



City of Harrisonburg Stormwater Advisory Committee

Agenda

July 29, 2015 5:00 – 7:00 p.m.

5:00-5:05	1. Appointment of Chair and Vice Chair
5:05-5:15	2. Discussion of Ground Rules (Attachment A)
5:15-5:25	3. Public Comment (limited to 3 minutes per speaker)
5:25-5:30	4. Review and Adopt Minutes
5:30-6:00	5. Overview of Residential and Non-Residential Manuals
6:00-6:20	6. Review Appeals Received a. 98 Emery St, Conservation Landscaping (Attachment B)
6:20-6:40	7. Stormwater Utility Fee Credits – Program Review a. Tree Canopy Cover on Residential Property (Attachment C) b. Maintenance Agreement for BMPs required with site development (Attachment D)
6:40-6:50	8. Cost Share Program Discussion
6:50-6:55	9. Chesapeake Bay TMDL Public Comment Review
6:55-7:00	10. Next Steps / Assignments a. Stormwater Improvement Plan
	Next Meeting – Weds. November 4, 2015 @ 5pm

Attachment A

Ground Rules for Stormwater Advisory Committee meetings

Expectations for Public Comment Period

- Speaker must state their name and address
- Each speaker is limited to 3 minutes
- SWAC members and staff may respond to speaker's comments at the meeting, but are not required to do so

Expectations for Public during Meeting

- Meetings are open to the public for observation
- There is often a lot of material to cover during the meeting. Citizens attending the meeting are to refrain from interrupting the meeting. Citizens with questions may contact city staff or SWAC members after the meeting.
- At the chairperson's discretion, he or she may invite a member of the public to comment on agenda items during the meeting.

Requests for Stormwater Utility Fee Credit Appeal

- Applicant requesting appeal must submit written request to city staff 30-days prior to meeting to stormwater@harrisonburgva.gov or Harrisonburg Public Works, ATTN: Stormwater Utility Program, 320 East Mosby Road, Harrisonburg, VA 22801.
- Applicant is encouraged to explain in the written request why a practice should be considered for a stormwater utility fee credit or why an area is not considered impervious. Submission of photos is also encouraged.
- City staff will submit the written request, along with a staff report to the Stormwater Advisory Committee, when agenda packets are distributed. Agendas are sent about 1-week prior to the meeting.
- At the meeting,
 - The chair will invite city staff to present the staff report
 - The chair will invite the applicant and other members of the public to speak in favor or against the matter (5 mins max per person)
 - The chair will invite committee members and staff to have discussion
 - The chair will ask committee members to make a motion to make a recommendation to the Director of Public Works.

Last updated: 7/24/2015

Attachment B

Staff Report – Petition for Adjustment

98 Emery Street – TM 9 C 19 – – Staff denial of Conservation Landscaping application

Stormwater Advisory Committee Meeting July 29, 2015

BACKGROUND ON STORMWATER UTILITY FEE CREDIT MANUAL FOR RESIDENTS

When developing the Harrisonburg Stormwater Utility Fee Credit Manuals in 2014-2015, City staff and the Stormwater Advisory Committee (SWAC) only included stormwater practices that were accepted by the Virginia Department of Environmental Quality (VA DEQ)'s Chesapeake Bay TMDL Action Plan Guidance. In addition to stormwater practices approved by VA DEQ's Stormwater Management Handbook for homeowner stormwater practices, the Chesapeake Bay TMDL Action Plan Guidance allows MS4 permittees (i.e. the City of Harrisonburg) to receive TMDL pollution load reductions for practices approved by the Chesapeake Bay Program (CBP)'s Urban Stormwater Workgroup, which includes specific residential/ homeowner practices/ BMPs.

Presently, conservation landscaping is not an approved credit for the Chesapeake Bay Watershed Model. However, city staff and SWAC members saw that future studies may result in the CBP approving TMDL pollution load credits for homeowner conservation landscaping and that encouraging good stewardship of residential properties by providing stormwater utility fee credits had benefits for stormwater management and local water quality. The CBP also included conservation landscaping in their "Homeowner Guide for a More Bay-Friendly Property" which the City references in the stormwater utility fee credit manual.

For a resident to receive 10% stormwater utility fee credit for conservation landscaping, coverage of 20% within the parcel is required.

Additionally, areas which the City has qualified as an approved and maintained best management practice for stormwater regulatory compliance and/or stormwater utility fee credit purposes are exempt from the City's "tall grass and weeds" ordinance, Section 16-6-58. The ordinance requires that between April first and November first, property owners must keep grass, weeds, and brush under 12 inches tall.

"For purposes of this section, whenever grass, weeds, brush or other foreign growth attains the height of twelve (12) inches or more, it shall be presumed to threaten the health, safety and general welfare of residents of the city." – Excerpt from City Code Section 16-6-58

STAFF REPORT

On June 30, 2015, Mr. Panayotis Giannakourous, tenant at 98 Emery Street submitted an application for stormwater utility fee credits, and his landlord Moore Properties, LLC later provided a letter authorizing

Mr. Giannakourous to carry out responsibilities on behalf of the owner relating to the stormwater credit property. See attached.

The City granted the property owner stormwater utility fee credits for roof drain disconnects, tree canopy, and nutrient management, resulting in a 40% credit. See attached. The City denied credits for the rain barrel, which Mr. Giannakourous agreed was not properly installed, and also denied credits for conservation landscaping.

Mr. Giannakourous requested credits on the application for 700 sf of tall grass and 1500/2500 sf of forbes and fine grass. The parcel is 12,180 sf, resulting in a claim of 18-26% conservation landscaping coverage. Note that, although these plants are not listed on the application, Mr. Giannakourous' lists the following plants in the petition for adjustment: tall grasses, prunella vulgaris, viola sororia, long fine 'no mow' grasses, mixed forbs, dandelion, buttercup, Deptford pink, plantain, goldenrod, philadelphia fleabane, chicory, and clover.



Figure 1. Photo included by applicant as part of credit application submitted on June 30, 2015



Figure 2. Photo taken by city staff of front yard of 98 Emery Street, taken on July 24, 2015

Attached is Mr. Giannakourous' petition for adjustment and supporting documentation.

The "Homeowner Guide for a More Bay-Friendly Property" says that "conservation landscaping is the replacement of turf grass with vegetation which is native." However, the City does not require native plants, as the guide continues to say "native plant species are preferred, but ornamental or garden plants are acceptable if they are adapted to regional climates". The Guide also says "you will want to look for flow paths to your [conservation landscaping] bed". Conservation landscaping is also referred to as Bayscaping.



Figure 3. Examples of conservation landscaping from “Homeowner Guide for More Bay-Friendly Property.”



Figure 4. Examples of conservation landscaping in Harrisonburg.

Although perennial ground covers such as forbs and grasses may be included as part of conservation landscaping design, there are a list of plants to be avoided due to invasiveness reference in the Guide as “Plant Invaders of Mid-Atlantic Natural Areas”.

Staff has denied the application for conservation landscaping credit for several reasons. (1) the applicants plantings do not meet conservation landscaping design principles, and (2) the plants being cultivated by the applicant are intermixed between turf grass and there is not 20% conservation coverage on the property.

The Stormwater Advisory Committee is asked to weigh in on this matter and provide a recommendation to the Director of Public Works who will make the final determination.

References:

- Virginia Department of Environmental Quality (VA DEQ)'s Chesapeake Bay TMDL Action Plan Guidance,
<http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/VSMPPermits/MS4Permits.aspx>
- Virginia Department of Environmental Quality (VA DEQ)'s Stormwater Management Handbook,
<http://www.deq.virginia.gov/Programs/Water/StormwaterManagement/Publications.aspx>
- Chesapeake Bay Program (CBP)'s Urban Stormwater Workgroup,
<http://chesapeakestormwater.net/bay-stormwater/baywide-stormwater-policy/urban-stormwater-workgroup/>
- National Park Service, US Fish & Wildlife Service, Plant Invaders of Mid-Atlantic Natural Areas,
<http://www.nps.gov/plants/alien/pubs/midatlantic/midatlanticprint.htm>.

Date Received: 6-30-15

Credit Application ID: 9C19



City of Harrisonburg, Virginia
Department of Public Works
320 East Mosby Road
Harrisonburg, VA 22801
540-434-5928
stormwater@harrisonburgva.gov

\$52.50 (original)
\$21.00 (credit amount)
\$31.50 (final)
40% CREDIT

Stormwater Utility Fee Credit Application For Residential May Submit ONE Application for Multiple BMPs

Please refer to the credit manual for further information about each stormwater best management practice (BMP) and fill out this application to the best of your ability.

- For Pre-Installation Review (Before the BMP is constructed/installed)
- For Final Credit Application (For pre-existing practices or BMPs that have been newly constructed/installed)
- To Reinstate an Expired Credit (For re-application of credits not yet expired, see Appendix E.)

General Information:

Parcel Information

Tax Map Parcel Number(s): 9C 19

Parcel Street Address: 98 Emery Street

Owner Information

Owner Name (Last, First, M.I. or Business): MOORE PROPERTIES, LLC c/o James R. Sipe, Jr

Owner Mailing Address: 401 UNIVERSITY BLVD,

City: HARRISONBURG State: VA Zip Code: 22801

Phone Number (w/Area Code): (540) 478-3030 Email: JRSipe@

FunkhouserGroup.com

Type of Stormwater Best Management Practice (BMP) Installed: cc: poti.potis.org

Roof Drain Disconnection (10-20% Credit Available. See Section 8.A. in Credit Manual.)

Number of Disconnected Downspouts: 3

Total Roof Area Draining to the Disconnected Downspouts: 2135 Sq. Ft.

Total Roof

(See Web-GIS site and measure polygon tool on <http://www.harrisonburgva.gov/stormwater-utility>)

Do any of the disconnected downspout lead to another stormwater BMP? Yes No

If yes, what is the other stormwater BMP* (rain garden, etc.): Conservation Landscaping

*Make sure information for all BMPs is detailed in this application material.

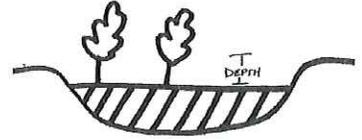
Rain Garden (25-50% Credit Available. See Section 8.B. in Credit Manual.)

Area of the Rain Garden (WIDTH x LENGTH): _____ Sq. Ft.
Depth of the Rain Garden: _____ Inches

Impervious surface area Draining to the Rain Garden: _____ Sq. Ft.

Type and Quantity of Plants (Native Vegetation Recommended) (Attach additional sheets if necessary)

Type: _____ Quantity: _____
Type: _____ Quantity: _____
Type: _____ Quantity: _____
Type: _____ Quantity: _____
Type: _____ Quantity: _____

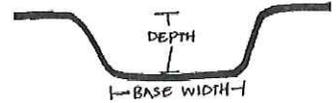


Vegetated Filter strip (10% Credit Available. See Section 8C in Credit Manual.)

Upon signing this application, the homeowner commits to leaving the vegetated filter strip and its immediate drainage area unfertilized.

Size of the Filter Strip (BASE WIDTH x DEPTH): _____ Sq. Ft.

Length of the Filter Strip: _____ Ft.



Is the area fully vegetated and unmowed with no bare soil or mulch on embankments? Yes No

Rain Barrel/Cistern (20% Credit Available. See Section 8.D. in Credit Manual.)

Not installed

Total Volume of Barrel(s)/Cistern(s): 55 Gallons

Total Roof Area Draining to the Barrel(s)/Cistern(s): 500 Sq. Ft.

An overflow control mechanism and mosquito prevention device included? Yes No

Describe how you plan to use the water from your Rain Barrel/Cistern:

maintain compost pile moisture

Regional BMP (50% Credit Available. See Section 8.E. in Credit Manual.)

Type of regional BMP: _____

Has an agreement been made between property owners in the contributing drainage area? Yes No

A completed Regional Stormwater BMP Agreement (Appendix H.) must be included with the application.

Please describe and/or sketch the regional BMP below:

Empty rectangular box for describing or sketching the regional BMP.

Urban Tree Planting (10% Credit Available. See Section 8.F. in Credit Manual.)

Tree canopy covers at least 20% of the homeowner's property? Yes No

Check here if canopy cover was determined by aerial imagery. Date of imagery: 2015

Existing Trees:

What is the approximate canopy cover on your property? 20% %

What is the estimated number of trees contributing to this canopy cover? 8

New Plantings:

Complete the following table for new plantings on the homeowner's property:

Type:	Quantity:	Year Planted:	Caliper Size: OR Height at planting: (Circle One)	Projected canopy cover at 10 year growth:
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____
_____	_____	_____	_____	_____

A 2" caliper minimum sapling is required for utility fee credits. Caliper size is measured at 6" above the soil surface. If the type of tree planted is not included in the referenced tree canopy chart, the applicant must provide canopy cover information.

Projected canopy cover at 10 year growth for all new plantings: _____ Sq. Ft.

Homeowner has called Miss Utility (dial 811) a minimum of three days before a new planting? Yes No

Conservation Landscaping (10% Credit Available. See Section 8.G. in Credit Manual.)

What type/quantity of plants are in the homeowner's current or planned conservation landscaping? (Native vegetation is recommended) (Attach additional sheets if necessary)

Type: _____ Quantity: _____
 Type: tall grass _____ Quantity: 700
 Type: forbes and fine grass _____ Quantity: 1500 total 2500 sq ft

Will the homeowner mulch and fertilize the conservation landscaping area? Yes No

Homeowner Nutrient Management and Lawn Care Agreement

(10% Credit Available. See Section 8.H. in Credit Manual.)

Owner has signed and agreed to the provisions set forth in the Homeowner Nutrient Management and Lawn Care Agreement? Yes No

Impervious Cover Removal/Pervious Paver and/or Vegetated Roof Installation *(See Section 8.I. in Credit Manual for more information.)*

Impervious Cover Removed: _____ Sq. Ft.

If a permeable hardscape will replace the impervious cover, explain the type of material installed and the underdrain system:

What is the depth of the stone reservoir? _____ Inches

If a vegetated roof(s) will replace the impervious cover, explain the type of system installed:

For Pre-Application:

Will the services of a qualified installer be used for pervious paver/vegetated roof installation? Yes No

BMP and Property Sketch

Please use the space provided to give a general sketch of the stormwater management BMP(s) installed on your property. Include the location of rain barrels (if applicable), an outline of your deck/shed/driveway, an outline of your tree canopy (if applying for Tree Planting credit) and the square footage of rain gardens, conservation landscaping, and vegetated filter strips (if applicable). Alternatively, you may provide a sketch on an aerial map. Include square footage (if available) and drainage path(s) to the BMP(s) as well as the intended overflow drainage path away from the BMP(s). If multiple BMPs are being installed, please sketch each BMP installed. Attach any drawings, photographs, or other information that may be helpful to city staff in reviewing your application. A measurement tool is available on the Impervious Surface Map for Stormwater Utility Fee to assist with measuring the square footage of relevant BMP(s).

Note on Photos: Conservation Landscape BMP not possible until approved due to TWG ordinance, thus no picture. Trees pictured, disconnects visible on Google, Rain barrel blue 55G drum location pending gutter replacement.

Required Attachments:

Photographs of each BMP (Except for Nutrient Management and Lawn Care Agreement & Tree Planting)
Date Photos were taken: 2015 (must be no more than 60 days old)

If submitting photos of more than one stormwater BMP, label each photo with the "type of BMP installed".

Signed Stormwater Utility Fee Maintenance Agreement

Homeowner Nutrient Management and Lawn Care Agreement, if applicable

Stormwater Utility Fee Regional BMP Agreement, if applicable

Construction Plans and Record Drawings, if available

Signature of Agreement

I hereby certify the above information to be true and correct to the best of my knowledge. I agree that pollutant credits approved by the City of Harrisonburg as Stormwater Utility Fee Credits will no longer be available for any other use, including Virginia Stormwater Management Program requirements.

MOORE PROPERTIES, LLC
Owner Printed Name

James S. Spivey 30 June 2015
Owner Signature *AGENT* Date

FOR CITY USE ONLY

Application administratively complete Yes No
Reviewed by: Kelley Date: 7/1

Application Status Approved Denied

If approved, amount of credit to be applied: \$ -21.00

Reviewed by: ~ Kelley Date: 7/1

*PARTIAL APPROVAL -
• Rain Barrel not installed
• Cons. Landscaping does not meet program specifications.*

Property Owner Contacted Yes
Contacted by: Q Fisher Date: 7/1/15

If approved, Credit Applied Yes
Entered by: Kelley Date: 7/1











Petition fo Adjustment - 98 Emery Street - Conservation Landscaping



Tall Grass	Black
Violett	Magenta
Goutweed	Blue
Heal all	Light Blue
Chicory	Red
Disconnect	Yellow
Rainbarell	Dark Green
Shade forbes	Light Green
fine grass	Dark Green





July 13, 2015

Via Facsimile
434-2695

Thanh H. Dang
City of Harrisonburg
320 East Mosby Road
Harrisonburg, VA 22801

RE: Stormwater Credit Application- 90 Emery Street

Dear Ms. Dang:

Panayotis Giannakouros is hereby authorized to carry out responsibilities on behalf of the owner of the subject property relating to the stormwater credit application for the above property, including maintaining BMPS described in the credit application, documenting BMP maintenance, supplying additional information in support of the application, initiating appeals, conveying City requests and decisions to the owner and otherwise communicating with the City regarding the application process as needed. In the event you should have any questions, please do not hesitate to contact me at 478-3030.

With every good wish I am,
Very truly yours,

A handwritten signature in black ink that reads "James R. Sipe, Jr." with a stylized flourish at the end.

James R. Sipe, Jr
Associate Broker
Property Manager for:
Moore Properties, LLC



City of Harrisonburg, Virginia

OFFICE OF THE PUBLIC WORKS DEPARTMENT
320 EAST MOSBY ROAD
HARRISONBURG, VIRGINIA 22801
PHONE: 540-434-5928 • FAX 540-434-2695
EMAIL: PUBLICWORKS@CI.HARRISONBURG.VA.US

Street Division
Traffic Engineering
Central Stores
Recycling
Resource Recovery
Sanitation

July 1, 2015

Moore Properties LLC
C/o James Sipe Jr.
401 University Blvd.
Harrisonburg, VA 22801

Mr. James Sipe Jr.,

Thank you for submitting a Residential Credit Application Form to the City of Harrisonburg Public Works Department. Your application was received on 6/30/15. The city has reviewed and approved your Residential Credit Application.

The revised billing will be applied in the next fiscal year. Changes are as follows:

1. Original Stormwater Utility Fee: \$52.50
2. Credit Reduction Applied: \$21.00
3. Revised Stormwater Utility Fee: \$31.50

The 40% Credit has been approved and granted for 98 Emery Street for the following items: Roof Drain Disconnects, Tree Canopy and Nutrient Management Agreement.

The Rain Barrel listed on the application has been denied for credit as it is currently not in a functional state. The Conservation Landscaping credit has also been denied as it does not meet the requirements by which Conservation Landscaping has been defined through the Stormwater Utility Fee Program.



City of Harrisonburg, Virginia

OFFICE OF THE PUBLIC WORKS DEPARTMENT
320 EAST MOSBY ROAD
HARRISONBURG, VIRGINIA 22801
PHONE: 540-434-5928 • FAX 540-434-2695
EMAIL: PUBLICWORKS@CI.HARRISONBURG.VA.US

Street Division
Traffic Engineering
Central Stores
Recycling
Resource Recovery
Sanitation

Please be advised that in order for an applicant to continue to receive a stormwater credit, each stormwater BMP installed must be maintained to ensure its continued function and compliance with the Stormwater Utility Fee Maintenance Agreement(s). As described in the Stormwater Utility Fee Maintenance Agreement, city staff may periodically inspect the stormwater BMP at reasonable times and upon presentation of proper identification. Credits will be valid for five (5) years or until transfer of ownership. Refer to the Stormwater Utility Fee Credit Manual for Residential for more information and call 540-434-5928 or email stormwater@harrisonburgva.gov for further questions or concerns.

Thank you,

Kelley Junco
MS4 Program Coordinator
City of Harrisonburg – Public Works

Date Received: _____

Credit Application ID: _____



City of Harrisonburg, Virginia
Department of Public Works
320 East Mosby Road
Harrisonburg, VA 22801
540-434-5928
stormwater@harrisonburgva.gov

Stormwater Utility Fee Petition for Adjustment Form

General Information:

Parcel Information

Tax Map Parcel Number: _____

Parcel Street Address: _____

Owner Information

Owner Name (Last, First, M.I. or Business): _____

Owner Mailing Address: _____

City: _____ State: _____ Zip Code: _____

If Business, Contact Name (Last, First, M.I.): _____

Phone Number(w/Area Code): (_____) _____ Email: _____

Type of Property

- Residential
 Non-Residential

Reason for Petition (Check Applicable)

- A. Error made regarding square footage of the impervious area of the property
 B. Property is eligible to be "fee waived" under provisions of City Code Section 6-5-4(g)
 C. Mathematical error in calculating the stormwater utility fee
 D. The party invoiced is not the owner of the property
 E. An approved credit was incorrectly applied
 F. Stormwater Utility Fee Credit Application that was denied by City staff

Application Checklist

- For Item A. Provide a plot, plan, or map showing dimensions of all impervious areas and identifying areas believed to be incorrect. If the areas are shown on city maps as impervious and the applicant believes these areas do not meet the impervious area definition, photo-documentation shall be provided.
- For Item F. If appropriate, applicants are encouraged to provide photo documentation, and plot, plan or map showing the dimensions of the practice you believe should be considered for credits.

Appeal Description and Statement (For items A-E: Provide detailed information as to why you believe your Stormwater Utility Fee is in error. Include requested value, in the applicant's opinion, for the correct Stormwater Utility Fee associated with the property. For item F: Provide detailed information as to why you believe a practice on your property should be considered for credits, and if appropriate, provide suggestions for modifying the City's Stormwater Utility Fee Credit Manuals for Residential and Non-Residential. Attach additional sheets if necessary.)

Signature of Agreement

I hereby certify the above information to be true and correct to the best of my knowledge.

Owner Printed Name

Owner Signature

Date

FOR CITY USE ONLY

Application administratively complete Yes No
Reviewed by: _____ Date: _____

Petition for Adjustment Determination Granted Denied
Reviewed by: _____ Date: _____

Property Owner Contacted Yes
Contacted by: _____ Date: _____

If approved, adjustment applied? Yes No
Entered By: _____ Date: _____

Examples and background for Conservation Landscaping Storm Water Credit

Contribute

Please add to the document at [Harrisonburg community forums](http://peacefulyard.com/forum/viewtopic.php?f=9&t=190&sid=ebe3c011b726ab2f3c57e57aaa941ffa) <http://peacefulyard.com/forum/viewtopic.php?f=9&t=190&sid=ebe3c011b726ab2f3c57e57aaa941ffa> or [the Harrisonburg Community wiki](http://buildingbettercommunities.org/wiki/index.php?n=Main.NewDirectorOfCommunityDevelopment), <http://buildingbettercommunities.org/wiki/index.php?n=Main.NewDirectorOfCommunityDevelopment> The following is background material for presentation to the Harrisonburg Storm Water Advisory Committee, July 29, 2015 with respect to implementing the Conservation Landscaping credit against the Storm Water Utility passed to comply with the Chesapeake Bay Act.

Overview

Selectively cultivating land away from mowed and fertilized turf, including on rental properties under renter responsibility, is beneficial to the goals of the Chesapeake Bay Act, Harrisonburg's Comprehensive plan providing for an inclusive and sustainable community, and the will of City Council as expressed in their unanimous approval of a tall grass and weeds exemption for storm water regulation compliance and credits. The exemption is not being used as intended, as the interpretation applies only to features that would have been clearly accepted under Tall Grass and Weeds. Public Works staff is in fact giving less leeway than Community Development supervisors. Forms and procedures used by Public Works are an impediment, rather than an inducement, to the adoption of beneficial practices that will improve the community and save the city money. Streamlining procedures and forms and adopting the spirit as well as the letter of conservation landscaping are a path toward improvement.

Examples and links to more detailed resources are provided below.

Runoff from Example Site

The following is a lot behind 7-11 on N. Mason Street that has been undeveloped and intermittently cut since the 70s.

Windows version:

[beforeswac-Wi-Fi.m4v](#)



Windows version:

[afterswac-Wi-Fi.m4v](#)



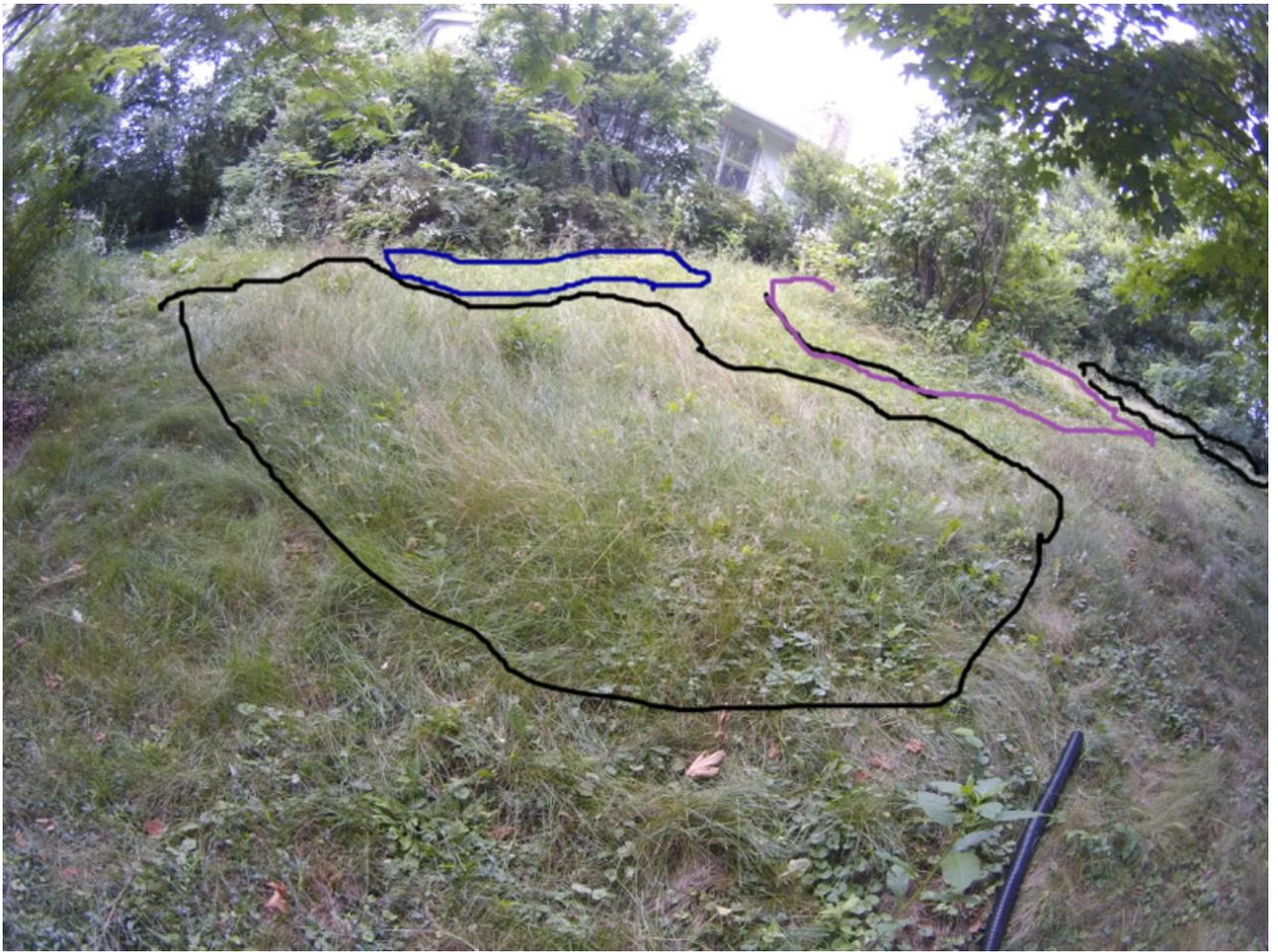
Mowed

The same field that is shown retaining storm water above appears like turf when mowed the next season.

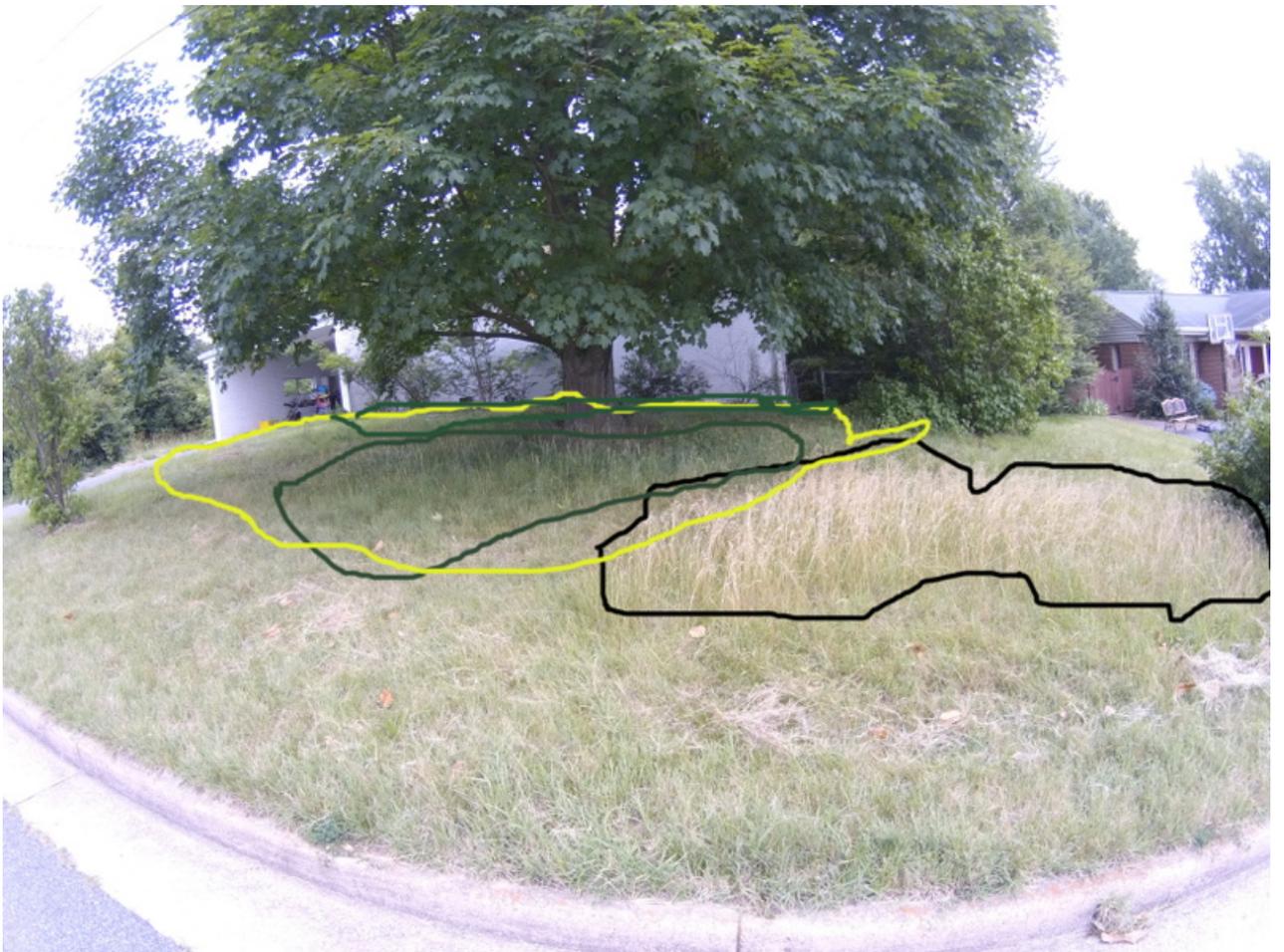


Example yard

The following is an example residential yard proposed to be selectively cultivated into a state similar to the above example.



Black=tall grasses, purple=prunella vulgaris , violet= viola sororia, green = long fine 'no-mow' grasses, yellow=mixed forbes: dandelion, buttercup, Deptford pink, plantain, goldenrod, philadelphia fleabane, chicory, clover and other nitrogen fixers



Petition fo Adjustment - 98 Emery Street - Conservation Landscaping

Example of Presumably Approved 'Conservation Landscaping'



Grass replaced with mulch and nursery plant accents.

Additional documents and hurdles

Recommendations and correspondence related to trying and failing to get the credit intended by council:
[Stormwater Credits in Practice](#)

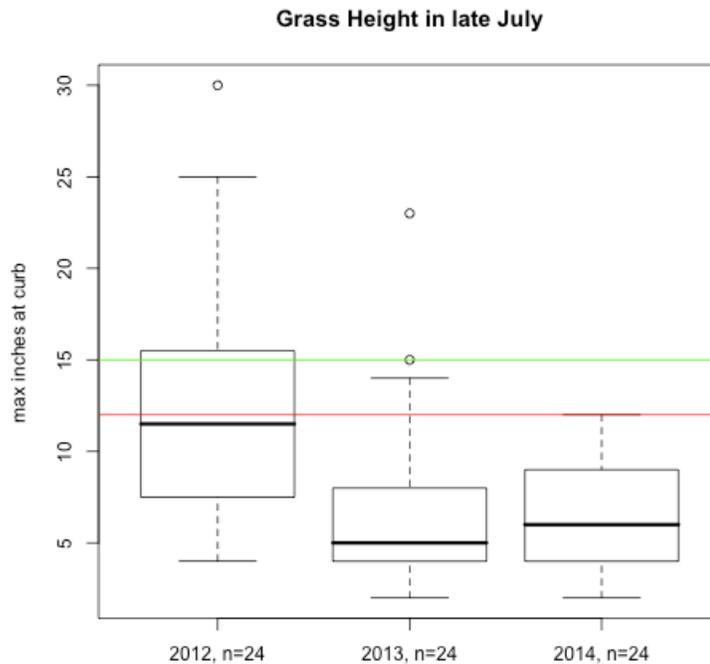
Governing documents:

1. [Homeowner BMP Guide](#) (HBMPG)
2. [DEQ May 18th 2015 Guidance](#)
3. [Eight Essential Elements of Conservation Landscaping](#) (cited in HBMPG) Recommends against the practices mandated by Harrisonburg's interpretation of CL, including store bought mulch, nursery plants, excessive disruption, and rigid rather than adaptive design.
4. [Landscape for Life](#) (cited in HBMPG) explaining that the purpose of mulch is to simulate what already exists in the copiously tree-covered example yard on which all growth stays and is mulched in before the next growing season.

Effect of regulation on resident behaviour

City regulations have a substantial effect on behavior. A lowering of maximum grass height from 15 inches to 12 inches in the Tall Grass and Weeds ordinance justified in order to reduce response time to complaints that ended in mowing by the city (a couple every few years) resulted in substantial change in behavior across the city. The following measurements reflect a combination of increased mowing frequency and lower mowing heights. An exemption to TWG was passed for storm water BMPs to avoid the chilling effect on deviation from conventional practices that might trigger a TWG complain or violation of the norms conveyed by the ordinance.

Maximum Grass Height at Curb, July 2012-2014, Measured in Harrisonburg VA Pleasant Hill Acres Neighborhood



See more on lawn ordinances and add comments at [forums](#). In the example yard, the Director of Community Development has inspected with the City Planner and they have approved the forbes that are growing above 12 inches as selective cultivation that is clearly intentional and allowed. An expansion of Conservation landscaping would make possible a formal way to track such properties that don't conform to lawn norms but are intentional and are thus consistent with the will of City Council as expressed in discussion of Business Gardens (you can have an edge to edge garden, front and back) and the unanimous vote on a Tall Grass and Weed exemption to allow practices that would include tall grasses and plants that might look like foreign growth to the unsympathetic eye.

History of abuse

The example yard had a history of harassment, including trespassing, vandalism, and most relevant from the point of view of the city, abuse of 16-6-58. The following is a pictorial history of some of the more recent events, depicting action on 16-6-58 despite there being no difference between areas mowed by a landlord's mower and areas of the yard in the state that drew action by staff and pictures of taller grass and spreading 'foreign growth' in the yard of the complainer, and finally a vandalized and blocked campaign sign.

[Abuse](#)

Unanimous support from City Council for a storm water exemption from 16-6-58

Selections From the minutes of City Council, Tuesday, February 24, 2015 http://harrisonburg-va.granicus.com/MediaPlayer.php?view_id=4&clip_id=245

Item 6c:

Ms. Dang stated item 6.b. on the agenda is a request to amend and add section 5 to the Tall Grass \& Weeds Ordinance. This is to exempt areas the city has qualified, approved and are maintained by the Best Management Practices for stormwater regulatory compliance and/or stormwater utility fee credit purposes from tall grass and weeds regulations. Ms. Dang noted that these areas would be shown on a recorded maintenance agreement or in their stormwater utility credit application that would delineate the area where the best management practice is located.

Item 6b:

Consider amending and re-enacting Section 16-6-58 "Weeds, etc., on lots" of the Harrisonburg City Code

Ms. Dang stated this amendment would add the exemption to properties that are approved and maintained by the Best Management Practices for stormwater regulatory compliance and/or stormwater utility fee credit purposes from tall grass and weeds regulations.

At 8:36 p.m., Mayor Jones closed the regular session and called the third public hearing to order. A notice appeared in the Daily News-Record on Monday, February 9, 2015 and Monday, February 16, 2015.

Beth Schmoyer, 419 Neyland Drive, stated she was an ecological landscape designer . Ms. Schmoyer stated she knows someone who received a letter from the city regarding her garden needing to be cleaned up and wondered how home gardens fall under this ordinance and amendment. Ms. Schmoyer noted that gardens are good ways to capture stormwater.

##City of Harrisonburg Page 8 Printed on 3/10/2015
City Council Meeting Minutes - Final February 24, 2015
#####7.

Dr. Panayotis "Poti" Giannakouros, 98Emory Street, stated those that have been concerned about the ordinance just passed were concerned about the \$60per year fee and feels that this ordinance costs \$300per year as it was strengthened in 2012. Mr. Giannakouros stated the ordinance caused people to maintain lawns too much that it won't absorb water. Mr. Giannakouros feels that greater deregulation of this ordinance will help with the item just passed. Mr. Giannakouros shared a project/experiment that he did behind 7-11in a grassy area and asked council to let stuff grow up, because it works like a sponge. Mr. Giannakouros asked council to repeal the ordinance and have people mediate through differences.

Noel Lavan, 156Maryland Avenue, stated this ordinance in some ways seems to be necessary, but he is doing away with his grass on his property. Mr. Lavan stated he wasn't aware of what organizations had been involved in conversations, but he suggested some of the master gardeners be engaged on the website as a resource so people can get a consultation regarding what options they have. Mr. Lavan stated there might be some civic organizations and/or volunteers that can aid with improvements to properties.

At 8:45 p.m., Mayor Jones closed the public hearing and the regular session reconvened. Council Member Degner stated he appreciated the comments and is glad it recognizes and encourages people putting in systems that are taller than grass that can help mitigate water runoff.

A motion was made by Council Member Byrd, seconded by Council Member Shearer, to approve the Tall Grass and Weeds Ordinance amendment. The motion carried with a recorded roll call vote taken as follows:

Yes: 5 - Mayor Jones, Vice-Mayor Baugh, Council Member Byrd, Council Member Degner and Council Member Shearer

No: 0

Recommendations

1. Expand TGW protection.
 2. Send information about the storm water program and TGW exemption with all TGW violation notices.
 3. Enlist volunteer community experts to assess and advise on practices and exemptions.
-
1. At the moment, Public Works will not issue a Tall Grass and Weeds exemption until a BMP is fully functional. An exemption only, without credit, could be issued in order to allow conservation landscaping to establish. Furthermore, twg exemptions should be granted for conservation landscaping even in the absence of a credit as a proactive step anticipating where regulation and thinking about urban ecosystems is going. Residents need protection from the city if there is going to be a shift in culture toward the sustainable ways of living that will be required in order to meet the growing requirements of the Chesapeake Bay Act and more.
 2. TGW notices open an opportunity that is comparable to targeted advertising. These will be properties where that could benefit from alternative programs, or mediation and protection for residents who are already employing beneficial practices. In the case of extreme properties, instead of mowing, the city could put in place conservation landscaping to generate revenue for the city and protection for the environment until and properties are put back into regular use and costs recouped.

3. Expert advisers can greatly benefit all involved, and can place a firewall between the city and residents to prevent corruption such as political retribution through how credits, protections, and appeals are decided.

Why is this so difficult?

Harrisonburg is not as different from [Ferguson](#) as some might like to believe. The following quote comes from an lengthy investigation by the Washington Post that documents the role of zoning and petty municipal regulations wielded by intransigent city staff and government officials to segregated and crush residents.

A majority of these fines are for traffic offenses, but they can also include fines for fare-hopping on MetroLink (St. Louis's light rail system), loud music and other noise ordinance violations, **zoning violations for uncut grass or unkempt property**, violations of occupancy permit restrictions, trespassing, wearing "saggy pants," business license violations and vague infractions such as "disturbing the peace" or "affray" that give police officers a great deal of discretion to look for other violations.

<http://www.washingtonpost.com/news/the-watch/wp/2014/09/03/how-st-louis-county-missouri-profits-from-poverty/>

What the Post uncovered was later affirmed by the Department of Justice.

http://www.justice.gov/sites/default/files/opa/press-releases/attachments/2015/03/04/ferguson_police_department_report.pdf

Lawn Ordinances to Street Signs: Noninvidious Recreation of Community from the Ground Up

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Abstract

Since the great financial crisis, communities across the United States have questioned conventional social relations and economic ideas. I focus on the case of Harrisonburg Virginia, a city that through its history has been at the forefront of national trends but where such history has played out on a human scale. I start with challenges to the traditional lawn. Methodologically, a clear data concept is necessary. I thus illustrate the evolution of the concept of the lawn and the related height of grass and cutting of weeds. I build on Veblen, but also go into greater detail, tracing specifically what tall grass and weeds have meant from the time of the origin of the lawn concept. In some ways, my approach parallels Commons' analysis of the concept of property in his *Legal Foundations of Capitalism*. On settling on a clear concept, I present data tracking changing regulations that didn't function in accord with their justification and seemed to exacerbate invidious tendencies in the community while blocking creative uses of land for building community and protecting the environment. I move from an analysis of the reaction against these and other local movements for progressive change to the renaming of a major street, Cantrell Avenue, to Martin Luther King, Jr. Way. While a body of literature exists on the latter topic, Harrisonburg's experience is special in overturning incorrect assumptions and coinciding with national scale anniversaries and developments that illuminate a common thread of antipathy toward the human life process stretching from the time after Emancipation to current austerity movements. I close by advocating community engagement geared toward preparing for federal full employment guarantees, rounding out the problem solving process that evolved around the original lawn question.

1 Lawns

The most easily found scholarly source on lawn ordinances is a teaching module in a horticultural technology journal. It provides an a-historical overview of

the issues, juxtaposing concerns over health with dislike of a particular weed and stating without question the ‘property value’ argument while pointing out that (like climate science) much uncertainty was found by council members in the ecological arguments. The paper settles on the sociological issues as the salient issues councils will have to face in drawing lessons from the case study. In that process, the model chosen is one of static individuals with fixed differences to be resolved. It does not consider institutional adjustment as a process of solving social problems connected to the life process, but rather of balancing ‘equally valid’ conflicting tastes and opinions [Hanchev, 1994]. In contrast, an article four years later takes a historical approach to the emergence of various types of lawn ordinances and argues for applying rational criteria to developing lawn ordinances. It, however, does not dwell on an analysis of the sources and consequences of the irrational impulses that drive traditional lawn ordinances [Rappaport and Horn, 1998]. Finally, a 2005 article endorses an interdisciplinary approach that seeks to find the roots of social pressure to maintain idealized lawns. It identifies social pressure to conform and that “public policies often encourage adoption of the idealize lawn aesthetic.” The author posits a sociological feedback loop between community members and policy makers that is born out by some of our own data analysis [Laband, 2005].

I take an institutionalist approach, looking to the Veblenian dichotomy and the theory of institutional adjustments to help inform solving the problem of building non-invidious community in support of the human life process. The approach lends itself not only to extracting the best from the above studies, but also to further deepening the analysis, which ultimately opens new questions.

1.1 Institutional Theory of the Lawn

This research was the result of engagement as a community economist. It thus follows a path suggested by Linwood Tauheed’s abstract for the 2014 Association for Institutional Thought conference “Phases and Levels of the Community Economist Workplan”. The analysis phase broadly outlined the institutions involved. The facilitation phase refined the initial picture given by the analysis phase and started a new cycle of analysis on deeper institutional structures that were brought out in greater relief in the advocacy functions of the consulting phase. These deeper issues brought out more intensive campaign that needed to be achieved before solution could proceed on the lawn issue. This campaign was the renaming of a street for Martin Luther King, Jr. which proceeded all the way to completion but in its solution pointed the way forward not only for the lawn issue, but for macroeconomic policy making, including exposing the roots of austerity thinking and broaching the ‘last mile’ questions implicit in the full employment alternative of building non-invidious community.

In the Theory of the Leisure Class, Veblen, using the language of a certain period of his writing¹, identifies the lawn as a peculiarly white institution of

¹ In this section of *The Theory of the Leisure Class*, Veblen uses archaic racial language to make his point. For our purposes, his identification of the institution of the lawn serves our purpose of tying it to the ideology and institution of white supremacy. Veblen’s language is

his time. He traces its origins to the land holdings grazed by ungulates in the agrarian fields of enclosed England. In what appears to be a humorous passage, he describes the ornamental deer replacing the more utilitarian cow that kept the grass shorn [Veblen, 1912, p. 134]. Now, while real deer still grace the more majestic lawns, like that of the National Institute of Standards in Bethesda, in more modest lawns those deer are literally ornamental. However a contemporary account reveals as is often the case with Veblen's astute observations² that the cow was still, in fact, used to maintain lawns up to his time, being displaced in the nineteenth century by scythes and later by the mechanical lawn mower

troublesome and merits note. Mouhammed [2008] in his defense of Veblen from the critique of Marxists on this count brings additional evidence from Veblen showing he was an astute observer and theorist of his times. He did not, however, provide evidence that Veblen went the next step of identifying the concept of race in which he was absorbed as a fatally flawed concept that came into being to facilitate the institutions he was, nonetheless, effectively criticizing by the end of his career as quoted. Mouhammed [2008] writes as follows:

As far as the issue of racism is concerned, Sweezy's critique is baseless and misleading. Veblen thinks that racism, which is related to the process of capital accumulation, started with the slaughter of Native Americans and the importation of African slaves. The destruction of Native Americans was aimed at controlling natural resources, including fur-bearing animals. He [Veblen, 1923, p. 168-69] points out, 'Bound up with the enterprise there is also a written chapter on the debauchery and manslaughter entailed on the Indian population of the country by the same businesslike Fur trade.' Similarly, when the slave trade as a profitable enterprise declined in the North, this trade emerged as an embedded institution in the South. The South needed slaves to work the soil for private gain. He [Veblen, 1923, p. 170] points out, 'In the South the private usufruct of the soil injected into American life the 'peculiar institution' of Negro slavery,' and he [Veblen, 1934, p. 433] clearly states, 'The Ku-Klux-Klan has been reanimated and reorganized for extra-intimidation of citizens.' Hubert Harrison, a great black scholar and activist, was quoted in Perry (2001: 325) to have written the following about Veblen: No preliminary study of sociology and economics can be said to be complete without the work of Veblen. Besides these two books his work on *The Instinct of Workmanship*, *The Theory of Business Enterprise* and *The Higher Learning in America* are especially to be recommended. And we feel sure that whoever may get acquainted with any of Prof. Veblen's books through our recommendation will live to thank us for it [Mouhammed, 2008, p. 32].

²Bartley and Bartley [2000] in a comprehensive debunking of defamatory myths spread about Veblen incidentally juxtapose two pieces of evidence that suggest Veblen might have fit in at the forefront of the present anti-lawn and ecological movements. At the top of page 375 he writes of Alvin Johnson, mentor of Joseph Dorfman who they trace as a prime source of false and misleading representations of Veblen, "He and Veblen 'knew a hundred times more about plant life' than they had before their mutual indulgence of their 'passion for botanizing'". They later cite as one of Heilbroner's embellishments on this theme Heilbroner writing in *The Worldly Philosophers* that at his California retirement cabin Veblen "disturbed nothing of nature, not even a weed. He allowed 'the rats and skunks to brush by his legs and explore his cabin ...' "p. 384 Rather than pointing to some problem with Veblen, this points to the ignorance of New Yorker, Heilbroner, who while he loved Japanese poetry seems not to have tried his hand at camping. Indeed, Heilbroner repeats the myths born of ignorance of ecology often brought in favor of lawn ordinances in juxtaposing wild skunks and human associated rats which rely on rich artificial food sources in the context of undisturbed nature. Heilbroner rather seems to project an imagination of how a home outside of his own New York City should look born of Levitt's suburbia.

[Editorial, 1878]. Further investigation reveals that Veblen may well have been describing the origins of modern landscape architecture.

The door to the past is opened by a piece in the New York Times reporting on an increasingly common trend around the country, manifesting as the local foods movement, the anti-lawn movement, or in this specific case, the back yard chickens movement.

“Ms. Saye has been ordered by the Forest Hills Gardens Corporation, which manages the neighborhood, to get rid of the chickens. In a recent letter, corporation officials cited the nuisances section of a century-old homeowners’ covenant.

The rules were set down in 1913, during the infancy of this 140-acre, leafy swath that is one of America’s oldest planned communities and was designed by Frederick Law Olmsted, Jr., whose father was Frederick Law Olmsted, the famous landscape architect who helped design Central Park.

Ms. Saye called the nuisances section - which forbids “any brewery, distillery, malt house, slaughter house, brass foundry, tin, nail or other iron foundry, lime kiln or sugar bakery, tallow candlery, crematory, hospital, asylum” - antiquated.

She said she felt the rules should be modernized to fit the more progressive approach to raising poultry today, especially the heritage breeds that she owns.

She noted that the nuisances section also does not allow a ‘cattle yard, hog pen, fowl yard or house, cesspool, privy vault; nor any cattle, hogs or other live stock or live poultry.’” [Kilgannon, 2014]

The reader comments on the preceding New York Times article reveal something that is not common in Harrisonburg Virginia, the focus of the present case study. A number of people making comments oppose challenging rules on principle, identifying as people who have made it into multi-million dollar houses on the basis of those rules. Starting to question any of the rules on the basis of instrumental valuation (do they do anything useful, anything other than conferring status) threatens to unravel the legitimacy of their success as being no more based on reason than any of the obsolete rules they preserve. Research by Jenner [2014] indicates there are very few people from this social class in Harrisonburg and thus this sort of argument is not heard there. Rather, the main arguments in Harrisonburg are based on irrational fear of nature, shame of ones rural roots, xenophobia, and a desire to see others conform.

The conditions Olmsted, Jr. tried to exclude from his planned community in the late 19th century are conditions that were found in the heart of Harrisonburg: stables, tanneries, foundries, were situated along Black’s Run near where the present municipal building is situated. Today we can imagine what that past was like by standing in the former ‘Colored Section’ of the city and smelling the dog food factory. A hundred years ago, that same wind would have brought more noisome vapors from further south. In this context, the once

elite, now student and faculty, Old Town neighborhood developed up-wind. As of the start of the 20th century there were still discussions of penning pigs near Historic Cantrell Avenue and of cows roaming in town.

Thorstein Veblen analyzed the emerging taste for lawns at that time as follows:

“By further habituation ... it comes about that a beautiful article which is not expensive is accounted not beautiful. In this way it has happened, for instance, that some beautiful flowers pass conventionally for offensive weeds...

“The same variation in matters of taste, from one class of society to another, is visible also as regards many other kinds of consumable goods It is not a constitutional difference of endowments in the aesthetic respect, but rather a difference in the code of reputability which specifies what objects properly lie within the scope of honorific consumption for the class to which the critic belongs. ...

“Everyday life affords many curious illustrations ... Such a fact is the lawn, or the close-cropped yard or park, which appeals so unaffectedly to the taste of the Western peoples. It appears especially to appeal to the tastes of the well-to-do classes in those communities in which the dolicho-blond element predominates in an appreciable degree. ... This higher appreciation of a stretch of greensward in this ethnic [dolicho-blond– apparently similar to WASP] element [is peculiar to where they came from]. The close-cropped lawn is beautiful in the eyes of a people whose inherited bent it is to readily find pleasure in contemplating a well-preserved pasture or grazing land.” [Veblen, 1912, p. 133]

Having theorized the pecuniary elements of taste and having introduced the group to whom at his time this curious taste was peculiar, having made clear through his gratuitous pseudo-biological discussion that he is talking about ‘white’ people, Veblen goes on to a detailed description of the aesthetic.

“For the aesthetic purpose the lawn is a cow pasture; and in some cases today – where the expansiveness of the attendant circumstances bars out any imputation of thrift – the idyl of the dolicho-blond is rehabilitated in the introduction of a cow into a lawn or private ground. In such cases the cow made use of is commonly of an expensive breed. The vulgar suggestion of thrift, which is nearly inseparable from the cow, is a standing objection to the decorative use of this animal. So that in all cases, except where luxurious surroundings negate this suggestion, the use of the cow as an object of taste must be avoided. Where the predilection for some grazing animal to fill out the suggestion of the pasture is too strong to be suppressed, the cow’s place is often given to some more or less inadequate substitute, such as deer, antelopes, or some such exotic beast.” [Veblen, 1912, p. 134]

Did Veblen come to this through extensive observation? With the reputation of being learned about things botanical and of nature, it might be surmised that Veblen had access to the travel writings of Frederic Law Olmstead, the father of the designer of the community in the opening quote which contain the following passages, nearly mirroring Veblen:

“A few miles further on we came to a large, park-like pasture, bounded by a neatly trimmed hedge, and entered by a simple gate, from which a private road ran curving among a few clumps of trees to a mansion about a furlong distant. ... The house was nearly hidden among trees, and these, seen across the clear grass land, were the finest groups of foliage we had ever seen. [describes the foliage] ... The cattle in the *pasture-lawn* were small and black, brisk and wild-looking, but so tame in reality, that as we lay under the tree, they came up and licked our hands like dogs. The whole picture completely realized Willis’s beautiful ideal, ‘The Cottage *Insoucieuse*.’” [Olmstead, 1852, p. 108]

Olmstead’s account is steeped in admiration for the nobility, of which I preserve a touch that he contrasts with the rude American frontier in another description of the emerging lawn aesthetic:

“Hark! horns and kettle-drums! Come on. It is the band of yeomanry; we shall see them directly There! Five squadrons of mounted men trotting over a broad green meadow below us. Well mounted they seem to be, and well seated too. Ay; fox hunting will make good cavalry. Doubtless many of those fellows have been after the hounds.

Possibly. But never one of them charged a buffalo herd, I’ll be bound.

This green plain – a sort of public lawn in front of the town – is about twice as large as Boston Common, and is called ‘the Roodee.’ It is free from trees, nothing but a handsome meadow, and a race-course runs round it ...

Right below us, on the meadow, there is pitched a *marquee*. It belongs to a cricket club. I want you to notice the beautiful green sward of the playing ground. It is shaven so clean and close. You see men are sweeping it with hair-brooms.” [Olmstead, 1852, p. 117]

Finally, we have a description of Veblen’s deer, and a paraphrase of his statement about the contribution of the grazers to the aesthetics of the scene:

“Ah! here is the real park at last.

A gracefully, irregular, gently undulating surface of close cropped pasture land, reaching way off illimitably; dark green in colour; very old, but not very large trees scattered singly and in groups – so far apart as to throw long unbroken shadows across broad openings of

light, and leave the view in several directions unobstructed for a long distance. Herds of fallow-deer, fawns, cattle, sheep, and lambs quietly feeding near us, and moving slowly in masses at a distance; a warm atmosphere, descending sun, and sublime shadows from fleecy clouds transiently darkening in succession, sunny surface, cool wood-side, flocks and herds, and foliage.

... We concluded that the sheep and cattle were of the most value for their effect in the landscape; but it was a little exciting to us to watch the deer, particularly as we would sometimes see them in a large herd leisurely moving across an opening among the trees, a long way off, and barely distinguishable; or still more when one, two, or three, which had been separated from a nearer herd, suddenly started, and dashed wildly by us, within pistol shot." [Olmstead, 1852, p. 135-136]

Veblen's writing is almost a line by line commentary on the passages just quoted. Tracing one more reference, this time an explicit one to Willis, we find the root of "the idyl of the dolicho-blond," which Olmstead calls in French instead the 'The Cottage *Insoucieuse*,' to be an Orientalist vignette in Willis's essay:

"Before I enter upon the cultivation of grounds, let me lay before the reader my favorite idea of a cottage - not a *cottage ornee* but a *cottage insoucieuse*, if I may coin a phrase. In the valley of Sweet Waters, on the banks of the Barbyses, there stands a small pleasure palace of the sultan, which looks as if it was dropped into the green lap of nature, like a jewel-case on a birth-day, with neither preparation on the part of the bestower, nor disturbance on the part of the receiver. From the balcony's foot on every side extends an unbroken sod to the horizon. Gigantic trees shadows the grass here and there, and an enormous marble vase, carved in imitation of a sea-shell, turns the silver Barbyses in a curious cascade over its lip; but else, it is all Nature's lap, with its bauble resting in velvet - no gardens, no fences, no walls, no shrubberies- a beautiful valley with the sky resting on its rim, and nothing in it save one fairy palace. The simplicity of the thing enchanted me, and, in all my yearnings after rural seclusion, this vision of old travel has, more or less, colored my fancy." [Willis, 1969 (1845, p. 80)]

While a casual reading suggests Willis was describing his own travels, closer examination reveals that it is a reasonable description of an engraving from a drawing by W. H. Bartlett that appears on the title page and opening chapter of travel book published in 1838 by an author identified as Mrs. Parode.

Parode [1838]'s recollection of her past travels that this engraving illustrates appears on page 6 and matches Willis so closely that his account seems like it may be a paraphrase of hers:

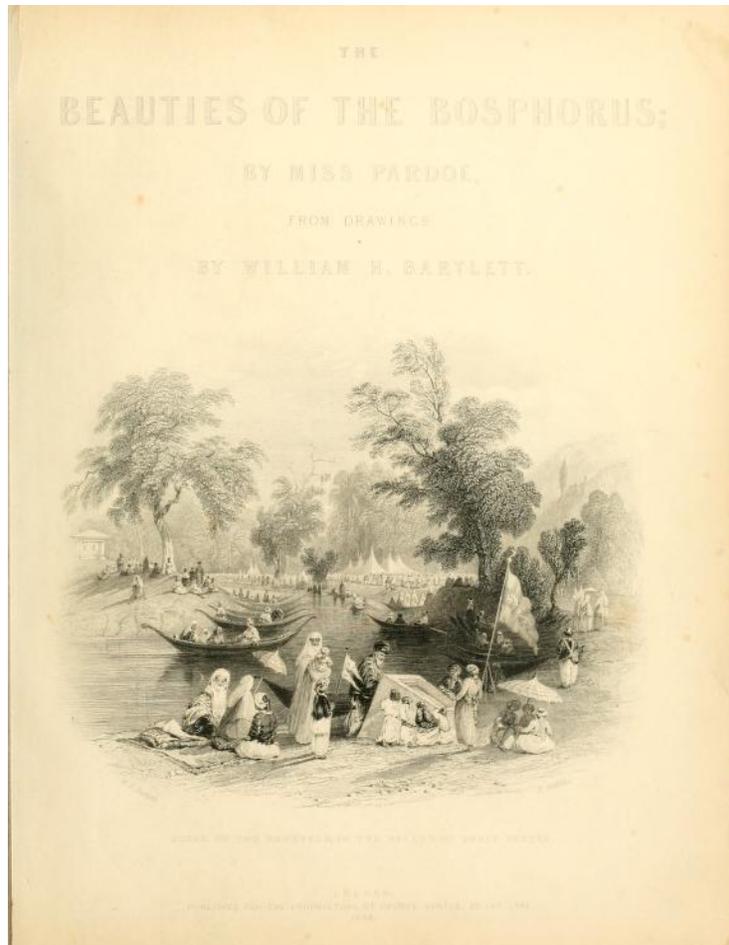


Figure 1: "Scene on the Barbyses, in the Valley of the Sweet Waters." From the Original title page vignette of Parode [1838, p. 6], drawn by W. H. Bartlett, engraved by H. Griffiths.

“ ... the ‘Valley of the Sweet Waters,’ is a lovely glen, nestled at the base of a chain of hills, ... It is entirely shut in on all sides; and looks from the heights above, which are bleak and arid, like a huge emerald. Through the thick grass of the valley, and under the shadow of its magnificent trees, flows the Barbyzes; a limpid, but inconsiderable stream, upon whose banks rise two of the most fairy-like edifices that ever sheltered prince or peasant!” [Parode, 1838, p. 6]

She continues to describe without disapproval the “favourite wives of the Sultan” who “loung[e] away many of the long sun-shiny days of the warm season in comparative freedom” in the grassy paths of the palace gardens as being closely guarded but that “Occasional glimpses of the pretty prisoners may, nevertheless, be obtained, as they glide along the Barbyzes, in their magnificent caiques, closely veiled, and followed by other boats, filled with a portion of the negro guard of the household.” [Parode, 1838, p. 6]

It is “[T]he smaller edifice to which allusion has been made” however, that most closely matches Willis’s description of his ideal cottage of idleness. [Parode, 1838, p. 7] describes it as

“a kiosque, also appertaining to the Sultan, and occasionally occupied by the high officers of the household: it stands on the very edge of the Barbyzes, ...; while the inmates of the kiosque smoke their *chibouques* in luxurious indolence, fanned by the air of the river, and amused by the passing groups.

The valley itself is delicious; the greensward is bright and rich, to a degree unknown in any other environ of the city. In spring it is the grazing-ground of the Imperial stud; In summer it is the resort of all ranks; who, on every Friday (the Turkish Sabbath,) resort thither, to enjoy what none know better how to appreciate than the Orientals – a bright sky, a running stream, flowers, leaves, and sunshine.” [Parode, 1838, p. 7]

Willis may well have had this very prose, which from its multiple editions seems to have been somewhat popular at the time, in mind.

What, however, was the nature of writing in which this gem appeared? It was a practical advice column by Willis for those cultivating an alternative to the grimy cities of the burgeoning industrial revolution. Willis merely decorated the otherwise mundane topic with the spice of Orientalism that was in vogue at the time.

Parode [1838] makes clear what the appeal of this sort of imagery was at the time of her writing with opening with lines like:

“I anticipated I know not what – adventures as numerous and as romantic as those of the ‘Thousand and One Nights;’ and I dreamt dreams impossible of accomplishment; not caring to inquire too curiously of my reason whether such things would be; but content to

inhabit my cloud-land castle, and to look down from the unstable edifice in all the luxury growing out of my self-created images.

When I was subsequently dwelling in the ‘City of the Sultan,’ and the reality had succeeded to anticipation, much of the mist of romance, indeed, rolled away; but the fair face of the landscape suffered little from its absence, for Constantinople needs no aid from the imagination to make it one of the brightest gems in the diadem of nature:... ” [Parode, 1838, p. 4]

She makes clear that it is not just the landscape she has in mind as an exoticised escape, but the people who are ‘other’ and ‘strange’ relative to her colonial center of the world:

“The great charm of Constantinople to an European eye exists in the extreme novelty, which is in itself a spell; for not only the whole locality, but all its accessories, are so unlike what the traveller has left behind him in the West, that every group is a study, and every incident a lesson; and he feels at once the necessity of flinging from him a thousand factitious wants and narrow conventional prejudices, and of looking calmly and dispassionately upon men and scenes wholly dissimilar to those with which he had previously been acquainted.”[Parode, 1838, p. 4]

The following is what Willis was actually writing about, a mundane subject that evidently needed some decoration in his opinion in order to keep the attention of the reader:

“you are as much insulated in a cottage surrounded with high grass, as on a rock surrounded with forty fathom water – shod a la mode, I mean. People talk of ‘being pent up in a city’ with perhaps twenty miles of flagged sidewalk extending from their door-stone! They are apt to draw a contrast, favorable to the liberty of the cities, however, if they come thinly shod to the country, and must either wade in the grass or stumble through the ruts of a dusty road. If you wish to see bodies acted on by an ‘exhausted receiver’ (giving out their ‘airs’ of course), shut up your young city friends in a country cottage, by the compulsion of wet grass and muddy highways. Better gravel your whole farm, you say. But having reduced you to this point of horror, you are prepared to listen without contempt, while I suggest two humble *succedanea*.”[Willis, 1969 (1845, p. 80)]

He then goes unabashedly into the pecuniary details, counting the dollars:

“First: [by a pair of India-rubber shoes for your guest] Your shoes may cost you a dollar a pair, but if your visitors are not more than ten or twelve in the season, it is a saving of fifty percent., at least in gravelling and weeding.”[Willis, 1969 (1845, p. 80)]

And again provides a quote on which Veblen could have directly commented:

“Or, Second: Enclose the two or three acres immediately about your house with a ring fence, and pasture within it a small flock of sheep. They are clean and picturesque (your dog should be taught to keep them from the doors and porticoes), and by feeding down the grass to a continual greensward, they give the dew a chance to dry off early and enlarge your cottage ‘liberties’ to the extent of their browsings.”[Willis, 1969 (1845, p. 80)]

Willis continues with practical advice such as slicing ‘weeds’ from a dirt path rather than pulling them from between stones, but closing, as if to spice up the prosaic topic as he did with the description of the pleasure palace, with this bit of wisdom that would haunt home owners through the centuries:

“A neglected walk indicates that worst of country diseases, a mind grown slovenly and slip-slop! Your house may go unpainted, and your dress (with one exception) submit to the course of events – but be scrupulous in the whiteness of your linen, tenacious of the neatness of your gravel-walks; and, while these points hold, you are at a redeemable remove from the lapse (fatally prone and easy), into barbarianism and misanthropy.”[Willis, 1969 (1845, p. 80)]

This admonition to be tidy, however, was merely a rhetorical flourish, reminiscent of the conflict between leisure and Ben Franklinesque business in Washington Irving’s 1816 *Rip VanWinkle* which had been published in 1819 but appeared in a new edition close to the time of the relevant writings in 1834[Irving, 1834].³

Willis’ intentions were purely instrumental and above all effort minimizing. Willis vision was decidedly opposed to the vision of laboring in the yard each weekend and spending a substantial portion of a paycheck at the home improvement store. Speaking of those who prefer to idly speculate under a tree he writes, again using words that also appear in Veblen:

“These men, too, like that which is beautiful, and for such I draw his picture of the *cottage insoucieuse*. What more simply elegant than a pretty structure in the lap of a green dell! What more convenient! What so economical! Sheep (we may ‘return to muttons’) are cheaper ‘help’ than men, and if they do not keep your green-sward so brightly mown, they crop it faithfully and turn the crop to better account. The only rule of perfect independence in the country is to make no ‘improvement’ which requires more attention than the making. ...”[Willis, 1969 (1845, p. 81)]

From these homespun beginnings, Olmstead abstracted the fantasy, and coupled it with the pretensions of British nobility just a couple of years after Willis

³Thanks to historian Steven Reich who called this to my attention.

wrote, providing the quintessential example of pecuniary emulation for Veblen. Years later, Olmstead entered a contest that launched his career as the father of landscape architecture, a designer of the iconic parks and campuses across the country.

Possibly of this Veblen also wrote:

“Public parks of course fall in the same category with the lawn; they too, at their best, are imitations of the pasture.”

“Such a park is of course best kept by grazing, and the cattle on the grass are themselves no mean addition to the beauty of the thing, as need scarcely be insisted on with anyone who has once seen a well-kept pasture. But it is worth noting, as an expression of the pecuniary element in popular taste, that such a method of keeping public grounds is seldom resorted to. The best that is done by skilled workmen under the supervision of a trained keeper is a more or less close imitation of a pasture, but the result invariably falls somewhat short of the artistic effect of grazing. But to the average popular apprehension a herd of cattle so pointedly suggests thrift and usefulness that their presence in the public pleasure ground would be intolerably cheap. This method of keeping grounds is comparatively inexpensive, therefore it is indecorous.”[Veblen, 1912]



Figure 2: Detail of Thaddeus Wilkerson photo postcard #53, “Sheep Fold, Central Park, New York” circa 1910.

The photograph in Figure 1.1 however, showed that 10 years after Veblen wrote, Olmstead in his contest piece was not above bringing to life the picture, in his final quote above, that initially inspired him: with sheep mowing the sheep meadow of Central Park.

Confirming my tracing the genealogy of the modern lawn approximately to the writers here quoted Veblen writes:

“Private grounds also show the same physiognomy wherever they are in the management or ownership of persons whose tastes have been formed under middle-class habits of life or under the upper-class traditions of no later a date than the childhood of the generation [Olmstead’s] that is now passing.”[Veblen, 1912]

Of the differences between the leisure and the middle classes on this matter Veblen writes: “Both classes equally constructed their ideals with the fear of pecuniary disrepute before their eyes.”[Veblen, 1912]

The lawn in Veblen’s time had its roots in a life sustaining agricultural practice. Enclosure in England however had created those who had and those who did not. The lawn thus from early on harbored the seeds of an invidious institution. As the functional elements were stripped away, the habit of keeping a grazed expanse had become increasingly ceremonial.

The lawn mower brought the lawn within the ability of the non-agricultural urban dweller who has lost connection with a rural community and its tools. But the inventor of the lawnmower directly affirms Veblen’s conspicuous consumption thesis describing the machine in his patent of October 1830 as follows: “... country gentlemen may find in using my machine themselves an amusing, useful and healthy exercise.” [Budding, 1830, p. 330]

Writing of a 19th century landscaping pioneer, Kolbert [2008] says

“The only work it does is cultural. In Downing’s day, the servant-mowed lawn stood, eloquently, for the power structure that made it possible: who but the very rich could afford such a pointless luxury?”

By the 20th century, this institution had become encapsulated, with Kolbert quoting the architect of the modern suburb saying:

“A fine carpet of green grass stamps the inhabitants as good neighbors, as desirable citizens,” Abraham Levitt wrote. (By covenant, the original Levittowners agreed to mow their lawns once a week between April 15th and November 15th.) “The appearance of a lawn bespeaks the personal values of the resident,” a group called the Lawn Institute declared. “Some feel that a person who keeps the lawn perfectly clipped is a person who can be trusted.”[Kolbert, 2008]

This transformation of an institution that was already increasingly removed from any instrumental value it had either in tangentially related English agrarian days or in its more recent and directly related American frontier days to a norm for fitting in rather than an ostentatious display of status drove encapsulation of the lawn norm. Sturgeon writes of encapsulation:

“If adjustments are deferred and build to a situation where change involves significant dislocation there will be more resistance as vested interests accumulate around the prevailing institutional structure. This situation is more likely to create the condition of ceremonial

encapsulation 23 making adjustments less likely and less susceptible to deliberative processes.” [Sturgeon, 2010, p.9]

In the present, the lawn has become an imbecilic institution. In the general case, by the testimony of Kolbert [2008], it does not even serve the pecuniary emulation function, but rather is a show of submission. The invidious element has become one of degrading the person who does not conform rather than conferring positive distinction to those who do as one chemical lawn becomes indistinguishable from another [Kolbert, 2008]. The fact that the lawn lost its prestige status and became the default landscape gives great inertia to its encapsulation. A commonly quoted number is that the lawn industry is over 40 Billion Dollars, as in an interview with Ted Steinberg on his 2007 book *American Green* in which he also claims that at its emergence in the 1950’s the American Lawn became a way to sustain aggregate demand. It furthermore links in to the commodification of housing. [Schatz, 2007, Steinberg, 2007] In the words of a real estate agent still thinking in terms of the pre-bubble world, “you don’t buy a house for yourself, you buy it for the next person.” Even front yard garden and natural landscaping activists confess to yielding when selling their homes. This suggests an application of Keynes’ critique of the beauty contest aspect of financial markets, turning part of the usual ‘property value’ argument on its head, reinforcing the idea from Laband [2005] and latter supported by our data that most people don’t really want to bear or impose the burden.

This institution faces challenges in the 21st century as mores shift in a generation that starts to feel and understand the impact of pollution and ecological destruction, and as economic myths like ‘housing as investment’ start to collapse in the wake of the Great Financial Crisis. An early writer on the issue of ecological ethics was naturalist Aldo Leopold who made observations of the interaction between agricultural development and the land in the upper Midwest. In that tradition the environmental movement has spawned now organic agriculture, the local foods movement, and more refined elaborations such as permaculture. In these the instrumental value of the land and a new set of institutions come to the fore. Some are of course invidious, such as expensive engineered natural landscapes or permaculture foodscapes reflecting a display of education and wealth or an abstruse ethical/scholarly orthodoxy. In any event, new mores vie for the place of the moribund lawn ethic. The lawn ethic is, however, frequently enshrined in the form of lawn ordinances. These encapsulations force dissenters to fight government regulations and trigger not just a clash of values but validate other institutions, like the concept of property value- tied to exclusion but also of late to the housing bubble and the commodification of living spaces. It is an institution embedded within a fabric of other institutions, and pulling that thread meets resistance that runs deep.

1.2 Legal and Conceptual History of Tall Grass and Weeds in Harrisonburg

The first mention of lawns turned up by an archive search of Harrisonburg's local newspaper, the Daily News Record and its predecessor, the Rockingham Register, appears in an article about Woodbine Cemetery, Harrisonburg's historically white cemetery.⁴ The 1882 article praising the new caretaker includes the following:

“The grass grew tall and unkept; weeds lifted their unsightly heads; briars and thistles molested the footstep.— There were no paths conducting you hither and thither to the grave of loved one or friend; no roads for the rolling vehicle, the wheels of which passed over the sod.”

“The evenly mown grass, neatly trimmed hedges of box, carefully tended plants, all bespeak the watchful care of the keeper provided by the society.⁵” [Staff, 1882]

This article, like the article by Willis, points to an instrumental criterion of keeping an area passable. Other articles from the time mentioning weeds are in the context of agriculture and tend to focus on keeping wind dispersed weeds from seeding, the criterion for ‘weed’ being a plant that interferes with plants of agricultural interest. Even at these early times and against their relatively instrumental criteria, there was evidence of dissent. In 1905 an article appeared questioning the narrow, culture bound view of which plants were useful to the continuity of the life process. It stated: “Man will eat 200 or 300 more foods in the year 2,000 than he eats now, said a chemist.” and explained “It is by a study of the food of savages that we get our new foods. Savages eat many things we regard as weeds or poison, but which we can refine.” The article goes on to describe goosefoot, also know as lambs quarter, which we still don't eat.⁶[Staff, 1905c]

Later in the same year, well into the time about which Veblen wrote when describing the lawn craze of his time, a writer in the Rockingham Register extended his enthusiasm to the country:

⁴Prior to Virginia's 1902 segregation constitution, African Americans favored by the white community were occasionally buried in Woodbine. I identified six against the back wall of the cemetery, evidently connected to the same white family from the time of slavery and the burial of a woman whose gravestone identified her as ‘Mammy.’

⁵An advertisement for “A reliable man to take charge of the house and grounds at Woodbine” to apply to Mrs. Ellenberger and Mrs. M. L. Huston appeared on February 2, 1882 and the year saw a number of reports of fund raising by “the indefatigable ladies of the Woodbine Society.”

⁶Note the unbridled Eurocentrism and white supremacy of the time reflected in the quote. The inability to accept knowledge if the knower was ceremonially unacceptable is suggestive of how white supremacists may have welcomed institutions with ceremonial functions to certify knowledge that could give legitimacy to these crude biases. The ceremonial function of certifying knowledge continues to serve established power, as we will see in the sections to follow in this dissertation.

“In many of the smaller cities of this country efforts are now being made to beautify them. The movements for the abolition of the billboard and the handbill nuisance, the cutting of the weeds and grass about public and private places, are all in the right direction, says the Washington (pa) Observer. Well kept lawns, clean streets and alleys, vacant lots well delivered of weeds, are all part of the work of making a city clean and beautiful. These things help any town. They attract residents and draw capitalists. But while these efforts are being made by the residents of our towns, why should not the residents of the country districts also make reforms along this line? ill-kept farmhouses, ... Beauty will add to the value of any farm, and those who would make the country more attractive and their properties worth more money should give some attention to these things.” [Staff, 1905b]

The author employs magical thinking to argue for property value in a way quite different from today’s appeal to exclusion, hoping to attract capitalists and settlers. The fashion never did spread to the countryside, for reasons that Veblen clearly set out. The farm is a site of production, not of consumption. The pecuniary emulation operating in the city at a site of consumption gives way to the pecuniary considerations of agricultural production where the engineering consideration of extracting a little more production from the earth dominates, even if blunted by the pecuniary considerations of cash flow that led to the aforementioned neglect of ‘weed’ members of the ecosystem and the longer term phenomena of soil depletion, erosion, and dust bowls.

It is possible in this period that the targets of this moralizing could have been African American rural settlements, but these started to vanish by the 20th century with increasing taxes and later with the decline of service work at resorts and all the other pressures leading to the great migration of African Americans to the urban North.

On the same page as the above article welcoming capitalists appeared an article on fighting the billboard.

“The billboard, glaring and staring at every point, approaches the limit beyond which business should not go. Its misfortune has been injudicious use.” [Staff, 1905a]

This appears to be an example of the control of socially embedded markets described by Polanyi. It may however also have been directed at political control. Twenty years earlier, an article about a mass rally of Shenandoah Valley African Americans described the use of billboards and handbills. African Americans remained a powerful voting block until internal divisions precipitated by the ‘Lilly White’ movement of the 1920’s. John Morgan Tams, the apparent African American leader of that effort from which attendance was unexpectedly absent despite the presence of armed African American troops, was buried

within a week after the 1 year anniversary of the event.⁷

Continuing the sampling of the agricultural articles, a 1907 article citing a department of agriculture study by E. B. Clark published in *The Technical World Magazine* for May of that year quotes

“Today it is telling the farmer that that which he has been looking upon as a pest has its uses and that it may profit him to consider the weeds” [Staff, 1907]

Finally, 1916 article on building turf comes close to both Veblen and Willis and demonstrates terms and practices that persisted into this century, foreshadowing the early weed ordinances in Harrisonburg.

Citing a study by the department of agriculture and subtitled “Proper Grazing Lands for Cattle Great Aid to Agriculture – Help in Fertilizing” the author writes:

“Little labor is necessary to keep a good pasture in first-class condition. All loose stones and rubbish that are removed give that much more space for grass plants to grow. All brush or trees not needed for shade or other purposes should be cut or deadened by girdling. In addition to the above suggestions, all tall-growing weeds should be mown at least once a year, preferable just before they seed. It is a common practice in central Kentucky and in some other sections of the bluegrass region to mow the weeds. This is done with a mowing machine if the fields are sufficiently smooth otherwise, by a man with a scythe. The difference in the appearance of the fields in localities where weed mowing is practiced and where it is not is very striking. Mowing will usually hold in check most of the common weeds, such as ragweed, oxeye daisy, thistles and briars. A few sheep on cattle pastures have been found very efficient in keeping down many troublesome weeds.” [Staff, 1916]

The purpose here is producing good sod for grazing cattle.

One of the earliest mentions of weeds in connection with health in the Daily News Record is an account of chickens dying of a strange disease. The author attributes it to mycosis, or mould disease, related to recent wet weather and

⁷The cited article was subtitled “‘allies’ can’t raise the wind—the ‘distinguished speakers’ are invisible, and the ‘brothers in black’ have a lonesome day and go home sick with ‘no one to love them, none to caress’ ” The rally was October 1st, Tams was dead by October 12 of the next year. Henry W. Grady, seeming to describe the very event in his oration on crushing exactly the strength of African American vote that was present in Harrisonburg said in December of 1889:

“It was just as certain that Virginia would come back to the unchallenged control of her white race - that before the moral and material power of her people once more unified, opposition would crumble until its last desperate leader was left alone vainly striving to rally his disordered hosts - as that night should fade in the kindling glory of the sun.” [Grady, 1910, p. 212]

affecting chickens that had foraged grain under ‘rank growth of weeds’[Conger, 1924], the strange archaic term singled out in current critiques of the vague language of lawn ordinances. This is the first and last plausible connection between weeds in general and health that appear in the archaic but still common formulae in many lawn ordinances. It is ironic that the health being protected in this case was that of what today we might imagine to be backyard chickens, the subject of Harrisonburg’s first large scale challenge to ‘residential character’ ordinances.

Tracing the ordinances prior to 1950 becomes somewhat difficult. The law in Harrisonburg is connected with Commonwealth of Virginia enabling legislation, of which Olson [2000] writes “In the past two centuries, the state has seen just five general revisions of its statutes, enacted as the Codes of 1819, 1849, 1887, 1919, and 1950.” In Harrisonburg, the earliest available codification at the City Attorney’s office was 1952 [Virginia, 1952]. There the Tall Grass and Weeds ordinance appears as 17-38 and later 19-55 before becoming 16-6-58 and refers to Chapter 38, section 41 of Code from 1946. It was first enabled by state code of Virginia 15.1-11.⁸

By 1946, a weed ordinance had appeared in Harrisonburg. In its first form, it applied to empty lots and was evidently targeted at keeping cleared spaces in a growing city from being reclaimed and keeping weeds from spreading, particularly by wind dispersed seeds. The ordinance consisted of City Council announcing once a year that the time had come to clear the weeds.

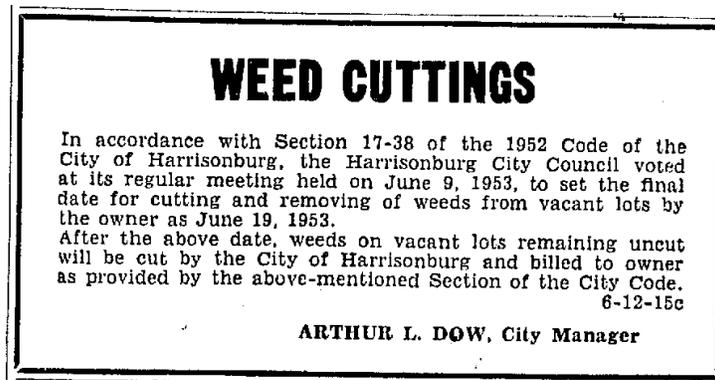


Figure 3: Harrisonburg, VA Weed Cutting Ad, Daily News Record p. 12, June 15, 1953.

In 1954, weeds were still showing up in connection with agriculture, as in a 1954 article advising that mowing pastures gives effective weed control for uniform grazing avoiding rank spots. [Staff, 1954] In the city, however, there was an escalation of exertion of police power over owners of vacant lots, evidently toward ends other than building turf. In 1955 the Daily News Record

⁸Virginia is a Dillon’s Rule state without home rule and thus municipalities depend on enabling legislation from the state legislature.

announced:

“The city is no longer in the weed cutting business and owners of all property must keep their grass, weeds, and other growth cut or be subject of a fine.” .. Arthur L. Dow says “It is now the responsibility of the owner to keep weeds, grass and other foreign growth cut. Failure to do so within the given time limits makes it a misdemeanor...”

“Any person who is annoyed by high weeds in a neighbor’s lot can call the police station, give their name, location of weeds and a summons will be issued if the condition is found to exist.” [Staff, 1955a]

Officers on beats were also to look for this. The statement of the code, then 17-38, published on p. 22 of the Daily News Record June 1, 1955 was the first statement we know of that includes a criminal penalty.

This was also a time of better living through chemistry. An example of Harrisonburg’s environmental consciousness at that time is a local advice column, Bruce Slaven’s Outdoors, which in May of 1954 recommended dumping fertilizer into ponds and cutting away the growth on the banks to make fishing easier. [Slaven, 1955]

Combining the two moods of the city at that time was an order to clean up Black’s run, a tributary that connects the areas that were soon to be razed during urban renewal to the center of town in a July 1955 article entitled “Cleanup Ordered for Black’s Run: Property Owners are Required to Keep Banks, Bed Clear.” Suggesting that the connection to Slavin’s fishing advice may not have been direct, owners who did not want to clear marshy areas along this tributary to the Chesapeake Bay watershed could instead “treat them with petroleum.” [Staff, 1955b] By this time, petroleum was also being used to power rotary lawn mowers.

The prosperity that brought mechanized and chemical warfare to the home front also brought a reaction. In the fall of that year, we see weeds connected with a new type of moral lesson adapted to the social control of labor at a time when the labor movement was feeling enough power to fall behind Martin Luther King, Jr. and the 1955-1956 Montgomery Bus Boycott. Leaving no mistake about the moral climate of the time, we have the following from a Sunday School lesson. The author links indolence, to arts and culture.

“The person without a work to do, a life of purpose, is never to be envied but to be pitted even though moderns may give him such names as ‘playboy’, a member of ‘cafe society’.”

He links character to fields, while reaffirming the old notion of weeds.

“his character is seen in the state of his fields.’ Last summer one of the great estates on our Valley became infested with a very noxious kind of thistle. As I passed I wondered that these were allowed to mature and sent their little downy parachutes of seed across the land with each gust of early fall wind.”

And finally pinpoints labor, probably organized labor, as his target.

“Does our factory, assembly line style of work rob the good workman of some of the dignity of work which the old time craftsman enjoyed?”

...

“Do you think the ‘Take it easy’ philosophy of today would have built the America we enjoy today or were our forebearers too intense and should have relaxed more?” [Locke, 1954]

Some time between the 50’s and the 70’s, the misdemeanor charge seems to have been dropped, though the agrarian roots of preventing the spreading of windborne seeds that even appears in Locke’s moralizing lesson remained.

In 1972, Harrisonburg city code specified that “between May 20 and June 20 and between August 1 and September 1 every owner of real estate situated in the city shall, at his sole expense, cause to be cut therefrom all grass, weeds and foreign growth.”

The twice yearly cutting times were challenged, probably reflecting the growing ubiquity of the motorized rotary lawnmower as announced in a 1973 article:

“Currently, the weed ordinance requires all property in the city to be mowed just twice during the growing season. Under the proposed ordinance, only lots in residential areas will be required to be kept free of tall grass and weeds throughout the spring and summer.” [Staff, 1973a]

The intolerance seemed to be growing in this Hippie era with the headline: “Weeds and dogs are running wild in Harrisonburg, and city police Chief Julius Ritchie wants both to be stopped.” [Staff, 1973b] The neighboring county to the south, containing the city of Staunton, was in the fervor as well quoting:

“Augusta County representative Lyle Kinding Jr. requested the state law to permit counties to adopt ordinances requiring the cutting of grass, weeds, and other foreign growth in all zoning categories except rural.” [Frye, 1973, p. 11]

The proposed continuous cutting from 1973 was evidently not passed, however, as suggested by Harrisonburg City council minutes from 1985.

“The City Manager presented, for Council’s consideration, an Ordinance amending Sec. 16-6-58 of the City Code, entitled: ‘Weeds, etc., on lots.’ The Ordinance provides for owners of real estate in the city to have grass, weeds, and foreign growth cut between May 1st and September 1st of each year, at their expense, and makes provisions for farm lands and open land, which have posed a problem. Chief of Police Presgrave noted that the city had incorporated a lot of undeveloped land under annexation, which is addressed in this ordinance. He offered an opinion that the ordinance will assist the

Department in handling the problem of weed and grass growth in the city by continuance of cutting between May and September, rather than only twice a year as set out in the present code section. He added the fact that the number of times required for mowing, depends on a wet or dry season. Councilman Shank moved that the Ordinance be approved for a first reading. The motion was seconded by Vice-Mayor Dingledine, and adopted by a unanimous recorded vote of Council.” [of Harrisonburg, 1985, p. 576-577]

On April 9, 1985, Council Member Elon Rhodes, the first African American city council member, referred to approvingly by the opposition of the Martin Luther King, Jr. street renaming, after noting the difficulty of collecting from owners of lots residing outside the city and a discussion of the cost of mowing, moved the approval of the ordinance on second reading.

The next year the ordinance was amended:

“For consideration of a first reading, the City Attorney presented an ordinance re-enacting and amending Section 16-6-58 of the City Code entitled: ‘Weeds, etc., on lots.’ He noted that the ordinance authorizes the City Manager to investigate, in conjunction with the Police Department, nuisance situations with regard to grass, weeds, brush and other foreign growth, at a height of 15 inches or more, on any land or premises within the city, including the area in front of such land or premises extending to the curb line, which presents any threat to the health, safety or general welfare of residents in the city. Notice would be given property owners of the situation and ordered to remove same within five (5) days. If not complied with, the work would be done by city forces or by contract, with cost billed the owner. If bill is not paid within a 30-day period, the amount would be forwarded to the Office of the City Treasurer, to be added to the next regular tax bill of the property owner. It was suggested that the words ‘or general welfare’ be added in paragraphs b and e, following the words health, safety. Council Member Shank moved that the ordinance be approved for a first reading, with suggested word additions, and referred back to the City Attorney to be redrawn. The motion was seconded by Council Member Robinson, and adopted by a unanimous recorded vote of Council.” [of Harrisonburg, 1986]

The addition of the term ‘General Welfare’ is significant, because that catchall would later be pivotal in the ‘residential character’ debate. Since the appearance of this term is during a time when the ordinance was still evidently only covering vacant properties– the concern stated in the minutes, ‘residential character’ does not appear to have been the intention. It is more likely that in that era of emerging environmental consciousness the health and safety rationale for clearing lots no longer made sense and general welfare, which covers the stated convenience of city staff, was added.

The same session contained discussion of three residential properties and the evidently abandoned former segregated swimming pool on Kelley street, a

street in the heart of historic Newtown, site of a later shooting that provided the impetus for the creation of the Northeast Neighborhood Association, and later to complaints connected to the adoption of the Spot Blight ordinance. This is the version in which the criminal penalty re-appeared. Dissent continued to persist, and the enabling legislation shows that the cities and counties were only permitted to enforce on vacant lots (unless perhaps the weed cutting was provided for in their charters).

The character of the lawn ordinance started to change in 2000. In that year, the wealthy counties of suburban Washington DC in Northern Virginia's Planning District 8 appealed to the state to modify enabling legislation to allow them to enforce tall grass and weed ordinances on occupied properties. A history of the housing bubble in this region, incidentally, points to increasing numbers of Latinos targeted by predatory lending that would fuel the runup in housing prices that started in 2002. The Hispanic population increased by 92 percent between the 2000 and 2010 census, with the majority of the state's Hispanics living in Planning District 8. [Cai, 2011] In the same year, enforcement of the Tall Grass and Weeds Ordinance in Harrisonburg was transferred from the police department to the department of Planning and Community Development.

A 2003 DNR article on the instituting of proactive zoning enforcement opens with Alison Banks describing a person who had roosters in his back yard tied with a rope to their feet that he was allegedly raising for fighting purposes and describes what seemed to be an unrecognized moment of cultural miscommunication. The article continues with Jason Smith, zoning inspector, describing his enforcement work. He describes most of the calls as being from "neighbors telling on each other." He describes people calling to complain about their neighbors and balances anecdotes of piled up trash bags with complaints about children's toys and a complaint of "trash all over the yard" of a college student that turned out to consist of a single Big Gulp cup. the report captures the essence of lawn ordinance complaints, stating: "many complaints are people who just do not like the way their neighbor's lawns look or do not like their neighbors, Smith explains." [Pagonis, 2003b]

In a parallel article in the same issue the reporter documents Smith's enforcement of the Tall Grass and Weeds ordinance in particular. Alison Banks, then zoning administrator, now senior planner, described how the mowing costs of the few people who did not respond immediately to violation letters were handled: "Worst-case scenario, we'd have to attach it to their tax ticket,... And it's been done." Smith is then contrasted giving an example of a property owner who he tracked down in the hospital and a couple in a nursing home and saying "I'll work with people." [Pagonis, 2003a] Smith is no longer employed by the city.

Three years later, a reporter who ran a story on the city "resorting to rarely used methods to encourage a landlord to clean up a backyard partially overrun with what appears to be poison ivy and weeds" gave Alison Banks the opportunity to quantify exactly how often enforcement got to the public notice stage. The 2006 incident proved to be the second since Planning and Zoning took over enforcement in 2000. Evidently, the role of the ordinance had more to do with

satisfying people who wanted a way to get at their neighbors than with any wrongdoing on the part of those complained against, even under the assumption that there is something wrong with the natural growth of plants. In the same article, whose continuation headline was “Weed problem Isn’t an Aesthetic Matter,” Banks said “This is not for aesthetic purposes.” [Reynolds, 2006, p. 11, 13] By 2012, Director of Community Development Stacy Turner’s staff was unabashedly zoning for aesthetics, with zoning inspector and Tea Party Treasurer Nancy Stone stating that original stonework must be kept clear and Turner forbidding growing the wrong plants adjacent to each other and specifying a host of restrictions such as maintaining of clear boundaries on business gardens.

The history of the enabling legislation clearly indicates that the intent of such ordinances was to apply to vacant lots. The sequence of amendments since 2000 suggests the impetus for expansion of powers was to change the character of the legislation from pertaining to keeping cleared land from being reclaimed while pending development to excluding people who could not be otherwise legally discriminated against. In Harrisonburg, this instrument has served as a general purpose weapon of intolerance, with collateral harms to a broad range of activities including those of churches, universities, faculty members, and civic minded students.

Key element in the revision history of this enabling legislation include the following:

- April 8, 2000:
Virg. Leg. Code ch. 740 [2000] added planning district 8, the wealthy Northern Virginia suburbs of Washington DC: Fairfax, Arlington, Prince William, and Loudon counties.
- March 22, 2003, Virg. Leg. Code ch. 829 [2003] added class three misdemeanor after three civil fines.
The subsequent years, particularly since 2009, saw a scramble of counties and cities to be added to the list allowed to enforce on occupied lot.
- March 31, 2014, Virg. Leg. Code ch. 385 [2014] extends the enabling legislation statewide. Like the city council members who passed Harrisonburg’s 2012 crackdown, the state legislators laughed and joked as they passed the bill. Notably, however, the representatives from Harrisonburg and adjoining districts⁹, where lawn ordinances are no longer a laughing matter, all voted against the expansion.

With respect for the motives for changing in a 2009 article entitled “You got rain, you get weeds: Mowing Complaints spur discussion of county ordinance” County Administrator Joe Paxton was quoted as saying “Quite frankly, I think it’s just because we’ve had so much rain this spring.” This was in no way a return to the sentiment of the writer from the 19th century who wanted to regulate farm

⁹Harrisonburg Republicans Tony Wilt, Mark Obenshane, and neighbors Steve Landes and Emmet Hanger

houses. Paxton made very clear that a contemplated ordinance would apply only to specific residentially zoned subdivisions, and enabling legislation further spells out only to homes on modest lots. [Bowser, 2009] In 2014, Paxton's explanation of another issue of controversy was that Harrisonburg and Rockingham county needed a new jail because of the region's increasing diversity. [Gilkerson, 2014]¹⁰ The evolution of the enabling legislation suggests the latter is a more robust potential explanation for Virginia's growing embrace of lawn ordinances.

The evolution of the lawn concept moves along with a parallel process in the available tools. Willis' 1830's advice about the relative ease of slicing weeds from a dirt path as compared to weeding between stones point to a scythe. The comment on evenness by the 1880's writer on Woodbine cemetery suggest the coexistence of scythes and reel mowers, with the later making that trait a reasonable expectation. The Harrisonburg city code continues to reflect the expectation of scything up to the 1970's, agreeing with the testimony of informants in the Northeast Neighborhood who reported using scythes and sickles even to maintain lawns into the 1960's. The shift in Harrisonburg code to grass heights reflects the motorized rotary mower that became available at the end of the 1940's. The combination of the motorized rotary mower and the introduction of extensive use of lawn chemicals combined to make possible the present lawn standard, which as they say shows more that we don't care than that we care.

The tools and technology, as they do in the well worked out Institutional theory of resources, interact with social mores in turn fed yet again by social relations predicated on the technology behind the possible tools and machines of the day, to constantly change the meaning of the plants growing in the vicinity of Harrisonburg's example of the American Southern home.

The preceding has presented a broad outline. I next turn to a detailed examination of the 2012 crackdown in Harrisonburg and display the use of contextually situated data and data analysis toward the end of policy goals, problem solving, in community economics.

1.3 Data Analysis on Current Ordinance 16-6-58

Harrisonburg had a history of challenges to its law ordinance. The ordinance itself did not come into being until relatively late. It first appears in the 1940's as a requirement to clear empty lots by a certain date and evolved in the early 70's from a fairly mild form that had lost its criminal penalty and required cutting, with no height specification, twice: at least once in the early part of the season and once at the end to cutting at a vaguely specified but generous height. The catchall phrase 'general welfare' was added to the motivation and the criminal penalty was reasserted in 1986. However, even after it started to be interpreted in a more modern form in 2000, its application warranted a front page article in the 2006 in which officials insisted that they were enforcing for safety, not for

¹⁰The article quotes "Paxton said the county has to face its 'increased population, increased diversity, and increased complexity in cases'"

aesthetics. It was some time after this that it started being seriously applied to occupied properties. At that point, the data concept of a certain grass height became meaningful for the current data analysis.

The ordinance became contentious when enforcement was turned over from the Police Department to the Department of Community Development under a its current director who engaged in a protracted conflict with a county planning official who wanted to used state of the art storm water management techniques on his city property. Since that time the ordinance has seen incremental strengthening and the planning and zoning officers evince an open hostility toward any suggestion of meadows in particular. The latest round of strengthening came in 2012. This followed a resident complaint that the ordinance which permits anonymous complaints could be used to target people, in particular with racist intent. A month after the complaint, the enforcement period was lengthened, the height lowered, and the requirement to provide notice before mowing by the city with an attendant 4th degree misdemeanor charge which cannot be contested or appealed was removed after the first complaint in a growing season.

The clash with modern values recurred later in 2012 when, inspired by the local foods movement and their course in ecological design at James Madison University, a pair of students requested a business license to sell produce grown in their yard. No such license existed. Initially, city staff saw no problem with creating a new category under 'home occupation' but when staff realized that this would open a way to circumvent the lawn ordinance, they reversed and opposed their own recommendation before city council, sending the request back to planning and zoning to be encumbered with a litany of restrictions. While in theory growing a garden from edge to edge on a property was permitted, the thought of it had not been publicly broached before the discussion of the business garden proposal. The opposition in public hearings was revealing.

Despite the zoning board's warnings and prompting of a silent majority, only a handful of opponents appeared to speak against urban horticulture versus a sizable well informed majority in favor. In surprisingly candid testimony one person expressed the tension, that they had come to be away from their agricultural past, echoing Veblen's chagrin at the functional cow and what that says about the owner. They also repeated frequent refrains of rats and snakes, that have no basis in ecological fact but that may be sincere expression of unfounded fear, but in a surprising throwback to medieval times included hawks in the list of pests. This puzzling inclusion evidently has a precedent in the English country side where hawks have been considered a pest for interfering with the game animals of the nobility. Other arguments brought forward included a warning that if people became attached to their places as homes, buying up the property in order to provide needed high density housing would become more difficult for developers (a surprising evocation of Urban Renewal reasoning that would take center stage later that year), an assertion that sunflowers instead of mowed lawn would be "an abomination against what mother nature does,"¹¹ and most

¹¹In the following season, sunflowers appeared across the city— for example at five sites within two blocks or so of the former Mayor's home, evidently in solidarity with a sensible

avored by the commission preservation of ‘residential character.’ The final, and honest, argument was sheer intolerance of those who don’t conform. While this concept of ‘residential character’ defied efforts to pin it down, it was confided as residents ‘being embarrassed’ by who they live next to when people come to visit.

The revised ‘business gardening’ permit was passed, with muted celebration among the groundswell of residents who had turned out in support. It amounted to permission to sell tomatoes out of grandma’s Miracle Grow garden, as opposed to permission to make a living out of great grandma’s Victory garden. It also moved the struggle against the lawn ordinance, 16-6-58, to the next stage.

The lawn ordinance and the reasoning behind it came up in two items before Harrisonburg City Council originating with concerns in the Northeast Neighborhood. The first was a concern over the maintenance of alleys, the second the adoption of a spot blight ordinance, a power recently granted by the state in this Dillon’s rule state, where municipalities have only the powers granted to them by the state. Whereas the reasoning that seemed to persuade for restricting business gardening ran in terms of maintaining ‘residential character,’ the reasoning in the Northeast Neighborhood cleanups focused on ownership, ownership, building community, and beautification. The concerns about the properties prompting the adoption of a spot blight ordinance were that they were empty and serving as a gathering place for people unknown in the neighborhood. The response of city staff in both cases was to reason in terms of extending the power of the lawn ordinance. The lack of alignment between this impulse and the neighborhood needs was pointed out with the result that the spot blight ordinance was subjected to oversight by council before enforcement funds would be allocated to staff and that an attempt to place all undeveloped alleys under 16-6-58 was blocked. When the ordinance was used, council said aesthetics could not form the basis of enforcement and requested that a threat to health or safety be documented. When paper alleys were proposed for closure, which would make them subject to the lawn ordinance, the closure of many was blocked. The decision was that adjacent property owners were responsible for maintaining the alleys but that 16-6-58 would not apply to them.

The Northeast Neighborhood was special in that it is one of the lowest income sections of the city and that it was historically the African American section of the city. It is now a diverse mix dominated by African American and Latino. This juxtaposition of diversity and tradition would eventually fully expose the institutional patterns lying behind the lawn ordinance struggles. At the same time the struggles over the lawn ordinance were going on, another was germinating, originally, though with much ambivalence and discussion, in discussions in the African American Community: a historic renaming of a street for Martin Luther King Jr.

In the remainder of the paper, we present data indicating that the lawn ordinance did not function according to its stated intent and had numerous unintended consequences. We follow up with an examination of claims regarding

approach to lawns.

the role of proactive zoning enforcement that are also not born out by the data. Both point to efforts to build non-invidious community as more likely to be driving measurements that suggest community improvement. We then take a deeper look at the institutions of Harrisonburg revealed by the street renaming effort. We present evidence against commonly asserted false claims regarding Martin Luther King Jr. Street renamings and point the way toward using our results to make the case for policy proposals at the federal level that have previously been difficult to persuade around.

1.3.1 Lawn ordinances don't function as promised

In this section, we analyze data on both the Harrisonburg lawn ordinance in particular, as well as on the role of zoning enforcement in general. Harrisonburg zoning ordinances are enforced in two ways: complaint driven and proactive enforcement. In the latter, inspectors travel through the city noting all violations visible from curbside at about one section per month on a cycle that takes three years to cover the whole city. The city is currently in its fourth cycle. In the case of the lawn ordinance, we concentrate on complaints. In the subsequent section, we take up proactive enforcement. On June 12, 2012 City staff was made aware that the Harrisonburg lawn ordinance had the potential to be abused. On July 24, 2012, the lawn ordinance was made harsher. The following data analysis suggests the harsher ordinance hobbled numerous projects including a popular business gardening initiative and raised anxiety across the city as reflected in increased mowing and drastically lower grass heights. The increased mowing amounted to an effective tax on the city (on the order of the 2012 proposed property tax increase) without revenue as the economy struggled to recover. The consequences of shorter, more chemical intensive lawns, may also show up as a cost to the city under new rules governing storm water runoff under a Chesapeake Bay protection act. The data also suggests the promotion of antisocial behavior. At the same time, there is no clear effect in the direction of cost savings in enforcement promised in the justification for the 2012 amendment to the ordinance.

1.3.2 Action and rationale

On July 10, 2012, the director of Community Development requested that the Tall Grass and Weed ordinance be amended to increase the enforcement period, reduce the notice requirements, and reduce the regulation height. This resulted in an ordinance that placed at least half the city at risk of incurring a criminal record by taking a long weekend at the wrong time of the growing season.

The scenario the director described to motivate the harsher ordinance was that people get frustrated because it can take a long time for the city to get through the process of having a property mowed. She also said people were waiting to complain before the start of the season, and people were disappointed at calling too late to complain. She also implied that the change would reduce the cost to the city. She gave as anecdotal evidence a cost of \$480 to mow a

property that heirs refused to claim that the city had to absorb. Her presentation resonated with conventional wisdom on council prompting one member to state that he saw such problems with foreclosed properties and reasoned that if a person did not mow by 12 inches, they would not mow by 15.

1.3.3 Direct effects

Subsequent to the crackdown, the data show that grass heights decreased, confirming anecdotal reports and reports by contractors that mowing frequency increased. Despite this, the number of complaints increased, including a surge just after the amendment was passed. The proportion of complaints that were unfounded increased. The pattern of height reductions did not support the ‘don’t mow at 12 inch, won’t mow at 15 inch’ hypothesis, but rather suggested people targeting a conservative interpretation of the regulation height.

The number of properties apparently mowed by the city or on which mowing was apparently averted remained very small, less than six, bounding the avoided enforcement cost at a very small number even under the director of community development’s worst case scenario: maximum savings would have been on the order of the cost of extra mowing probably induce on a single city block by the amendment (consider three extra \$33.00 mowings on 10 yards). In the mean time, workload of this type on staff, that staff reports is particularly unpleasant, increased.

1.3.4 Additional effects and findings

An examination of specific violation sites and discussions with people who had been cited in the past revealed noticeable presumably unintended consequences and misapplications. Inspection of geocoded complaint sites revealed visible marring of the landscape where people had evidently tried to avoid complaints by placing gravel or bushes on difficult to mow terrain. Many such homes were however *still* targeted. A significant group of homes that were targeted for complaints visibly had problems that could not be solved by mowing. Over a dozen people reported getting a violation letter for yards that, far from being abandoned, were being very intentionally cared for in an ecologically friendly way, sometimes by experts with a Ph.D. in or with businesses in related areas.

In the spring, a restricted form of urban gardening was passed and paper alleys were exempted from TGW. Following the passage of the two measures, one complaint was logged mentioning a garden, a traditional backyard garden, and no increased complaints regarding alleys were noted by staff. Data clustering patterns were consistent with staff’s report that some people call in with complaints against lists of properties, and that some people retaliate against complaints with counter-complaints or with revenge against the city in the form of complaints against random properties and consistent with the testimony that suggested a salient driver of 16-6-58 was antipathy toward one’s fellow human beings.

A striking feature of the data was that the Northeast Neighborhood marked

a consistent decrease in all code violations as well as in TGW violations starting from about the time of the founding of the Northeast Neighborhood Association, despite the fact that no substantive city action had been taken on NENA concerns, implying these were effects of community civic engagement alone and not of enforcement. Neighborhoods where multiple lawn alternative projects were undertaken were similarly low in TGW complaints.

1.3.5 Methods and data

Raw complaint data was supplied by city staff from the start of the pre-amendment 2011 growing season to the 2013 anniversary of the July 24 2012 amendment.

The data was coded according to the comment field with *TGW* being a simple Tall Grass and Weed complaint, *group* showing evidence of being multiple address in one complaint, *common* referring to common space, *bounced* having failed to reply to a notice, and *junk* noting junk or vehicles on the property.

The data was classified by time in the growing season to facilitate matched comparisons to control for time of year. dates labeled *pre* are for the growing season prior to July 24 in the given year. *Extended* for 2012 indicates the time after September 1. For 2013, *pre* starts at the new earlier start of the enforcement season. Complaints were further classified according to whether staff marked the complaint as unsubstantiated. For 2012 and 2013, we were able to identify resident complaints and report only on complaints by matching uniform enforcement dates for the former and through staff notation for the latter. For 2011, we could not distinguish between complaints and proactive enforcement so numbers are distorted by uniform enforcement which should bias the proportion of unfounded records downward and inflate totals.

Table 1: Resident Code Violation Complaints: Type by Season in Year Relative to Amendment Month and Day of Ordinance 16-6-58. Source: Harrisonburg VA, Department of Community Development.

	TGW	junk	bounced	group	mowed	common	foreclosure	garden
2011pre	61	0	6	9	1	1	5	0
2012pre	50	5	2	4	0	0	1	0
2013pre	49	2	2	13	2	1	1	1
2011post	14	1	0	0	1	0	0	0
2012post	26	3	2	0	0	0	0	0
2013post	7	0	0	0	0	0	0	0
2012extended	16	1	1	0	0	0	0	0
2013extended	0	0	0	0	0	0	0	0

Table 2: Unfounded Resident Complaints: Source: Harrisonburg VA, Department of Community Development.

	TGW	junk	bounced	group	mowed	common	foreclosure	garden
2011pre	16	0	0	0	0	0	0	0
2012pre	8	1	0	0	0	0	0	0
2013pre	12	1	0	3	0	0	1	1
2011post	1	0	0	0	0	0	0	0
2012post	7	2	0	0	0	0	0	0
2013post	2	0	0	0	0	0	0	0
2012extended	3	1	0	0	0	0	0	0
2013extended	0	0	0	0	0	0	0	0

1.3.6 Google Earth visualizations

Records were geocoded and visualized in Google Earth to find additional data patterns.

The list of gpx files includes all.gpx, which contains all complaints labeled with date and inspector comments, repeats.gpx which includes sites with multiple complaints, mowed.gpx, properties we are fairly sure were mowed by the city, and unfounded.gpx of unfounded complaints. While the data is public, we don't here include the gpx files, both because their dynamic character is lost in a printed work and to avoid disturbing the privacy of complaint victims.

Most notable in these files is the Northeast Neighborhood. A handful of complaints that happened during the 2012 uniform enforcement window were excluded since they were likely not to have been results of resident complaints,

Table 3: Percent Unfounded: Source: Harrisonburg VA, Department of Community Development.

2011pre	2012pre	2013pre	2011post	2012post	2013post	2012extended	2013extended
19	15	25	6	29	29	22	NaN

but two of the properties identified got complaints later that year and others did not recur later. Excluding this group of points probably improved the data by excluding non-complaint data that was not of interest while not deflating the number of relevant violations pertinent to looking for trends over time.

The results show a distinct drop in the number of complaints in the Northeast Neighborhood over time, contrary to the trend overall. This is in line with steady and substantial drops in all violations during proactive enforcement rounds starting from before the establishment of the Northeast Neighborhood Association. NENA has been at the heart of major civic engagement efforts that have had an impact in building community in the neighborhood and city wide. Excluding this neighborhood from analysis of the rest of the city would leave greater support for the hypothesis that harsher lawn ordinances encourage complaints. Excluding this neighborhood is also supported by the impression that the attitude toward the lawn ordinance may have been different there.

Another notable neighborhood was that around Collicello Street, where multiple households have been active in urban horticulture. At the site of two complaints in that area, visual evidence of the surrounding houses suggests a generation issue and a lack of awareness, for example, of how to prune trees in combination with properties that had signs on them suggesting they were vacant. Another pair of houses complained about on a nearby street had issues that would not be solved by cutting the grass. This was true of many houses with multiple complaints around the city. Similarly, the Roosevelt street neighborhood, where two people testified about front yard gardening, also had no complaints. The evidence suggests where awareness of alternatives exists, people don't complain.

Finally, in a substantial number of properties with sloping yards the owners evidently had resorted to replanting their lawns with rocks, a poor choice from a storm water management perspective, yet still found themselves targeted by complaints. The ordinance in numerous cases seemed to be driven by ignorance and to lead to actions that would run counter to an application of intelligence to solving the problems of maintaining a home in a given locational context.

1.3.7 Time/temperature/soil moisture plots

Since there may be a relation between growing conditions and complaints, we include graphs of growing conditions superimposed on complaints, shifted up for ease of comparison. Weather data from a Shenandoah Valley climate monitoring station was obtained at <http://www.wcc.nrcs.usda.gov/scan/>

There does seem to be an echo of more complaints lagging after a peak in

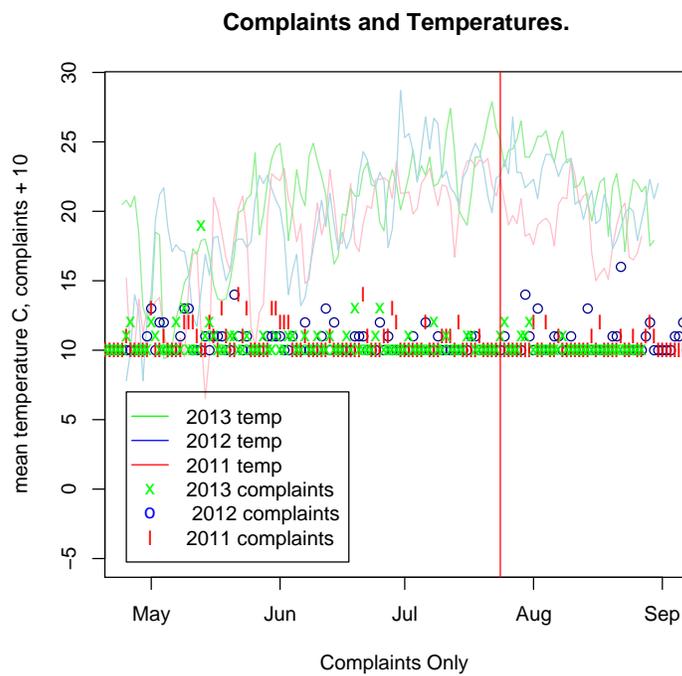


Figure 4: 2011–2013 Water Year Temperature and TGW Complaints. Source: Harrisonburg Department of Community Development and Shenandoah Valley Climate Monitoring Station, <http://www.wcc.nrcs.usda.gov/scan/>

Complaints and Soil Moisture.

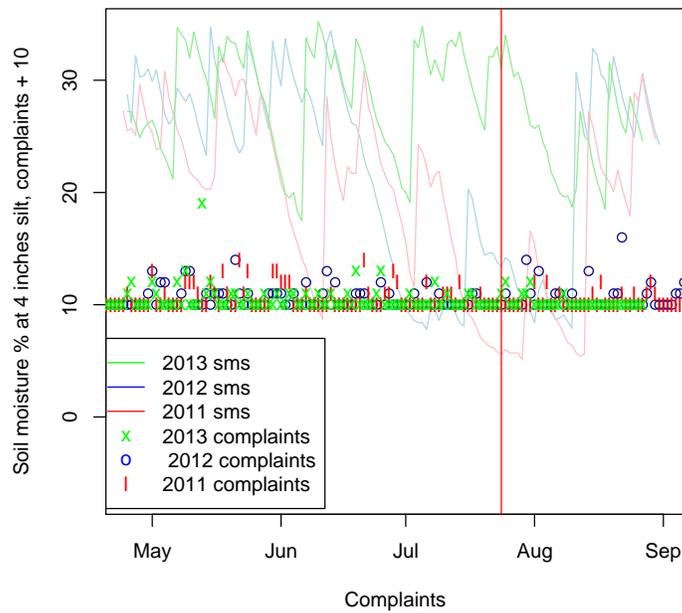


Figure 5: 2011–2013 Water Year Soil Moisture and TGW Complaints. Source: Harrisonburg Department of Community Development and Shenandoah Valley Climate Monitoring Station, <http://www.wcc.nrcs.usda.gov/scan/>

soil moisture. Overall, 2013 was wetter than the previous two years, but most of this was late in the season when water did not seem to affect complaints as much in previous years. What is very clear is that despite little obvious weather correlation, there was a flurry of new complaint activity for the remainder of the season after the amended ordinance was passed. In the new year, the pace of complaints steadied back to its old pattern. However, it is notable that the proportion of false positives increased despite the fact that the threshold for a violation had become lower. This suggests that people complain based on a certain look, as was the case of a neighbor who fulminated during the height survey that the bank owned property across the street was an ‘eyesore.’ That property, maintained by neighbors, did not clearly exceed the specified high. On getting the measurements and the phone number to which to complain, the neighbor was not responsive and no complaint was filed. The increase in unfounded complaints suggests that people might not have a feel for a three inch height reduction. This is even more strikingly born out in the final piece of evidence, the effect of the ordinance on mowing heights.

1.3.8 Chilling effect of ordinance

A survey was conducted the day before the enactment of the ordinance and again a year later. This data confirms anecdotal accounts of lawn services mowing more frequently and the impression of whole neighborhoods mowing as soon as the news of the new ordinance got out.

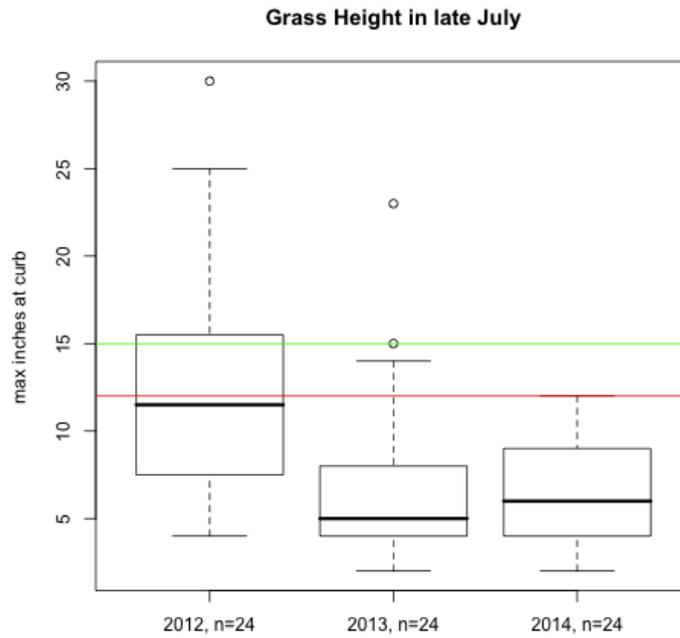
In the second survey, the grass heights were surprisingly short. The measurements were taken as the maximum height at curb side. In the previous year, this tended to correlate with the general state of the lawn. In the subsequent year, the tall spots stood out from lawns that were more or less uniformly short. I asked a person who gave me his e-mail to tell me when he had last mowed and why he had mowed (expected rain etc.) but he did not reply, suggesting that these were simply the routine grass heights and I had not happened to sample during an unusual mowing period. I subsequently conducted a third round of measurements in 2014 at the suggestion of Council Member Richard Baugh who hypothesized that people would have returned to their previous habits. They had not.

This evidence casts doubt on the claim that ‘most people’ like their grass short. If people liked three inch grass, nothing keeping them from it before the amendment. Rather, the data supports that people feel pressure to conform. Grass cutting behavior is thus equivalent to a tax imposed by the city.

1.3.9 Tax cost estimate

We can estimate the size of this mowing tax. If we take a random snapshot of grass heights we might reasonably assume that we will see grass at all stages from ‘just cut’ to ‘ready to be cut.’ If we assume that people have the same mowing norms, then we can infer the change in the mowing frequency by looking at the change in the difference between maximum and minimum grass heights.

Figure 6: Maximum Grass Height at Curb, July 2012–2014, Measured in the Harrisonburg VA Pleasant Hill Acres Neighborhood.



Min.	1st Qu.	Median	Mean	3rd Qu.	Max.
4.00	7.75	11.50	12.54	15.25	30.00
2.00	4.00	5.00	6.75	7.50	23.00
2.000	4.000	6.000	6.417	9.000	12.000

Setting aside heights about the third quartile as possible doing something other than mowing by the norms, in our data sample we see a difference of 11 inches before the ordinance, and 5.5 inches after. This implies that the mowing frequency *doubled*. As a double check, note that not only the median, but the also the variability, as measured by the interquartile range on the box plots was cut approximately in half. This adds confidence to the median measures since it would have been more difficult for measurement bias to enter into the variability.¹² This is consistent with anecdotal evidence and the extension of the mowing season makes it unlikely to be an underestimate of total mowing. Behaviorally, this makes sense. It is more likely that people who used to mow on Saturday now mow on Wednesday as well, for example, than that people have re-calibrated the mowing height on their lawn mowers.

To calculate the cost, start with a cost estimate for mowing of \$330.00 from <http://aggie-horticulture.tamu.edu/archives/parsons/turf/publications/mowing3.html> and make the conservative assumption that Harrisonburg rose from being below average to this average level. The cost increase would then be \$165.00 per household. If we take a median house price of \$200,000.00 this would feel more than an $8\frac{1}{4}$ cent property tax increase to the majority of home owners, more than twice the property tax increase proposed in the most recent city budget.

Beyond the direct costs, city authorities can, by stigmatizing, inflict serious consequences on individuals who harm no one. City authorities can also inflict harm on the community through acts that send a message to the public. For example, the constant repetition of the false claim that racists are the silent majority in the community, emboldens acts like the vandalism of a Mosque in 2012 and an October 2013 hate crime beating. Siding with intolerance by advertising arbitrary 'enough is enough' lines on matters like personal taste in cultivating a yard gives broader permissions than the city may realize.

1.3.10 Consequences of Repealing the Lawn Ordinance

During the 2013 growing season, the lawn ordinance has not applied to undeveloped paper alleys. City staff has noted no noticeable effect from the lifting of this restriction.

In 2012 there had been discussion of problems with alleys reported by the Northeast Neighborhood Association. I attended their neighborhood cleanup to see what the issues were. What I found had nothing to do with the lawn ordinance and in talking to leaders and residents of the neighborhood, I was not able to find people who perceived the neighborhood's issues in terms of lawn mowing. Rather, as statistics show, the issue in the neighborhood were ones of who was responsible and engagement. The neighborhood has, as the statistics and testimony from the neighborhood around a hearing to site subsidized hous-

¹²A further check on this would be to test whether the compression of the range is greater than what would be expected from a fixed measurement precision and a downward bias on height measurements compressing the total range. The graphs are striking enough that I did not do this check.

ing show, made substantial gains. Some of the demands of the neighborhood have been for greater police presence. However, by the testimony of the leaders of the neighborhood, those did not start to materialize until recently. The undeniable gains must thus be attributed to the increase in civic engagement rather than enforcement.

The data is consistent with people keeping their homes in a state that is acceptable to them and not a threat to their neighbors. On this count, there is no cause for regulation. What regulation does serve is to allow people to vent hostility toward other people. This is a holdover from times when it was socially acceptable to coerce people to stay in their place, as the discussion of the street renaming will similarly suggest in a later section which indicates that the underlying motivation for those objecting to others having freedom is pure antipathy toward their fellow human beings and that, furthermore, that antipathetic group is small and mostly no longer residing in Harrisonburg.

1.3.11 Recommendation on lawns

The data indicates that the amendment to 16-6-58 did not provide the benefits on the basis of which it was approved, and in fact it may have had the opposite effects. Beyond what is evident in the data, the amendment in spirit violates due process and puts people at credible risk of being branded with a criminal record through arbitrary action of an anonymous accuser. The severity of such a threat should not be underestimated in a climate where people cannot find work and where many resident live in fear for their immigration status. At the very least, the amendment should be repealed and criminal penalties removed.

Furthermore, data does not show significant benefits from the lawn ordinance, but does show substantial monetary costs, the promotion of anti-social behavior in the community, and the chilling of pro-social initiatives. There is scant justification for retaining the ordinance in any form.

For extreme cases, where vegetation is a marker for more significant underlying issues, the city now has a spot blight ordinance. The city also has close contact with bike groups that routinely clear forest trails and can provide expertise on how to clear a good sized lot for much less than the \$480 anecdote cited by staff unless trees need to be removed. At an intermediate level, the city may want to pressure owners to keep properties occupied, but the number of affected properties is very small and there are more efficient methods to exert such pressure that don't inflict substantial collateral damage on the community.

The city may want to take an affirmative position on natural landscapes to send a signal to potential complainers. Such landscapes around occupied homes should be allowed without conditions, except possibly on specific spreading dangerous plants such as poison ivy adjacent to a neighbor's property or state specified invasive species next to vulnerable habitats. Such landscapes already exist in many unoccupied sites (including poison ivy), around water ways and railroad track, and in parks for example. Natural landscaping should be arranged voluntarily first between landlords and tenants and then between residents and neighbors, with priority going to the person who will actually be

living at and enjoying the site.

1.4 Data Analysis on Harrisonburg Proactive Zoning Enforcement.

On November 14, the Daily News Record of Harrisonburg Virginia ran a story by Preston Knight entitled “Inspectors Seek Out Code Breakers” claiming code violations had decreased across the city and attributing the change to proactive enforcement. The Northeast Neighborhood was cited as an example. Knight states that proactive inspection has decreased the number of code violations. Knight quotes inspector Nancy Stone writing:

Stone said “more and more” residents are aware of proactive zoning. Numbers back that up.

In 2012, the inspectors found 103 violations - all of which were corrected - a recent report shows. And for almost every neighborhood on its fourth cycle of review, the number of violations has decreased.

In the Northeast Neighborhood, for example, 80 violations were found the first time it was proactively zoned. That figure dipped to 29 in May 2012.”[Knight, 2013]

The pattern reported is not clearly evident in the data. Excluding the Northeast Neighborhood, of 22 zones that had inspections in the fourth round, in 9 the number of violations increased and in 2 they stayed the same.

In the third round, of 35 zones, excluding the Northeast, in 17 zones the number of violations increased over the first round and in 4 they stayed the same.

In the second round, in 16 zones the number of violations increased over the first round. This was the only round in which we might claim a decrease. If the data had been collected through randomization and the sample proportion was tested against the hypothesis that proactive zoning enforcement made no difference, the P-value would be over 74% meaning the data would fail to persuade at any of the popular cutoffs.

Trying the second round as the baseline: excluding the Northeast, in 14 zones the number of violations increased over the first round and in 3 they stayed the same. Comparing the second round to the fourth round, in 13 zones the number of violations increased over the first round and in 1 they stayed the same. And Finally, in 8 zones the number of violations increased over the first round and in 3 the number stayed the same.

In summary, in no cases was there a significant decline in violations. In most there was an increase, with the largest effect being an increase in violations in the most recent two rounds.

We next break the data down into finer time periods. Each zone is visited in a different month over the year, thus the data provides a time series in which zones appear as correlated observations.

One way to look for a trend in time is to take log differences of observations in each zone which provides relative changes, and track the relative changes contributed by different zones over time. The log difference approach is common in financial time series. In interpreting the numbers, it is important however to keep in mind that the ‘rates of return’ are over a three year period, not a month by month period. For a month by month change, we need to consider that both the base and end period move forward as we advance to different zones.

We might expect two effects by the hypothesis of the Daily News Record: violations might drop more at the start. Declines may be smaller later as people who have learned about proactive enforcement come into and stay in compliance. Violations might drop as time passes if the population is large and if the news of proactive enforcement is not spreading fast. In log differences, the differences should decline over time as we bottom out to minimum violations as in the first story, unless the rate of change stays the same, which would be consistent with the second story. These features make a linear regression on log differences an inappropriate choice.

Alternatively, we can look at when the biggest proportion of violations occurred for each neighborhood. We would expect the distribution of violations over time to be tilted earlier in time for each neighborhood. We would expect the skewness to be greatest for the first neighborhoods in the cycle, since they would have been caught off guard by the proactive enforcement under the Daily News Record hypothesis. We can thus use the violations as a weight on each time period and come up with a weighted average time of violation.

Figure 7: Proactive Zoning Enforcement Weights on Time of Violation. Source: Harrisonburg VA Department of Community Development.

first	second	third
0.3244121	0.3764842	0.2991037

First three cycles, including Northeast.

first	second	third
0.3215230	0.3804020	0.2980751

First three cycles, not including Northeast.

first	second	third	fourth
0.2906543	0.2206813	0.2201616	0.2685028

All four cycles, including Northeast.

first	second	third	fourth
0.2871084	0.2212862	0.2169725	0.2746329

All four cycles, including Northeast.

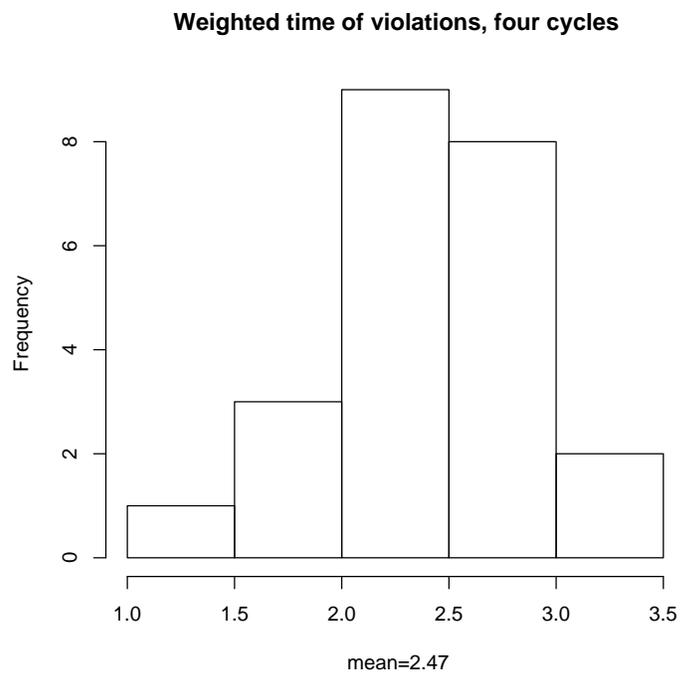


Figure 8: Neighborhood Weighted Time of Proactive Zoning Violations. Source: Harrisonburg Department of Community Development.

Weighted time of violations, four cycles, no Northeast

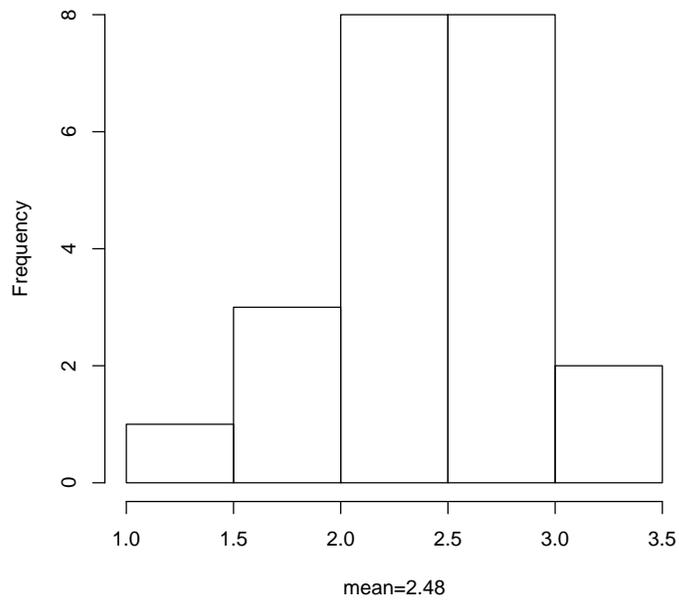


Figure 9: Neighborhood Weighted Time of Proactive Zoning Violations. Source: Harrisonburg Department of Community Development.

Weighted time of violations, three cycles.

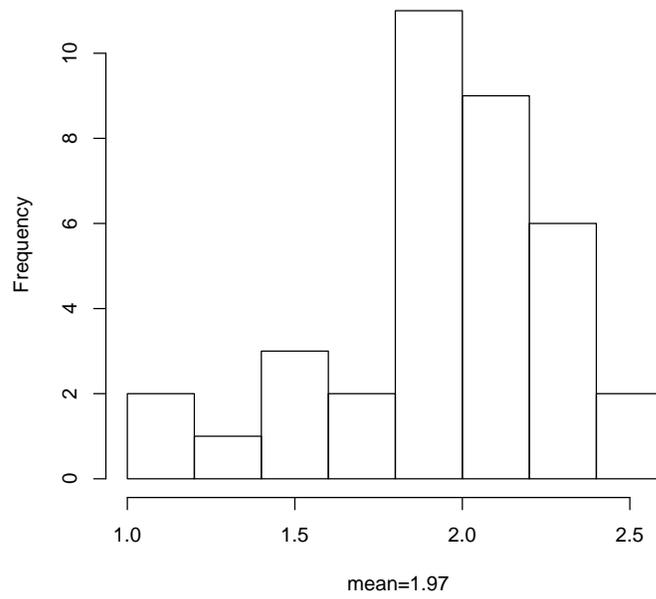


Figure 10: Neighborhood Weighted Time of Proactive Zoning Violations.
Source: Harrisonburg Department of Community Development.

The expected effect is not evident. We thus disaggregate the data to look for trends.

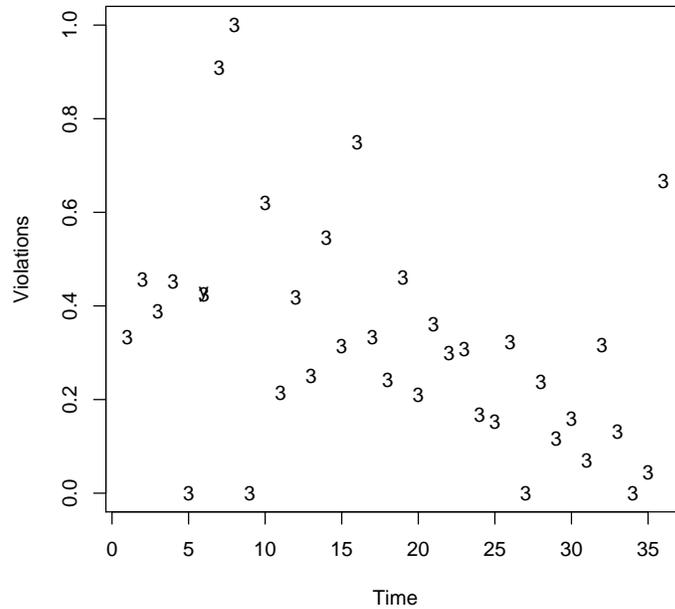


Figure 11: First Cycle Proactive Zoning Violations for Neighborhoods with Three Rounds of Inspection. Source: Harrisonburg Department of Community Development.

In figure 11 we see a downward trend in the proportions over the first cycle, consistent with word of the new policy spreading and people in other zones coming into compliance as news of enforcement elsewhere spreads.

In the second cycle, figure however, there is a rebound.

By the third round, in figure 13, we cannot see a pattern. When looking at the fourth round, patterns are even less clear. Looking at all the data over time, we see the pattern of decline and rebound. However, when looking over four cycles in figure 16, the pattern disappears. Fitting a line to the data confirms what is evident to the eye, no pattern for the data as a whole, and a decline for the Northeast.

The Northeast neighborhood stands apart in showing a distinct decline over time. At best, the rest of the data supports an effect of proactive enforcement only when it was first introduced. It may be argued that with a 25% increase in population over the relevant time period, there should have been an increase in violations and that the lack of this increase is the effect of proactive enforcement.

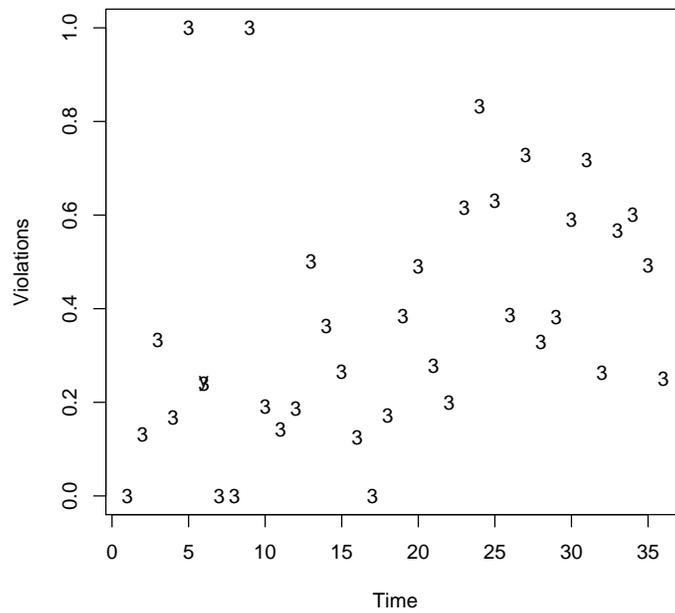


Figure 12: Second Cycle Proactive Zoning Violations for Neighborhoods with Three Rounds of Inspection. Source: Harrisonburg Department of Community Development.

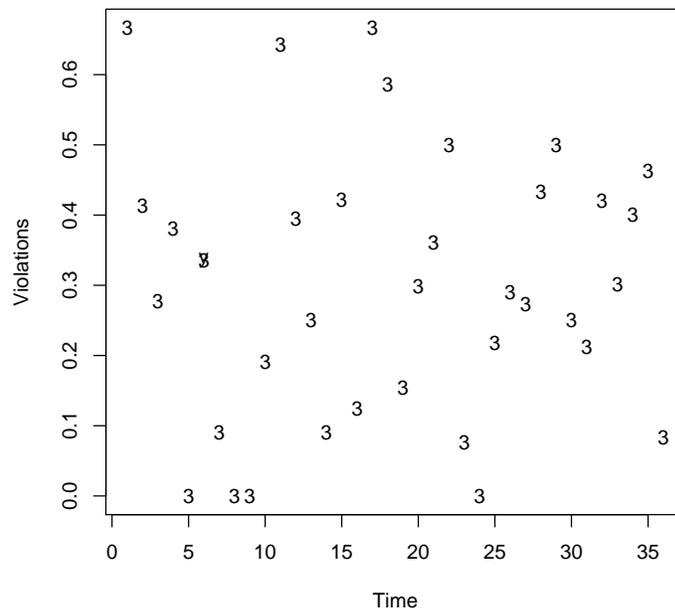


Figure 13: Third Cycle Proactive Zoning Violations for Neighborhoods with Three Rounds of Inspection. Source: Harrisonburg Department of Community Development.

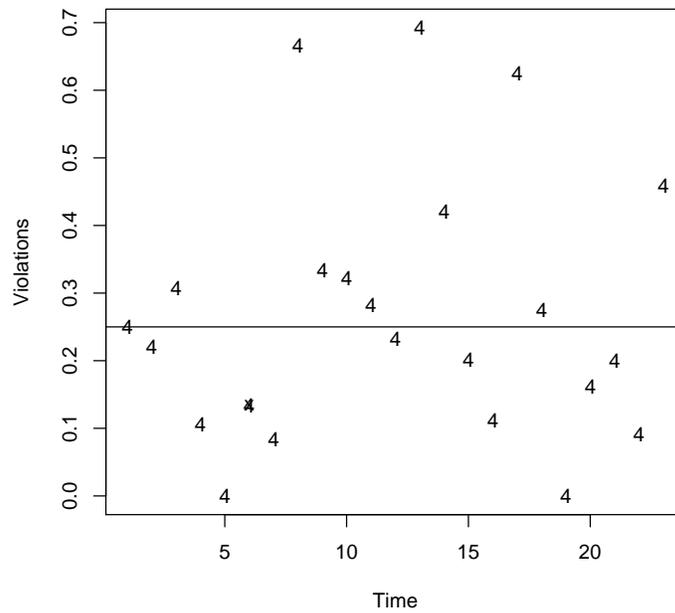


Figure 14: Fourth Cycle Proactive Zoning Violations for Neighborhoods with Four Rounds of Inspection. Source: Harrisonburg Department of Community Development.

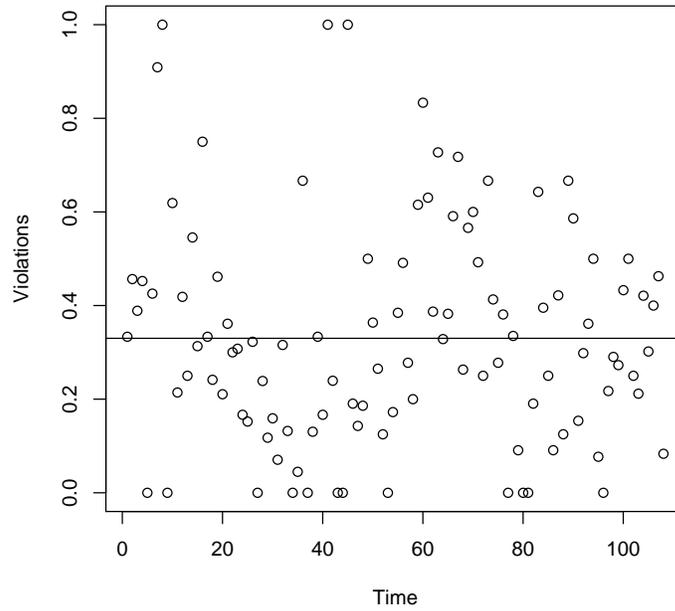


Figure 15: Proactive Zoning Violations for Neighborhoods with Three Rounds of Inspection. Source: Harrisonburg Department of Community Development.

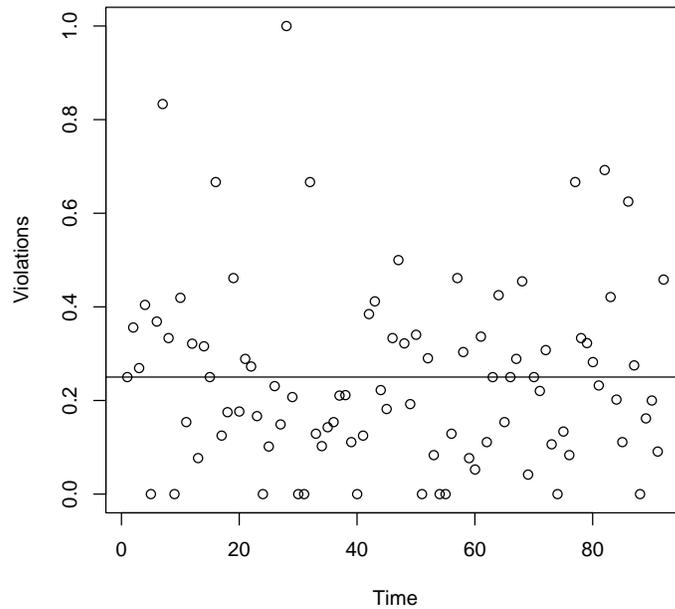


Figure 16: Proactive Zoning Violations for all Neighborhoods. Source: Harrisonburg Department of Community Development.

Figure 17: Regression diagnostics for Proactive Zoning Violations for all Harrisonburg Neighborhoods. Source: Harrisonburg Department of Community Development.

```

Residuals:
Min      1Q      Median      3Q      Max
-0.26133 -0.13345 -0.02664  0.08502  0.74495

```

```

Residual standard error: 0.1957 on 90 degrees of freedom
Multiple R-squared: 0.001402, Adjusted R-squared: -0.009694
F-statistic: 0.1263 on 1 and 90 DF, p-value: 0.7231

```

Table 4: Regression of Proactive Zoning Violations for all Harrisonburg Neighborhoods. Source: Harrisonburg Department of Community Development.

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	0.2627	0.0411	6.39	0.0000
x	-0.0003	0.0008	-0.36	0.7231

Table 5: Regression of Proactive Zoning Violations for Harrisonburg Northeast Neighborhood. Source: Harrisonburg Department of Community Development.

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	0.4055	0.0937	4.33	0.0495
x	-0.0622	0.0342	-1.82	0.2107

But this is not the argument that was made. The Northeast Neighborhood, in which the number of lawns has not been substantially subdivided in that time, displays a notable pattern that we will argue is better explained by other factors.

1.5 Conclusion

On November 14, the Harrisonburg Daily News Record ran an article crediting proactive enforcement with reducing code violations. The evidence given was from the Northeast Neighborhood. However, this neighborhood was an outlier in the data on proactive enforcement, with all other neighborhoods showing vague modest decreases or increases.

Furthermore, since 2011, all other neighborhoods showed an increase in complaints on one specific code issue: tall grass and weeds. In that category the Northeast Neighborhood was again different in showing a decrease. These numbers point to something being different about the Northeast Neighborhood.

Over this same 10 year period, the Northeast Neighborhood Association, and numerous civic groups connected to the neighborhood were established.

Figure 18: Regression Diagnostics for Proactive Zoning Violations for Harrisonburg Northeast Neighborhood. Source: Harrisonburg Department of Community Development.

```
Residuals:
first  second  third  fourth
0.02535 -0.07373 0.07143 -0.02304
```

```
Residual standard error: 0.07652 on 2 degrees of freedom
Multiple R-squared: 0.623, Adjusted R-squared: 0.4345
F-statistic: 3.305 on 1 and 2 DF, p-value: 0.2107
```

Such activity has recently culminated in preserving the Simms Center, a flurry of scholarly work on Newtown and urban renewal, the street renaming, and progress toward declaring the Newton Cemetery a historic site.

A more likely explanation of the change in the neighborhood is an increase in civic engagement, followed by successes and empowerment leading to pride in the community. This is more in keeping with Martin Luther King, Jr.'s idea of "Beloved Community" than with James Q. Willson's proactive enforcement/broken windows/genetic propensity for crime, and in the Northeast Neighborhood, the numbers bear it out.

How was it that Harrisonburg became encumbered with these backward ideas? What deeper structures do they reflect? As Laband [2005] found, there seems to be a feedback between policy makers and residents. In terms of the Veblenian dichotomy, the practices that are being enshrined in code are not instrumental. What prestige system is being shored up? To understand this, we turn to a little more context about where Harrisonburg is and who its people are, an issue that had to be addressed in the course of working with policy makers and community members in the lawn effort. Early on in leaving the isolation of campus, this community economist learned the term 'Old Harrisonburg,' a not quite visible group that wielded substantial power. Numerous other layers of Harrisonburg were to emerge.

2 Methodology and Institutional Adjustments in Harrisonburg Virginia

Harrisonburg Virginia is a small city in the Shenandoah Valley. The valley runs between the Blue Ridge Mountains to the East and West Virginia to the west. The valley has long been a travel corridor. At the present, interstate 81 runs along the valley and through the city. The interstate runs parallel to an older highway, route 11. Route 33 connects Harrisonburg to Richmond and to points west. Several railroads also cross in Harrisonburg. A look at the map suggests that people who arrived north of Virginia and wanted to head west would be likely to pass through Harrisonburg. Such travelers would have light journeys for reasons beyond the terrain. The land of the valley is rich, with sufficient water and a mild climate. Writers a hundred year ago noted excessive numbers of very old men and concluded the valley was a particularly healthy part of the country.

The Scots-Irish passed through in the 18th century and the geography of the valley attracted pacifist farmers moving along from Pennsylvania like the Amish and Mennonites who settled in other good farming spots where I have spent significant time like Ohio, and Iowa. The varied crop land spared Harrisonburg of aspects of slavery typical of other parts of the south. But this did not spare it of a role in slavery. Harrisonburg had plantations, like the state of the art Yancy Riverbank plantation near Elkton. Slaves were driven through here on their way south. Slaves were kept in small numbers, and borrowed. And human

beings were bred for slavery [Toliver, 2009, 12-13].

Slavery ended with the Civil War. War however, destroys and does not create. After a brief period of political effort at reconstruction, troops were withdrawn and a sustained national effort to recover from slavery was not mounted again until the civil rights movement, culminating in the assassination of Martin Luther King Junior.

During this time, Harrisonburg reflected the times, its side being on balance that of the south. John Brown conducted his fateful raid just north of here, and militias from here were sent to guard his hanging. In that war, this area was known as the breadbasket of the Confederacy. Winning the war involved Sheridan burning the valley. The city changed hands multiple times and the municipal building served as a hospital for both sides but is remembered as the Confederate hospital. Records list people having supported the Union. Some stayed on but others, such as the Watermans, whose family later donated some of their land holdings for Waterman elementary as a second school for white children, left.

While among whites the Confederates prevailed, a number of African Americans from the area, such as Private John Cooper buried at Newtown Cemetery, joined the Union forces to end slavery [Project, 2014]. Harrisonburg also included a significant population of religious pacifists. A city that promised some relief from violence must have been attractive to freed slaves in the area. Three African Americans who returned after the end of slavery were key to making a home for freed slaves just outside the city limit. These were Ambrose and Reuben Dallard and William Johnson, master builders who had learned their skills at the Yancy Plantation [Toliver, 2009, p. 21]. Another notable pioneer was George Newman, a highly educated descendant of a free family who was hired as principle for the 'colored' school in 1875 [Toliver, 2009, p. 40]. The settlement, Newtown, prospered. With an economic center, the African American community of Harrisonburg also prospered. Newtown was annexed by Harrisonburg as the 'colored section,' and still prospered. The African American community that grew from Newtown to the northeast section continued to prosper until it was bulldozed, repeatedly, starting in the time of desegregation.

Why was it bulldozed? A look at the occupations of the residents around 1960 suggests a power disparity. Their houses were indeed built by master builders and were as fine, if sometimes smaller than, any in town. The flood plain also contained numerous more modest houses. But whereas in 1904 stable owner and real estate developer J. C. Staples could round up a petition to have water brought to his street, there is no record of the same being done in the 'colored section.' Powerful though the community was, maids and even barbers could not compete with stable owners, lawyers, and judges. The political power of people like the Dallards and Newmans, and Willsons was broken after the 'Lilly White' movement of 1920. Many of the more modest homes were acquired by one non-African American landlord who spent his efforts on things other than maintaining property. Fifty years later, those who cared to could claim the Northeast Neighborhood homes were in the way of progress for having features that were more like country houses than city houses (though an archeologist,

Carole Nash, who interviewed the person who took the photographs for urban renewal states that even years later, he cried over the homes having been labeled ‘blighted’).

Harrisonburg changed over the years. It gradually, and then rapidly, became a poultry and college town, and then a college town. But a thread of continuity connected conservative attitudes with the past. In the words of Judith Diltz on the zoning board responding in a 2013 hearing on a request for urban horticulture permits, ‘you are asking us to re-imagine lawns, and I don’t think Harrisonburg is ready for that.’ A few months later, Harrisonburg had re-named a street running between James Madison University and the former neighborhood of the white elite for Dr. Martin Luther King Jr.

This is the story of how things change.

3 Diversity in Harrisonburg: The Street Renaming

On the eve of the street renaming, ‘Old Harrisonburg’ was demographically in the Wile E. Coyote position - it still had remnants of its segregation era institutions in place, as reflected in the composition of city staff and the income profiles of its population, but their demographic support had vanished.

The following data is drawn from the American Communities Survey and from City of Harrisonburg supplied data on city staff. The American Communities Survey “is an ongoing statistical survey that samples a small percentage of the population every year – giving communities the information they need to plan investments and services.” <http://www.census.gov/acs/www/> Since the survey is relatively small, the data is pooled over a number of years in order to provide enough observations at the local level. The data used was from the 5 year survey which has detail down to the census block group level. Documentation of the concepts in the survey can be found at http://www.census.gov/acs/www/Downloads/data_documentation/SubjectDefinitions/2012_ACSSubjectDefinitions.pdf . The data was extracted from the American Community Survey Summary File (ACSF) for 2008-2012.

The coding for the city of Harrisonburg in the file (000124) was found in the geography file: http://www2.census.gov/acs2012_5yr/summaryfile/2008-2012_ACSSF_By_State_By_Sequence_Table_Subset/Virginia/All_Geographies_Not_Tracts_Block_Groups/g20125va.txt Topics and their corresponding logical sequence code in the summary file were found in the Sequence Number and Table Number Lookup file. http://www2.census.gov/acs2012_5yr/summaryfile/Sequence_Number_and_Table_Number_Lookup.txt The 5 year ACSF technical document provides details on coding for the extraction of data from the summary file. http://www2.census.gov/acs2012_5yr/summaryfile/ACS_2008-2012_SF_Tech_Doc.pdf

For the period under consideration, just prior to the Martin Luther King, Jr. Street renaming, Harrisonburg had a population of about 51,000. James

Madison University had a student population of about 18,000. It is not clear to what extent students are counted in the population of Harrisonburg. For example, when the results of the 2012 American Community Survey were reported, people were surprised at the high poverty rate reported for Harrisonburg. There was much speculation at the time as to whether students had been included in the figure. This study of diversity in Harrisonburg starts with a race and ethnicity profile of the city. The reported categories used are other, Asian, Black, Hispanic, and Non-Hispanic white. A more accurate profile might address the counting issues related to Hispanic and non-Hispanic Black. We have addressed the key problem of students by breaking the population into age groups, allowing the 18 to 24 prime college student age cohort to be ignored.

3.1 City of Harrisonburg– Composition

Table 6: Percent of age group by category in Harrisonburg, VA. Source: 2012 American Community Survey, 5 year file.

	white	black	native	asian	pi	other	two	nonhispanicwhite	hispanic
<18	76.00	11.00	0.00	4.00	0.00	3.00	6.00	48.00	35.00
18-25	87.00	6.00	0.00	4.00	0.00	1.00	2.00	82.00	7.00
25-65	84.00	9.00	0.00	5.00	0.00	2.00	1.00	67.00	21.00
>65	95.00	4.00	0.00	1.00	0.00	0.00	0.00	93.00	2.00
city staff	94.00	5.00	0.00	0.00	0.00	0.00	0.00	94.00	1.00

Harrisonburg 2012 ACS 5 Year File Demographics vs. City Staff

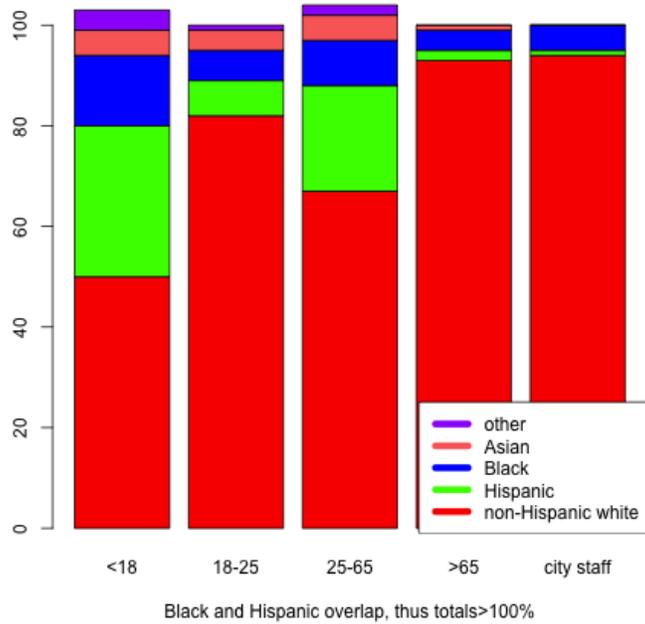


Figure 19: Harrisonburg Employment Data from 2012 American Communities Survey 5 year file and City Mannager’s Office.

3.1.1 Poverty in Harrisonburg

Table 7: Poverty Rate for Individuals by Age Cohort in Harrisonburg, VA. Source: 2012 American Community Survey, 5 year file.

age group	percent in poverty
youth	24
college	48
working	14
retired	8
total	29
noJMU	16

Table 8: Poverty Rate for Individuals by Age Cohort, White in Harrisonburg, VA. Source: 2012 American Community Survey, 5 year file.

age group	percent in poverty
youth	9
college	49
working	11
retired	8
total	28
noJMU	10

3.1.2 Individual Earnings

The way to interpret the following profile is ‘how would a congregation look if it was (Black, Hispanic, etc)? How many very low income people, how many well off?’ The display is a proportion polygon with the points representing proportions and lines to help track the pattern.

To put the Proportion by Bin of those not earning income into perspective, we compare to the percent of each group that is retired:

white	black	asian	hispanic
11%	5%	3%	1%

3.1.3 Full time profile

Note again, the way to interpret the profiles in figure 3.1.3 is ‘what would a congregation look like if it was (Black, Hispanic, etc)?’

In the third graph in figure 3.1.3, city salaries are superimposed in grey. The profile for the city as a whole is in yellow. What stands out is a clear partitioning in salaries.

Individual Earnings by Race, Gender, and Full time Status

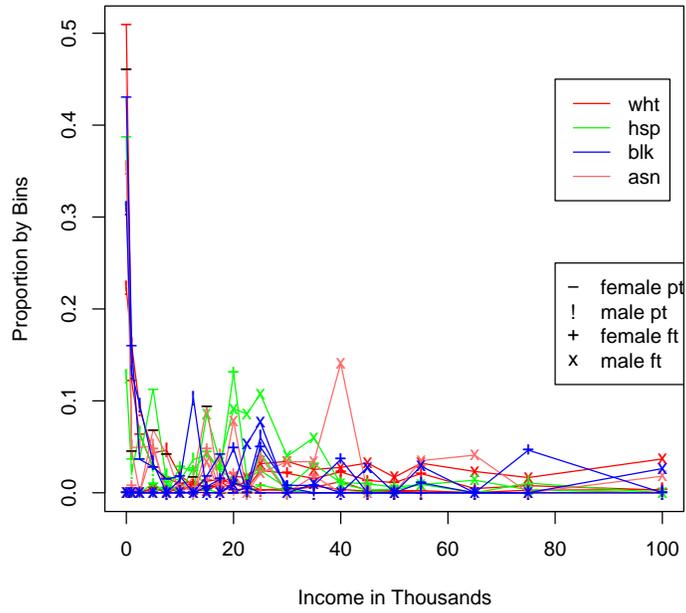


Figure 20: Harrisonburg Compensation Data from 2012 American Communities Survey 5 year file.

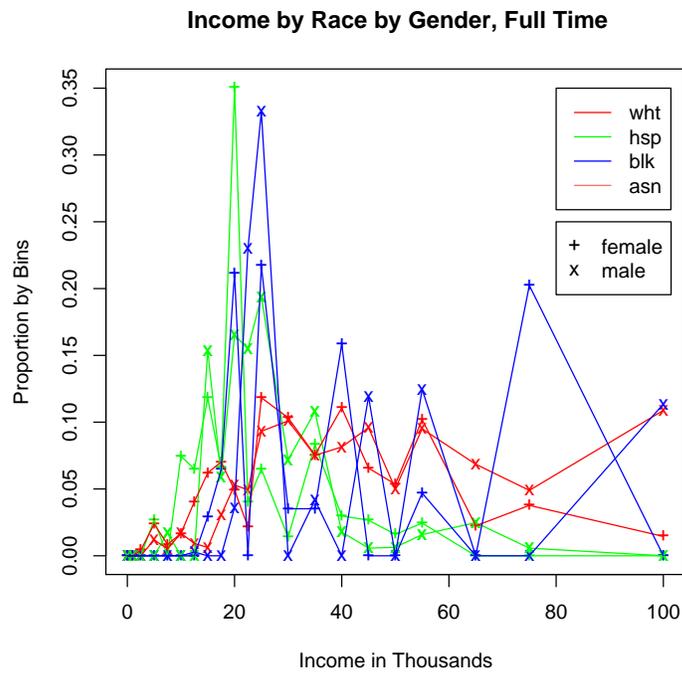
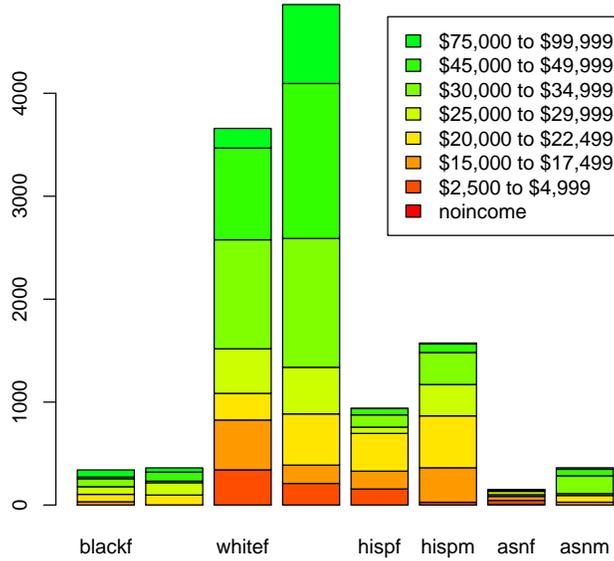
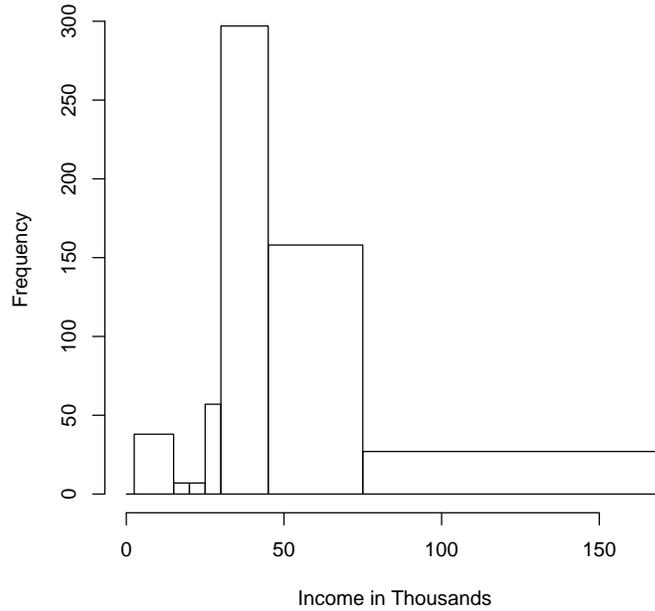


Figure 21: Harrisonburg Compensation Data from 2012 American Communities Survey 5 year file.

Distribution of Full Time Workers by Income



Histogram of Harrisonburg Full Time City Salaries



Profile of White, Black, and Hispanic Full Time Workers.

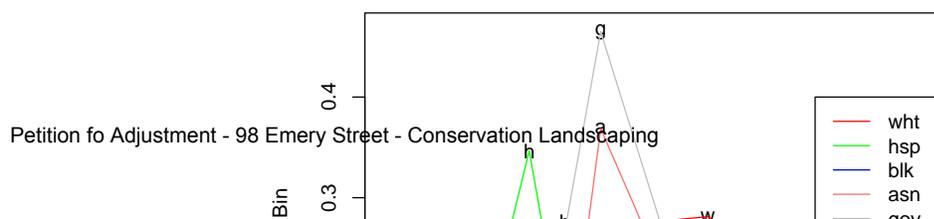


Table 9: Poverty Rate for Individuals by Age Cohort, Black in Harrisonburg, VA. Source: 2012 American Community Survey, 5 year file.

age group	percent in poverty
youth	48
college	50
working	24
retired	8
total	37
noJMU	31

Table 10: Poverty Rate for Individuals by Age Cohort, Asian in Harrisonburg, VA. Source: 2012 American Community Survey, 5 year file.

age group	percent in poverty
youth	27
college	62
working	21
retired	0
total	37
noJMU	22

3.2 Reflecting Diversity

Though the present report is the first time activists in Harrisonburg have seen this comprehensive picture, it is intuited in the daily life of the people. The diversity is boasted of by public officials and Harrisonburg prides itself on the 57 languages represented in its schools. However, on the occasion of the opening of the Martin Luther King Jr. Memorial in Washington DC., it struck Stan Maclin, an African American who had moved from the Midwest in the 1990s, as strange that there was no reflection of that diversity in the public spaces and in the power structure of Harrisonburg. He thus initiated the idea of renaming a street for Dr. Martin Luther King, Jr. The lawn effort was being directed to the Northeast Neighborhood just about the time that effort was resuming on that initiative, in time to plumb the questions about the sources of inertia in the community that were naturally raised also by the renaming effort. A series of historical coincidences and special circumstances made this a landmark renaming in the clarity of what it revealed and in its relevance and timelieness, from the raft of anniversaries to the policy debates that converged.

The analysis of Martin Luther King, Jr. street renamings made popular by Derek Alderman is that they are complex interactions of competing sense of place. Local researchers from the humanities, informed by a hermeneutic paradigm, also tried to put the renaming into this box. Key features of these arguments include: there is history at stake in the form of the name to be

Table 11: Poverty Rate for Individuals by Age Cohort, Hispanic in Harrisonburg, VA. Source: 2012 American Community Survey, 5 year file.

age group	percent in poverty
youth	37
college	37
working	19
retired	17
total	28
noJMU	26

removed to make way for King, there are costs to the city, there are costs to business, there are costs to individuals—especially the elderly, there are sentimental attachments to the street.

A second line of defense usually involves suggesting something other than a street, in many cases successfully suggesting a street in an African American neighborhood, in a marginal section of town, or on a section of highway. Failing that, opponents may object that King was not local, making up the ad-hoc rule that city names have to reflect local connections. Firefighters, veterans, and policemen who fell in the line of duty are invariable favorites. Eventually will come the names of local African Americans who became successful on the terms set by the white establishment.

These options are generally sufficient to swamp the discussion that only comes up when the name is that of Martin Luther King or someone similar and avoid the elephant in the room. Alderman does broach this topic that Gunnar Myrdal observed was anathema in his survey of the South, but he does so gingerly and more so in his later co-authored writing and still while giving ample pages to the 'sense of place' issues [Alderman and Inwood, 2013]. The real bottom line for the committed opposition is that this black man is out of 'place' in a white neighborhood.

In Harrisonburg, a combination of factors allowed us to decisively debunk these red herrings leaving as genuine opposition pure antipathy to one's fellow human beings and divisions within the African American community including on engaging in controversies and on the accommodation of a hostile white community.

The argument framed in the Harrisonburg renaming, following on the lawn struggle, was for an inclusive 'our.' When the time came, to the chagrin of the opposition forces, it was pointed out that the arguments against gave the impression of 'separate but equal.'

The issue of private residential cost was taken off the table when a caller to a radio talk show trying to help the City Manager substantiate the assertion that there were unknown unknowns related to cost that could be vast, inadvertently lost the game by bringing up the recent renaming of a residential street in which the City Manager had been involved, but which he had forgotten. Later

Table 12: Raw Harrisonburg Compensation Data from 2012 American Communities Survey 5 year file.

	blackf	blackm	whitef	whitem	hispf	hispm	asnf	asnm
noincome	0	0	0	0	0	0	0	0
\$1 to \$2,499 or loss	0	0	0	0	0	0	6	0
\$2,500 to \$4,999	0	0	15	0	0	0	0	0
\$5,000 to \$7,499	0	0	87	58	25	0	39	0
\$7,500 to \$9,999	0	0	31	25	0	27	0	0
\$10,000 to \$12,499	0	0	61	82	70	0	0	0
\$12,500 to \$14,999	0	1	148	45	61	0	0	0
\$15,000 to \$17,499	10	0	227	30	111	242	39	28
\$17,500 to \$19,999	22	0	257	148	62	93	0	0
\$20,000 to \$22,499	72	13	180	257	329	260	17	65
\$22,500 to \$24,999	0	83	79	240	38	244	0	0
\$25,000 to \$29,999	74	120	433	453	61	305	32	18
\$30,000 to \$34,999	12	0	378	491	13	113	0	28
\$35,000 to \$39,999	12	15	276	365	78	170	15	28
\$40,000 to \$44,999	54	0	405	396	28	28	0	117
\$45,000 to \$49,999	0	43	240	466	25	9	0	0
\$50,000 to \$54,999	0	0	196	244	15	10	0	0
\$55,000 to \$64,999	16	45	373	462	23	25	0	29
\$65,000 to \$74,999	0	0	82	333	0	39	0	34
\$75,000 to \$99,999	69	0	138	238	0	9	0	0
\$100,000 or more	0	41	53	529	0	0	0	15

community members came forward with the installation of the 911 system which had required re-naming on a massive scale in the 1990s as all rural streets had to get names.

The argument of public cost was eroded because the street signs were already slated to be replaced by retroreflective signs and the process had already begun. It further came out that the signs were made in-house, implying that the marginal cost was next to zero. This was confirmed when a stunning number of \$26,000 was produced by the city. This was eventually revealed to be the relevant components of the public works budget divided by 365.

Private business cost did not emerge. After a year and half, Council Member Richard Baugh confirmed there had still been no submissions of receipts which the city has promised to reimburse. A few business on the street complained loudly they the would face all sorts of costs, ranging from business cards to web pages. When pressed, the only specific costs they could think of were business cards and web sites, at the maximum cost of half a year's worth of stationary and changing a couple of lines on a free web site or contact information on a supplier account.

Table 13: Merged bins Harrisonburg Compensation Data from 2012 American Communities Survey 5 year file.

	blackf	blackm	whitef	whitem	hispf	hispm	asnf	asnm
noincome	0	0	0	0	0	0	6	0
\$2,500 to \$4,999	0	1	342	210	156	27	39	0
\$15,000 to \$17,499	32	0	484	178	173	335	39	28
\$20,000 to \$22,499	72	96	259	497	367	504	17	65
\$25,000 to \$29,999	74	120	433	453	61	305	32	18
\$30,000 to \$34,999	78	15	1059	1252	119	311	15	173
\$45,000 to \$49,999	16	88	891	1505	63	83	0	63
\$75,000 to \$99,999	69	41	191	767	0	9	0	15

Table 14: Mean Income by Race, Source: 2012 American Communities Survey 5 year file

	Female	Male
Black	\$37,595	\$39,266
White	\$34,590	\$45,472
Hispanic	\$22,021	\$25,238
Asian	\$16,561	\$38,605

The most dramatic finding however was the solving of the mystery of Cantrell, the previous name of the street. Initial speculation was that it was a reference to William Clark Quantrill. On not being able to find anyone to refute this gruesome possibility, the present author started doing archival research, along the way looking for evidence on the state of race relations at the time of the original street naming, which happened to be at that low point in US history, the turn of the 20th century, the time of the Virginia disfranchisement constitution. Others set out to find someone more palatable, producing several wildly unlikely candidates, generally war heroes, generally little guys who were remembered by the nobility.

The maps hinted at something but there was no direct link. The big break came when I found two instances of a spelling anomaly in city council minutes—the missing link between Central and Cantrell: Cantral. This was sufficient to settle the debate. Eventually the evidence was pinned down with the included figures showing the first use of Central Avenue and a year later the first use of Cantrell Avenue, in the same location. After a year of spelling fluctuations like Council’s, the name settled on Cantrell.

Rather than a war hero or a war criminal, the street was named for no one. It started as ‘the new street I just opened’ which was hastily rendered on the first deeds as New Street. When others started to reference it it became South Street (being the southernmost street at the time), then Central Avenue matching the name of its Western continuation in front of the home of the visionary judge who

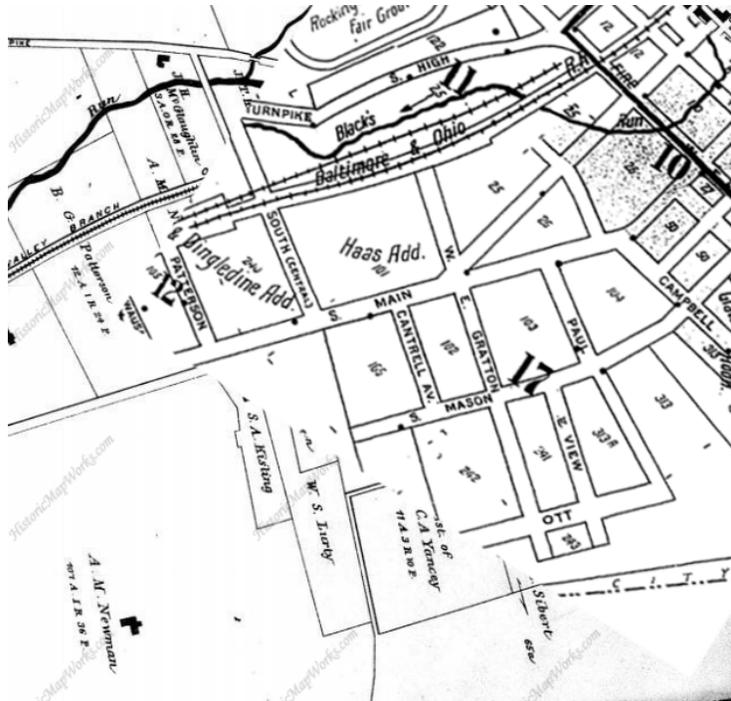


Figure 23: 1912 Harrisonburg Sanborn Fire Insurance Map Superimposed on 1885 Rockingham County Map Showing Names Related to Cantrell/South/Central Avenue.

*granted.
The petition of J. C. Staples and others
for a water main extending from South Main
Street along Cantrell Avenue was on motion
referred to the water committee*

Figure 24: Harrisonburg City Council Minutes, 5-3-1904, Provided by Harrisonburg City Manager's Office Displaying 'Cantral' Suggesting a Misspelling of 'Central.'

**Miss Clara Life, of near Mt Olivet,
is visiting the family of Rev. C. O.
Jones, on Central Avenue.**

Figure 25: Social Notice from the Rockingham Register, 12-29-1903, Displaying First Known use of 'Central Avenue.'

**Mrs. Maggie Life, of the Mt.
Olivet neighborhood, is visiting
Rev. and Mr. C. C. Jones, on
Cantrell Avenue.**

Figure 26: Social Notice from the Rockingham Register, 3-25-1904, Displaying First Known use of ‘Cantrell Avenue.’

lived there and was a leading force in the city having left his mark to this day. Central evolved into Cantrell over the course of a year of spelling fluctuations. The reasons remain unknown, but the air was taken out of the possibility of a story that would comport with Lost Cause lore.

This research laid bare in deliberation what lurked beneath the present opposition as well as the not so rosy Lost Cause past- as with the lawn issue that sprung from the same impulse, it was pure antipathy toward our fellow human beings, perhaps encapsulated in ignorance, but no more. To its credit, Harrisonburg could not abide it and made a formal show of unanimity in support of the renaming, after a difficult time of soul searching.

3.2.1 Hidden History of Harrisonburg

The proposal to re-name Cantrell Avenue to Martin Luther King Way in Harrisonburg Virginia and opposition to it citing a desire to preserve ‘history’ prompted deep community self-examination.

The evidence from 1903 to 1907 documents hostile rhetoric toward African Americans and those advocating for their rights. The rhetoric condoned violence, including threats of death and defense of lynching. On July 4, 1910, a large group of Harrisonburg residents attempted to act on these sentiments and were prevented from doing so by authorities at gunpoint. The intended victim of the thwarted lynching, an African American who is reported to have killed a white man who was pursuing him while wielding a weapon, was later executed in one of the many executions in Virginia that were found to be unconstitutional.

3.2.2 Background

In 1901, the state of Virginia followed other Southern states in convening a constitutional convention and designed a constitution that would circumvent the 15th amendment, disfranchise African Americans, and institutionalize segregation. Talfourd N. Haas became a Democratic candidate for delegate to this convention from Rockingham County April 19 1901.

He was not elected, but was widely seen as very influential. According to the Richmond Dispatch April 27 1902,

“Talfourd N. Haas, attorney at law, personally has no objection to the proclamation of the Constitution, but the Democratic party

of the State having pledged their convention nominees to vote for submission to the present electorate— he would regard the violation of that pledge as improper and dangerous.”

Interestingly:

“The white electorate in the county is pretty evenly divided between the two parties, and the colored vote as such has never cut a large figure, except in the town of Harrisonburg, where it holds the balance of power.”

The constitution was adopted without being put to a popular vote.

3.2.3 Rhetorical context

The Jim Crow constitution in question was challenged by John Wise and James Hayes. This is how the Rockingham Recorder, later merged with the Daily while professing it would not change its editorial stance and eventually bought by the Byrd family, opined about the efforts of Wise and Hayes:

“The better element of the colored race is not in sympathy with either of these self-appointed apostles of bloodshed. ... [Wise and Hayes in opposing the Virginia Constitution] also know that when the settlement of political questions is appealed to the torch and the sword, the extermination of the weaker race will as surely follow as night succeeds day. Therefore, we have no idea that the incendiary advice of Hayes and Wise will be seriously considered by any great number of colored people in Virginia.”

It cited with approval an editorial position from neighboring Staunton that was a thinly veiled death threat:

“Whether John Wise intends to lead a negro uprising in the South or not, need not be discussed. He will be properly taken care of when he does.”

The same paper threatens an “outpouring of righteous wrath upon the head” of any man (President Roosevelt, who later beefed up his security detail) who “thrust upon the people of any community a public officer who is utterly distasteful [in this case, Black] to them.”

A group of clipping from the same page captures more local climate resonating with national incitement, including commending lynching after death threat to Roosevelt and defense of the disfranchisement conditions in the 1902 constitution, upheld by the Supreme Court in the same issue. In an account of the lynching 100 years before of a man named Will, their comment on what must have been the horror of the sight was to say the court was able to see it was an effective “deterrent to crime.”

3.2.4 A history of tragedy

After years of incitement, on July 4, 1910, a provocateur from outside of town was able to get 100 Harrisonburg residents to vote for a lynching, and over a thousand followed. The incident was sparked after a confrontation in which Pink Barbour of Augusta County shot James Lee who was pursuing him with a board. James M. Lee was a resident of Cantrell Avenue as was J. C. Staples, who may still have had some connection with the stables at which Lee was employed and where the killing occurred. J. C. Staples had been the owner of the stables when they experienced a major fire, perhaps explaining the sensitivity to Barbour's cigarette. The new owner, Garber, also had connections to Staples beyond the sale and to the Cantrell neighborhood beyond their employee Lee. The case was heard by Judge Talfourd N. Haas who controversially oversaw the development of the neighborhood in his position on city council. In an unrelated tragedy, the Reverend C. C. Jones, in connections with whose residence both the first use of Central Avenue and the first use of Cantrell Avenue occurred, struck and killed an elderly pedestrian with his automobile. He was evidently so distraught that he could no longer bear to live in Harrisonburg and left the same year. They all apparently lived on the same block, around or within the area now surrounded by a white picket fence and known as James Madison University Parking lot 12.

3.2.5 Analysis

In these events we see scope for rhetoric, agency, institutional adjustments, valuation, and establishment of common knowledge. Throughout its history, Harrisonburg has been big enough that it has reflected national developments, but small enough that they unfold on a personal scale. In the accounts above, the agency of T. N. Haas is clear. Harrisonburg's boast of low taxes for high quality public services, an institutional feature of the city, is traceable to the lengthy tract on taxes by Haas, as is the Old Town neighborhood, now popular among faculty. Institutional adjustment had to be persuasive, city council had to use the story of wanting a planned community to justify the actions of Haas in surveying Mason and Grace. To this day, the rhetoric is resurgent with the city being pressed by a group calling itself 'We Support Planning' forcing city council to address the story line in the city's comprehensive plan.

Haas more significantly was involved in the disfranchisement constitution, an attempt to institutionalize practices that preserved the status of certain whites, in our terms to encapsulate ceremonial valuation from the time of slavery. Making the argument directly in terms of slavery was rhetorically difficult so the arguments were couched in terms of voter fraud and efficient taxation. Haas in this campaigned as a moderate who would be able to rein in the greatest excesses of the segregationists. But his perspective did not represent a radical revolution in values and was in line with encapsulating rather than adjusting institutions. History bears out what resulted of not flipping out of that story line and forcing institutions to adjust to line up with the ideas.

Finally, our stories about Haas have him at the center of another major

institutional adjustment- the institutions of personal violence connected with slavery.

The rhetoric of Ida B. Wells was pivotal in moving the national sentiment away from lynching. But the institutions of violence against African Americans persisted. At the end of a harrowing account of lynching just before the time of the street renaming she sums up the preceding phases of institutional adjustment well in a quote she selected.

“So long as it is known that there is one charge against a man which calls for no investigation before taking his life there will be mean men seeking revenge ready to make that charge. Such a condition would soon destroy all law. It would not be tolerated for a day by white men. But the Negroes have been so patient under all their trials that men who no longer feel that they can safely shoot a Negro for attempting to exercise his right as a citizen at the polls are ready to trump up any other charge that will give them the excuse for their crime. It is a singular coincidence that as public sentiment has been hurled against political murders there has been a corresponding increase in lynchings on the charge of attacking white women. The lynchings are conducted in much the same way that they were by the Ku Klux Klans when Negroes were mobbed for attempting to vote. The one great difference is in the cause which the mob assigns for its action.”

“The real need is for a public sentiment in favor of enforcing the law and giving every man, white and black, a fair hearing before the lawful tribunals. ... the South will not be free from these horrible crimes of mob law so long as the better classes of citizens try to find excuse for recognizing Judge Lynch.” Inter-Ocean Editorial of August 5th, 1893, Cited in Ida B. Wells reprinted in Wells [1893]

Note the recognition of the tension between ceremonial and instrumental valuation in describing a condition of law that would “not be tolerated by white men for a day,” presuming they would want an instrumentally efficacious institution for themselves, the threat to continuity in excessive displacement in the destruction of all law, and the pressure on the ‘better classes of citizens’ of the South to find a rhetoric to encapsulate the invidious institutions that keep them ‘better.’

By the time of the Barbour case, lynching was losing ground to a new institution. Pink Barbour was protected from the mob by a sheriff who deputized 8 men to hold off their fellow citizens at gun point. The local paper had recently disagreed with the Lynchburg paper that opposed the US Supreme Court for prosecuting sheriffs who gave up their prisoners. Judge Haas talked the crowd down and to his word, delivered a speedy trial. He empaneled his jury, something the clerk of court told me was unusual, and at least one appeal was filed so procedures were carefully followed in what appears as a hallmark of the Haas style, though Barbour’s execution file, unlike many others in the same archive

box, was virtually empty. Yet Barbour was executed on the same day as Arch Brown, a white man who had left a trail of dead and wounded- grand parents to children- while trying to exact revenge on someone. Papers wrote he only realized how low he had fallen when he was chained with Barbour. Barbour was the 30th to die in the second year of Virginia's electric chair. Several hundred such executions would later be found unconstitutional for their arbitrary application during a brief stay in the practice before the institution adjusted yet again to resume disproportionately killing men of color to this day.

3.3 Resolution

As all the excuses crumbled, the community and its decision makers had to face the fact that the past and present that had been exposed was unpalatable. There were some maneuvers to help Old Harrisonburg save face, but in the end decision makers acted on conscience. While grumbling, for example in comments on media stories, continued for a while, eventually that too faded away. By the time of the dedication ceremony on Martin Luther King, Jr. day, the city could make a symbolic show of unanimity, with even the extreme conservative editorial board of the local Byrd family newspaper (the family of the leader of the 'massive resistance' movement against desegregation) conceding that support was overwhelming in their pick of the re-naming as the top local story of the year and with their possible atonement for not picking it as unqualified first in their very favorable full page spread covering the Harriet Tubman Day celebration in which the entire council was awarded a leadership award.

A process philosophy view gives people the chance to change, rather than being types. Many appreciated this, and Harrisonburg officially embraced its 'inclusive our' by the time the dedication came around. Since then, the struggle has been as much to get the Democrats and progressives to let the city have its new official rhetoric rather than curtailing their requests, still wary of the 'silent majority' that proved to be the man behind the mirror.

4 Methodological Note and Implications

Three major approaches emerged in the academic framing of the street renaming issue.

1. The hero stories provided by amateur and professional non-academic historians.
2. Attempting to facilitate discourse.
3. Clarifying facts and exposing underlying structures.

The differences stemmed from solving different problems. The first was served primarily by the Harrisonburg Rockingham Historical Society and my the Massanutten Regional Library, and to a lesser degree the Library of Virginia. Their immediate task was to preserve and make accessible historical documents and

information. Their engagement in genealogy and local history in a Southern town gave them an element of serving continuity and preventing displacement which need not run counter to reproducing ceremonial valuation.

The second role was served primarily by JMUSE Cafe and the Institute for Visual Studies which sponsored a series of four events on related local history and which had already been engaged in a Grace Street project as a part of James Madison University's development of part of the original street. The mission for these groups was a University mission, a portion of which entailed maintaining balanced relations multiple sectors of the community. This was methodologically invested and came from a Hermeneutic approach in the humanities, particularly art history.

The third is represented by the present work and eventually came under the auspices of the Harriet Tubman Cultural Center, also in cooperation with the Shenandoah Valley Black Heritage Project. Ruth Toliver, a descendant of the founder of the historic freed slave settlement that was later annexed by the city and bulldozed during Urban Renewal and the authoritative writer on that history was another significant figure, but did not directly weigh in. This group directly integrated knowing with advocacy. It interconnected with the other two, in both cases sharing resources but advancing directions of inquiry that were not comfortable for the others and preventing either from framing the issue or shifting the source of legitimacy outside of the institutions of the mobilized community. That is, neither the local historians nor the University professors could have the final word because both facts and credentials could be brought forward, usually in a more timely manner, by the community researchers.

The motive for the last was to uncover insight at a concrete personal level that could be used to solve the problem of persistent policy barriers to the continuity of the life process posed

1. by joblessness, recalling King's time,
2. and economics built on spiritually and environmentally unsustainable grounds.

The goal was a radical revolution in values and institutional adjustment locally and beyond, toward an open, harmonious, happy, and healthy society.

An illustration of the differences made by methodological perspective is provided by two excerpts from an editorial published in the Daily News Record on September 2 by David Ehrenpreis, who convened the JMUSE conversations. Professor Ehrenpreis writes of the street renaming hearings:

“Despite differing views on an extremely complex issue, our declarations were nearly all measured and respectful.” [Ehrenpreis, 2013]

In fact, nearly all opponents either:

1. disrespected the autonomy of those who brought this forward by presuming to substitute their own proposals (name a school) for the one actually on the table (this resembles what Stan Maclin described as ‘plantation logic’ : “we think for you, because you are property”)

2. indulged stereotypes of whose offensiveness perhaps they were ignorant
3. actually expressed racist hate.

Obscuring that this happened obscures a valuable lesson from this experience. The fact that most proponents were measured and respectful in the face of this was remarkable, though the rage expressed by some was fully warranted and also to be respected by those who benefit from that toward which it was directed.

Compare this civil discourse norm to the Daily News retraction of calling Reuben Dallard a ‘darkie’ in his obituary:

“... the communication brought to this office was neither respectful or courteous ... were it not for the opportunity to point out a rule of the News – vis. that of wounding the feelings of none, be his color or condition what it may, it would have been most promptly thrown into the wastebasket.” [Toliver, 2009, p. 28]

This retraction re-enforced and clarified the initial insult. It was not meant to wound an individual, but it was an assertion of the status quo.

The second quote touches on the concern that the story not be re-told in a way that negates what actually happened. Ruth Toliver strongly warned of this in her book on Newtown, that her Uncle Charlie, a primary source on her founder ancestors, repeatedly exhorted her not to let others tell her story. David Ehrenpreis writes:

“But the citizens who want to preserve the name Cantrell also have compelling reasons to speak out. They feel so strongly about this issue because throughout their lifetimes, they have watched the places they care about most, their homes, churches, theaters and businesses, torn down and turned into parking lots. In this context, removing an established street name serves as only the latest instance of what feels like the unrelenting obliteration of their past.”[Ehrenpreis, 2013]

This is manifestly not why the opposition forces came out in such fury, as they do around the country only when Dr. King’s name is involved or that of a Confederate is being erased. Place is what they claimed, but efforts around the city’s proposal to build a new municipal building adjacent to the existing historic municipal building demonstrate that when a real instance of place is under a genuine threat, vouched for by highly competent experts, there is barely a response even while venom continues to flow about the street renaming. In fact, the people mobilized by the process around the selection of the new municipal building site appear all to be supporters, some leaders in, the street renaming.

4.1 Rhetoric

On one hand, letting the handful of individuals who voiced opposition off the hook is the polite thing to do, and community reconciliation efforts did have

much to commend them. The issue however is one of understanding the common rhetoric that has been repeated in the hundreds of Martin Luther King street renamings and that forms a thread of continuity from what the opponents really are trying to preserve, whether they understand it or not, and current policy from the Federal level down. The opponents draw upon rhetoric that has been shored up over decades.

Since about 2000, economists from the University of Missouri–Kansas City have been promoting full employment and price stability. Early on, ELR, employer of last resort, was dropped for a more upbeat term. When Modern Monetary Theory (MMT) was hit upon as a name, lots of people have heard of it. Tyler Cowan and others perhaps including his Koch Brothers funders may have understood how dangerous that was to their austerity positions, and another MMT sprang up like the mimic domain names of internet days gone by. But MMT could not get traction because however the story was told, when the implications got to job guarantees, it came out sounding like socialism. In the early days of the UMKC Ph.D. program the present author advocated drawing upon McCloskey’s insights about rhetoric to argue positions different from those she advocated. Current work by Wray also addresses rhetoric, the art of persuasive communication, for example paying attention to how Bruce Springsteen did it: “we take care of our own.”

Rhetoric is powerful because the fiber of the lives of people and institutions is made of narratives. When the Rockingham Register continually repeated pro-lynching propaganda, eventually Harrisonburg residents got it in their head to do some lynching again. When fortunately the message had also gotten out that you don’t defy the Supreme Court, even when they tell you not to give up your prisoner, perhaps that also had an effect and the mob was held off at gunpoint by a somber sheriff and eight deputies as the mob was talked down by an eloquent judge who, to his word, delivered a speedy execution instead.

Cutting through that thicket takes skill, and attention to the fact that stories matter. In the case of Harrisonburg, we also had luck on our side and were able to achieve a clarity about the goals behind not just our local rhetoric, but that of King renamings where the facts are not so congenial to clarity.

4.2 The Logic of Slavery

What the renaming exposed was in line with recent research on opinion polls. Most people, when they really think things through, are pretty decent. Just as with lawn mowing, most people are coerced and play along with more or less displaced resentment. As subjects get more abstract they tend to be more vulnerable to ideological manipulation and to expressing the less admirable human traits that behavioral economists study. When racism and white supremacy were brought close to home Harrisonburg residents could not abide them (though the level of ignorance, including within the two universities, of what seems most basic from a Northern college educated perspective remains remarkable), but the fact is that they permeate the fabric of American society and are encapsulated in most institutions of power. This was the way with segregation in

Harrisonburg. The strong African America community, facilitated in part by the pacifist presence, kept segregation and the excesses of racism less severe than in the county, but as institutions became more formal the bounds became more rigid- in the hospital, the schools.

The social relations underlying racism and white supremacy predate them and transcend them in the present. Framing the big picture is the logic of slavery. Slavery in the United States was a defining expression of hierarchy and domination and it shaped the American character. The concept of race was invented around the 17th century in an effort to rationalize slavery. Martin Luther King, Jr. would denounce this logic in his ‘Beyond Vietnam’ speech a year before he was assassinated, capturing much in this quote:

“When machines and computers, profit motives and property rights, are considered more important than people, the giant triplets of racism, extreme materialism, and militarism are incapable of being conquered.” [King, 1968]

King’s perspective, as the foremost leader of the Civil Rights Movement, was intimately rooted in this country’s history of slavery. This quote, and the landmark speech from which it came was a breakthrough in public consciousness connecting the struggle against slavery at home and oppression abroad into a systemic insight into the negative functioning of capitalism. King’s was a quintessentially American and spiritual insight, of like mind with the African American Mennonite Vincent Harding to whom he entrusted the drafting, that was difficult to dismiss with hackneyed anti-communism and that endures as a relevant insight today.

4.2.1 Historical Roots after Emancipation

The first chapter of *A Working People* by Steve Reich captures the period in which Dr. King’s spiritual insight into oppression is rooted: the time when the US struggled with the end of slavery, and how to move forward. Citing the report of William E. Strong on Southern planters to Major-General O. O. Howard, January 1, 1866, “Reports of the Assistant Commissioners,” Sen. Exec. Doc. 27, 39th Congress, 1st Sess., p. 83, Reich quotes:

They insisted that unless they resorted ‘to the overseer, whip , and hounds’ their estates would deteriorate and never recover. ... “Planters resented that emancipation not only challenged their sense of racial supremacy but also eroded their authority as employers of labor.” [Reich, 2013, p. 13]

The above quote is the iconic statement of what I call the logic of slavery throughout this work. It is valuable for the clarity of the fundamental issues involved. Since that time coercive methods have been refined and obscured. Combined with similar statements from the time of the Civil War cited in the next section, this statement forms a bridge from the time of slavery, lining up

with the words of Martin Luther King, and extending to this year's Tea Party revolt against the Republican Budget compromise and state refusals to extend medicaid coverage. The forging of these links in a concise, understandable set of arguments, bordering on slogans, is a substantial contribution of this section and the Harrisonburg street renaming.

The fate that awaited African Americans freed into this climate was one with which many workers of all background can relate today:

“Because black material success often rested on white goodwill, blacks took great care not to appear too successful or to transgress racial boundaries” [Reich, 2013, p. 39]

Note how closely this parallels present uncreative, docile, ‘model minority’ present Asian stereotypes. Reich goes on to tell of a Black teacher who felt compelled to live in an unpainted house [Reich, 2013, p. 39]. Without property and the political power to protect it, African Americans in the South were at a distinct disadvantage, something Confederates had hoped for as they contemplated their defeat. The fears of whites, North and South, run to the heart of issues we see today masked in the rhetoric of fighting inflation and keeping government small.

Reich spells out the details of the political reasoning at the time:

“The political activism of black workers in the low country caused Republicans to fear the African Americans would corrupt the political system by seizing the reins of government in order to confiscate property, redistribute wealth, and erode the promise of social mobility through hard work. Faced with growing white working-class unrest in the North and politically mobilized former slaves in the South, Northern Republicans abandoned their working-class allies, fearful that they would sow the seeds of political and economic disorder by strengthening the rights of labor at the expense of the rights of property.” [Reich, 2013, p. 30]

The key concepts here are what is now variously known and killing the spirit to work, or damaging the engine of growth, the distinction between labor and property, and the role of political power in affecting the balance on these issues.

“Many Republicans, who valued property rights over labor rights, grew fearful of encouraging a class politics from below. More and more, they became convinced that it was safer and wiser to come to terms with former Confederates than to promote and protect the interests of their black working-class constituents. In so doing, they enabled the white propertied elites of the South to survive the trials of Reconstruction.” [Reich, 2013, p. 31]

The property rights oriented Republicans enabled the elites of the South, and placed almost insurmountable barriers to accumulating anything and getting ahead before the freed slaves. The remainder of Reich's book chronicles

the struggle of African Americans to overcome this defeat of Reconstruction, a process that is still not accomplished.

Reich's book focuses on the condition of Black workers. In the condition of the Black worker we see the effects of the logic. For a direct examination of Confederate logic we turn to Bruce Levin, who unpacks this and provides documentary support in the process of debunking the concept of Black Confederates. Levin summarizes highlights of his book in a talk given at the University of Maryland -Baltimore Campus May 7th, 2008, entitled "Confederate Emancipation" which I here summarize.

When the Confederate army was losing the war and saw it was greatly outnumbered by the union army, it started to consider "emancipating" its slaves in exchange for their military service. In July of 1861, General Richard S. Yule cautioned an optimistic Jefferson Davis at Bull Run that the sure way for the South to triumph was "emancipating the slaves and arming them." He was disregarded. General Patrick Claybourn, division commander in the army of Tennessee, circulated the same idea in a memo following a defeat in December of 1863. In addition to stating that slavery had become useless to their military position, he also admitted the slaves' capacity for helping his enemy. Levin quotes Claybourn saying "Those who donned union blue had proved able to face and fight bravely against their former masters." Levin points out in his comments that this was supposed to be impossible according to pro-slavery ideology which claimed that slaves were content and that they were incapable of fighting effectively as soldiers.¹³ Claybourn's memo made its way to the Cabinet of Jefferson Davis where it was discussed. More Confederates objected to this proposal and it was defeated and suppressed. But it gained more support in less than one year when it became obvious the Confederate army was losing the war [UMBCtube, 2008].

Another key document with Claybourn's, in Levin's estimation, was one by John Henry Stringfellow of Virginia to Jefferson Davis. In Feb 1865, the staunchly pro-slavery Stringfellow wrote on the need for more troops:

"If it were done properly, abolishing slavery need not mean abol-

¹³Note the striking similarity between this and the early thinking of British colonialists in India. Chatterjee writes:

"There are two elements in Orme's account of the conquest of Bengal that would persist in different forms in imperialist histories written in subsequent decades and even centuries. The first is that of the natural servility of the inhabitants of India, who are constitutionally incapable of defending themselves by the strength of arms and therefore are always under the sway of more warlike peoples. This tapped directly into the venerated classical Aristotelian tradition—one that would be transmitted right through the nineteenth century by way of the patrician education imparted by the English universities to generations of imperial civil servants— that spoke of the 'natural slavery' of barbarians. It also invoked the more recent European humanist tradition in which the French jurist Francois Connan could say that 'liberty was born with servitude ... there was no one free, when no one was a slave,' [Chatterjee, 2012, p.48]

In the same talk Levin also points out that the Southern elites viewed 'Liberty' as their liberty to deprive others of liberty.

ishing the whole plantation system. ... only the measures involved in Confederate emancipation could save the plantation system. ... If *we* emancipate, our independence is secured. The white man only will have any and all political rights and will retain all his real and personal property and he alone will be in a position to make laws to control the free negro; whose wages, would be regulated by law hereafter as may suit the change of relation. In this kind of post war South, the landless free man would have to labor for the land owner on terms as economical as if he were still owned by him.”[Stringfellow, 1900, p. 1068]

Leaving no doubt about the continuity between rhetoric that is familiar today and the logic of slavery, among the other statements quoted by Levin is one by R. M. T. Hunter, President Protem of the Confederate Senate who wrote: “what did we go to war for, if not to protect our property?” Levin points out that the precious ‘Social Institutions’ more often cited, still given by some Southerners as an excuse, and of which the venerated Robert E. Lee, among others, write is no more than a code for slavery. What Lee, Confederate Secretary of State Judah P. Benjamine, and others feared in casting about for a compromise was “the wholesale destruction of slave society.” [UMBCtube, 2008]

Several such documents demonstrated the plan the white elite in the South had to implement the emancipation that they felt pressed toward by massive outside force as well as “internal resistance and active revolt” of their enslaved population so that their former slaves could still be put under their control and continue to serve as labor to the plantation system after the liberation. The documents showed the white elites considered the Black an “inferior” race, and liberating them was an “evil consequence” (Robert E. Lee’s words). Nonetheless, they felt it better to have imperfect white supremacy in the South than losing all to the Union. Therefore, they contemplated how to maintain their control over their Black population after the liberation thorough carefully implementing the emancipation (making landless African Americans controlled labor, for example). Levin described this as their need

“to maintain control of the black labor force both by monopolizing the land and by enforcing a restructured form of the legalized physical coercion that Southern masters had always considered essential to the survival of their plantation system.” [UMBCtube, 2008]

Though the ‘Confederate Emancipation’ of Black slaves did not happen during the Civil War, the ideas on how to control and exploit free African Americans saw their influence after the failure of Reconstruction, as detailed above by Reich.

Prescient in seeing the exigencies of the slave society coming, Claybourn writes one of the most illuminating statements for understanding the far reaching effects the United States not winning Reconstruction: “It is said slaves will not work after they are freed but we think necessity and wise legislation will compel

them to work for a living.” His statement shows that the logic was not only a way of thinking about African Americans and about labor, but a logic to guide plans. Those plans were in fact realized and fashioned into the turn of the twentieth century constitutions throughout the South [UMBCtube, 2008].

This drive to build institutions predicated on coercing labor is the drives the refrain that has been used most recently as of this writing in connection with the budget compromise (“killing the spirit to work”), entitlement programs in the budget, the Affordable Health Care Act, Supplemental Nutrition Assistance Program, and austerity in Greece (“lazy Greeks”) and around the world.

The view expressed by King, who calls for a “radical revolution in values” against the slave logic underlying the institutions of oppression is consonant with that of economists who look to a society that is non-invidious, economists who conceive of economics as a process of social provisioning, rather than of allocation of scarce resources to competing ends. To such economists, what King denounces, embodies the bondage of people, the extraction of work by coercion, and the extraction of international resources and cooperation by violence. This logic, which started with the idea of race, persists to this day and race still literally stigmatizes people. However, people are now bound, actually and effectively by incarceration, criminal records, and credit scores. The rationalization for treating people inhumanly, race, is replaced for more sophisticated people by appeals to genes and economic constructs like ‘types’ and voluntary unemployment. Coercive force persists in the threat of unemployment, unto death, increasingly at the pure whim of the employer. Militarism persists, even though the reasons given to fight, the rhetoric, have changed. Note that King does not call for an end to property rights, for example, but for a moral shift in the ends to which rules are invented. This might not need be at odds with McCloskey and proponents of Smith’s Theory of Moral Sentiments, for example, but places human values as a valid focus of research. Vincent Harding, the author who has born the burden of those words, asserted as much at a recent Eastern Mennonite University appearance. Advocating that this research be scientific as well as spiritual is at the heart of the economic paradigm driving this research.

4.3 Subsequent National Developments

In the weeks following the renaming, the fact that Harrisonburg, again, was a reflection of national trends was born out in the major media. On October 3, the front page of the electronic version of the New York Times was devoted to items including that default by the Federal government was not an option; a map showing that gaps in health care coverage roughly traced the places where disfranchisement constitutions had been passed a hundred years before; coverage of the harm to workers and the economy of the austerity measures, and a link to an editorial by James K. Galbraith laying out the MMT line that all this was based on a myth.

“When the Treasury writes a check, a bank credits an account. That’s money creation. Treasury bonds absorb money, but aren’t needed.” He did not have space to make the more technical argument that money is debt, and ‘the debt’

is merely swapping one maturity of a government issued financial instrument for another.

On October 4, Colbert I. King published an editorial in the Washington Post entitled "The rise of the New Confederacy" making the links to the Confederacy explicit:

"For the moment, they are getting what they want: a federal government in the ditch, restrained from seeking to create a more humane society that extends justice for all."

"The ghosts of the Old Confederacy have to be envious."

"South Carolina wept and wailed as it withdrew from the Union, citing the Supreme Court's 1857 Dred Scott decision when it noted that states in the North had elevated to citizenship persons who, by the supreme law of the land, are incapable of becoming citizens; and their votes have been used to inaugurate a new policy, hostile to the South, and destructive of its beliefs and safety."

"But don't go looking for a group by the name of New Confederacy. They earned that handle from me because of their visceral animosity toward the federal government and their aversion to compassion for those unlike themselves." [King, 2014]

His final line was what we had come to in the street renaming effort, that the explanation for visceral opposition was reduced to pure antipathy toward ones fellow human beings.

In March, Representative John Conyers proposed a federal jobs program in the spirit of the Freedom Budget of King's time. On October 15th, he heard about Harrisonburg's street renaming and expressed enthusiasm for it.

On October 16th, Charles Rangel, involved in trying to re-open the government and pass comprehensive immigration reform, repeated the obvious connection for a reporter, calling austerity 'Confederate logic.' The reporter interviewing him responded with the same hostility that was seen in some of the opponents to re-naming, confirming that the Congressman was on target.

On October 17th, a review of historical political polls on the issues of budget and austerity showed that to the extent that people understand what they are being asked, they tend to oppose austerity and they tend to me much closer to the values of Dr. King than to Democrats, Republicans, and the Tea Party. They seem to relent on deficits and debt only due to the overwhelming quantity of rhetoric from both political parties taking the same side on the issue. The following are two key quotations from a review of the article:

"Cutting the deficit amounts to austerity economics, *the opposite of the Keynesian approach, which keeps deficits high when the economy is struggling, letting public-spending demand take up the slack of missing private sector demand, in order to hasten recovery. Classic Keynesian policy calls for cutting back deficits only after economic recovery is well established* - a point we are still far from reaching

roughly three years after PPC's surveys were conducted." [Rosenberg, 2013]

The section in italics is incorrect 'deficit dove' thinking. The correct 'deficit owl' approach that can be found in the macroeconomics chapter here implies that, for the US, deficits depend on a combination of the foreign sector and the private sector's desire to save, with a natural tendency to run deficits. The piece continues:

"Yet, this doesn't necessarily mean the public actually believes in austerity economics in the way that these figures might suggest, for at least three main reasons. First, as Free and Cantrill's research showed, Americans have always believed in austerity economics at a symbolic, ideological level." [Rosenberg, 2013]

However, this was not the case at the operational level of how they would like to see people treated, with agreement across the self-identified political spectrum. In the street renaming, this aligns with the isolation of the vocal opposition group.

The month of November saw several revealing speakers on the topic of debt and deficits in Harrisonburg.

4.3.1 Bill Clinton: engine of growth

Bill Clinton spoke in Harrisonburg before the election. His introduction by Terry McCauliff, candidate for Governor, included praise of his budget surplus. That did not draw applause. President Clinton did not emphasize the same. He did, tellingly, say that our employment problem was not with new workers, but with workers who just need 10 or 15 years of additional work. These are the people who were devastated by the budget surpluses he can no longer enthuse about in good conscience. He did nonetheless use the 'credit card' analogy, and did stand by protecting the 'engine of growth,' as in his book.

4.3.2 Bob Goodlatte: cut the size of the government

Representative Bob Goodlatte recently spoke before the Chamber of Commerce on the topic of the recent government shutdown and the Federal Debt. The Congressman started his talk with a false premise: the debt is bad. The only support he gave for this was that it was bad because it was big. Stacking up dollar bills in that amount would reach very, very, high. So it was bad.

He also confounded the debt and the deficit. He stated that the deficit was bad, noting that only 7 times in American history had we run budget surpluses big enough to substantially pay down the debt, (whatever that may mean). He did not mention that each of those episodes was followed by a depression, including the recent crisis with its roots in the Clinton surplus and its necessary sectoral balances 'homes as piggy banks' boom. He also stated a desire to curb

the growth of entitlements, sometimes also known as ‘automatic stabilizers,’ seemingly inured to sending the feeble economy into another nose dive.

Mr. Goodlatte however, tipped his hand in a very revealing statement: A balanced budget amendment would give us ‘pressure points’ with which to force a cut in the size of government. He revealed the real goal is not the debt or the deficit, it is the size of the government.

4.3.3 Burt Abrams: The Debt and Deficit: The New Red Menace

Mr. Goodlatte’s slides were not available. However, an economics department speaker, Burt Abrams, seems to have been the source of Mr. Goodlatte’s outline. In any event, he covered the same points in some greater detail in a talk entitled “The Debt and Deficit: The New Red Menace”. The subtitle was a chilling warning to those thinking of disagreeing with his position, evoking Palmer Raids and McCarthyism. He, like Goodlatte, came to a moment when he tipped his hand. He stated that big government is bad because if people had free medical care, for example, they would not work. Thus we have that modern austerity rhetoric returns to the plantation logic that won the day after Reconstruction.

On November 27th, the following quote from a 2012 paper by Robert Gordon was circulated among those working on immigration issues as well as others involved in the street renaming:

While addressing an even more dire need that appeared in one of Congressman Goodlatte’s slides before the Harrisonburg Chamber of Commerce of a coming steep decline in number of workers per retiree, Economist Robert Gordon in a paper that repeats common errors about the Federal Debt but is otherwise insightful asks:

“Why was unlimited immigration into the U.S. so successful throughout the 19th century, until it was stopped by restrictive legislation in the 1920s, yet could not be considered as a plausible public policy today? Unlimited immigration before 1913 did not cause mass unemployment. Immigrants were extremely well informed about the availability of employment in the U.S. economy. They arrived when the economy was strong and postponed their arrival (or returned to their home countries) when the economy was weak.” [Gordon, 2012]

Congressman Goodlatte and his staff had used the line ‘a billion people are waiting to come into the US’ as an argument against loosening immigration restrictions in the summer. By the time of his Chamber of Commerce talk, he had switched exclusively to the ‘nation of laws’ argument also reflected in the rest of the mainstream anti-immigration rhetoric. The market oriented, incentives and information oriented quote and the wavering over a specious argument at the same time show the inconsistency of the foundations of the austerity economic view and the rhetorical appeal of scarcity arguments, if only they could be sustained by reality, which they cannot.

4.3.4 Erosion of Austerity

In late November, the spiritual leader of over a billion Catholics came out with a landmark statement that recognized the condition of the times and echoed Martin Luther King of 1967/68 to an uncanny degree. While the Catholic Church has long held teachings regarding the poor, the shift by this Pope at this time had the potential to generate significant coordination. To those Catholics who take teachings on authority, the shift in position was as good as common knowledge in that they could have a sense of a proportion of their reference group now sharing the new direction. Like the street sign, people seeing it know that others see it and that it carries a certain signal about the conditions of a time and place. As the Pope's message was circulating, a November 25th Washington Post article reported unprecedented anxiety among workers.

Starting from the Great Financial Crisis, through the jobless recovery, to this year's Reinhardt and Rogoff scandal, the old austerity rhetoric is losing credibility in the lived experience of more and more people. On top of that, going into this year of significant anniversaries of the civil rights and economic justice movement, starting with the 150th anniversary of Emancipation, there have been substantial opportunities to establish common knowledge for a shift to instrumental valuation, a radical revolution in values, and instrumental policy proposals. This is reflected in the fraying rhetorical strategies of the pro-austerity policy makers. They increasingly move to the heart of the matter, back to the 'whip, hounds, and overseer' line of the planters, as in the 'killing the spirit to work' comments about the recent budget compromise, a much harder sell than the abstract 'fiscal responsibility' that got so much mileage in the past or the similarly abstract 'engine of growth' and positive sounding 'business confidence.'

Finally, on December 8, Paul Krugeman claims the credit that should have been occupied by OI and Post Keynesians:

Some select quotes:

“Six years have passed since the United States economy entered the Great Recession, four and a half since it officially began to recover, but long-term unemployment remains disastrously high.”

...

“Correspondingly, [the austerity/budget myth proponent] answer to the problem of long-term unemployment is to increase the pain of the long-term unemployed: Cut off their benefits, and they'll go out and find jobs. How, exactly, will they find jobs when there are three times as many job-seekers as job vacancies? Details, details.”

...

“Businesses aren't failing to hire because they can't find willing workers; they're failing to hire because they can't find enough customers.”

...

“So the odds, I'm sorry to say, are that the long-term unemployed will be cut off, thanks to a perfect marriage of callousness – a

complete lack of empathy for the unfortunate – with bad economics. But then, hasn't that been the story of just about everything lately?" [Krugman, 2013]

4.4 Conclusion

Baldwin Ranson makes the case that Foster held that people only use one criterion of valuation: instrumental valuation [Ranson, 2008]. The differences arise because some are mistaken. Analytically, this insight could be incorporated by treating ceremonial valuation as a form of mistaken instrumental valuation. People working from a Hermeneutic perspective are prone to focus on the perspective of individuals. Here they find the narratives that people use to explain their actions. These may not match what they are feeling but don't want to express or may not be consistent with what they are doing. If by Foster at some level their valuation is mistaken instrumental, they are failing to perceive the realities of the life process correctly. In the case of the street renaming juxtaposed to urban renewal, trying to cast both in terms of equally valid 'sense of place' resulted in juxtaposing an abstract rationalization that did not quite make sense with watching ones house burned down, as expressed in a poem by the art historian who convened a series of sessions on Harrisonburg history in the semester following the street renaming.

Alternatively, if we think in terms of institutions and the Veblenian dichotomy, the renaming opposition is applying ceremonial valuation that protects their status and the urban renewal group is applying instrumental valuation, preserving the roof over their head. The former would be thought of as being about race, an evolution of an institution from the times of slavery. The institutionalist perspective will also provide a way of thinking about the people caught up in this institution in a way that is more flexible and hopeful than the positivist perspective.

The street renaming in Harrisonburg is unique in that it reduced this sentiment of the opposition to a state that was not supported by any of the purported facts in its narrative. The valuation was thus exposed to be purely ceremonial (or mistaken). By extension, the accusations that are now surfacing in the major media around government austerity programs were demonstrated in this case to in fact be grounded on nothing but antipathy to the life process of fellow human beings, something that we hope is an error and that like the city council members when confronted with the stark reality, could not be rhetorically sustained; that there should, in other words, be a radical revolution in values.

A welcome feature of the process philosophy undergirding how this has been understood is that it does not necessitate a field of victors and vanquished. There was not an opposition that was out voted, there was a narrative that was discredited. That imaginary silent majority lost their legitimacy. To the extent that they existed, many changed their minds, changed their hearts. On the positive side, if someone feels like being for the ideas of Martin Luther King, they know they don't have to hide. They are in the majority, and the justice of their position is admitted.

On the methodological front a salient lesson is that the importance of Linwood Tauheed's phases cannot be underestimated by the community economist. While theory is good for sizing up the situation, the theory used in this case study is predicated on the fact that the task of the economist is solving a problem: as a community economist, the community's problem. This involves 'taking leadership' where 'taking' should be thought of in terms of 'taking your medicine' for those economists who come from a position of power and privilege. This was an ongoing issue in the street renaming where people from across socio-economic strata interacted. A common phenomenon was 'turning the room white' in which white male dynamics backed up by institutional resources made it possible for middle aged white men to take up time and space in a way that wore out others and made them give up on allocating their time to solving *their* problem while the white men continued blithely on their spiritual, political, or academic paths.

The most effective phase of the renaming struggle in this regard was the movement for the renaming. At this time 'leadership' played the role of following so that people would be empowered and resourced and of shielding so that people would feel safer stepping forward. After the success, which surprised everyone, including those who saw themselves as organizers, invidious dynamics started to be fed as awards and recognition began to be at stake. At this point people with well defined positions within institutions ranging from the universities to social services were more significantly involved. The final leg up to the dedication was substantially more difficult in this sense as professionalized institutional and organic community spheres overlapped. For the universities, the problem was one of methodology, not seeing the real social structures, and not thinking in terms of engaged problem solving as Tauheed's phases suggest. While some came a long way, this methodological failing continues to contribute to a lack of trust.

5 Chapter Summary and Conclusion

In retrospect, this engagement of the community can be understood in theoretical terms drawing on the institutionalist literature. We here put the chapter into that theoretical perspective with reference to the current literature.

Veblen wrote that certain white people in his time seemed to be strongly pleased by the sight of expanses of grass grazed by cows. But the uncouth practicality of the cow drove them to try to simulate the effect. By the time of Abraham Levitt, who gave us Levittown, the quintessential suburb, the lawn was far removed from its instrumental roots, and even from its days as a display of wealth and leisure (or knockoff emulation thereof) to a mark of conformity. Better living through chemistry degraded even that so that now Budding's image of healthy sport seems as comical as Veblen's cow. Levitt's suburban law came just in time to usher in a new breed of municipal ordinances to help ensure exclusivity just as old segregation laws were being repealed. Our case study of Harrisonburg attempting to justify the strengthening of such an ordinance

revealed that the ordinance did not have instrumental efficacy. Complaints increased, the proportion of unfounded complaints increased, and the extreme cases were about as frequent- a couple every year or two.

And there were side effects. People on the cutting edge of creation care or ecological living had to give up projects. But surprisingly, the whole city felt the chill. Measurements in the then Mayor's neighborhood on the eve of the amendment suggested half the city could face enforcement under the new height limits. The data shows that a year later on the same day in the growing season, grass heights had dropped drastically. This confirmed research that indicates a feedback loop (or more accurately, an autopoietic alternating coevolution) between policymakers and residents and belies the idea that people actually like short grass. The mismatch between perceptions of city governance and reality on the ground was further confirmed by a study of proactive zoning enforcement.

As with the lawn ordinance, in the rest of the city complaints went up: but not in the Northeast Neighborhood, where both dropped. This neighborhood was tellingly different. It was a lower income neighborhood, a diverse mix of Latino and African American, and the location of a historic freed slave settlement where needs on the ground that people tried to convey to the city were perceived by the city in terms of the lawn ordinance.

The mismatch pointed to a city staff and city institutions that were misaligned with the demographic reality of the city and rooted in old social structures dating to the days of slavery.

Further examining the demographic picture, excluding the serious case where institutions were doing nothing, striking pictures emerged. Among the lowest earners, there are as many who mark Hispanic as whites and there are fewer low earners in their mix. But Hispanics unlike whites have no 'green'- marginal productivity is not as likely an explanation as the racism Bracarens [2014] described, combined with lack of political rights. There was notable gender equity and relatively even income mix among African Americans that may warrant further research on having won rights through collective political struggle. Finally, considering the distribution polygons of the city's income profile by race we found the city is partitioned according to race. City jobs would be a step up for many people of color, and are the bottom rung for white salaries.

While this view of the data was new to people with my research, people living this reality intuited as much. When the King memorial opened in Washington DC, Stan Maclin wondered, 'we boast of diversity, why is it not reflected in our power structure and public places?' and proposed naming a street for Martin Luther King. The renaming was the obvious direction for shoring up the call for an inclusive our that came up in the business gardening hearings, where our community was repeatedly juxtaposed against 'you people.'

Martin Luther King, Jr. street renamings are rife with controversy and red herrings. Harrisonburg appears unique in that all were refuted.

Most surprising was the mystery of Cantrell the name of the street finally chosen for renaming. After a year of spelling fluctuations like that discovered in council minutes after the street was first called Central, the name settled on Cantrell- undermining the idea that it was purposely named, whether for a war

hero or a war criminal.

This research laid bare in deliberation what lurked beneath the present opposition as well as the not so rosy Lost Cause past- as with the lawn issue that sprung from the same impulse, it was pure antipathy toward our fellow human beings, perhaps encapsulated in ignorance, but no more. To its credit, Harrisonburg could not abide it and made a formal show of unanimity in support of the renaming, after a difficult time of soul searching.

The coincidence of this insight with anniversaries such as that of Emancipation, and several related to the civil rights struggle, in the context of austerity myths increasingly discredited by undeniable facts on the ground gave it immense rhetorical potential- to get a potent message across, tying current austerity rhetoric to its roots in hierarchy and domination in its most blatant expression as American slavery.

In this case study, methodological issues did make it difficult for academics who were motivated to become involved to be sensitive to power that flowed from collective effort. The net effect was like that of a company insisting on talking to representatives of its own choosing rather than to a union appointed representative, or in the case of taking advantage of internal divisions within the community, of a nation facing a block of opponents making a separate peace with individuals. This could be explained as a consequence of a methodological individualist methodology that made collective structures invisible to those academics, who tended to be from the humanities.

A contrasting example of being methodologically able to see collective entities is provided Kirdina [2014] who in a 2014 AFIT talk illustrated that revolutions could be thought of as resetting diverted efforts to solve problems in sustaining the continuity of the life process. Reading history this way is methodological institutionalism, as Kidrina called it. It looks at the process writ large, a problem solving effort that, as with George Herbert Mead's social psychology in which mind includes one's library, goes beyond the individual both in meaning and in power. In both, power is of the mass movement. The methodological individualist form of the Hermeneutic approach invalidates the power in those movements, for example, placing all in the tastes and suffering of individuals. When applied by those with a secure academic home the effects can be amplified if they leave unexamined the sources of legitimacy or the fact of power they bring by, for example things as mundane as access to rooms, students, and payed time on task- permissions granted, liberty protected that is not symmetrically present in the counter-parties except as they have self-empowered through organizing. Furthermore, refusing the blessings of legitimacy with which a university is empowered to those they don't like *de facto* colonizes and is a wielding of that asymmetric institutional power. Such dynamics were guarded against in the renaming, both in the coalition, and in the city, but there is great staying power for the resourced and powerful institutions which prevail by attrition against people on the margins.

To recap, recall we started with lawns and ended with street signs. In recapping, we can understand aspects of our case study in terms that are used in the OI literature. For example, we here do so with respect to papers that

were presented at the Association for Institutionalist Thought meetings of April 2014 where this work was also presented. As Hopkins [2014] pointed out in her talk, the issue in her case of Navaho skirts is not as much the restriction of women's dresses (which Veblen describes in 19th century styles but which does not apply to the Navaho skirt) as the display of privilege. Natural landscaping can similarly be a display of privilege. Repealing a lawn ordinance has deeper effect than natural landscaping, however, loosening a constraint for people who were bound to purchase positional goods, as Kepner [2014] described in her talk (in her example houses, in ours a conforming lawn) crowding out needs that are not visible to others. This can be to the chagrin of natural landscaping professionals who fear their trade getting a bad reputation from the latter. Again, drawing from the talk of Simiqueli and Luz [2014], there is room to coopt ecological goods, as they describe happening with cultural expressions in the 60s. However, pulling at the thread of lawn ordinances touches something more fundamental, questioning the grounds of legitimacy at the level of cultural values or social beliefs as described in the social fabric approach reported on by Hayden [2014]. Bringing this to the surface and exposing it to examination reaches to the shifting demographic grounds no longer held by Veblen's dolico-blonds and their grandchildren but, again as Valery Kepner reported, by demographic groups that for example buy into a non-competitive version of the American Dream. In Harrisonburg this laying bare just happened to get us up to street signs, and a rhetorical coup that ought to impress whether students of George Lakoff or of Deirdre McCloskey.

This research was put into action, for example petitioning Congressman Goodlatte of the House Judiciary committee to support immigration rights and the voting rights amendment where community members cited the dedication of the new street with unanimous support, including by the Republican mayor who had voted against, as a sign of the times. The demographic data presented here was used in this encounter to signal that the community members were not bluffing. At other events, literature was distributed laying out the line of reasoning from the concept of Confederate Emancipation conceived to retain the power over freed African Americans through planter protests during Reconstruction to the North to let them govern African American labor according to the philosophy of hounds, the whip, and the overseer and the North's acquiescence to protect the rights of property over the rights of labor, to the rolling back of the civil right's movement's gains against that system made over 100 years later by today's austerity ideology, including Congressman Goodlatte's advocacy of a balanced budget constitutional amendment.

The renaming continues to have significance as of this writing, with an academic who participated in a number of encounters in which issues of community leadership were raised standing in what appeared to be an appropriate support role to leadership from the African American community and making an almost correct appeal to the renaming movement in speaking in support, and a council member who initially had to adjust to shifting power dynamics appropriately acknowledging those chosen by the community. The issue at hand, funding to improve the historic Newtown Cemetery, is one that would entail

non-professional community leaders directing the development of neighborhood physical, social, and historical infrastructure and developing a track record and infrastructure related to handling funds that could open the door for more resources flowing to support latent structures like those described by Clear [2014]. These are among the networks that might be activated to guide future federal job guarantee programs envisioned by MMT while having the potential to currently be a part of the rhetorical persuasion to bring such a job guarantee into being.

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Attachment C

Staff Report – Program Review

Residential Tree Canopy Cover Credit

Stormwater Advisory Committee Meeting July 29, 2015

BACKGROUND ON STORMWATER UTILITY FEE CREDIT MANUAL FOR RESIDENTS

When developing the Harrisonburg Stormwater Utility Fee Credit Manuals in 2014-2015, City staff and the Stormwater Advisory Committee (SWAC) only included stormwater practices that were accepted by the Virginia Department of Environmental Quality (VA DEQ)'s Chesapeake Bay TMDL Action Plan Guidance. In addition to stormwater practices approved by VA DEQ's Stormwater Management Handbook for homeowner stormwater practices, the Chesapeake Bay TMDL Action Plan Guidance allows MS4 permittees (i.e. the City of Harrisonburg) to receive TMDL pollution load reductions for practices approved by the Chesapeake Bay Program (CBP)'s Urban Stormwater Workgroup, which includes specific residential/ homeowner practices/ BMPs.

Presently, tree canopy cover is not an approved credit for the Chesapeake Bay Watershed Model. However, city staff and SWAC members saw that studies currently underway will likely result in the CBP approving TMDL pollution load credits for homeowner tree plantings and that encouraging good stewardship of residential properties by providing stormwater utility fee credits had benefits for stormwater management and local water quality. The CBP also included tree plantings in their "Homeowner Guide for a More Bay-Friendly Property" which the City references in the stormwater utility fee credit manual.

For a resident to receive 10% stormwater utility fee credit for conservation landscaping, coverage of 20% or greater within the parcel is required.

STAFF REPORT

Since implementing the Stormwater Utility Fee Program, city staff has been approached by owners of large residential lots whose properties are mostly pervious (often grass fields), and who have concentrated tree canopy cover in portions of their properties. Given the large size of their total parcel, it is difficult for them to reach the 20% tree canopy cover requirement for stormwater utility fee credits. Examples provided below.

Example 1. 150 W Mosby Rd.

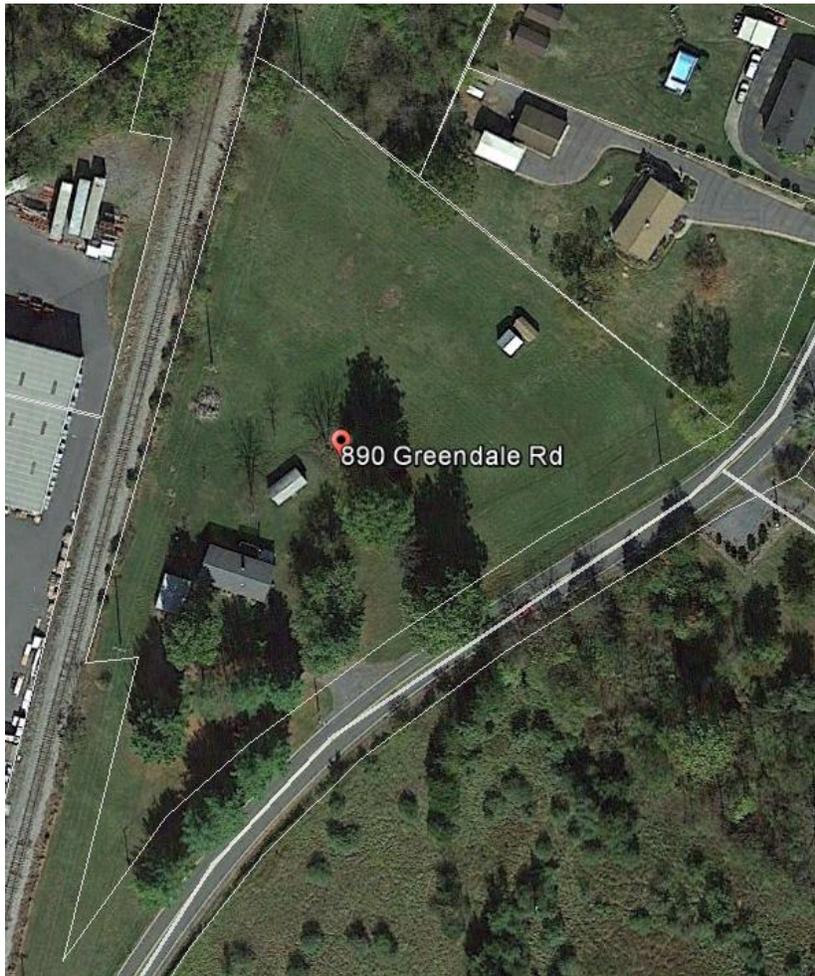


Aerial imagery, 2011.

Lot size	1,000,000 sf (~22.95 acres)	
Existing tree canopy cover	~ 155,133 sf (~3.56 acres)	15% of property
10 year projected tree canopy cover for new tree plantings*	~4,296 sf (~0.09 acres)	0.9% of property
New total tree canopy cover	~159,429 (~3.65 acres)	15.9% of property

**Property owner has planted 50 trees in the last 2 years. 10 pine, 5 persimmons, 10 white dogwood, 7 northern red oak, 7 yellow poplar, and 10 eastern white pine on this property.*

Example 2. 890 Greendale Rd



Aerial imagery, 2013

Lot size	95,832 sf (2.2 acres)	
Existing tree canopy cover	12,539 sf	13.1% of property

City staff proposes modifying the criteria so that property owners of larger residential lots would have a smaller percentage of tree coverage required compared to smaller lot owners. City staff proposes the following criteria.

Table 1. Proposed criteria for residential tree canopy cover

Lot size (acres)	% tree canopy cover requirement
2.5 or less	20%
> 2.5 - 5.0	10%
Greater than 5.0	5%

To illustrate how much tree canopy coverage would be required for different residential lot sizes, see Table 2.

Table 2. Tree canopy coverage requirements for different size residential lots

<i>If lot size is (acres)</i>	<i>Minimum % tree canopy requirement</i>	<i>Minimum tree canopy (sf)</i>	<i>Minimum tree canopy (acres)</i>
0.5	20%	4,356	0.1
1.0	20%	8,712	0.2
1.5	10%	6,534	0.15
2.0	10%	8,712	0.2
2.5	10%	10,890	0.25
3.0	10%	13,068	0.3
3.5	10%	15,246	0.35
4.0	10%	17,424	0.4
4.5	10%	19,602	0.45
5.0	10%	21,780	0.5
10.0	5%	21,780	0.5
20.0	5%	43,560	1
30.0	5%	65,340	1.5

40.0	5%	87,120	2
50.0	5%	108,900	2.5
100.0	5%	217,800	5
200.0	5%	435,600	10

City staff seeks input and recommendation from the Stormwater Advisory Committee.

This change would require City Council action to amend the Stormwater Utility Fee Program Manual for Residents.

Attachment D

Staff Report – Program Review

Stormwater Maintenance Agreements for Non-Residential BMPs

Stormwater Advisory Committee Meeting July 29, 2015

City staff and the Stormwater Advisory Committee included provisions in the Stormwater Utility Fee Program to allow stormwater utility fee credits for stormwater BMPs installed to meet site development requirements. This was done because the Virginia law authorizing localities to establish a stormwater utility program required (Section 15.2-2114),

“A locality adopting such a system shall provide for full or partial waivers of charges to any person who installs, operates, and maintains a stormwater management facility that achieves a permanent reduction in stormwater flow or pollutant loadings.”

In order for an applicant to continue to receive a stormwater utility fee credit, each stormwater BMP installed must be maintained to ensure continued function. The applicant is responsible for having all ongoing maintenance work completed, and if not maintained their stormwater utility fee credit will be revoked.

There are three types of BMPs: (A) “Post-2009” BMPs required to meet development regulations, (B) Voluntary BMPs installed for Stormwater Utility Fee Credit, and (C) “Pre-2009” BMPs required to meet development regulations.

- A. For site development, to comply with state regulations, in 2009 the City of Harrisonburg updated its Design & Construction Standards Manual (DCSM) to require stormwater BMPs that are installed to meet site development requirements to have maintenance agreements recorded with the Rockingham County Clerk of Court and conveyed with the land to future property owners. The maintenance agreement describes that an inspection report must be submitted once every 5 years (recently amended to every 5 years from every 3 years) to assure safe and proper functioning of the facilities. A copy of the maintenance agreement is attached. For the Stormwater Utility Credit Program, the City will accept these inspection reports.
- B. For Stormwater BMPs installed voluntarily, not to meet site development requirements, the Stormwater Utility Fee Program requires a maintenance agreement that is not recorded with the Clerk of Court. If the property owner fails to maintain, their stormwater utility fee credit will be revoked, and there are no penalties. See attached.
- C. Stormwater BMPs installed prior to 2009 to meet site development requirements do not have maintenance agreements, as previous regulations did not require them. The Stormwater Utility Fee Program was adopted requiring owners of Stormwater BMPs installed prior to 2009 to enter into a recorded maintenance agreement with the City in order to receive stormwater utility fee credits. Upon program implementation, city staff realized that the current maintenance agreement in the DCSM was written for BMPs *planned to be built* and that a new maintenance

agreement with language addressing *already built BMPs* is needed. With additional questions to address, city staff set up a “Provisional Maintenance Agreement” (see attached), that allowed property owners of non-residential BMPs to receive stormwater utility fee credits for FY15-16 until these questions can be resolved and a new maintenance agreement drafted.

Attached on page is a table comparing three types of non-residential BMPs that can apply for stormwater utility fee credits. In column C, there are questions listed which the SWAC is being asked to weigh in on and to provide a recommendation to city staff.

	(A) "Post-2009" BMPs required to satisfy development regulations	(B) Voluntary BMP installed for Stormwater Utility Fee Credit	(C) "Pre-2009" BMPs required to satisfy development regulations
Type of Maintenance Agreement Required as part of Development Regulations	VSMP regulations require Maintenance Agreement at time of development, recorded at Clerk of Court.	N/A	No maintenance agreement was required at time of development
Type of Maintenance Agreement Required for Stormwater Utility Fee Credit Application	Copy of recorded Maintenance Agreement as required by City Design & Construction Standards Manual	Accepting "Stormwater Utility Fee Maintenance Agreement – for use with Voluntarily Installed Non-Residential BMPs". Not recorded at Clerk of Court.	Presently accepting "Provisional Maintenance Agreement". Agreement expires June 30, 2016. <i>Future Maintenance Agreement – should we require option A or B?</i>
Conveyance of Maintenance Agreement	Maintenance Agreement conveys with land.	If property owner changes, then new application and maintenance agreement required.	<i>Should future owners be bound to Maintenance Agreement to maintain BMP in perpetuity?</i> <i>Or should they be allowed to opt out of the agreement?</i>
Failure to Maintain BMP	After proper notice, City may enter upon property to correct deficiencies and charge cost of repairs to owner.	After proper notice, failure to maintain will result in revocation of stormwater utility fee credits and maintenance agreement is voided. No further penalty.	?
Utility Fee Credit Terms/Expiration	Utility Fee Credits valid for 5 years from date of application approval. Credits do not transfer with ownership.	Utility Fee Credits valid for 5 years from date of application approval. Credits do not transfer with ownership.	Utility Fee Credits valid for 5 years from date of application approval. Credits do not transfer with ownership.
Notes			<i>Issue of fairness – new developments are required to maintain BMPs</i> <i>Is this a way to encourage property owners to bring failing BMPs up to standard?</i> <i>What is the likelihood of property owners applying for Stormwater Utility Fee Credits for either option A or B?</i> <i>If the stormwater BMP has claimed "overage" credits (25%), and the City reports them to DEQ for Chesapeake Bay TMDL reductions, what are the consequences of Utility Fees being revoked and the City no longer being able to report pollutant reductions to DEQ?</i> <i>Both Charlottesville and Lynchburg require Pre-2009 BMPs seeking to Stormwater Utility Fee Credits to go through Option A process for Maintenance Agreement. Conveys with land in perpetuity.</i>

(A) Post-2009 BMP Maintenance Agreement

CITY OF HARRISONBURG, VA

DESIGN & CONSTRUCTION STANDARDS MANUAL

APPENDIX I

STORMWATER MANAGEMENT/ BMP FACILITIES MAINTENANCE AGREEMENTS

Procedures for Submitting Agreements

- Agreements are submitted to the City of Harrisonburg, Department of Planning & Community Development, 409 S. Main Street, Harrisonburg, Virginia 22801.
- Obtain **original** agreement from the Department of Planning & Community Development or from the City's Design Construction Standards Manual (DCSM).
- **Type** all information on form.
- **Submit** draft agreement with exhibit(s) for City review **prior to signature.**

Following approval:

- Sign form in **black ink.**
- Signature must be properly notarized (black ink).
- If the Landowner is a corporation, partnership, trust, limited liability company, etc., provide official/legal documentation that the person signing is authorized to sign legal/contractual documents for the organization.
- Record agreement in County Clerk's office and provide copy of stamped document to City.

CITY OF HARRISONBURG, VA

STORMWATER MANAGEMENT/BMP FACILITIES MAINTENANCE AGREEMENT

THIS AGREEMENT, made and entered into this ____ day of _____, _____, by and between _____ hereinafter called the
(Insert Full Name of Owner)
"Landowner", and the City of Harrisonburg, a Virginia municipal corporation, hereinafter called the "City".

WITNESSETH:

WHEREAS, the Landowner is the owner of certain real property described as City of Harrisonburg Tax Map/Parcel _____ as recorded by deed in the land records of Rockingham County, Virginia, Deed Book/Page _____, hereinafter called the "Property".

WHEREAS, the Landowner is proceeding to build on and develop the property; and

WHEREAS, the Site Plan/Subdivision Plan known as, _____, prepared by _____ and dated _____, hereinafter called the "Plan", which is expressly made a part hereof, as approved or to be approved by the City, provides for Best Management Practices (BMPs) for detention and/or treatment of stormwater within the confines of the property; and

WHEREAS, approximate locations of specific BMP facilities included on the Plan are shown on the attached (indicate by x):

___ Copy of City-approved final subdivision plat, or

___ City-approved scaled exhibit drawing of property; and

WHEREAS, the City and the Landowner, its successors and assigns, including any homeowners association, agree that the health, safety, and welfare of the residents of City of Harrisonburg, Virginia, require that on-site stormwater management/BMP facilities be constructed and maintained on the Property; and

WHEREAS, the City requires that on-site stormwater management/BMP facilities as shown on the Plan be constructed and adequately maintained by the Landowner, its successors and assigns, including any homeowners association.

NOW, THEREFORE, in consideration of the foregoing premises, the mutual covenants contained herein, and the following terms and conditions, the parties hereto agree as follows:

1. The on-site stormwater management/BMP facilities shall be constructed by the Landowner, its successors and assigns, in accordance with the plans and specifications identified in the Plan.

2. The Landowner, its successors and assigns, including any homeowners association, shall adequately maintain the stormwater management/BMP facilities. This includes all pipes and channels built to convey stormwater to the facility, as well as all structures, improvements, and vegetation provided to control the quantity and quality of the stormwater. Adequate

Project Name: _____

maintenance is herein defined as good working condition so that these facilities are performing their design functions. The required Inspection Report form(s) is(are) to be used to establish what good working condition is acceptable to the City.

3. The Landowner, its successors and assigns, shall inspect the stormwater management/BMP facility and submit an inspection report every five years by the method and date prescribed in the latest City's Design and Construction Standards Manual. The purpose of the inspection is to assure safe and proper functioning of the facilities. The inspection shall cover the entire facilities, berms, outlet structure, pond areas, access roads, etc. Deficiencies shall be noted in the inspection report.

4. The Landowner, its successors and assigns, hereby grant permission to the City, its authorized agents and employees, to enter upon the Property and to inspect the stormwater management/BMP facilities whenever the City deems necessary. The purpose of inspection is to follow-up on reported deficiencies and/or to respond to citizen complaints. The City shall provide the Landowner, its successors and assigns, copies of the inspection findings and a directive to commence with the repairs if necessary.

5. In the event the Landowner, its successors and assigns, fails to maintain the stormwater management/BMP facilities in good working condition acceptable to the City, the City may, after proper notice, enter upon the Property and take whatever steps necessary to correct deficiencies identified in the inspection report and to charge the costs of such repairs to the Landowner, its successors and assigns. The City shall allow Landowner 90 days to make necessary repairs before taking this action; however, for large scale repair work the City may, on a case-by-case basis, allow the Landowner to present for consideration an Action Plan and schedule for repairs. In such cases the City may require a bond, letter of credit, cash escrow or other acceptable surety to guarantee the work. This provision shall not be construed to allow the City to erect any structure of permanent nature on the land of the Landowner. It is expressly understood and agreed that the City is under no obligation to routinely maintain or repair said facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

6. The Landowner, its successors and assigns, will perform the work necessary to keep these facilities in good working order as appropriate. A maintenance schedule should follow those prescribed in the Plan, along with any recommendations included in the City's Design and Construction Standards Manual, manufacturers' guidelines, etc. This schedule shall be followed by the landowner, its successors and assigns.

7. In the event the City pursuant to this Agreement, performs work of any nature, or expends any funds in performance of said work for labor, use of equipment, supplies, materials, and the like, the Landowner, its successors and assigns, shall reimburse the City upon demand, within thirty (30) days of receipt thereof for all actual costs incurred by the City hereunder. This shall include costs which exceed those obtained through a surety provided in association with an Action Plan as described in Item 5 above.

8. Landowner, by execution of this Agreement, acknowledges that he/she has reviewed with the Engineer the specifics of the Plan and understands the function and maintenance requirements of all BMPs provided for on the Plan. Landowner agrees to maintain a copy of the Plan through the duration of ownership, and to transfer that plan to the new owner upon relinquishing the property.

Project Name: _____

9. This Agreement imposes no liability of any kind whatsoever on the City and the Landowner agrees to hold the City harmless from any liability in the event the stormwater management/BMP facilities fail to operate properly.

10. This Agreement shall be recorded among the land records in the Clerk's Office of the Circuit Court of Rockingham County, Virginia, and shall constitute a covenant running with the land, and shall be binding on the Landowner, its administrators, executors, heirs and any other successors and assigns in interests, including any homeowners association.

11. This agreement shall be governed by the laws of the Commonwealth of Virginia.

12. Any disputes arising from or as a result of this Agreement shall be resolved in the Circuit Court of Rockingham County, Virginia.

13. If any provision of this Agreement is found to be illegal, invalid, or unenforceable, that shall not affect the validity or enforceability of any other provision of this agreement.

Project Name: _____

WITNESS the following signatures and seals:

Company/Corporation/Partnership Name

By: _____

(Type Name)

(Type Title)

STATE OF _____

CITY/COUNTY OF _____

The foregoing Agreement was acknowledged before me this day _____ of _____,
_____, by _____.

NOTARY PUBLIC

My Commission Expires: _____

My Commission No. is: _____

Project Name: _____

(B) Voluntary BMP
Date of Submittal: _____

Credit Application ID: _____



City of Harrisonburg, Virginia
Department of Public Works
320 East Mosby Road
Harrisonburg, VA 22801
540-434-5928
stormwater@harrisonburgva.gov

Stormwater Utility Fee Maintenance Agreement

For use with Voluntarily Installed Non-Residential BMPs

This Agreement, made and entered into this ____ day of _____, by and between _____ (“Property Owner”) and the City of Harrisonburg, a Virginia municipal corporation, (“City”).

The City and the Property Owner(s) agree to the following terms and conditions as follows:

The Property Owner(s) is the owner of that certain parcel of land located within the City at (ADDRESS) _____, Harrisonburg, Virginia and designated on the Harrisonburg City Tax Map as parcel _____ (the “Property”). The Property Owner(s) has submitted to the City a credit application pursuant to the City’s Stormwater Utility Fee Credit Program for certain stormwater management BMP facilities located on the Property.

The City requires that any on-site stormwater management BMP, as outlined in the credit application, be adequately constructed, operated, and maintained by the Property Owner(s).

1. Location of the Facility. The on-site stormwater management BMP facility (check one) located on the Property or on Harrisonburg City Tax Map as parcel _____, has been constructed by the Property Owner(s) in accordance with the specifications identified in the appropriate Stormwater Utility Fee Credit Manual for Non-Residential or Residential.

2. Commitment to Operation and Maintenance of Facility. The Property Owner(s), including any homeowners association, shall adequately operate, inspect, and maintain the stormwater management BMP facilities in accordance with the specific operation, inspection, and maintenance requirements set forth in the attachment to the maintenance agreement.

3. Documentation. The Property Owner(s) shall document any maintenance, landscaping, and repairs performed to the on-site stormwater management BMP facilities on the City’s Maintenance Record form and provide a copy of said Maintenance Record to the City or its representatives upon request. Regular inspection by the Property Owner(s) is encouraged, but submittal of inspection forms to the City is not required.

4. Right of Entry on Property. The Property Owner(s) grants permission to the City and its authorized agents and employees, to enter upon the Property at reasonable times and upon presentation of proper identification, to inspect the stormwater management BMP facilities whenever the City deems necessary. Except for emergencies, City representatives shall use reasonable efforts to provide at least a 24 hour

notice to the Property Owner(s) before entry upon the Property. The purpose of inspections is to assure safe and proper functioning of the facilities, follow-up on suspected or reported deficiencies, and/or to respond to citizen complaints. In the event any deficiency is observed during an inspection, the City shall provide the Property Owner(s) copies of the inspection findings and a directive with timeline to commence any necessary repairs.

5. Failure to Maintain. In the event the Property Owner(s) fails to operate and maintain the stormwater management BMP facilities in good working condition and in accordance with the attachment, the City will notify the Property Owner(s) in writing of deficiencies and required maintenance actions. If maintenance actions are not corrected by the Property Owner(s) within 90 days after notification is sent, the revocation of stormwater utility fee credits will take effect immediately and this maintenance agreement is voided. It is expressly understood and agreed that the City is under no obligation to maintain or repair said stormwater management BMP facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

The Property Owner(s) may reinstate their credit by following the procedures and requirements outlined in the appropriate Stormwater Utility Fee Credit Manual for Non-Residential or Residential.

6. Credit Effective Dates. Credits will be valid for five (5) years from the date of application approval or until transfer of ownership (i.e. sale of the property to another party), whichever is first. The Property Owner(s) will need to re-apply for the credit every five (5) years. Credits do not transfer with ownership changes.

7. Release of City. The Property Owner(s), its successors and assigns, shall release the City, its elected officials, offices, employees and designated representatives, from all damages, accidents, casualties, occurrences, or claims or causes of action which might arise from or be asserted against said City, its elected officials, offices, employees, and representatives related to the construction, presence, existence, operative or maintenance of the stormwater management BMP facilities by the Property Owner(s) or City. In the event that such a claim is asserted, the City shall promptly notify the Property Owner(s) and the Property Owner(s) shall defend, indemnify, and hold harmless the City, its elected officials, City Officers or employees, and its associated individuals, in any suit or action based on the claim.

8. Attachments.

- Description of Operation, Inspection, and Maintenance Requirements (provided by property owner)

Upon signing this document, The City and the Property Owner(s) agree to the terms and conditions as outlined above and as described in the appropriate Stormwater Utility Fee Credit Manual for Non-Residential or Residential effective on the date signed.

Owner Printed Name

Owner Signature

Date



City of Harrisonburg, Virginia
Department of Public Works
320 East Mosby Road
Harrisonburg, VA 22801
540-434-5928
stormwater@harrisonburgva.gov

Provisional Stormwater Utility Fee Maintenance Agreement

For use with Non-Residential BMPs without a previous maintenance agreement that were installed to meet site development regulations

This Agreement, made and entered into this ____ day of _____, by and between _____ (“Property Owner”) and the City of Harrisonburg, a Virginia municipal corporation, (“City”).

The City and the Property Owner(s) agree to the following terms and conditions as follows:

The Property Owner(s) is the owner of that certain parcel of land located within the City at (ADDRESS) _____, Harrisonburg, Virginia and designated on the Harrisonburg City Tax Map as parcel _____ (the “Property”). The Property Owner(s) has submitted to the City a credit application pursuant to the City’s Stormwater Utility Fee Credit Program for certain stormwater management BMP facilities located on the Property.

The City requires that any on-site stormwater management BMP, as outlined in the credit application, be adequately constructed, operated, and maintained by the Property Owner(s).

1. Location of the Facility. The on-site stormwater management BMP facility (check one) located on the Property or on Harrisonburg City Tax Map as parcel _____, has been constructed by the Property Owner(s) in accordance with the specifications identified in the appropriate Stormwater Utility Fee Credit Manual for Non-Residential.

2. Commitment to Operation and Maintenance of Facility. The Property Owner(s), including any homeowners association, shall adequately operate, inspect, and maintain the stormwater management BMP facilities in accordance with the specific operation, inspection, and maintenance requirements set forth in the attachment to the maintenance agreement.

3. Documentation. The Property Owner(s) shall document any maintenance, landscaping, and repairs performed to the on-site stormwater management BMP facilities on the City’s Maintenance Record form and provide a copy of said Maintenance Record to the City or its representatives upon request. Regular inspection by the Property Owner(s) is encouraged, but submittal of inspection forms to the City is not required.

4. Right of Entry on Property. The Property Owner(s) grants permission to the City and its authorized agents and employees, to enter upon the Property at reasonable times and upon presentation of proper identification, to inspect the stormwater management BMP facilities whenever the City deems necessary. Except for emergencies, City representatives shall use reasonable efforts to provide at least a 24 hour

notice to the Property Owner(s) before entry upon the Property. The purpose of inspections is to assure safe and proper functioning of the facilities, follow-up on suspected or reported deficiencies, and/or to respond to citizen complaints. In the event any deficiency is observed during an inspection, the City shall provide the Property Owner(s) copies of the inspection findings and a directive with timeline to commence any necessary repairs.

5. Failure to Maintain. In the event the Property Owner(s) fails to operate and maintain the stormwater management BMP facilities in good working condition and in accordance with the attachment, the City will notify the Property Owner(s) in writing of deficiencies and required maintenance actions. If maintenance actions are not corrected by the Property Owner(s) within 90 days after notification is sent, the revocation of stormwater utility fee credits will take effect immediately and this maintenance agreement is voided. It is expressly understood and agreed that the City is under no obligation to maintain or repair said stormwater management BMP facilities, and in no event shall this Agreement be construed to impose any such obligation on the City.

The Property Owner(s) may reinstate their credit by following the procedures and requirements outlined in the appropriate Stormwater Utility Fee Credit Manual for Non-Residential or Residential.

6. Credit Effective Dates. This provisional maintenance agreement shall expire on June 30, 2016. The City of Harrisonburg shall contact the Property Owner(s) by February 1, 2016 with a copy of the new maintenance agreement. After reviewing the new maintenance agreement, the property owner can choose to continue with the credit program and sign the new maintenance agreement, or the property owner can choose to no longer participate and no further action is required. In general, credits will be valid for five (5) years from the date of application approval or until transfer of ownership (i.e. sale of the property to another party), whichever is first. The Property Owner(s) will need to re-apply for the credit every five (5) years. Credits do not transfer with ownership changes.

7. Release of City. The Property Owner(s), its successors and assigns, shall release the City, its elected officials, offices, employees and designated representatives, from all damages, accidents, casualties, occurrences, or claims or causes of action which might arise from or be asserted against said City, its elected officials, offices, employees, and representatives related to the construction, presence, existence, operative or maintenance of the stormwater management BMP facilities by the Property Owner(s) or City. In the event that such a claim is asserted, the City shall promptly notify the Property Owner(s) and the Property Owner(s) shall defend, indemnify, and hold harmless the City, its elected officials, City Officers or employees, and its associated individuals, in any suit or action based on the claim.

8. Attachments.

- Description of Operation, Inspection, and Maintenance Requirements (provided by property owner)

Upon signing this document, The City and the Property Owner(s) agree to the terms and conditions as outlined above and as described in the appropriate Stormwater Utility Fee Credit Manual for Non-Residential or Residential effective on the date signed.

Owner Printed Name

Owner Signature

Date