

MINUTES

The Lexington City Council held its regular meeting in the courtroom of the Lexington -Rockbridge Joint Facility on April 7, 2005.

PRESIDING: J.W. Knapp, Mayor

OFFICERS: T.J. Ellestad, City Manager
L.A. Mann, City Attorney
C. Irby, Asst. City Clerk

MEMBERS: T. P. Golden
J. H. Page
J. E. Gianniny
L. W. Broomall
R. W. Smith
M.M. Elrod

There were 24 people present.

PUBLIC HEARING

To receive public comment on Ordinance 2005-3 deleting Chapters 5, 8, & 16 of the City Code and replacing them with a revised Chapter 5

No comment

To receive public comment on Ordinance 2005-4 deleting and reenacting Chapter 6 of the City Code relating to the operation of city cemeteries

No comment

To receive public input on Ordinance 2005-5 deleting and reenacting Chapter 7 of the City Code relating to courts and fines

No comment

To receive public input on an application by Red Hammer, LLC, for subdivision approval to the property at Thornhill and Birdfield Roads

Russ Orrison, of Perkins & Orrison located in the city of Lexington, appeared to discuss overlay zoning of the property at Thornhill and Birdfield Roads. The cause for the overlay is due to the configuration of the lots. The overall density is in compliance with the R-M zoning, but because they are using the green space around the detention pond, the configuration of the lots would not allow the setbacks being proposed, while the overlay district would. Plans were given to council members. Councilman Gianniny asked if the maximum number of planned units (56) was recorded somewhere. He was told it was. Bill Blatter clarified that the planning and development have already been approved. At present, they are presenting a plan for the

actual subdivision.

The name under which Red Hammer LLC is operating was questioned for clarification. Council was told the final legal development name will be called Weatherburn LLC.

To receive public input on the agency requests for funding from the City's budget

The following agencies were represented at the public hearing:

RATS was represented by president Mary Huger, of Lexington. She said that in the past year they have rented and furnished an office, hired an Executive Director, hired a dispatcher and scheduler, and now employ ten part time drivers. They have been awarded two new vehicles. She described their fundraising efforts and a cooperative agreement they are pursuing with the Community Services Board. In order to continue offering reasonably priced rides for those who need them most, they are requesting that \$7,000 be included in the City's FY 2005-2006 budget for RATS.

The Rockbridge Area Community Services Board and Parent Empowerment Program were represented by executive director Dennis Cropper. He explained the value of services provided to the citizens of Lexington and requested funding to continue those services.

The Rockbridge Area Occupational Center was represented by Ruth Anne Parsons, the executive director, of Rockbridge County, who explained that 5 residents of Lexington with disabilities are employed through the program. She described the mission of her agency.

Valley Program for Aging was represented by executive director Paul Levine who spoke about his agency's mission. They have a new facility which opened three weeks ago in Buena Vista. He requested a \$7,000 increase in funding by the City of Lexington to help close funding gaps. Councilman Gianniny asked how different communities would be treated if they failed to meet the request. Mr. Levine explained that a waiting list would then have to be implemented.

Lime Kiln Arts was represented by artistic director John Healey who described recent upgrades to the Troubadour and the need for continued funding to address fire safety and handicap accessibility issues at the Troubadour.

The YMCA was represented by executive director Chris Wyndham. He explained their new programs which have been implemented this year in the community, their goals, and plans for the future. Councilman Golden asked Mr. Wyndham if the YMCA was looking for a permanent facility. He was told that they have received guidance looking toward a three and a half year vision for market analysis, feasibility, and implementation of a new facility.

The Talking Book Center was represented by director Oakley Pearson, of Staunton. He explained their program and services, as well as having Elma Adamson of Lexington describe how she uses the service. Last year they served 28 residents of Lexington. Mayor Knapp asked if the center was supported by the Rockbridge Regional Library and was told that they do. Councilman Golden asked how they received funding and was told that they were part of the national library system and received no federal state monies.

LDDA was represented by its president, Victoria Pannell of Lexington. She explained that the LDDA had abandoned its plans for a Special Service District and therefore was requesting a supplement of \$5,000 in addition to its original request in the amount of \$35,000 to support its pursuit of economic vitality and historic preservation in downtown Lexington. Councilwoman Elrod asked what percentage of downtown businesses were members of LDDA. Ms Pannell said that approximately 120 of 200 were members. Councilwoman Elrod also understood they were reducing dues to attract more members and wondered if this was a good idea. At this time LDDA is not able to do so.

The Rockbridge Area Habitat for Humanity was represented by B. Lynn DiBiase who thanked council for its past support and explained how their agency works. They are requesting \$3,900 to be included in this year's budget to move the Rockbridge County High School house to Massie Street. Councilwoman Elrod asked how frequently students could build a house and was told that one per year was built by the school. Councilman Smith asked how the house was funded. He was told that money was raised through grants, habitat monies, donors, and with the city's help.

REGULAR MEETING

Mayor Knapp called the meeting to order at 9:19 p.m. and Councilman Smith delivered the invocation.

APPROVAL OF MINUTES

Councilwoman Elrod noted that on page 5 under the City Attorney's report, that Leanne Shank should not end in "s". Councilman Gianniny moved that the minutes be approved as corrected. Councilwoman Elrod seconded and the following vote was recorded:

| | | | |
|---------------|-----|---------------|-----|
| T.P. Golden | Aye | R.W. Smith | Aye |
| J.H. Page | Aye | J.E. Gianniny | Aye |
| L.W. Broomall | Aye | M.M. Elrod | Aye |

The motion carried.

CITIZENS' REMARKS AND COMMENTS ON MATTERS NOT ON AGENDA

No comment

REPORTS AND COMMUNICATIONS

City Council Committees

FINANCE COMMITTEE - No report

PHYSICAL SERVICES COMMITTEE - No report

SOCIAL AND ECONOMIC SERVICES COMMITTEE - No report

Boards and Commissions

PLANNING COMMISSION

Councilman Smith reported that the commission continues to work on its Comprehensive Plan.

Councilman Smith reported that the commission unanimously approved the proposed subdivision by Weatherburn LLC on the property at Thornhill and Birdfield roads. He moved that the application for subdivision be approved. Councilman Gianniny seconded and the following vote was recorded:

ROLL CALL

| | | | |
|---------------|-----|---------------|-----|
| T.P. Golden | Aye | R.W. Smith | Aye |
| J.H. Page | Aye | J.E. Gianniny | Aye |
| L.W. Broomall | Aye | M.M. Elrod | Aye |

The motion carried.

RAEDC - No report

CENTRAL SHENANDOAH PLANNING DISTRICT COMMISSION

Mayor Knapp reported that the commission will meet Monday, April 18, 2005.

ROCKBRIDGE REGIONAL COMMUNITY SERVICES BOARD - No report

MAYOR

Mayor Knapp informed council that he will be traveling through the town of Eichstadt, Germany in June and plans to pay a visit to the Burgermeister of this town which was established as a twin city with Lexington in 1989.

CITY MANAGER

Consideration of Ordinances 2005-3, 2005-4, and 2005-5

Councilman Gianniny moved that all three ordinances be approved as presented. Councilman Smith seconded and the following vote was recorded:

| | | | |
|---------------|-----|---------------|-----|
| T.P. Golden | Aye | R.W. Smith | Aye |
| J.H. Page | Aye | J.E. Gianniny | Aye |
| L.W. Broomall | Aye | M.M. Elrod | Aye |

The motion carried.

**AN ORDINANCE REPEALING AND REENACTING
CHAPTER FIVE, BUILDING CODE ENFORCEMENT**

WHEREAS, the Lexington City Council wishes to update Chapter Five, Building Code Enforcement, of the Lexington City Code; and

WHEREAS, Chapter Five as amended will incorporate the provisions of Chapters 8, Electricity, and 16, Plumbing; now therefore

BE IT ORDAINED AND ENACTED by the Mayor and Council of the City of Lexington, Virginia, that City Code Chapters Five, Eight, and Sixteen are hereby repealed and reenacted as follows:

CHAPTER 5.

BUILDING CODE ENFORCEMENT

Article I. Enforcement of Uniform Statewide Building Code.

Sec. 5-1. Department of Planning and Development, Enforcement agency.

The Department of Planning and Development shall have an employee designated as the Building Official and such assistants and inspectors as may be authorized by City Council.

Sec. 5-2. Administrative Practices.

The Building Official shall establish such procedures or requirements as may be necessary for administration and enforcement of this ordinance. It shall be unlawful for any person to violate or fail to comply with any such rule or regulation so promulgated when a copy thereof has been placed on file in the Department of Planning and Development and is made available to the public for inspection and use during regular business hours.

Sec. 5-3. Applicable Law, Where Copies to be Filed.

The Virginia Uniform Statewide Building Code shall control all matters concerning the construction and maintenance of all buildings and structures and the procedures for the administration and enforcement of such standards. A copy of said Code, shall remain on file in the Department of Planning and Development.

Sec. 5-4. Permits and Fees.

Unless otherwise excepted, no permit to begin work for construction as defined by § 36-97 of the Code of Virginia or required by the several provisions of the Virginia Uniform Statewide Building Code shall be issued until the fees prescribed in this section have been paid. All such permits shall be issued by the Building Official on forms provided by that office.

The City Council shall establish and update permit fees as authorized by its annual appropriations resolution in the schedule included therein. All permit fees required by this section shall be paid by the applicant to the City Treasurer at the time the application for permit is filed with the Building Official.

Article II. Violations and Appeals.

Sec. 5-5. Violations.

No person shall violate any provision of this ordinance.

Sec. 5-6. Notice of Violation.

The Building Official shall serve a notice of violation on the person who violates any provision of this ordinance. Such order shall direct the discontinuance of the violation.

Sec. 5-7. Prosecution of Violation.

If the notice of violation is not complied with properly, the Building Official shall request the legal counsel for the City of Lexington to institute the appropriate legal proceedings to restrain, correct or abate such violation.

Sec. 5-8. Fines.

Any such violation shall be punishable by fine of up to \$1,000 by a Court of Law.

Sec. 5-9. Board of Building Code Appeals.

Pursuant to § 36-105 of the Code of Virginia, the Board of Building Code Appeals is hereby created. Members shall be appointed by the City Council and function in accordance with the provisions of the Virginia Uniform Statewide Building Code and in accordance with By-Laws that may be adopted by the Board of Building Code Appeals and approved by City Council.

Sec. 5-10. Appeals.

The Local Board of Building Code Appeals is hereby designated to hear appeals arising from the application of the provisions of the code.

Sec. 5-11. Severability.

Should any provision of this ordinance be declared by the courts to be unconstitutional or invalid, such decision shall not affect the validity of the ordinance as a whole, or any part thereof other than the part so declared to be unconstitutional.

Adopted: _____

Debbie Desjardins, Clerk

**AN ORDINANCE REPEALING AND REENACTING
CHAPTER SIX, CEMETERIES**

WHEREAS, the Lexington City Council wishes to update Chapter Six, Cemeteries, of the Lexington City Code; now therefore

BE IT ORDAINED AND ENACTED by the Mayor and Council of the City of Lexington, Virginia, that City Code Chapter Six is hereby repealed and reenacted as follows:

**CHAPTER 6.
CEMETERIES.**

Article I. In General.

Sec. 6-1. Disfiguring, etc., markers, monuments, etc.

It shall be unlawful for any person to disfigure, break or mutilate any tombstone, gravestone, marker, monument, vault, enclosure, tree, shrub or vegetation in Evergreen Cemetery or Stonewall Jackson Memorial Cemetery. (8-1971.)

Sec. 6-2. Trespassing; lewd conduct.

Any person or persons entering upon the land located within the confines of the Evergreen Cemetery and the Stonewall Jackson Memorial Cemetery between the hours of 9:00 p.m. and 7:00 a.m., and any person or persons found upon the premises of these cemeteries at any time without lawful business or found conducting himself or herself in a lewd, wanton or lascivious manner shall be guilty of a misdemeanor and upon conviction thereof, shall be punished in accordance with section 7-1 of this Code. (8-19-71.)

Sec. 6-3. Depositing trash, waste, etc.

It shall be unlawful for any person to deposit trash, waste or filth in or about Evergreen Cemetery or Stonewall Jackson Memorial Cemetery. (8-19-71.)

Sec. 6-4. Power of custodians as to violations of sections 6-1 through 6-3.

The custodians of Evergreen Cemetery or Stonewall Jackson Memorial Cemetery may, without warrant, summon an offender against section 6-1, 6-2 or 6-3 before the municipal court. (8-19-71.)

Sec. 6-5. Depth of graves.

All graves shall be dug to such depth that there shall be at least three feet from the surface of the ground to the top of the box. (8-19-71.)

Article II. Regulations.

Division 1. Generally.

Sec. 6-6. Definitions.

Advisory board. As used in this article, the words "advisory board" or "board" shall mean the advisory board of the Evergreen and Stonewall Jackson Memorial Cemeteries.

Cemetery. As used in this article, the word "cemetery" shall mean the Evergreen Cemetery and the Stonewall Jackson Memorial Cemetery, located in the city and used or intended to be used for the interment of human remains.

City resident. Any natural person who resides within the corporate limits of the city of Lexington, Virginia, continuously for the last twelve months next preceding the date of application, or more, with the intention of making it his or her primary residence. (8-19-71; 9-20-73; Ord. No. 94-1 (part).)

Sec. 6-7. Name.

The names of the cemeteries regulated by this article shall be "Evergreen Cemetery" and "Stonewall Jackson Memorial Cemetery." (8-19-71; 9-20-73.)

Sec. 6-8. Superintendent.

A superintendent for the cemeteries as a department of the city shall be selected and employed by the city manager at such salary as may be deemed proper, who shall undertake and perform all duties which may be assigned by the city manager. (8-19-71; 9-20-73.)

Sec. 6-9. Control and supervision.

The cemetery shall be under the direct supervision and control of the city council acting through the office of the city manager which shall act on recommendations made by the board. (8-19-71; 9-20-73.)

Division 2. Advisory Board.

Sec. 6-10. Establishment; designation; composition; authority.

There is hereby established an advisory board to be known as "The Advisory Board of the Evergreen and Stonewall Jackson Memorial Cemeteries" which shall consist of six members, appointed by city council, as provided in this division. (8-19-71; 9-20-73.)

Sec. 6-11. Terms of members.

Members of the advisory board appointed as provided in this division shall hold office for terms of two years commencing on August 31 or until their successors are appointed and qualified; half of the board shall be appointed during an even year and the other half during in an odd year. (8-19-71; 9-20-73.)

Sec. 6-12. Chairperson and secretary; executive committee.

The advisory board shall elect two officers, a chairperson and a secretary, who shall perform such duties as the board may direct. The board may elect an executive committee with authority to act on behalf of the full board. (8-19-71; 9-20-73.)

Sec. 6-13. Duties and powers--Generally.

It shall be the duty of the advisory board to advise city council and make recommendations on the operations of the cemetery. (8-19-71; 9-20-73.)

Sec. 6-14. Same--Determination of policies, costs, etc.

The board may recommend to city council policies of the cemetery operations, the cost of interment, the price of lots, the cost of perpetual care, the sale of lots and all other things incident or necessary to the accomplishment of these general purposes. (8-19-71; 9-20-73.)

Sec. 6-15. Same--Contracts; obligations; sale of lots.

The board shall not make contracts, nor assume obligations, nor sell burial space. (8-19-71; 9-20-73.)

Sec. 6-16. Same--Operational rules and regulations.

The board may, from time to time, suggest to city council rules and regulations governing the operations of the cemetery. (6-19-71; 9-20-73.)

Division 3. Funds.

Sec. 6-17. Repealed by Ord. No. 94-1.

Sec. 6-18. Perpetual care trust fund.

The perpetual care trust fund will be handled by city council as a separate account within its control and direction, treating such account as a trust account for the sole purpose of providing for the perpetual care of the cemetery or under an agency account with a depository selected by city council as it may elect. The purpose of the perpetual care trust fund is to minimize the financial burden of the city in operating and maintaining the cemeteries. In the event that the account is placed with a depository then such fund shall be under the direct control of such depository. (8-19-71; 9-20-73; Ord. No. 94-1 (part).)

Sec. 6-19. Deposit and disbursement of general cemetery funds.

The general cemetery funds, including all other than the perpetual care trust fund, shall be deposited in the city's general fund. (8-19-71; 9-20-73.)

Sec. 6-20. Charges for cemetery sales and services.

All charges for the sale of lots and the rendering of services by the city in connection with the operation of the municipal cemeteries shall be established annually by the city council at the time of the adoption of the annual appropriation resolution. Of the sales revenues, all proceeds over the sum of two hundred fifty dollars per lot shall be placed in the perpetual care trust fund. The city may adopt therein a two-tiered fee structure for the purchase of said lots and for cemetery service charges; one fee structure for city residents as defined in section 6-6. and one for non-city residents. All revenues derived from any surcharge for cemetery services levied for non-city residents shall be placed in the perpetual care trust fund. Further, the city shall have the right as a term of the sale of any and all cemetery lots, when offered to the city for repurchase, to repurchase said lots at the price paid for same regardless of the then current sale price of lots.

The cemetery management may require the person having the right of custody and control of the remains, or authorized agent, to meet with the management at the cemetery to locate the site at which a grave is to be opened. The cemetery management reserves the right to select the location of all grave plots when less than four grave spaces are purchased at one time in order to maximize the space utilization of the cemeteries. (2-5-76; 6-17-82; Ord. No. 91-4; Ord. No. 92-5; Ord. 94-1 (part).)

Adopted: _____

Debbie Desjardins, Clerk

John W. Knapp, Mayor

Ordinance 2005-5

**AN ORDINANCE REPEALING AND REENACTING
CHAPTER SEVEN, COURTS, FINES AND IMPRISONMENT**

WHEREAS, the Lexington City Council wishes to update Chapter Seven, Courts, Fines and Imprisonment, of the Lexington City Code; now therefore

BE IT ORDAINED AND ENACTED by the Mayor and Council of the City of Lexington, Virginia, that City Code Chapter Seven is hereby repealed and reenacted as follows:

CHAPTER 7

COURTS, FINES AND IMPRISONMENT

Article 1. In General.

Sec. 7-1. General penalty; application of mandatory penalties under state law; continuing violations.

Wherever in the Charter or in this Code or in any ordinance or resolution of the city or rule or regulation promulgated by any officer or agency under authority duly vested in him or it, any act is prohibited or is made or declared to be unlawful or an offense or misdemeanor, or the doing of any act is required, or the failure to do any act is declared to be unlawful or an offense or misdemeanor, where no specific penalty is provided therefor, the violation of any such provision of the Charter, this Code, any ordinance, resolution, rule or regulation shall be punished by a fine not exceeding two thousand five hundred dollars or confinement in jail not exceeding twelve months, or both.

In the event the penalty provided in the first paragraph of this section is in conflict with any mandatory penalty for a similar offense under the laws and statutes of the state in such cases made and provided, then the penalty provided by the laws and statutes of the state shall be enforced and not the penalty provided in the first paragraph of this section.

Each day any violation of the Charter, this Code or of any such ordinance, resolution, rule or regulation shall continue a separate offense, except where otherwise provided. (Code 1958, § 7-1; Ord. No. 91-9.)

Article IV. Court Fees.

Sec. 7-20. Courthouse construction and maintenance assessment.

Effective July 1, 1992, there shall be assessed, pursuant to § 17.1-281 of the Code of Virginia, 1950, as amended, a fee of two dollars (\$2.00) as part of the costs in (a) each civil action filed in the district or circuit court located in the city, and (b) each criminal or traffic case in the district or circuit court in which the defendant is charged with a violation of any statute or ordinance. The total assessments authorized hereby in a civil action together with those assessed pursuant to § 42.1-70 of the Code of Virginia, 1950, as amended, if any, shall not exceed four dollars (\$4.00). This assessment shall be collected by the clerk of the court in which the action is filed, remitted to the treasurer of the city subject to disbursements by the governing body for the construction, renovation or maintenance of the Lexington-Rockbridge County combined district court. (Ord. No. 92-7.)

Sec. 7-21. Courthouse and courtroom security fee.

A sum in the amount of five dollars (\$5.00) is hereby assessed as part of the costs in each criminal or traffic case in its district or circuit court in which the defendant is convicted of a violation of any statute or ordinance. The assessment shall be collected by the clerk of the court in which the case is heard, remitted to the treasurer for the City of Lexington, and held by the treasurer subject to appropriation by the Lexington City Council to the sheriff's office for the funding of the courthouse security personnel. (Ord. No. 02-9.)

Adopted: _____

Debbie Desjardins, Clerk

John W. Knapp, Mayor

Consideration of support for an on-site evaluation of the Rt. 11 corridor to determine if it meets the criteria for Virginia Byway eligibility

City Manager Ellestad explained that this is primarily a tourism designation. Councilman Page questioned if this would affect state funding. Mayor Knapp said that could be looked into. Councilman Gianniny moved that council support the evaluation. Councilman Page seconded and the following vote was recorded:

| | | | |
|---------------|-----|---------------|-----|
| T.P. Golden | Aye | R.W. Smith | Aye |
| J.H. Page | Aye | J.E. Gianniny | Aye |
| L.W. Broomall | Aye | M.M. Elrod | Aye |

The motion carried.

Consideration of an advertised proposed tax rate for the next budget meeting

City Manager Ellestad explained that this rate was not binding, but could not be exceeded. Councilman Broomall moved that a rate of 6 cents be advertised. Councilwoman Elrod seconded. Councilman Gianniny noted that he would prefer a rate of 5 cents as a point of discussion. The following vote was recorded:

| | | | |
|---------------|-----|---------------|-----|
| T.P. Golden | Aye | R.W. Smith | Nay |
| J.H. Page | Aye | J.E. Gianniny | Nay |
| L.W. Broomall | Aye | M.M. Elrod | Aye |

The motion carried.

CITY ATTORNEY

City Attorney Mann reported that the order has been signed and entered. The paperwork for the acquisition of the Smith property is in place. Negotiations are under way concerning the Bowen property. Councilman Gianniny asked when council would have to consider if Varner Lane would remain open. City Attorney Mann said that was not necessary until the footprint of the building was established. Gianniny expressed a desire to look at the issue as a council. Golden expressed his desire that Varner Lane be kept open.

UNFINISHED BUSINESS - None

NEW BUSINESS - None

ADJOURNMENT

There being no further business, the meeting was adjourned at 9:34 p.m.