



City of Harrisonburg

409 S. Main Street
Harrisonburg, VA 22801

Meeting Minutes - Final City Council

Mayor Deanna R. Reed
Vice-Mayor Richard A. Baugh
Council Member Ted Byrd
Council Member George Hirschmann
Council Member Christopher B. Jones

Tuesday, July 24, 2018

7:00 PM

Council Chambers

1. Roll Call

Present: 4 - Mayor Deanna R. Reed, Vice-Mayor Richard Baugh, Council Member Ted Byrd and Council Member Christopher B. Jones

Absent: 1 - Council Member George Hirschmann

Also Present: 3 - City Manager Eric Campbell, City Attorney Chris Brown and City Clerk Ande Banks.

2. Invocation

Council Member Jones offered the invocation.

3. Pledge of Allegiance

Mayor Reed led the Pledge of Allegiance.

4. Special Recognition

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 Vice Mayor Baugh, seconded by Council Member Jones, to approve the consent agenda as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 4 - Mayor Reed, Vice-Mayor Baugh, Council Member Byrd and Council Member Jones

No: 0

Absent: 1 - Council Member Hirschmann

5.a. Minutes from the July 10, 2018 City Council meeting.

These minutes were approved on the Consent Agenda

- 5.b.** Consider a request from Campbell and Main, LLC, with representative Rodney L. Eagle, to rezone 412 South Main Street by amending proffers on property zoned B-1C, Central Business District Conditional.

This amendment of proffers was approved on second reading.

- 5.c.** Consider a request from Lantz-Eby Enterprises, with representative Tim Reamer, to rezone 19+/- acres identified as 1550 & 1650 North Liberty Street and 451 Acorn Drive from B-2C, General Business District Conditional to M-1C, General Industrial District Conditional.

This re-zoning request was approved on second reading.

- 5.d.** Consider a request from C. Glenn Loucks, with representative Matthew W. Brackens, to rezone a 17,600 +/- square foot portion of a 1.0 +/- acre parcel, addressed as 915, 917, 919, and 921 North Main Street, from R-2, Residential District to B-2C, General Business District Conditional. The parcel is currently split-zoned and if the request is approved, the parcel would remain split-zoned with the front portion zoned B-2 and the rear portion zoned B-2C

This re-zoning request was approved on second reading.

- 5.e.** Consider a supplemental appropriation for the purchase of land for a new school in the amount of \$5,025,000

This Supplemental Appropriation was approved on second reading .

6. Public Hearings

- 6.a.** Consider a resolution to permit the city to use condemnation proceedings to acquire necessary easements for the Eastern Raw Waterline Project

Chris Brown, city attorney, presented a resolution that authorizes the city manager and the city attorney to initiate, if necessary, the use of eminent domain proceedings, which involves filing a Certificate of Take with the Rockingham County Circuit Court Clerk as well as depositing funds with the clerk equal to the fair market value of easement interests needed for the Raw Water Line Project. He stated eminent domain is a very powerful right of the government and very controversial, however it is necessary at times and provided for by the United States Constitution and the Virginia Constitution, however council has never entered into eminent domain lightly, and he recalls it only happened twice, and those were for very critical governmental projects.

He stated council approved the construction of the Eastern Raw Waterline from the Shenandoah River to the city for services to city residents, business's, schools, etc. He stated this project is part of a much larger project proposed by the Public Works Department and is designed to secure the water needs for generations to come. He stated Mr. Collins, director of Public Utilities, often states that staff can talk about schools and fire stations but nothing works without water and without water the city doesn't exist. He stated this project was developed in three parts, it will cross the property of 36 property owners of which two are still being negotiated, many of the easements were secured some years ago and in the last year staff has been working diligently to obtain all of the necessary easements for this project. He stated these are easement requests not a take in fee simple of property of the land owners, and the city's right-of-way agent, Mr. Rick Altizer, who is highly competent and pleasant to deal with, has worked diligently to obtain easements via meetings, conferences, visits of property, letters and obtained third party appraisals which were shared with the affected land owners. He stated every effort was made to inform the land owners along with formal offers, and encouraged land owners to obtain independent appraisals if needed. He stated staff has gone above and beyond what was required by law. He stated negotiations will continue if council approves the resolution and staff will continue to try to reach an amicable solution, however, sometimes an agreement cannot be reached in a timely manner, which is where we are on this project as construction on this project must begin in the very near future. The resolution is for the city's protection even though we will continue to negotiate.

Mr. Brown read the resolution and noted a written agreement has been received from one of the land owners listed on the resolution, referenced as tax parcel 124-A-L130, and it still part of this resolution because it hasn't actually closed. He reiterated the resolution allows the city manager and the city attorney to file with the Clerk of the Circuit Court of Rockingham County Certificates of Take along with paying into the Clerk the estimated value of the easements which will allow the city to enter onto the property and begin construction. He stated the land owner, at any time, can withdraw those funds from the court without waiving any other rights and retains negotiation rights, and staff will continue to negotiate with the land owner. He stated on past eminent domain cases, the city was able to reach a negotiation through mediation rather than court.

At 7:12 p.m., Mayor Reed closed the regular session and called the first public hearing to order. A notice appeared in the Daily News-Record on Monday, July 16, 2018 and Monday, July 23, 2018

Edward Speshock, land owner, stated in their discussions with staff they have never rejected the need of the project, but do take exception to a number of points. He stated the recent appraisal cuts into the true value of the property, shows lesser value than a previous appraisal done in 2007, and they are waiting on an objected current fair market value appraisal from an independent appraiser. He stated the proposed

easement runs through the entrance to the property and chokes it off and he feels strongly this will impact any further consideration of future use for the property. He stated there has not been sufficient coordination between the county and city for alternate placement of the water line, and read a portion of a letter received from Dominion Virginia Power that states "...guidelines prohibit allowing utilities to run parallel any easement, exceptions have been made for distances of 200 feet or less, and when the proponent of a utility has shown that all other routes have been vetted...". He stated city staff was not able to identify if other approaches have been vetted and requested the city approach Dominion Virginia Power to request if five feet of encroachment on their easement would be allowed, allowing some space at the entrance of the property, if necessary, for future use. He stated if the resolution is passed he feels they will be at an unfair disadvantage with the pressure of a Certificate of Take before they have been able to obtain the appropriate appraisal completed in order to negotiate with the city of what they feel the land is worth. He stated he requests council delay approval of the resolution.

Angela Speshock, land owner, stated she had put a lot of effort into this issue, they have worked with the county and the city on trying to send forward their alternate approaches, suggesting perhaps a detour along Oceola Springs Road, and there seems to be a bit of difference of opinion between the county and city sewer and water officials, on whether the proposed detour is viable, however, perhaps a cost analysis could be done to see if the alternative approaches would work. She stated she is disappointed at the little give and take during negotiations that took place and the offer given was unreasonable because it was based on 2015 comparables in the area, and was not adjusted for the growth in the area. She stated she would like to see more attempts from city staff to work with them as a land owner and use this as a model of how they would treat future landowners in the same situation.

At 7:25 p.m., Mayor Reed closed the public hearing and the regular session reconvened.

Vice Mayor Baugh stated approving the resolution doesn't mean it will be initiated and it does allow for city staff to continue to negotiate with the land owners, and noted should it reach the court system, the legal process does give the land owner the right to try to get the value of the property they believe it is worth.

Council Member Byrd asked if staff will honor the written agreement of the one property. Mr. Brown stated staff will honor the agreement, it just hasn't reached closing, and therefore remained in the resolution.

Council Member Jones asked Mr. Brown if the land owner will have the opportunity to obtain a more current appraisal and negotiate from there. Mr. Brown stated absolutely and noted the most recent appraisal the city had updated in May of 2018, but looks forward to receiving a copy of the appraisal Mr. and Mrs. Speshock upon its completion. He stated the value decreased on several properties involved in this

project from the original appraisals in 2011. He reiterated staff looks forward to receiving the independent appraisal and to continuing negotiations. Mr. Speshock stated they were concerned about the deviations in values in the appraisals as well as the value of the McBride parcel versus their own property. Mr. Brown stated the situation for each parcel is different and must be viewed individually. He stated he wanted to stress the fact that staff really wants to sit down, discuss and negotiate further in hopes of an amicable agreement.

Mayor Reed asked if once the independent appraisal is received Mr. Brown and staff will contact the Speshock's to set up a meeting. Mr. Brown stated that is correct. Mayor Reed asked Mr. and Mrs. Speshock if that was satisfactory. Mr. and Mrs. Speshock stated they still request the resolution not be approved to release the pressure.

Council Member Byrd stated this resolution has already been delayed one month at the request of the landowners.

Council Member Jones asked how much more time is available. Mr. Brown stated there is not much more time available before the project must get started. Mr. Brown stated if council approves the resolution, it doesn't mean anything happens immediately, and even if at some point the Certificate of Take is filed, there is still plenty of time for negotiation. Mrs. Speshock stated they were told that staff would be on their property in August. Mr. Speshock asked for information on the bid process and the time line. Mr. Brown stated there will be preliminary work that must occur prior to the construction work. Ms. Speshock stated Mr. Collins stated it could be as late as February 2019, but there were no details as to what type of access to the land was needed. Mr. Brown stated that he, Mr. Altizer, and Mr. Collins would be more than happy to sit down and work out those details.

Council Member Jones stated he is very sensitive to this type of action, and is in favor of reaching an agreement, but feels that approving the resolution puts stress on the matter. Mr. Brown reiterated that conversations and negotiations continue even if the resolution is approved. Ms. Speshock stated it does not sound as if an opening for an alternate approach is viable. Mr. Brown stated that Mr. Collins and his engineers have looked at the routes very carefully.

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

Yes: 2 - Vice-Mayor Baugh and Council Member Byrd

No: 2 - Mayor Reed and Council Member Jones

Absent: 1 - Council Member Hirschmann

7. Regular Items

7.a. Consider approving proposed amendments to Title 7, Chapter 3, "Sewer System," of the Harrisonburg City Code

Mike Collins, director of Public Utilities, stated there are approximately 100 septic tanks remaining in the city and the requested amendments to the ordinance are for environmental reasons with stormwater credits and updating antiquated language to encourage residents to connect to sanitary sewer and support the environmental plan. Mr. Collins stated there are a few sections being revised to reflect the following: Any future development that has access to sanitary sewer shall not use a septic system; If a septic tank is in significant need of repair connection to sanitary sewer is required if available. Mr. Collins stated this will help with the septic systems growing and there is a four point strategies within the amended ordinance to encourage existing septic tank owners to connect to sanitary sewer: Septic tank owners must maintain, inspect and pump out every five years and provide a copy of the report to the Department of Public Utilities; a monthly fee may be charged for septic tank owners for phosphorous and nitrogen removal, although he doesn't advocate enforcing that at this time; connection fee to be waived if septic tank owners chooses to connect to sanitary sewer as an encouragement to connect; credits provided to septic owners that have connected to compensate for changes in plumbing to accommodate connection. He stated this will allow for septic tank owners to connect and take advantage of credits. He reviewed I&I, Infiltration and Inflow which is water that gets into the sewer through ground water, sump pumps, drains, rooftops etc. and reviewed the problems I&I causes.

Chris Brown, city attorney, stated Mr. Collins hit the most important points, but these ordinances were looked at holistically from the beginning, and most had not been revisited since 1973 or earlier. He stated there were many terms never defined, terms that were never used, many were archaic and didn't make sense.

Vice Mayor Baugh stated he has received from feedback and asks that staff reach out to the public and make sure residents are aware this is not mandatory but encouraged.

A motion was made by Council Member Jones, seconded by Council Member Byrd, to approve the ordinance amendments as presented. The motion carried with a recorded roll call vote taken as follows:

Yes: 4 - Mayor Reed, Vice-Mayor Baugh, Council Member Byrd and Council Member Jones

No: 0

Absent: 1 - Council Member Hirschmann

8. Other Matters

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

Austin Sax, 1931 Highway Crossing on behalf of Protect and Divest, a Virginia based

organization working to implement socially responsible investing and banking and the Rockingham Alliance to protect and transform our natural resources. He stated they are proposing a resolution for consideration to urge the General Assembly, Governor Northam, and the Virginia Retirement System (VRS) Board of Directors to create a social responsible public bank and divest the VRS from extractive industries such as fossil fuels, weapons manufacturers, private prisons and big tobacco, noting a public bank would save the state millions of dollars in interest costs related to long term debt, produce over \$100M annually in revenue for the state, and help bolster Virginia's local economy by including a socially responsible requirement in any investments and loans made from the public bank and it would ensure state funds are not invested in companies that kill Virginians. He stated over the next few weeks the group hopes to meet with each council member to review the resolution and what socially responsible investing and public banking are and to address any concerns council may have in hopes by late fall this resolution can be passed.

James "Bucky" Berry, 30 W Washington St. stated last weekend the radio system failed, it's a matter of safety for our officers and fire fighters. He stated he is also really concerned about recycling in the city, everyone still pays the fee for recycling but the city expects the residents to haul the recycling to the convenience center, a solution needs to be found.

Mark Klosinski, 1222 Woodcrest Circle stated on July 16, 2018 he received a notice, as being one of the septic system property owners, regarding outlining the changes in the code, it noted in the letter that a public hearing will not be held and it was strictly for informational purposes. He stated he did not find it very informational this evening, a vote was taken, and as a property owner with a septic system he was not given the opportunity to either review the proposed amendments or to provide public comment.

Kathy Todd stated she was going to talk about the septic ordinances and certainly doesn't want a lot of fees and charges, but it will remain to be seen what happens with that. She stated there is always a crowd at the recycling center and there must be a better system, in Colorado they have three bins: recycling, landfill and compost. She stated there are places for the recyclables to go, there must be a better solution, we are a big city, we have plenty of money, we are progressive and perhaps we can create a recycling committee, which would include individuals from the many sustainable groups we have in the city, to research other solutions.

Rosalie Lynch, 601 S High St, stated she is in favor of the proposal put forth by Mr. Sax to speak with each council member and promote the resolution to divest. She stated she loves the city, it's a beautiful place to live, but would be prouder of the community if she knew the beauty and growth were not on the backs of people suffering from these industries.

Noel Levan, 156 Maryland Avenue, stated there are any number of means and ways

by which this city and every city can invest its resources in industries that are not fossil fuel based. This is not rocket science nor nuclear physics, it is plain finances, and there are many that are well versed in how to find the best financial benefits for the city. He stated at this point in our nation's financial future and present, we are looking at some really astounding returns coming from solar energy as an example. He stated regarding recycling, there are communities that have engaged hub oriented development of recycling industry within communities with partial grant funding from the municipalities. He stated what would normally go into a landfill or through a recycler is becoming new products, by virtue of a hub based industry and feels there are people that would really benefit from having access to the tools and raw materials for free. He stated he would be willing to share information with council if they would like.

Eleanor Amidon, Nelson County, stated over the past four years she has been following, with great interest, the proposed Atlantic Coast Pipeline. She stated one thing that is very clear is climate change is real and over all we are in a time of transition away from fossil fuels and toward renewable energy. She stated part of the strategy of stopping the pipeline is to divest from banks that are funding these pipelines and divest from the energy companies that deal with fossil fuels. She urged council to divest.

Corey Maxa, 759 Madison St, stated Mr. Brown talked about the value of future generations and how essential water is. Fossil fuel is a dying industry, it's harder and harder to get the energy, takes more chemicals which is poisoning the water system, and it is not in the benefit of future generations. He stated he has worked with two communities along the proposed Atlantic Coast Pipeline, both of which are at the most hazardous places where compressor stations are planned. He urged council to divest into local creative solutions.

8.b. City Council and Staff

Council Member Jones stated the Community Criminal Justice Board meeting originally scheduled for September 24, 2018 has had to be rescheduled, and as soon as a date is picked he will announce it, please spread the word.

Vice Mayor Baugh stated there will be several items coming out of the Planning Commission for the next council meeting, some weren't unanimous votes and one recommended against, so it will be a busy agenda.

Mayor Reed stated city staff will hold an Urban Tree Canopy meeting Wednesday, July 25, 2018 at 5:30 pm at the Cecil F. Gilkerson activities center; National Night Out will be on August 7th, 2018 beginning at 5pm at City Hall, and will include stops in the Broadview Drive/Clay Street neighborhood, Northeast neighborhood just to name a few and more information can be found on the city's website; the city's Park and Recreation Department will be holding the annual Youth Tryathlon on August 11,

2018 and registration closes on August 3, 2018, this unique and fun event is for folks age 5-17.

9. Boards and Commissions

9.a. Harrisonburg-Rockingham Regional Sewer Authority (HRRSA)

A motion was made by Council Member Jones, seconded by Vice Mayor Baugh, to reappoint Eric Campbell, Mike Collins, Matt Light, Bradley Chewing and Ande Banks as alternate to the Harrisonburg Rockingham Regional Sewer Authority (HRRSA) as presented. The motion carried with a unanimous voice vote.

10. Closed Session

10.a. Virginia Code Section 2.2-3711(A), under:

Subsection 1 for a discussion of prospective candidates for employment for the position of Chief of Police; Subsection 7 for consultation with legal counsel pertaining to actual or probable litigation; and Subsection 8 for consultation with legal counsel regarding a specific legal matter requiring the legal advice of such counsel.

cb 8:12pm tb / rb

At 8:12 p.m. a motion was made by Council Member Byrd, seconded by Vice Mayor Baugh, to enter into closed session as authorized by the Virginia Freedom of Information Act, Virginia Code Section 2.2-3711(A), under: Subsection 1 for a discussion of prospective candidates for employment for the position of Chief of Police; Subsection 7 for consultation with legal counsel pertaining to actual or probable litigation; and Subsection 8 for consultation with legal counsel regarding a specific legal matter requiring the legal advice of such counsel. The motion carried with a recorded roll call vote taken as follows:

Yes: 4 - Mayor Reed, Vice-Mayor Baugh, Council Member Byrd and Council Member Jones

No: 0

Absent: 1 - Council Member Hirschmann

11. Adjournment

At 8:33 p.m., the closed session ended and the regular session reconvened. City Attorney Brown read the following statement, which was agreed to with a unanimous recorded vote of Council: I hereby certify that to the best of my knowledge (1) only public business matters lawfully exempted from open meeting requirements under Chapter 37 of Title 2.2 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 meeting was convened were heard, discussed or considered in the closed meeting by the City Council.

At 8:33 p.m., there being no further business and on motion adopted, the meeting

was adjourned.

DEPUTY CITY CLERK

MAYOR