MINUTES OF HARRISONBURG PLANNING COMMISSION
October 10, 2012

The Harrisonburg Planning Commission held its regular meeting on Wednesday, October 10, 2012, at 7:00 p.m. in the City Council Chambers, 409 South Main Street.

Members present: Charles Chenault, MuAwia Da'Mes, Judith Dilts, Alan Finks, Deb Fitzgerald, and Henry Way.

Members absent: Bill Jones.

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

Vice-Chair Fitzgerald called the meeting to order and determined there was a quorum with six of seven members in attendance. She then asked if there were any corrections, comments or a motion regarding the minutes from the September 12, 2012 Planning Commission meeting.

Mr. Way moved to approve the minutes as presented from the September 12, 2012 regular Planning Commission meeting.

Dr. Dilts seconded the motion.

All voted in favor of approving the minutes (4-0), with Mr. Chenault and Mr. Finks abstaining from the vote.

New Business

Public Utility Application – Rockingham County

Vice-Chair Fitzgerald read the request and asked staff to review.

Mrs. Banks said Rockingham County is requesting to connect to the City's sanitary sewer system in order to serve proposed County developments through the City's system. At this time, Aspen Heights and Stone Spring Courtyard, two sites located east of the City limits along Port Republic Road would connect to the sanitary sewer. Planning Commission previously had some exposure to the Aspen Heights project, which consists of 183 student housing dwelling units, and is directly adjacent to Ashby Meadows. Stone Spring Courtyard is a 220 unit townhouse/condominium development situated at the intersection of Port Republic Road and Stone Spring Road.

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.

Rockingham County has worked with the Public Utilities Department to review the capacity in the existing sewer system and found that there appears to be adequate capacity to accommodate the existing City customers, undeveloped City lands, and the proposed County connection. The City will continue to work closely with the applicant to design an acceptable means of measuring the flow for billing purposes.

Planning staff has no concerns and the Public Utilities Department supports this application for further review of the sanitary sewer service connection.

Vice-Chair Fitzgerald asked if there were any questions for staff.

Mr. Fletcher said he would like to add that he had spoken with the Planning Commission Chairman regarding this request, and he wanted to inform Planning Commission that he was very much in support of this idea of extending the sanitary sewer to this portion of the County.

Mr. Chenault moved to recommend approval of the extension of sanitary sewer to this area within Rockingham County.

Dr. Dilts seconded the motion.

Vice-Chair Fitzgerald

Vice-Chair Fitzgerald asked for a voice vote on the motion to recommend approval.

All voted in favor (6-0).

Vice-Chair Fitzgerald said this request will move forward to City Council on November 13, 2012 with a favorable recommendation.

Special Use Permit – 130 University Boulevard (Shentel)

Vice-Chair Fitzgerald read the agenda item and asked staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, office, wholesale, or service functions. These areas are generally found along the City's major travel corridors and in the Central Business District of the City.

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

Site:	Office building containing Easy Radio, Inc. (WMXH-FM) and Donovan's Framery, zoned B-2
North:	Professional office complex, zoned B-2
East:	Financial institution, zoned B-2
South:	Undeveloped parcel, zoned B-2
West:	Professional office, zoned B-2

The applicant is requesting a special use permit per Section 10-3-91 (4) of the Zoning Ordinance to allow for the co-location of telecommunications equipment on an existing tower. The existing 79-foot tower at 130 University Blvd has been the subject of several special use permit (SUP) requests over the last twelve years. The pole was permitted by-right, as an accessory use, per Section 10-3-90 (15) of the Zoning Ordinance, to Easy Radio, Inc. a radio station located on the property and currently serves as a telecommunications co-location site for Shenandoah Personal Communications Company (Shentel) and Verizon Wireless. The most recent SUP request was in August 2011, when City Council approved a request to allow Verizon Wireless to update and co-locate twelve wireless communication antennas to the existing tower. At this time, the tower has satellite dishes and antennas that serve the on-site radio station, along with the co-location equipment of Verizon Wireless and Shentel. This request would amend an existing special use permit for telecommunications equipment associated with Shentel. The amendment would add more equipment to the site.

Shentel currently has three antennas mounted on the tower at a height of approximately 45-feet. There are six coax power cables attached from the antennas to a Base Transceiver Station (BTS)

cabinet and a Battery Back-Up (BBU) cabinet. With this request, Shentel would remove the three existing antennas and replace them with nine antennas and twelve remote radio heads (RRH). This equipment improves the ability to send information to mobile devices and allows for better coverage. Six antennas and nine RRH would be installed immediately, with three antennas and three RRH planned for future installation. As well, they would remove the coax cables and reinstall with hybriflex cables, a fiber optic and power cable combination. The existing ground cabinets would be retrofitted and a second BBU cabinet is proposed. These changes would allow Shentel to advance their network services for the expanded data technologies used today.

As we have become aware over the past year, wireless technology is evolving and so too must the antennas and equipment that provide that service. This tower has previously been approved to allow other wireless co-locations and staff has always advocated for such co-locations. Therefore, staff recommends approval of the SUP and, in keeping consistent with the previous request for this site, suggests the following conditions:

1. If the radio station ceases to operate from the building, the co-located equipment shall be removed.
2. If the cell provider goes off the air or their equipment no longer operates for more than twelve (12) months, then all equipment associated with that company shall be removed from the pole.
3. Only the proposed and future equipment as shown on the submitted drawings and elevations, or equipment substantially similar to such equipment, shall be approved under the issuance of this special use permit. Any other equipment placed on the pole not shown on this drawing will constitute a violation of the special use permit and make the permit null and void. Therefore, all equipment will have to be removed from the pole. This shall not include equipment approved under another special use permit.
4. The equipment attached to the pole shall be painted a uniform color to match the pole that decreases the visual impact on the surrounding environment.
5. The fence shall be maintained so as not to appear dilapidated or in poor condition, and to provide security against entrance by unauthorized persons.
6. Landscaping surrounding the fence line shall consist of evergreen materials and shall be maintained to improve the appearance of the surrounding area.
7. Placement of advertising of any kind is prohibited on the fence and/or antennas, except for an 11” X 17” sign, placed on the fence, displaying telephone numbers in case of an emergency.
8. If in the opinion of Planning Commission or City Council, the equipment becomes a nuisance, the special use permit can be recalled for further review, which could lead to the need for additional conditions, restrictions, or the revocation of the permit.

Vice-Chair Fitzgerald asked if there were any questions for staff. Hearing none, she opened the public hearing and asked if the applicant or the applicant’s representative would like to speak.

Mr. Paul Whitely said he is here tonight on behalf of Shentel Communications. If you have any questions for me regarding this co-location I would be happy to answer them for you.

Hearing no questions, Vice-Chair Fitzgerald asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of

the request. Hearing none, she closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Chenault said I am happy that this is a co-location application as opposed to a new cell tower and I move to recommend approval of the special use permit with the suggested conditions.

Mr. Finks seconded the motion.

Vice-Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of the motion to recommend approval (6-0).

Vice-Chair Fitzgerald said this will be heard at City Council on November 13, 2012.

Mr. Finks excused himself from the meeting at this time (7:12 p.m.)

Special Use Permit – 2060 Pro Pointe Lane (Medical Transport, LLC)

Vice-Chair Fitzgerald read the request and asked for staff to review.

Mrs. Banks said the Comprehensive Plan designates this area as Commercial. This designation states that these areas include uses for retail, office, wholesale, or service functions. These areas are generally found along the City's major travel corridors and in the Central Business District of the City.

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

Site: Business office complex, zoned B-2

North: Retail center, zoned B-2

East: Business offices and retail store, zoned B-2

South: Business office complex, zoned B-2

West: Financial institution, zoned B-2

The applicant is requesting a special use permit (SUP) under Section 10-3-91 (11) of the Zoning Ordinance to allow a transportation service facility at 2060 Pro Pointe Lane. Medical Transport, LLC is an ambulance service that provides services such as non-emergency EMS transportation and emergency inter-facility (i.e. hospital to hospital) transportation, at all levels of care. They have stated their intent is not to respond to 911-emergency calls; but to work with primary emergency response agencies if requested. Medical Transport must also receive approval from City Council to operate this type of use within the City limits and they are currently on Council's October 9, 2012 agenda for this resolution.

The applicant desires to locate within a business office complex located at 2060 Pro Pointe Lane, a private street off of Lucy Drive. The site, and all adjacent properties, are zoned B-2, General Business District and include a mixture of business offices, retail operations and financial institutions. Medical Transport, LLC would utilize an office at 2060 Pro Pointe Lane for their business and as a base station for the ambulance service. The applicant has stated they would have staff at the office around-the-clock, with eight to ten employees throughout the day and about half that number on nights, weekends, and holidays. At this time, they plan to operate three ambulances, with two additional vehicles on reserve, for a total of five ambulances that would be housed on site.

Staff feels this use is appropriate within this area of the General Business District; however, we have concerns with parking of vehicles at the proposed site. The property is an existing business

office complex with customers and employees coming and going throughout the day and staff discussed whether too many parking spaces would be used by ambulances associated with Medical Transport. The applicant stated they would be utilizing three ambulances with reserve ambulances located on site, staff feels that limiting the number of ambulances parked on site would reduce parking concerns for other uses and customers at the property.

Staff recommends approval of the request to operate a transportation service facility at 2060 Pro Pointe Lane with the following condition:

1. No more than five ambulances shall be housed at the property.

Vice-Chair Fitzgerald asked if there were any questions for staff. Hearing none, she opened the public hearing and asked if the applicant or applicant's representative would like to speak.

Mr. Treacy Landes, Operations Supervisor for Medical Transport, LLC, said he would be the supervisor in charge of the Harrisonburg office. I would like to thank staff for their description of what we would like to do in your community. We are partnered with Sentara and Rockingham Memorial Hospital, and we look forward to joining the community by bringing twenty-five to thirty new jobs. I am also here with Michael Bashner, our Regional Manager and Jeff Robb with Lee and Associates, our realtor. If you have any questions for us we would be happy to address them now.

Mr. Way asked if the condition of five ambulances was appropriate.

Mr. Landes said with the exception that we could come back before you to request more; as we hope to grow the business. Frankly, we are trying to get a good idea of what our volume would be initially, so this is what we are looking at for initial staffing. We hope to be able to come back and ask for more as we grow.

Mr. Way said but for now that condition is reasonable.

Mr. Landes replied yes.

Mr. Chenault asked if there was parking available behind the building on Pro Pointe Lane.

Mr. Landes replied yes.

Mr. Chenault said you could store unused ambulances or equipment behind the building if necessary.

Mr. Landes said there is one section of the parking lot, furtherest away from the building that gives us an entire row of spaces where we plan to park our vehicles. This location would probably be the most unobtrusive for what we are trying to do here. Obviously there will be days that we may have ambulances in front of the building, but for general parking we look to be in that far corner. We will use the rear area at times for vehicle washing and maintenance.

Mr. Da'Mes asked what is your affiliation with Rockingham Memorial and Sentara.

Mr. Landes said Sentara Health Care is whom we are owned by; we are a wholly owned subsidiary of Sentara Health Care. Rockingham Memorial is, of course, a partner of Sentara Health Care.

Mr. Da'Mes said would you say you would be satisfying 100% of their business in terms of hospital-to-hospital transportation. Are you their exclusive provider?

Mr. Landes said we do not create an exclusive contract. We try to be a right of first refusal contract, meaning that if we cannot provide the services, they would be able to call someone else. But yes, we would want to capture as much of that business as we could.

Mr. Bashner noted that Medical Transport, LLC does not provide wheel chair transportation.

Mr. Chenault said you probably do not do nursing home to doctor transportation.

Mr. Landes replied correct; we are looking to build upon that someday, but we have not really researched it at this time.

Mr. Da'Mes asked if there were any concerns about monopolizing the market on this type of transportation.

Mr. Chenault said City Council feels that issue is not really a land use issue.

Vice-Chair Fitzgerald asked if there were any further questions for the applicant. Hearing none, she asked if there was anyone else wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition to the request. Hearing none, she closed the public hearing and asked Planning Commission for discussion or a motion.

Mr. Chenault moved to recommend approval of the special use permit with the suggested condition limiting the on-site ambulances to five.

Dr. Dilts seconded the motion.

Vice-Chair Fitzgerald called for a voice vote on the motion.

All voted in favor of recommending approval of the special use permit with the condition suggested by staff (5-0).

Vice-Chair Fitzgerald said this will move forward to City Council with a favorable recommendation on November 13th.

Mr. Finks returned to the meeting at this time (7:23 p.m.).

Rezoning – Campus View Apartments R-3 to R-5C and Special Use Permit – Campus View Apartments 10-3-55.4 (1) More than 12 Units per Building

Vice-Chair Fitzgerald read the agenda item and asked staff to review.

Mr. Fletcher said I will present the next two agenda items as one and then Planning Commission can vote on each item separately. The Comprehensive Plan designates this area as Medium Density Mixed Residential. This designation states that these largely undeveloped areas continue the existing medium density character of adjacent areas, but in a different form. They are planned 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. They should be planned communities that exhibit the same innovative features as described for the low density version of mixed residential development. The gross density of development in these areas should be in the range of 4 to 12 dwelling units per acre and commercial uses would be expected to have an intensity equivalent to a Floor Area Ratio of at least 0.4, although the City does not measure commercial intensity in that way.

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

<u>Site:</u> Campus View Apartments, under development, zoned R-3

North: Across Chestnut Ridge Drive, undeveloped property, zoned R-3

East: Copper Beech Apartments student housing complex, zoned R-3

South: Undeveloped property, zoned R-3

West: Single family homes, zoned R-3, and Campus View Condominiums, zoned R-3

The property owner of Campus View Apartments (Davis Mill, LLC), a development company who has an approved comprehensive site plan and approved building permits to build 108 multi-family units within nine buildings off of Chestnut Ridge Drive, would like to construct the same number of units for their project but by redistributing them among eight buildings rather than nine buildings. To do this, they must rezone the property from R-3, Multiple Dwelling Residential District, which does not permit more than 12 units per building, to the R-5, High Density Residential District and obtain a special use permit (SUP) per Section 10-3-55.4 (1) to allow multi-family dwellings of more than 12 units per building. The property owner is simultaneously requesting approval of both applications. If approved, they would eliminate one building and redistribute those 12 units by placing two additional units within six other buildings.

As part of the rezoning request, the applicant has proffered the following:

- To build no more than 108 units within eight buildings.

Before describing the details of the rezoning and SUP requests, it is best to understand how this project has evolved.

The 7.03-acre subject property now known as Campus View Apartments was originally part of a project with a very similar name: Campus View Condominiums. In December 2007, the Campus View Condominiums project received comprehensive site plan (site plan) approval to build 168 multi-family units within 14 buildings along with a clubhouse on just over 12 acres. After several revisions to the site plan, which included combining the clubhouse with an apartment building, in June 2008 Campus View Condominiums had an approved site plan for 167 multi-family units (one unit less than originally designed). Three buildings (35 units) were completed in August 2008. A fourth building was issued building permits in May 2008, but only a "building pad" was constructed. A fifth building (12 units) was completed in May 2009. Unfortunately, Campus View Condominiums ultimately went into foreclosure and the entire project was not completed.

Over the course of its development, Campus View Condominiums has had erosion and sediment control (E&S) violations. The site was prepped to build the entire development, therefore, when the property went into foreclosure, the site was left in a partially developed, unsightly construction zone with a great deal of land disturbance. After unsuccessful attempts to work with the property owner to correct their E&S violations, in April 2010 the City sent the property owner a notice to comply order to rectify the violations. The property owner did not comply; therefore, a citation was issued in June 2010. After not paying the citation, in July 2010 the City attempted to claim the surety bond to have the violations rectified or to have the project finished. The City was never able to claim the bond as the City's legal counsel was involved and discussed the difficulties embroiled in the process and ultimately suggested not forcing the issue.

In early 2012, Davis Mill, LLC contracted to purchase portions of the Campus View Condominiums property. The property was to be subdivided into three lots: Lot #1—a 4.6-acre lot, Lot #2—a 17,293 square foot lot (the area of property around the "building pad" structure), and Lot

#3—a 7.03-acre lot. Davis Mill, LLC was interested in buying Lots 2 and 3, which essentially included buying the uncompleted portions of the project. Because of the desired locations of the subdividing lines, the planned building on Lot 2 and several of the planned buildings on Lot 3 would not have met setback regulations nor would the density requirements of Lot 2 or 3 have been met. As a result, in April 2012 Davis Mills, LLC applied to the Board of Zoning Appeals (BZA) for multiple setback variances and for two density variances. The following month, the BZA granted each variance request. (This is why several of the buildings are shown so close to the dividing property line, and thus are considered conforming to the Zoning Ordinance.)

Although the BZA granted the density variance to allow the creation of Lot 2 as described above, at this time, the property has only been subdivided into two lots: a lot that is just over five acres and the 7.03-acre subject property parcel. This subdivision was outside of the City's Subdivision Ordinance regulations because all lots involved were larger than five acres, and therefore, neither Planning Commission nor staff was involved in its review. If, at a later date, they want to subdivide to create Lot 2, they may do so through an administrative, minor subdivision application. At this time, Davis Mill, LLC owns the 7.03-acre property and should soon close on the purchase of each condominium unit of the unconstructed Building 3.

After a considerable effort by Davis Mill, LLC, they are currently moving forward with approved building permits and actively constructing each of the yellow-colored buildings as illustrated on the layout submitted with the rezoning and SUP applications herein. Each of the yellow buildings (Buildings 3, 7, and 12), regardless of whether the rezoning and SUP requests are approved, may be built as shown with 12 units in each building.

In an effort to save money, Davis Mill, LLC is now requesting to rezone the 7.03-acre property from R-3 to R-5C (see proffer above) while simultaneously requesting a SUP per Section 10-3-55.4 (1) to allow multi-family dwellings of more than 12 units per building. To do this, they are proposing to remove a 14th building, which was planned and designed in the southern, triangular area across from Building 13, and to redistribute those 12 units by placing two additional units within each of the six, purple-colored buildings as shown on the submitted plans.

If both requests are approved, the site would continue to meet all of the provisions of the Zoning Ordinance. The physical appearance of the site, other than one less building, one less parking space, and a few feet added to the height of the 14 unit buildings, will not change. Due to the topography of the property and because of the exposed foundations that were already planned for many of the multi-family buildings, the majority of the additional two units per building will be added as basement units. In addition, and regardless of whether these applications are approved, the units will now be apartments rather than condominiums.

Because the density of the property is being proffered to the same density as was already permitted under the R-3 regulations and given that the development will basically function in the exact same way regardless of whether there are eight or nine buildings, staff is recommending in favor of both requests. Although the property is designated Medium Density Mixed Residential by the Comprehensive Plan's Land Use Guide, the specific circumstances involving this property are such that staff believes a precedent would not be set for rezoning other properties in this area to the high density residential district that are not planned for such density.

Vice-Chair Fitzgerald asked if there were any questions for staff.

Dr. Dilts said I have a question about the erosion and sediment control currently. How is it doing?

Mr. Fletcher said there are still violations.

Dr. Dilts asked why are they not being taken care of.

Mr. Fletcher replied I do not have an answer for that question.

Mrs. Turner said I guess it goes back to the legal difficulty on trying to make claim on the previous developer's surety and the City Attorney did not have us press it any further.

Mr. Chenault asked if they could be forced to at least remediate it.

Mr. Fletcher said that is part of what the Site Development Technician does. He goes out to the site and evaluates the site. The reason we currently know there are violations is because he has been there and said the remediation efforts are not working, the sediment traps are not working, the silt fence is not working, and the site is still eroding. These violations need to be corrected; if they are not corrected, the City will send out a citation. If they are still not corrected, the City will charge you a fee. If that does not work, the City will take you to court. The City has done all of these and has attempted to claim a surety bond; however, we were told to "step back" from continuing this route.

Dr. Dilts said the claim on the surety bond was against the previous owners; is that correct? What happens with the current owners and these violations?

Mr. Fletcher replied yes, at that attempt it was all on the previous owner.

Mr. Way said with finishing the project, does that also fix the existing violations?

Mr. Fletcher said it does; but that is a very valid question.

Mrs. Turner said as they come in and obtain the land disturbance permit in their name, and as they are actively working on the site, then they will be requested to bring it into compliance again. I do not know how out of compliance they are today. Did you ask that question Adam?

Mr. Fletcher said no, I did not ask that question. I am not the Site Development Technician; but, if you visit the site you can basically figure it out for yourself.

Mrs. Turner said she did not check on violations, or what the severity of the existing violations may be for this project. If they are actually out there working and not correcting violations, then we can issue a "stop work" order. We could also stop doing building inspections at the site. Previously, no one was working at the site and therefore these types of actions carried no weight. With this developer, if they do not bring the site into compliance we will be issuing a "stop work" notice.

Dr. Dilts said as I understand there are three buildings being built in the locations shown. What is the build-out time line on the others?

Mr. Fletcher said perhaps we should let the property owner answer that question.

Dr. Dilts said will the erosion and sediment violations continue to exist on the portion of the site where work is not being done.

Mr. Fletcher said unless the current property owner puts in the remediation efforts to control the problem.

Mrs. Turner said it is all one property; therefore, they will be required to bring the entire site into compliance.

Mr. Chenault said it appears to me the fastest way to get this site into compliance is to get it constructed. My only thought is the City may need to change the system regarding surety bonds. Instead of relying on surety bonds, the City should be able to go to court and obtain a judgment against the property. If that had been the case, then the judgment would run with the land and whoever purchased, or owned, the land would have to settle that lien before any permits would be issued. Of course that is not the situation with this; but, I think I will look into this for the future.

Mr. Fletcher said for what it is worth we probably had the perfect storm. We had an out-of-state LLC that went into foreclosure and was not responding to the inquiries.

Vice-Chair Fitzgerald asked if there were any further questions for staff. Hearing none, she opened the public hearing and asked if the applicant or applicant's representative would like to speak.

Mr. Ed Blackwell, of Blackwell Engineering, said he is the engineer for this project and he is joined here tonight with the owner of the property, Guy Blundon who will speak in a moment. I would like to speak regarding some of the erosion and sediment control comments that have been discussed tonight. I was also the engineer for the previous owner that went into foreclosure and I agree there have been violations on this site for years. The development went into foreclosure and was purchased by a second party who made some changes and remediation to improve the site; however, there were still problems. The second party sold the site to my client, who closed on the property about seven weeks ago and we are gearing up to get this site improved, the financing is in place. If there are some current violations we would like to know about it, because we have a contract with an excavator and we want to get these violations taken care of properly. My client does not want to have any "stop work" orders. We have permits in place for all the buildings, except for building fourteen, and if this request is approved, my client would modify the permits in order to add the two extra units per building.

Mr. Blackwell continued stating there is a large pond on the site, which is up to standard; but, there are some erosion and sediment control site issues. As we develop we will be putting down stone on the parking lots and that will immediately help with some of the erosion issues. If you have any technical questions regarding the site, I would be happy to answer them at this time.

Mr. Way asked if the site would have sidewalks.

Mr. Blackwell said there is a requirement to have sidewalks along the entire frontage of the property and there is one small portion that we must complete. It will be part of this project.

Dr. Dilts asked if there was a build-out time frame for the project.

Mr. Blackwell replied he would let the owner answer that question.

Mr. Guy Blundon, developer of the project and owner of the property, said when we began constructing the first building we noticed we had six buildings with these massive, eight to ten foot high foundation walls in the back and it occurred to us why not put units in the bottom of these buildings. By doing so we could eliminate a building, create more green space, and less runoff. Our request before you is no more units than what was originally approved. We would like to put in a walking trail where the extra building would have been.

On the erosion and sediment control issue, I am aware of pre-existing violations, but not of anything new. We put-up $125,000.00 in cash for our surety on this project, not a bond as did the previous owners. Therefore, we are at risk to get the work done, properly. Purchasing a project that was a

failure and a mess to begin with is a daunting task; but, we are willing to pick it up and make it work for the City. I would be happy to answer any questions you may have of me.

Dr. Dilts asked what the build-out time frame is.

Mr. Blundon replied we want to be occupied by the school year 2013-2014. We have one building, building 3 that is ready for roof trusses and should be occupied by, hopefully, May. We then hope to bring a building "on-line" every three weeks, so I would say the last building would be mid August.

Vice-Chair Fitzgerald asked if there were any further questions for the applicant. Hearing none, she asked if there was anyone wishing to speak in favor of the requests. Hearing none, she asked if there was anyone wishing to speak in opposition of the requests. Hearing none, she closed the public hearing and asked for discussion or a motion.

Mr. Chenault asked if both could be done together or should there be a separate motion and vote for each.

Mr. Fletcher said I would do them separately because it wasn't clear when the public hearing was opened that you were opening the hearing for both the rezoning and the special use permit.

Mr. Chenault said I think the best chance to get all the erosion and sediment control issues addressed is to move forward, therefore, I move to recommend approval of the rezoning request.

Dr. Dilts seconded the motion.

Vice-Chair Fitzgerald called for a voice vote on the motion.

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

Vice-Chair Fitzgerald said this request will move forward to City Council on November 13th, with a favorable recommendation from Planning Commission. She then asked for discussion or a motion on the special use permit request.

Mr. Fletcher said we need to officially open and close the public hearing on the special use permit request.

Vice-Chair Fitzgerald said the public hearing for the special use permit to allow more than twelve units in a building is opened and asked if there was anyone wishing to speak in favor of the request. Hearing none, she asked if there was anyone wishing to speak in opposition of the requests. Hearing none, she closed the public hearing and asked for discussion or a motion.

Mr. Chenault moved to approve the special use permit.

Mr. Finks seconded the motion.

Vice-Chair Fitzgerald called for a voice vote on the motion.

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

Vice-Chair Fitzgerald said this request will move forward to City Council on November 13th, with a favorable recommendation from Planning Commission.

Zoning Ordinance Amendment – Section 10-3-24 and 10-3-114 Portable Restroom Facilities Standard Guidelines

Vice-Chair Fitzgerald read the request and asked staff to review.

Mr. Fletcher said in May of this year, two groups proposed using portable restroom facilities on private property within the downtown area as permanent alternatives to providing typical restrooms within buildings to serve the uses on their property. The types of businesses and operations that were interested in doing so were not required to provide restrooms for their employees or for customers to the businesses. Nuisance and aesthetics concerns quickly surfaced and staff was asked to evaluate whether using these facilities on a permanent basis was regulated in any fashion, and if not, to establish a means to manage their use. Staff discovered there were no regulations that prevented the interested parties from using them indefinitely.

In June, staff proposed amendments to the Zoning Ordinance by offering a definition of "portable restroom facilities" and by proposing the use as a special use within the MX-U, B-1, B-2, and M-1 zoning districts. Planning Commission recommended (4-0 with one abstention) in favor of adopting the ordinance amendments as presented by staff. In July, City Council rejected the amendments and advised Planning Commission and staff to consider establishing standard guidelines.

After two months of research, internal discussion, and further evaluation on the topic, staff offered and discussed the standard guidelines they had drafted to Planning Commission at their September 12th regular meeting. The Commission was comfortable with the proposed amendments and decided to move forward with holding a public hearing.

Staff and Planning Commission are now proposing several Zoning Ordinance amendments. The first modification is to add the following definition to Section 10-3-24: *Portable Restroom Facilities*: A movable restroom facility including but not limited to single portable toilets, portable sinks, trailer-mounted toilets, and restroom trailers that may include showers and tubs. Portable restroom facilities, as defined herein, shall be considered accessory buildings.

The last sentence of the proposed definition directs individuals to follow the guidelines for accessory buildings, which are outlined in Section 10-3-114. Then, within Section 10-3-114 multiple amendments are proposed to govern the use of portable restroom facilities. Staff is also taking this opportunity to update other features of this section.

Subsections (a) and (b) would both be amended to exclude portable restroom facilities from the regulations stated in those subsections which outline general guidelines for accessory buildings. The amendments would also specify that such facilities are further regulated within Section 10-3-114. Furthermore, a clarification is made that any accessory building on any property zoned MX-U would be considered part of the guidelines for properties of a business or industrial nature and a reiteration that no accessory buildings may be placed within the limits of a recorded easement or required fire lane.

Subsection (c) currently requires that accessory buildings cannot be located on property without such property having a principal building. Staff is proposing to maintain that provision but to provide flexibility in governing that properties may also be permitted to have accessory buildings on properties having only an operating principal use. In no way, however, can an accessory building be located on property if either a principal building or a principal use is not in operation. By adding this detail, properties that do not have principal buildings but have operating uses, such as a parking lot, recreational facility, or food trucks, would be permitted to have accessory buildings.

There would be no changes to subsections (d), (e), or (f).

The standard guidelines for portable restroom facilities would be added to this section as subsections (g), (h), and (i). Subsection (g) stipulates that for properties zoned residentially and used

residentially are simply not permitted to have portable restroom facilities. However, properties that are zoned residentially, but are primarily used non-residentially are required to locate portable restroom facilities at least 30 feet from all property lines, screened from general public view, and shall not be located within the limits of a recorded easement or required fire lane.

Subsection (h) describes that property with portable restroom facilities on parcels zoned B-2 or M-1 shall be held to the same setbacks and regulations required of principal buildings. This requirement is the same requirement for all types of accessory buildings in those zoning districts—30 foot front yard setbacks and 10 foot side and rear yard setbacks. This also means that if the parcel shares property lines with residentially zoned property, then the setback is 30 feet rather than 10 feet. Subsection (h) also stipulates that properties zoned B-1 or MX-U would be held to the exact same standards as just described for properties zoned B-2 and M-1.

Finally, subsection (i) explains that if portable restroom facilities are used for active construction sites, emergencies, or temporary events or festivals, they are exempt from all regulations of Section 10-3-114.

Vice-Chair Fitzgerald said please note in the minutes that Mr. Finks has left the meeting (8:00 p.m.), we still have a quorum with five members present. She then asked if there were any questions for staff regarding the ordinance amendment for portable restroom facilities.

Mr. Way said I do not know if this is an issue or not, but the idea that portable restroom facilities shall be screened from general public view; what is the reasoning for that?

Mr. Fletcher said aesthetic concerns mainly. The language comes from other areas of the Zoning Ordinance, specifically dumpsters. It is a rather broad description of what needs to be done.

Mr. Da'Mes asked if there was any thought or consideration in terms of the maintenance of a portable restroom facility.

Mr. Fletcher replied that we did not want to propose any regulations that got into the maintenance of these facilities.

Mr. Da'Mes said what about maintenance from a nuisance standpoint.

Mrs. Turner said we felt that staff is not a health expert. It would be difficult to monitor how often these are being pumped or emptied.

Mr. Da'Mes said if a complaint came in what would staff say?

Mr. Fletcher said what would be the example of your complaint?

Mr. Da'Mes replied what if the complaint was a leak.

Mr. Fletcher said staff would do what they could. Maybe contact the property owner to let them know of the complaint and ask that they look into it or get it cleaned up.

Mrs. Turner said we could also contact the Health Department, but I am not sure that there would be anything they could do.

Mr. Fletcher said we would not give the answer that there was nothing the City could do if the complaint or concern did arise.

Mrs. Turner said however what we do may not rectify the situation to the satisfaction of all parties. I do not want to give the impression that we are going to take care of everybody's concern. That would be the downside of permitting such.

Dr. Dilts said these are simply guidelines, assuming someone allows this to actually happen.

Mr. Fletcher replied that is correct.

Dr. Dilts said so should the City Council decide that there would be no portable restroom facilities allowed, this becomes sort of a moot point. Is that correct?

Mr. Fletcher said let me try to rephrase your question. If this ordinance does not go through and portable restroom facilities are not permitted, and someone decides to use them, what would staff say? Is that what you are asking?

Dr. Dilts said no.

Mrs. Turner said if Planning Commission recommends approval of this, in effect you are recommending that portable restroom facilities can be established and that they be considered an accessory structure. The conditions under which they would be permitted by right as an accessory structure would be what are outlined here.

Dr. Dilts said so someone could put in a portable restroom forever.

Mr. Fletcher replied yes. Just so it is clear, it reverts back to what is an accessory building. A portable restroom is considered an accessory building and an accessory building is listed in each zoning classification as a by-right use.

Mr. Way said just to be clear, as of right now one can do this without any guidelines.

Mr. Fletcher replied yes.

Mr. Chenault said I think staff has done a really good job with this language. I could not fathom the idea of portable restrooms in residential neighborhoods and this takes care of that. Where they might come up, because of the food truck discussion, is the commercial area and this opens the possibility of using them there.

Mr. Fletcher said just to be clear, portable restroom facilities are permitted in residential districts, but not on residentially used properties.

Mrs. Turner said there are non-residential uses in the residential districts where you could have one. For instance a private park, a church, a school, or even professional offices could have portable restroom facilities.

Mr. Da'Mes said if you are constructing a house you cannot have a portable restroom there.

Mr. Fletcher replied construction sites are exempt.

Dr. Dilts said I feel as if the cart is before the horse with this issue. The issue of whether one has permanent portable restroom facilities has not been discussed in a way that addresses the health concerns, the aesthetic concerns, and other. Yet what has happened is that Planning Commission has been charged with creating guidelines for making sure that portable restrooms are not sitting out in the middle of the street or on public property. The issue of whether or not the City wants to progress that way, or if it is wise to do so, has not been addressed. Is that a fair statement?

Mrs. Turner said that is part of what you are discussing tonight.

Mr. Fletcher said it is also possible that the Planning Commission may recommend to not adopt the regulations as they move forward to City Council. It is very much like, if you have to have them, this is what you get. This is why we first offered the special use permit; we wanted to look at these on a circumstantial basis.

Mrs. Turner said the idea of whether or not they are appropriate on a permanent basis; this is it, this is the public hearing and time for Planning Commission to weigh in and have that discussion. City Council will get to have that discussion next month.

Dr. Dilts said in the end of last month's minutes it noted that Mr. Chenault was going to speak to Downtown Renaissance regarding their thoughts.

Mr. Chenault replied yes, I did discuss it.

Mr. Fletcher said I also had communication with Eddie Bumbaugh, Executive Director of Harrisonburg Downtown Renaissance (HDR), and I may have waited a bit too long to allow him the ability to respond back with input from his board. HDR's executive committee meeting occurred the day after Planning Commission's regular meeting. Mr. Bumbaugh did get in touch with members of the board and said that he had not received any responses back either for or against the proposed amendment. Mr. Bumbaugh did say Mr. Chenault brought it up during the meeting; however, there was so much on the agenda that they just moved forward with their agenda.

Vice-Chair Fitzgerald asked if there was any further discussion. Hearing none, she opened the public hearing and asked if there was anyone wishing to speak in favor of the request. Hearing none, she asked if there was anyone to speak in opposition of the amendment.

Mr. Michael Weaver said he did not want to be a thorn in the side of staff on this issue, and it is very reasonable and very thorough. To give you a little background on my issues, I came to City staff with an idea of a food truck court and that is kind of what brought about some of this discussion. There is a possibility that when having a food truck court, one would also need to have a portable restroom facility. The idea is to have a parking lot where you put maybe six food trucks together, some common outdoor seating area, landscaping, and have some facilities in place for the employees and truck owners to use the restroom. There are some other possibilities to meet that need, but still very possible that it could only be met by a portable restroom facility. Right now there is no ordinance against having such a facility. I cannot think of many other examples where these would be necessary, other than for what I am proposing. I believe the Farmer's Market was looking into having one.

On one hand I look at this amendment to regulate these facilities and it does seem very reasonable. I almost did not come tonight; however, a parking lot is opening up downtown, and although I have not approached the owner, it would be a great place for a food truck court. The lot happens to be about thirty-feet wide, and if you apply these regulations to that lot it just does not make sense. If a portable restroom facility was used on that site, with these regulations, it would need to be placed in the middle of the lot. Ideally, if a portable restroom was used on that site, it could be placed against the brick building of the Downtown Furniture store. Far away from any entrances or exits related to the building itself, tucked away from public view, and not in the middle of the parking lot. I would want to do all that screening, etc. for the food truck court business and for the immediately adjacent neighbors. If you have an outdoor eating area you do not want to have any problem with smell, or the appearance; you want your business to succeed.

I am not in favor of portable restroom facilities, but I am in favor of the food truck court and this may be a necessary evil as part of that project. As the manager of such a court, I would do everything possible to minimize every possible negative impact of having to have a portable restroom facility. I think these amendments would prohibit me from doing that.

Mr. Chenault said that lot has two road frontages, each would require a thirty-foot setback and what would be the side setback requirement.

Mr. Fletcher said ten feet from each side. The particular lot Mr. Weaver is referring to is about forty-feet in width.

Mr. Way said understanding the particular problems and aesthetics of the downtown area, is there a case to be made for considering a different sub-section for the B-1 district? Perhaps there could be a zero setback, given that there are brick walls that you could install these next to along a property boundary.

Mr. Fletcher replied you could make a case for that particular change. A response to Mr. Weaver's concern regarding facility placement, and this may be somewhat of a hard-line approach, but, as with any site there are going to be regulations that you have to work within. An example would be parking; if you decide to build a restaurant on a relatively small lot and cannot meet parking requirements, than you need to find a new site in order to accommodate your building and meeting the regulations.

Mr. Way said we have done certain special things for that district.

Mr. Fletcher said because we are creating this ordinance and you want to allow something to fit what he is proposing, then now is the time to propose it.

Mr. Way said was it the spirit of City Council that there be no special use permit associated with this at all.

Mrs. Turner said honestly I felt like that was the intent. I felt like they thought this could be managed through just setting up regulations that would be followed if someone were planning to establish this type of facility. This would do away with the trouble of someone having to come in, go through a public hearing Planning Commission, and a public hearing with City Council to obtain approval for the facility.

Mr. Way said if the unintended consequence is actually more impediment, than it seems that Council may have erred in that situation.

Vice-Chair Fitzgerald said particularly with something creative like this, which is something we have not done before, but has been done very effectively in other places. If it stops that in its tracks, then I'm not certain it is a particularly useful direction to go.

Mrs. Turner said that could me a message you convey to City Council if you desire. I never was sure if there was an overwhelming majority of them who thought that we needed to do anything.

Dr. Dilts asked Mr. Weaver if a more permanent facility was out of the question.

Mr. Weaver replied that is a good question, and certainly I have been and continue to explore every possible solution. A permanent building with bathroom facilities would be very expensive to see if a project like the food truck court would even work initially. Certainly, if I try this and it is successful, and the food truck operators are doing well and people like it, then yes, I would invest more into it and build out, much like other successful businesses do. Once you get your foot in the

door, you can put your money back into your business and improve it. That is exactly what I would want to do. I do not want to sound like I am going to open something just scraping the barrel, I want to open something that looks really good and meets a certain standard; but, building a building to house the bathroom would cost upfront and would make the project prohibitive.

Please understand there are other possibilities and I am exploring them all, wherever I end up starting. I can talk with neighboring businesses to see if we could use their facilities; I would certainly explore them all.

Mr. Chenault said I like Mr. Way's thoughts of eliminating the B-1district from the requirements of the setbacks, but still requiring the screening.

Mr. Way said the suggested ordinance amendments are doing some good things, such as getting these out of the residential uses. The B-2 and M-1 districts I have no problem with because they are more spacious areas. If there is some way we could avoid any of the unintended consequences of the B-1 district, I feel we should. Rather make it by special use permit or eliminate the setbacks within the B-1. But I come back to Dr. Dilt's question from earlier, and this is if any of this is addressing the bigger issue of hygiene.

Mrs. Turner said staff did discuss the hygiene issue; however, we do not have any requirements for hygiene of restrooms in privately owned facilities. I have been into some privately owned facilities that had restrooms that I certainly did not think were clean. It is not a zoning issue and it would not be something we address in the Zoning Ordinance.

Mr. Way said if that is the case, and hygiene standards are not what we are addressing here because we cannot, than there is surely no problem with having the setback reduced in the B-1. Do you see the logic to that?

Mr. Fletcher said I would stand by the requirement that if it is abutting a residential property, then the setback should remain thirty-feet.

Mr. Way said could we just make this easy and say portable restroom facilities in Business and Industrial districts, and the MX-U district are permitted without any setback requirements, except when abutting residential uses.

Mr. Fletcher said I would offer within subsection H., the third sentence, the following language: "portable restroom facilities in the B-1 and MX-U districts shall meet the same setbacks of the district, except if located adjacent to residentially zoned property, then thirty feet". Essentially, what I am trying to get across is B-1 has not setbacks, and MX-U could potentially have no setbacks, so the portable restroom facilities would meet the setbacks of the district, which is zero, except that they should be located thirty feet from a public street and thirty feet from abutting residentially zoned property. Do we want to allow a portable restroom facility to be located directly behind the sidewalk on Main Street?

Mr. Way asked could we say ten feet for the front setback, rather than thirty.

Dr. Dilts said ten feet is not very far, I like the thirty feet.

Planning Commission agreed that thirty feet was best for the setback from public right-of-ways.

Vice-Chair Fitzgerald said the motivating interest in order to attract business is to make this as discreet and palatable as possible. At this time Vice-Chair Fitzgerald reminded Planning Commission that this was still a public hearing on this request.

Dr. Dilts said I think there is a more general issue that the City should think about, and that is public restrooms. If you had sufficient public restrooms it would not matter and this would not be an issue for us.

Mr. Way suggested that perhaps Planning Commission should go on record as stating the investment into public restrooms in the downtown area would be good.

Mrs. Turner said actually it may or may not. If there is a food truck vendor, that only has one person working in the truck, and they have to walk five or six blocks away to the restroom, that is not convenient. So what was explained to us is that there is still the need for a portable restroom at that location. Just having public restrooms may not totally resolve the issue.

Mr. Fletcher said he quickly drafted some language for the proposed change that Planning Commission has suggested – "portable restroom facilities in the B-1 and MX-U districts shall be held to the same setbacks required of the districts, except that they shall be located thirty-feet from public street right-of-way lines and thirty-feet from abutting residentially zoned property". It may not read exactly as this; but, is this the intent?

There was a consensus among Planning Commission that this language was what they were proposing.

Mr. Da'Mes said is MX-U not considered residentially zoned?

Mr. Fletcher replied based upon the amendments before you, it is not considered residentially zoned. We are considering that MX-U is part of a more business type nature.

Mr. Way said we want to use the language residentially zoned rather than residential uses?

Mr. Fletcher said that is correct. B-1 allows stand alone residential uses, such as Lineweaver Apartments, so these could go right up on the side property line of such uses. Mrs. Banks just said there are situations that should also be considered, where you do not have property lines with solid walls right next to you. For instance there is Clementine's, where you have outdoor dining on the back patio and there is a parking lot right next to that and a portable restroom facility could be placed right on the property line next to the dining.

Vice-Chair Fitzgerald said at this time I am going to close the public hearing and continue the discussion among Planning Commission.

Mr. Way said the Clementine scenario you just presented, under the current situation with no regulation, they could do that anyway.

Mr. Fletcher replied that is correct.

Mr. Way said what I see as the merits of this is we are tidying up some ordinances here, getting this out of the residential uses, we are stipulating regulations about abutting residential zoning, and I see this as a step in the right direction.

Mr. Chenault said I agree with Mr. Way and I think it is appropriate to send something to City Council. I feel it is correct to regulate some of it and I do not have a problem with the B-1 and MX-U modifications that we are suggesting.

Dr. Dilts said if you left this as you have written, is it possible for someone to come in and make the argument that they cannot follow those regulations.

Mrs. Banks said you could request a variance from the Board of Zoning Appeals.

Dr. Dilts said we could leave it as it was written and when you have an unusual situation such as presented tonight, you could request a variance or appeal it.

Mr. Fletcher said that then makes the applicant have to pay for and go through the public hearing process, which it seems is something City Council does not want to create.

Mr. Way suggested that Council look at some type of way where certain, smaller type of applications can be reviewed on a case-by-case basis, rather than having to go through the entire special use permit process; for instance, the location of portable restroom facilities.

Mr. Fletcher said there are a few circumstances where the Zoning Administrator has the authority to grant certain things; such as shared parking. This, however, creates a difficult situation of being consistent.

Mr. Way said it strikes me, just in a policy making way, that there are these small areas where I wish it were less onerous, that would facilitate the engagement of interesting business ideas, like we are hearing here about the food truck court. Perhaps this is something to think about.

Mr. Chenault said to get things started – I'll move to recommend approval of the amendments with the proposed changes, as discussed tonight, to the B-1 and MX-U districts. I do know that staff is correct; there was some negativity about the administrative headaches and the money that it would cause the applicant, if this were done by special use permit or variance.

Mr. Way seconded the motion.

Vice-Chair Fitzgerald said there is a motion and a second; are there any questions regarding the motion?

Mr. Way said is, in effect, what we are doing here by creating these ordinances, bringing portable restroom facilities into existence; we are now recognizing their existence. Will the effect of this ordinance be a sudden proliferation of portable restrooms throughout the City?

Mrs. Turner said we have actually had this discussion with another vendor, who thought that eventually he would want to have this type of facility at his B-2 location.

Mr. Chenault said one thing that might help with evaluating this is that the building code requires bathrooms, and from a practical standpoint we are probably only going to be dealing with open areas that want these facilities. If you are building a structure, the building code requirements would be enforced.

Dr. Dilts said suppose this food truck court happens and you have six or seven vendors in the area. Currently if you have a restaurant in a building, you are required to have restroom facilities. Now we are proposing restrooms for the workers, in the food truck court situation; but no bathrooms for the customers.

Mr. Fletcher said I do not want to speak for the food truck court management, but I am sure the customers could use the restroom if they choose.

Mr. Chenault said we cannot regulate what happens with the food trucks, they are regulated through DMV.

Mrs. Turner said the only few times we have discussed food truck courts, it has been vehicles with wheels that fall under the DMV regulations; therefore, no building code regulations need to be met. If they were a trailer type of food vendor, I do not know what the regulations would be. It could be

that they would be permitted for a certain amount of time as a temporary structure, after which it would need to come into compliance with regulations. We would have to ask that question.

Dr. Dilts said I was not trying to suggest that we require them; I saw disconnect between requiring restrooms for restaurants in buildings and having multiple food vendors in one area, effectively a restaurant, and not requiring anything.

Mrs. Turner said this would be the same for someone who was establishing a flea market type situation. If you are building a retail store establishment that is open to the public, you would be required to put restrooms in, the flea market would not.

Mr. Way said I completely see the logic of what Dr. Dilts is saying. I suppose I am more relaxed about this, because I see food trucks to be something of a different beast than restaurants. I suppose the broader policy question here is do we want to be encouraging a vibrant, varied, publicly well used, downtown. These intermediary uses of food trucks are a way to get people downtown. We do not want to be setting up too may regulations in the way of this.

Vice-Chair Fitzgerald asked if there was any further discussion on this amendment. Hearing none, she called for a voice vote on the motion.

Commissioners De'Mas, Fitzgerald, Way, and Chenault voted in favor of the motion; Commissioner Dilts voted against the motion (4-1).

Vice-Chair Fitzgerald said this will move forward to City Council on November 13th, with the recommended changes and a favorable recommendation from Planning Commission.

Unfinished Business

None.

Public Input

None.

Report of secretary and committees

Mrs. Banks said City Inspectors visited the North Main Street area of the City where they found ten violations consisting of inoperable vehicles, discarded materials, and signage. Next month they will take a look at the Liberty Street area.

Other Matters

None.

Adjournment

The meeting was adjourned at 8:45 p.m.

Chairman William L. Jones, Jr.

Secretary, Alison Banks