockingham County said they do not allow people to do it and it is odd because it is somewhat of a cross between some things that the Health Department tells them and what the County Zoning tells them. However, they do not have anything in writing that is a regulation.

Mr. Fletcher said I think a little further investigation into what other localities do is necessary and is definitely something that staff would do.

Mr. Chenault said the gentleman that is proposing this use and facility came here from Portland, Oregon and apparently it is a rather larger use there. He did not know if there were regulations on restroom facilities or not. Perhaps we should look into Portland's regulations.

Mr. Fletcher said Asheville, North Carolina is dealing with almost the same situation and they have decided to wait and see what happens.

Mrs. Turner said I have briefly reviewed things from Portland, and their regulations are so entirely different from ours that it is somewhat hard to even get a grip on what and where in the ordinance this type of information is. I also have some forwarded information from San Antonio, Texas I can review. I forgot to mention, I did talk to Richmond and they do not have anything that would address this. They are talking about it because they have food carts that convene in certain places throughout the week and they feel the restroom facilities may come up.

Mr. Finks said if we tell this person to go ahead and do this and then problems arise and we retract it, we would look like the bad guy.

Mrs. Turner said this person was told by City Council last night that if he wanted to establish it now, before any regulations went into place he could do so. He would just become nonconforming. If it is a big problem, the City Attorney said he could address it through the nuisance ordinance.

Mr. Chenault said the nuisance ordinance is a very onerous and time consuming process.

Mr. Finks said I have never seen the food carts in New York City needing a portable restroom facility.

Mr. Chenault said the rationale for these is that it is more for the employees of the food cart court than for the general public.

Dr. Dilts said if you are a restaurant opening in a building, you are required to have a restroom. Yet these people get to put their cart somewhere and keep it there for an extended period of time and they do not have the same monetary outlay and the building restaurant.

Mrs. Turner said the other thing that has brought up the portable restroom facilities, and this was mentioned at the Council meeting last night as well, is the Farmers Market. The Farmers Market would like restrooms for the vendors and customers. When they are open on Tuesday it is not a big issue because the Municipal Building is open for restrooms. However, on Saturday the building is closed. Last year the Farmers Market had a portable bathroom dropped off before the Saturday market opened and picked-up later. They have decided it could be a cost savings to them if they just left the facility there; in fact, it sat on a trailer in the parking lot all winter. They would like to just leave it there in the parking lot. They were told "no" by the Managers Office when they asked if they could have it in the parking lot; they could not have it permanently located in the City parking lot from March through November. They continued to ask and at the same time we were entering into all this discussion with the food cart person so they both coincided with each other. The Farmers Market began to ask if they could place this on a private property adjacent to the City property. They were finally given permission to place the facility on City property this year, and it is somewhat on a trial basis. If someone complains to the Managers Office or to a Councilmember it may be subject to removal. We have some control over this because it is on City property and our property does not have to follow the Zoning Ordinance. But there are other types of uses, a produce stand, a flea market, or some other type of market use that would not be required to have bathrooms and might want something like this.

Mrs. Fitzgerald said it almost sounds like the City is reaching a tipping point with a collection of activities that are beginning to accelerate downtown, where public bathrooms might be sooner rather than later.

Mr. Chenault said I have not heard anyone complain about there not being bathrooms any place downtown. This has just come up with these situations. I believe there are bathroom facilities at the Court House.

Mrs. Turner said it is my understanding that they are not open all the time. If you have a function there they have some type of automated locking and unlocking mechanism so you can have them open during the time of your event.

Mr. Chenault said of course the library is open and people use that. I am downtown most every Saturday and Sunday and the people milling around usually have a destination they are headed to that has a bathroom.

Dr. Dilts said if you think about the cities that have a vibrant downtown and are destination places; there is usually always a public restroom. Maybe that is something the City needs to think about at this point, given the Downtown Renaissance and various activities that are going on in our downtown.

Mrs. Turner said that HDR does have a public restroom that is open during the times they are open; they are open on Saturday and Sunday as well.

Mr. Fletcher said if I can direct this conversation back to the question at hand, which is about portable restroom facilities; staff will aim to bring you information next month with some type of standards; nothing formal for public hearing, just something for Planning Commission to react to. We will be looking at this as a by right use with some type of regulating control.

Dr. Dilts asked if you could include aesthetic standards.

Mr. Fletcher replied yes, certainly. Perhaps standards like screening or not within general public view would be considered.

Planning Commission agreed that staff should bring information to them next month for them to review.

Mr. Fletcher said I have two other items. Next month we have a street and alley closing which is related to the alley closing you reviewed in May of this year, near Collicello Street. This is related to that same project. There will also be a special use permit request to amend an existing telecommunications SUP.

Lastly, tour timing for Planning Commission; we have already advertised for next month that we will be touring at the usual 4:30 time on Monday, August 6th. But please think about the tour times again and whether Mondays at 4:30 is the right time for everyone. I cannot think of the last time when we had more than one or two Planning Commissioners come to the tour.

Other Matters

None.

Adjournment

The meeting was adjourned at 7:45 p.m.

Chairman William L. Jones, Jr.

Secretary, Alison Banks