

REGULAR MEETING

SEPTEMBER 28, 2004

At a regular meeting of Council held this evening at 7:30 p.m., there were present: Mayor Larry M. Rogers; City Manager Roger Baker; Assistant City Manager Kurt Hodgen; City Attorney Earl Q. Thumma, Jr., Vice-Mayor Rodney L. Eagle; Council Members Charles R. Chenault; Council Member Hugh J. Lantz; George W. Pace; City Clerk Yvonne "Bonnie" Ryan, CMC/MMCA, and Chief of Police Donald Harper.

Mayor Rogers gave the invocation and led everyone in the Pledge of Allegiance.

Bucky Berry, a resident of Harrisonburg thanked Mayor Rogers for getting involved with citizens of the community.

Marty Solomon requested updated information regarding operating a taxi service in the City.

City Manager Baker responded that a report will be presented to City Council once the matter is completely researched. Mr. Solomon will be notified once this item is placed on the agenda.

Vice-Mayor Eagle offered a motion to approve the consent agenda, including approval of the minutes and the second reading of Supplemental Appropriations for the Harrisonburg Downtown Renaissance, School Board and Fire Department, rezoning request by the Harrisonburg Redevelopment and Housing Authority, and closing a 4,138 square foot section of East Elizabeth Street. The motion also included amending and re-enacting Section 7-1-16, 7-2-1, 7-4-3 and 7-4-21, and enacting Chapter 5 of Title 13, Mopeds and Electric-Assisted Bicycles of the Harrisonburg City Code. The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Mayor Rogers

Absent - None

Planning and Community Development Director Turner introduced a request by Carl Berkey for the City to provide residential water connections to 74 proposed single-family homes located adjacent to Belmont Estates along the City's western border. She said that a utility application and a letter from the Director of Public Utilities stating support for this request was included in Council's packet. She said that Planning Commission has recommended approval of the request.

Council Member Pace offered a motion to approve this request as presented. The motion was seconded by Vice-Mayor Eagle, and approved with a unanimous vote of Council.

Planning and Community Development Director Turner introduced a request by Oak Crest Companies to plat 137 townhouse lots on 14.38 acres of land, zoned R-3 Multiple Dwelling Residential District, with variances to the subdivision ordinance. She said the developer has revised the plat to indicate there will be a temporary turn around at the end of the proposed Blue Stone Hills Drive extension. She reviewed the surrounding uses in the area. The City's major street plan has indicated there should be a future connection of Lucy Drive with Reservoir Street. It has also been suggested that Blue Stone Hills Drive be developed to extend over to Lucy Drive to discourage cut through traffic. She said that the R-3 zoning classification does permit townhouses as a development or as a use permitted by right. The question Council has to consider is whether the subdivision will include private streets as requested by the developer or public streets. Current R-3 regulations only require a twenty-five foot setback between the rear of a townhouse and the abutting property line. She said that 2.5 parking spaces are required for each of the townhouse units and no on street parking will be allowed on the private streets. The developer has agreed to limit occupancy of the townhouse units to families or no more than two unrelated individuals. Mrs. Turner said that Planning Commission has recommended approving the subdivision and including a condition to limit occupancy to families or no more than two unrelated individuals per unit. The City Attorney has suggested, as a matter of enforcement, the condition should become part of the covenants and restrictions with the City as a party of that particular portion. She said that the Planning Commission recommendation included the restriction on occupancy being part of the subdivision and recommended approval by a vote of 6-1.

Council Member Lantz asked what was the maximum density that could be developed on the property without the variance?

Mrs. Turner replied that the developer has not submitted a plat of the property.

Council Member Pace said that he was pleased to see a turn around at the end of the extension of Blue Stone Hills Drive. What is the possibility of installing a four-way stop sign at the corner of Deyerle Avenue and Blue Stone Hills Drive?

Mrs. Turner said installing stop signs hasn't been discussed and further discussion would be needed with the City Engineer and the Director of Public Works if Council wanted it considered.

Council Member Chenault said that it has been experience that four-way stop sign intersections probably cause more traffic hazards than they fix. He suggested placing stop signs on Blue Stone Hills Drive and leave Deyerle Avenue open to slow down some of the traffic.

Mayor Rogers said that a citizen has requested to speak before Council. This request can be permitted according to Section 2-3-3 of the Harrisonburg City Code. Council agreed to yield time to the requestor.

Dr. Rob McKearney thanked Council for allowing him to address the issue. He said he wanted to discuss issues regarding the current and future variance requests that will be reviewed by Council to allow private roads for the purpose of developing townhouse communities in Harrisonburg. He said, "I live on Pearl Lane which is adjacent to the property that is being reviewed for the variance request. I am not asking you to deny this request, but I am asking you to delay your decision until the next Council meeting so that the true impact of this decision can be evaluated. There are many factors I ask Council to carefully consider each time a request of this nature comes before them. 1) Is it supported by the Comprehensive Plan? 2) Does the current infrastructure support it? 3) What impact will this project have on our school system? 4) What are the tax implications, or revenues versus debits? 5) What are the other alternatives? 6) If anything is undesirable what means do we have legally to correct it or to change the current code to prevent similar problems in the future?" Currently there are approximately 500 new townhouses on the Planning and Council agenda involving three developments with others in the work. The Comprehensive Plan vision statement suggests creating a great place to work where there are quiet peaceful neighborhoods, beautiful and architectural landscaping. This sounds great, but once the okay is given many developers can typically do as they please without recourse. Goal seven for the vision statement is to preserve and enhance the City's natural resources and encourage development that is compatible with nature. How can a townhouse developer clear cutting 14 acres of 100-year oak trees help achieve that goal? Goal 15 states, "engage all citizens to work collaboratively in planning, developing, and promoting the City as a great place." Numerous members from the homeowners associations in the Blue Stone Hills Drive area have met with the developers twice. We know by right they can develop the property in accordance with R-3 zoning. The developer has offered many concessions and assurances in an attempt to alleviate our concerns about the impact of 137 new townhouses in our immediate neighborhood. Specific design architectural landscaping has been addressed with promises of continued corporation and following through with their plans. Our chief concern is that none of these promises are legally binding unless the Council makes them a condition upon approval of the variance. If that can't be done than I request that the City develop a plan allowing such provisions to be handled legally in the future for other developments. "I cannot speak on behalf of all of my neighbors, but I applaud the developers willingness to work with us." Many in our neighborhood would like to see it remain undeveloped. We need the City to encourage this type of planning between neighborhoods and developers and find a way to enforce specific concession and design specifications. Who will pay to upgrade Deyerle Avenue and Blue Stone Hills Drive because of all the additional traffic? The new development will need upgraded street surface, additional traffic lights, sidewalks, no parking signs, and will have an impact on the school system. Can Harrisonburg afford all these new townhomes?

Vice-Mayor Eagle said that the developer worked with the community and made some proffers that are worthwhile. He suggested that staff should review the infrastructure of the area. Vice-Mayor Eagle offered a motion to approve the request by Oak Crest Companies.

Council Member Chenault said that he appreciated Dr. McKearney remarks and comments. Council has looked very intensively at these developments and worked with the school board on it. At the last joint meeting Council held with the school board it was recognized that there might be a potential need for another school and they instructed the school board to start looking for land for a new elementary school. Some of the issues mentioned

tonight will need to be addressed at the state level before the City can address the issues locally. There is a joint meeting scheduled with the Planning Commission to discuss some of these issues and perhaps accomplish some of the goals Dr. McKearney mentioned. The Liaison Committee met with the School Board recently and some of these issues were discussed.

Mayor Rogers said that the development represents the American dream for a lot of people to own their first home.

Council Member Pace encouraged staff to have at least two stop signs at the intersection of the Blue Stone Hills Drive to slow down traffic because it is in the best interest of the public. "I was the dissenting vote at the Planning Commission meeting and my vote was not on the substance of the project, but it was a public safety issue relating to the school buses and traffic on Blue Stone Hills Drive. Council has two choices, do nothing and open up the project to apartments or agree to the request and provide the best situation that has been presented to Council."

Council Member Lantz said that Dr. McKearney has made some good points, but Council is aware the City has R-3 land. Once that property is developed there could be a possibility of more children enrolled in City schools, nevertheless, this developer is trying to work with the neighborhood.

Council Member Chenault offered a motion to second the motion made by Vice-Mayor Eagle and added an amendment to approve the request by Oak Crest Companies for the variance and he included in the motion that the developer should work with the City to place a covenant in the restrictive covenant when they are recorded in the Clerk's office to give the City some type of third party beneficiary right just as any other land owner would to enforce that specific two family unrelated covenant. Council Members approved the motion with a unanimous vote.

Planning and Community Development Director Turner introduced a request by Jared Scripture to plat 184 townhouse lots on 20.46 acres of land with a variance to the subdivision ordinance. She said this plan would have access to City streets from Goldfinch Drive and Oriole Lane. This property is currently zoned R-3, Multiple Dwelling Residential District. She reviewed the surrounding uses in the area. The proposed design would require a variance to the subdivision, which requires a variance that all lots front on a public street. All roads within the development are designed to be private streets. Parking will not be permitted along the streets. As with any development utilizing private streets, no City services such as trash pickup, snow removal, or school bus service would be provided. At the center of this development is a "village square" intended to contain public recreational space and a large gazebo. She said that the developer has informed staff that he intends to limit this number to two unrelated individuals through the neighborhood's covenants, conditions and restrictions. She said that Planning Commission has recommended approval of the request with the conditions as presented.

Council Member Lantz questioned the maximum density allowed without the granted variance.

Jerry Scripture developer for the project responded that 184 townhouse lots could be developed on the property. If condominiums or apartments were built, 280 units could be built on the property.

Council Member Chenault offered a motion to approve the request granting the variance for this subdivision including in the motion the fact that the developer would work with the City to place a covenant in the restrictive covenants when they are recorded in the Clerk's office to give the City some type of third party beneficiary right just as any other land owner would to enforce the specific two family unrelated covenant. The motion was seconded by Vice-Mayor Eagle, and approved with a unanimous vote of Council.

The next item of business was a request by the Harrisonburg Redevelopment and Housing Authority to hold a rabies vaccination clinic on October 16<sup>th</sup>. City Manager Baker said that HRHA needed to obtain written permission from the City Council to hold a rabies vaccination clinic on October 16<sup>th</sup> at their facility. The Animal Control Officer will also attend the event to sell dog licenses. Council Member Lantz offered a motion to grant City Manager Baker permission to write a letter to HRHA authorizing the rabies vaccination clinic. The motion was seconded by Council Member Pace, and approved with a unanimous vote of Council.

The next item of business was a request to grant tax-exempt status to the Harrisonburg/Rockingham Free Clinic. City Attorney Thumma advised Council that voters approved amending the State Constitution in the general election held in November 2002. This amendment allows localities to grant exemptions for either real or personal property tax exemptions. The General Assembly approved and adopted the resolution in 2003. He also advised that an ordinance needed to be adopted prior to holding a public hearing or granting the exemption. The applicant must own the property before applying for the exemption. Since the Harrisonburg/Rockingham Free Clinic will not close on the property until November, Mr. Thumma suggested adopting the ordinance in October, which would allow Council to hold a public hearing once the Free Clinic, has closed on the property. Vice-Mayor Eagle offered a motion to table this item until the first meeting in October.

Police Chief Harper presented a request for a supplemental appropriation for the Police Department. He said these funds were received from a reimbursement grant from the Division of Motor Vehicles. The funds will be used to purchase a radar unit. Council Member Lantz offered a motion to approve this request for a first reading, and that:

\$1,262.00 chge. to: 1000-33524 DMV Grant

\$1,262.00 approp. to: 1000-310231-48111 Machinery and Equipment

The motion was seconded by Council Member Chenault, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz

Vice-Mayor Eagle  
Council Member Chenault  
Mayor Rogers

Absent – None

Bucky Berry, a resident of Harrisonburg complained about flooding problems in the north end of the City due to heavy rain.

Council Member Pace said that Adelphia Cable has announced the company will divest itself of all its cable operations and cluster everything together to get potential buyers. At the end of the year there should be a new owner of the system in this area. He encouraged everyone to stay close to the situation and determine how best to proceed depending upon how the auction takes place.

Council Member Pace requested that staff provide an analysis of the General Assembly decision to place a cap on car tax and the payment of the cap being deferred until the first of July in the next fiscal year.

City Manager Baker responded the cap on car tax will not have an impact on the 2004-2005 budget and the City should receive approximately \$200,000 less in revenues for the 2005-2006 budget.

Council Member Chenault thanked Planning Commission, Council Member Pace, and the Community Development Department for the amount of work in preparing recommendations coming before City Council.

City Manager Baker announced that Ann Anderson, Executive Director of the SPCA, has invited City Council to tour the new facility.

City Council agreed to accept an invitation from the School Board and tour the new high school facility on October 11<sup>th</sup> at 5:30 p.m.

City Council agreed to hold a joint meeting with the Planning Commission on October 26<sup>th</sup> at 5:30 p.m.

At 8:45 p.m., Council Member Lantz offered a motion that Council enter a closed session for discussion and consideration of personnel and prospective candidates to be appointed to the Blue Ridge Disability Services Board, Social Services Advisory Board, Harrisonburg Board of Zoning Appeals, and Harrisonburg Electric Commission, exempt from public meeting requirements pursuant to Section 2.2-3711(A)(1) of the Code of Virginia. Discussion concerning a prospective business where no previous announcement has been made of the business' interest in locating within the City, exempt from public meeting requirements pursuant to Section 2.2-3711(A)(5) of the Code of Virginia. Discussion and consideration of the acquisition of real estate to be used for public purposes, exempt from public meeting requirements pursuant to

Section 2.2-3711(A)(3) of the Code of Virginia, 1950, as amended. The motion was seconded by Council Member Pace, and approved with a recorded roll call vote taken as follows:

Vote: Yes - Council Member Pace  
Council Member Lantz  
Vice-Mayor Eagle  
Council Member Chenault  
Mayor Rogers

Absent - None

At 9:45 p.m., the closed session ended and the regular session reconvened. City Clerk Ryan read the following statement which was agreed to with a unanimous recorded vote of Council: I hereby certify to the best of my knowledge and belief that (1) only public matters lawfully exempt from open meeting requirements pursuant to Chapter 21 of Title 2.1 of the Code of Virginia, 1950, as amended, and (2) only such public business matters as were identified in the motion by which the closed session was convened, were heard, discussed or considered in the closed session by the City Council.

At 9:46 p.m., there being no further business and on motion adopted the meeting was adjourned.

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CITY CLERK

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MAYOR