



City of Harrisonburg

409 S. Main Street
Harrisonburg, VA 22801

Meeting Minutes - Final City Council

Mayor Christopher B. Jones
Vice-Mayor Richard Baugh
Council Member Ted Byrd
Council Member Kai Degner
Council Member Abe Shearer

Tuesday, October 11, 2016

7:00 PM

Council Chambers

1. Roll Call

Present: 10 - Mayor Christopher B. Jones, Vice-Mayor Richard Baugh, Council Member Ted Byrd, Council Member Kai Degner, Council Member Abe Shearer, City Manager Kurt Hodgen, Acting Deputy City Manager Ande Banks, City Attorney Chris Brown, Police Chief Stephen Monticelli and Clerk Pro Temp Pam Ulmer

Absent: 1 - City Clerk Erica Kann

2. Invocation

Vice-Mayor Baugh offered the invocation

3. Pledge of Allegiance

Mayor Jones led the Pledge of Allegiance

4. Comments from the public, limited to five minutes, on matters not on the regular agenda. (Name and address are required)

James "Bucky" Berry, 30 West Washington Street requested council draft a resolution for Hunger Action Week, similar to one done in the town of Strasburg, those with parking fines could have their fine waived if cans of food are donated and the food donated can be split up amongst the organizations in town. Mr. Berry stated 900,000 people in the state of Virginia are hungry and 15M children. Mr. Berry noted a big event coming up, Harrisonburg and Turner Ashby football game on November 4, 2016, 5:00 to 8:00 PM, Challenge of the Valley. Mr. Berry noted whoever collects the most food at halftime will receive a plaque. Mr. Berry also noted James Madison University's basketball team will be offering free entrance to games on November 21 and November 23, 2016 for those who bring two cans of food.

5. Consent Agenda (any item placed on the consent agenda shall be removed and taken up as a separate matter, if so requested by any member of Council, otherwise all items will be voted on with one (1) motion)

A motion was made by Council Member Byrd, seconded by Council Member to approve the

consent agenda as presented. 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

5.a. Minutes from September 27, 2016 Meeting

These minutes were approved on the consent agenda

5.b. Consider a request from Jamison Black Marble Wildlife Preserve LLC represented by Richard Blackwell to close a 8,523 +/- square foot undeveloped portion of Red Oak

This Ordinance was approved on the consent agenda.

5.c. Refer a request to Planning Commission for the City to vacate two alleys surrounding property located at 211 E Washington Street

This alley closing request was referred to the Planning Commission.

6. Public Hearings

6.a. Consider a request for a Special Use Permit per Section 10-3-48.4 (9) to allow a public use to deviate from the requirements of the Zoning Ordinance on property zoned R-3, Medium Density Residential District and located at 1171 Hillcrest Drive.

Adam Fletcher, director of Planning and Community Development, presented a request from the city of Harrisonburg for a Special Use Permit to deviate from the height regulations and set back encroachment for the specified 500,000 gallon water tank the city is planning to place in this location. Mr. Fletcher reviewed the surrounding property zoning and the current ongoing construction. Mr. Fletcher noted the test borings results for the water tower location may cause a slight shift from the original planned, hence the request for the deviation to the set back regulations, to ensure the water tower has space to shift from original planned location. Mr. Fletcher noted in August 2014, Planning Commission held a 2232 review hearing and found the project was in accordance with the comprehensive plan. Mr. Fletcher presented images of the proposed 105 foot water tower which is 65 feet above the maximum allowed, and reviewed the setback on the northern line to allow for potential shifting of the water tower. Staff offered favorable recommendation to approve the request and the Planning Commission recommended 4-0 to approve.

At 7:13 p.m., Mayor Jones closed the regular session and called the first public

hearing to order. A notice appeared in the Daily News-Record on Monday, September 26, 2016 and Monday October 3, 2016

There being no one desiring to be heard, Mayor Jones closed the public hearing at 7:13 p.m., and the regular session reconvened.

A motion was made by Council Member Byrd, seconded by Council Member Degner, to approve the Special Use Permit as presented. 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

7. Regular Items

- 7.a.** Consider a resolution to approve the final percentage of personal property tax relief for the year 2016 to be 29.5%

City Attorney Chris Brown presented a resolution to adjust the percentage of personal property tax relief for the year 2016. Mr. Brown stated this is addressed every year and the Commissioner of Revenue and the director of Finance have determined a 29.5% tax relief is appropriate. Mr. Brown noted last year's rate was at 30%.

A motion was made by Council Member Degner, seconded by Council Member Shearer, to approve the resolution. The motion carried with a unanimous voice vote.

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

No: 0

- 7.b.** Consider amending and re-enacting section 7-2-19(b)(4), 7-2-19(b)(6), 7-2-19(b)(7) and 7-2-19(b)(8) of the Harrisonburg City Code, conservation of water during emergencies or drought

City Attorney Brown presented, on behalf of the city's Public Utilities Department the recommended amendments to the city's drought ordinance. Mr. Brown noted the director of Public Utilities recently advised council the city's new water permit had been obtained and has new requirements, one of which is to amend the city's drought ordinance to comply with DEQ requirements. Mr. Brown stated if there is a drought emergency declared by the state, county or city, the city must adopt the mandatory conservation measures as detailed in whichever document is more restrictive. Mr. Brown stated the documents are all very similar, and Mr. Collins stated the city's own plan is the most restrictive unless the state, in response to a particular water emergency, adds additional qualifications. Mr. Brown noted council may question why Rockingham County can declare a water emergency in

which we would have to follow suit, and that is because we are both part of the upper Shenandoah River Basin Drought Preparedness and Response Plan, and Rockingham County has adopted verbatim the city's criteria for adopting an emergency drought declaration.

A motion was made by Council Member Degner, seconded by Council Member Byrd, to adopt the amended and reinstated ordinance as presented. The motion carried with a unanimous voice vote

7.c. Council discussion on Trans Pacific Partnership Agreement (TPP)

Mayor Jones reviewed the recommended resolution regarding the Trans Pacific Partnership which was slightly revised since the last council meeting.

Council Member Degner stated support came from community members and the passive support of the TPP from council four years ago was prior to the document being printed for review. Council Member Degner stated he is in support of the revised resolution.

Council Member Byrd asked staff for clarification of paragraph four of the revised resolution. Attorney Brown noted he is not aware of any trade agreement, NAFTA or any others, that actually make a body such as city council one subject an international tribunal, and if the treaty is breached somehow, there are sanctions, tariffs, etc. against a country but he is not aware of any international tribunal corporate dominated or otherwise that has any authority over this body. Council Member Shearer stated his understanding of local government law is that Harrisonburg City Council has no authority to take any action that affects international or interstate commerce, and those powers are delegated to the federal government under the constitution, and local governments have no independent constitutional status. Furthermore, all powers not delegated under the constitution are reserved to the states, not local governments. Attorney Brown stated the Dillon Rule would prevent such authority by local governments. Council Member Degner stated Virginia is unique with the Dillon Rule, but there are concerns about this along those lines for the rest of the country, and is trying to avoid us looking as if we support a partnership at the scale we don't have influence over.

Council Member Byrd stated he was here in 2012, and noted council was asked by local employers and employees, to pass a resolution asking for greater intellectual property protection, an extension of biological pharmaceutical regulatory data protection, to encourage investment in research and development. Council Member Byrd stated today we have over 900 people directly employed in research, pharmaceutical biological production and patent application review. In addition we have identified pharmaceutical, biological production as a targeted recruitment in retention industry sector because of the level of pay and benefits this sector brings and provides to its employees and their families. Council Member Byrd stated he has been contacted by four individuals who asked us to rescind our support from the two previous stated points and in addition, urge our

congressional delegation to oppose TPP. Council Member Byrd supports good local paying jobs, local companies, and opening new markets for trade and supports the decision he made in 2012 and will not support the proposed resolution.

Council Member Shearer stated he echo's Council Member Byrd's comments, and feels it is entirely inappropriate to meddle in this topic to begin with. Council Member Shearer stated city council made a stance in 2012 to support intellectual property, which is a very small component of the TPP, containing 30 chapters long with thousands of pages in each chapter and is extremely in-depth. Council Member Shearer doesn't feel our former position should be changed in regard to support of protecting intellectual properties, which is probably a good thing, particularly for the industries we have locally and to conflate that with outright opposing the TPP and calling on our elected representatives to oppose the TPP is intellectually dishonest. Council Member Shearer stated he was pretty well read on the TPP, but cannot call as a city council member to take action as it is out of his realm and will not act as it is not our responsibility to begin with. Council Member Shearer stated he appreciates concerns, but it is misdirected, as the folks that have the ability to change this are congressional representatives and if he were running for congress he would bring this up as a political issue, but it is not the place of city council.

Mayor Jones asked if Council Member Shearer agreed with the first paragraph of the resolution. Council Member Shearer noted it states what the original stance was, and does not disagree with it, as there are still local industries that think it is still important to protect their intellectual properties.

Vice-Mayor Baugh stated enough concerns have been raised by enough people as to the TPP in general, who the beneficiaries are going to be and how those benefits are going to be balanced, and is in support of the proposed resolution. Vice-Mayor Baugh stated although there is no hard and fast rule on how to act on these types of topics, he does recall how council weighed in on the Dream Act and how council took a stance. Council Member Byrd noted the stance on the Dream Act was very different verbiage and council worked on it before the Dream Act went through.

Council Member Degner stated when council is informed of state and federal policies council should be able to state their opinion and he is concerned about this issue. Council Member Degner stated since this was acted upon four years ago and brought up again council should be able to take another stance on this topic.

Council Member Shearer stated this particular body did not take a position on the TPP, and the proposed resolution states we oppose the TPP and call upon congress to oppose it as well. Council Member Shearer stated the only stance that was made by the prior council was to support strong intellectual property protections, which is a small iota of the entirety of the agreement.

Council Member Degner stated there are those dealing with the prescription drug pricing which is out of control, and jobs being supported already with the current intellectual property laws, and we can protect corporations by resolutions such as the one being proposed but we also have the responsibility to look out for people that are having their prescription prices increased, and the TPP would continue to allow that to happen.

Mayor Jones noted it seems as if none of the council members disagree with the primary meat of this which is the first paragraph of the proposed resolution.

Council Member Shearer noted as Council Member Byrd pointed out these are jobs that our constituents have in which their employers have asked us to protect throughout negotiations to maintain strong intellectual property rights, and it impacts our constituents in a significant way. Council Member Shearer asked how this affects our economic development, what message does this send to possible companies looking to locate here, that we don't support intellectual property rights.

Mayor Jones stated he is ok with moving forward with rescinding the previous resolution.

Attorney Brown stated per Roberts Rules of Orders we cannot rescind something that by its nature cannot be undone and provided examples of such situations. Attorney Brown stated the negotiations in the existing resolution were done, therefore, paragraph five of the proposed resolution cannot take place, however the final paragraph can be addressed.

Vice-Mayor Baugh asked if rescinding our support is synonymous with us saying it was a bad idea, wouldn't that follow Roberts Rules of Order, and therefore be acceptable. Attorney Brown agreed we could state it was a bad idea.

Council Member Shearer asked if we are rescinding our support of local industries that asked us to protect intellectual property and asking our congressional representatives and president to oppose the TPP.

Council Member Degner stated from his perspective we are rescinding support for and stating opposition to a statement that would perpetuate high drug prices and put American tax payers at risk of being sued by multi-national corporations if national, state or local rules got in the way of the projects as is already seen through other trade negotiations. Council Member Shearer noted local government has no independent constitutional status to have any control over those things. Council Member Degner stated if federal tax payers are sued from anywhere in the country, be it because of state law in Virginia and the Dillon Rule or local laws in any other state in the country, our constituents are going to be impacted. Council Member Shearer stated we have no control over that. Additional conversation took place on opinions of the TPP and how it affects citizens.

Mayor Jones stated it was a bad idea in 2012 to even get involved in this to begin with. Council Member Shearer asked if anyone has reached out to the governor or state legislators on what their opinion was on this topic since they are the ones that have control over this and have impact upon what actually happens.

Council Member Shearer noted that those that are working on economic development in the state of Virginia are strongly in support of this.

Mayor Jones stated he is in favor of rescinding the original resolution, and we should not be in this conversation at all. Council Member Shearer stated the proposed resolution states we should oppose the TPP. Mayor Jones stated he understood that, but is in favor of rescinding the previous resolution.

Discussion took place regarding any amendments to the current proposed resolution, and decided to leave it as is.

A motion was made by Council Member Degner, seconded by Vice-Mayor Baugh to approve the resolution as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 3 - Mayor Jones, Vice-Mayor Baugh and Council Member Degner

No: 2 - Council Member Byrd and Council Member Shearer

8. Special Event Application Requests

- 8.a.** Consider the approval of a special events application for Skeleton Fest on Saturday, October 22, 2016

Jeremiah Jenkins, Harrisonburg Downtown Renaissance, presented an application for the Skeleton Festival, which is a community event featuring elements of Halloween and Dia de los Muertos, to be held on October 22, 2016 with trick or treating at local business from 2 - 4 pm and various activities for all ages at the Turner Pavilion from 4 - 9pm. Mr. Jenkins noted the application has been reviewed and approved by all departments.

A motion was made by Council Member Degner, seconded by Council Member Shearer, to approve the special event request. The motion carried with a unanimous voice vote.

9. Other Matters

- 9.a.** Consider amendments to the original Purchase Agreement terms with The Community Foundation of Harrisonburg and Rockingham County, Inc., a Virginia Corporation

City Attorney Brown stated council approved the Eastham House transaction some time ago, there were some environmental issues but they have been completed, all contractual preconditions have been met and the parties are ready to close.

Attorney Brown reviewed the original sales agreement and noted the Community Foundation has since decided to use historic tax credits to help finance the redevelopment of the property, which will require the property to be transferred into a limited liability company (LLC) rather than directly to the foundation which is necessary so tax credits can be sold to investors. Attorney Brown noted another issue that has come up since the original sales agreement is in regard to the city's negotiated right of first refusal, which created the following changes: repurchase price would be determined by the greater of the appraised value less \$250,000 or whatever amount is owed on deed of trust on the property rather than the average of two appraisals less \$250,000 as in the original agreement. Attorney Brown requested a motion by council to approve the re-work of the right of first refusal buy-out.

Council Member Byrd asked how far along the foundation is on obtaining security for the project. Council Member Shearer noted tax credits can take many months to obtain.

Revlan Hill and Melissa Mayhew, with the Community Foundation, stated they have received commitments for \$275,000 but they have stopped reaching out for additional commitments as they have applied for a grant of \$137,500 and will need a dollar for dollar match if that is obtained, at which time they will reach out for additional solicitations. Ms. Hill has received positive and exciting response from the community on this project. Ms. Mayhew stated in addition to the funds previously mentioned the tax credits would bring in \$178,000 and a developer contribution that would generate an additional \$99,000, which in total equals \$552,000 not counting the grant funds. Ms. Mayhew noted the renovations will be well over the \$440,000 expenditure mark, and with the tax credits the city can be assured the renovations will be high quality to meet all of the tax credit rules and regulation compliance. Council Member Byrd asked for clarification to insure the city is not a guarantor on the tax credits or mortgage. Ms. Mayhew stated the Community Foundation will be the guarantor for the tax credits and the city does not have any commitment to buy back the house should the foundation ever decide to sell, but she doesn't see the foundation selling the house. Ms. Hill stated over \$300,000 has already been spent on this project to date, and has sound financial projections of this project. Council Member Baugh stated this project seems to be moving in the direction council wanted.

A motion was made by Council Member Shearer, seconded by Council Member Byrd, to approve the amendment to the purchase agreement terms as presented. 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

10. Other Matters - continued

City Attorney Brown stated he and Mr. Fletcher met with the owner of the building

that used to house Social BBQ to discuss a proposal from the owner to build a nine foot wide wooden deck, which would sit one foot off the pavement for outdoor dining. Attorney Brown noted this entails more than what an outdoor dining licensing agreement would cover as a deck would limit use of city property. Attorney Brown and Mr. Fletcher considered a lease for up to five years, which has never been done; therefore he asked council that if there is a strong gut reaction against the concept of even looking at a lease for this small piece of property they can advise the owner before he expends any more funds. Attorney Brown stated the owner requested the council's opinion if this is worth looking further into before he proceeds and spends any more money. Mayor Jones asked if access in and out of property would still be feasible. Attorney Brown stated that would be one of the considerations, as well as additional restrictions and assurances, but before it is sent around to all of the departments to review and then bring back to council to review, he is needing council to either approve to move forward or just tell the owner no. Mayor Jones was ok with putting a smoker on that area in the past, but if a deck is installed it makes it more difficult to tell the owner to move it if problems arise. Attorney Brown reiterated this request is just to bring this request up with council and if there was a strong adverse reaction to the idea the owner would look at other options. City Manager Hodgen asked if a public hearing would be required before a lease was accepted. Attorney Brown stated a public hearing would be required, and if this lease were to go beyond the five year period it would become a franchise, which would incur other requirements, and advised the owner of such, and other restrictions would be instilled in the lease to protect the city. Vice Mayor Baugh asked why a lease versus a license is requested, as with a lease the city has more control, which is the easiest to deal with in a worst case scenario. City Attorney stated if the property is going to be occupied permanently it doesn't really qualify for a license, and also with the owner investing money for the deck, owner is not comfortable with the thought the city can ask him to remove the deck for any reason at any time. Council Member Degner stated it seems less negatives potentially than what was there previously. Council Member Shearer stated he was not opposed to moving forward at this point, making sure parking isn't impacted. Attorney Brown will relay the message to move forward.

Council Member Byrd stated he would like to recognize Mary-Hope Vass and the Harrisonburg Fire Department for the state wide award received for the Safety Sally campaign from the Virginia Municipal League (VML), and for the success of keeping the landscape cover material ordinance in the legislative program. Council Member Byrd stated the VML conference was interesting.

- 10.a.** Consider appointing Council Member Byrd as ex officio member to the Build Our Parks Board in place of Council Member Shearer

Council Member Shearer noted the Build Our Park restructuring created a board of directors which he, Council Member Baugh, Ande Banks and Luanne Santangelo serve as ex officio members. Council Member Shearer stated the scheduling of the meetings does not allow for him to attend, and therefore would like to propose that Council Member Byrd be appointed to take his position on the board as an ex

officio member going forward. Council Member Byrd noted he was willing to accept the position.

A motion was made by Council Member Degner, seconded by Council Member Shearer, to appoint Vice Mayor Baugh and Council Member Byrd as ex officio members to the Build Our Parks Board. The motion carried with a unanimous voice vote.

11. Other Matters - continued

Mayor Jones stated he would like this body to make some movement on the old Municipal Building renovations before January. Mayor Jones stated he would like a plan, timeline and direction from staff, so this project is a priority and will create space for other needs and partnerships and feels this has not been discussed as much as it should be. City Manager Hodgen stated some funds are available for the architectural and engineering studies, the key will be if any major structural changes need to occur in that building. City Manager Hodgen stated the interior work won't require much work and will not require it to be lined up and completed as that level can be done fairly quickly without major equipment. City Manager Hodgen noted one of his primary concerns is that if other projects get ahead of us, space for major renovations might not be available. City Manager Hodgen stated it is known there are drainage issues, but staff can get started on the architectural and engineering part and move forward from there.

Council Member Degner stated an update is needed on the Middle River Regional Jail (MRRJ) in regard to the accreditation issues and asked if this was something council wants to pursue. Council Member Degner noted he doesn't feel like council has a good grasp of what is going on and council needs to be responsive to constituents concerns. Mayor Jones stated more information on accreditation is fine but the lack of frequency of the Community Criminal Justice Board (CCJB) meetings should not prevent council from obtaining information and stronger updates between now and January when the next MRRJ meeting is to be held.

Council Member Degner asked if council could ask for a recommendation from CCJB. A discussion took place regarding the meaning of accreditation and what it entails and perhaps reaching out to the other partners of MMRJ to get their input and City Manager Hodgen was tasked to find out what accreditation actually is and what it would entail.

Council Member Degner stated perhaps a presentation from a professional along with members of CCJB can be requested, to be either presented at a council meeting or during a different session.

Mayor Jones shared his concerns regarding the complaint regarding the healthcare at MRRJ. City Manager Hodgen urged council to not get ahead of the rest of the board on this issue, and can follow up during the next MRRJ meeting to see what their interest is.

Vice Mayor Baugh stated nothing exciting on Planning Commission meeting

scheduled for October 12, 2016. Vice Mayor Baugh wanted to acknowledge the Harrisonburg Police Department and the SWAT competition, considering the weather caused stressful training conditions.

12. Adjournment

At 8:27 p.m., there being no further business and on motion adopted, the meeting was adjourned.

CLERK PRO TEMPORE

MAYOR